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**MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION  
ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED**

**IN THE MATTER OF:**

**GRAND RAPIDS POLICE COMMAND  
OFFICERS ASSOCIATION  
LABOR ORGANIZATION,**

**-and-**

**CITY OF GRAND RAPIDS,  
EMPLOYER.**

**Case No. LO7 I-4013  
AWARD OF THE PANEL**

**APPEARANCES**

**FOR THE CITY**

John H. Gretzinger, Esq.

**FOR THE Association**

James J. Chiodini, Esq.  
Timothy J. Dlugos, Esq.

**PANEL**

Martin L. Kotch  
Ken Deering  
James J. Chiodini

Chairperson of Arbitration Panel  
City Delegate  
Association Delegate

## **STATUTORY AUTHORITY**

This matter is a proceeding brought under the provisions of Act 312, MCL 423.231 *et seq.* The statutory criteria upon which the award of the Arbitration Panel must be based are set forth in Section 9, MCL 423.239:

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.

## **BACKGROUND**

The previous contract between the parties expired on June 30, 2007. The successor contract now before the Panel is to cover the three-year period spanning July 1, 2007, through June 30, 2010.

There were five hearing dates in this matter:

December 15, 2008  
December 16, 2008  
January 15, 2009  
January 29, 2009  
August 25, 2009

The Panel met in executive session on November 3, 2009

The Panel issued an "Interim Award on Comparability" on May 1, 2009. The parties submitted briefs on the issue of comparability. The Panel Chair submitted a draft opinion to which the City filed a dissenting opinion. The Association then filed a concurring opinion. Both opinions are attached hereto, as is the interim decision on Comparability.<sup>1</sup> Ultimately, the Panel concluded that the following communities would be used for purposes of comparability under Section 9(d):

Warren  
Sterling Heights  
Livonia  
Wyoming  
Lansing  
Kalamazoo

Immediately prior to the final hearing, a Partial Settlement Agreement was reached between the parties, resolving all but one issue. This Partial Settlement Agreement became effective as of September 15, 2009. The sole issue remaining was proposed by the Association as an equity adjustment, and constitutes the Association's Last Best Offer. The parties agree that this remaining issue is properly before the Panel for consideration on the merits.

### **LAST BEST OFFERS**

#### **The Association**

For the rank of Lieutenant, an equity adjustment shall be added to the top-paid "F" Step of the most current Salary Schedule. This adjustment will be split into two equal (non-compounded) installments, with the first installment to be effective as of the date

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<sup>1</sup>Where reference to "the Panel" is made in this Award, it is understood this refers to a majority of the Panel.

of the Act 312 Award, and the second installment effective on the last day of the contract, being June 30, 2010. The progression of the installments is illustrated by the Salary Schedules listed below.

For the rank of Captain, an equity adjustment shall be added to the top-paid "F" Step of the most current Salary Schedule. This adjustment will be split into two equal (non-compounded) installments, with the first installment to be effective as of the date of the Act 312 Award, and the second installment effective on the last day of the contract, being June 30, 2010. The progression of the installments is illustrated by the Salary Schedules listed below.

As a result of the above offer, the Annual Salary Schedule set forth in Appendix A of the contract shall be amended to reflect the following pay rates for the remaining duration of the collective bargaining agreement:

**POLICE LIEUTENANT AND CAPTAIN  
SALARY SCHEDULE - Current, as of ratification of Partial  
Settlement by the parties**

CLASSIFICATION	E	F
Police Lieutenant	\$36,568.90 \$76,063	\$30,740.10 \$80,580
Police Captain	\$41,416.10 \$86,146	\$43,489.50 \$90,458

**POLICE LIEUTENANT AND CAPTAIN  
SALARY SCHEDULE - First Equity Installment  
Effective (Date of Act 312 Award)**

CLASSIFICATION	E	F
Police Lieutenant	...	\$40,065.90 \$83,337
Police Captain	...	\$44,716.80 \$93,011

**POLICE LIEUTENANT AND CAPTAIN  
SALARY SCHEDULE - Second Equity Installment  
Effective June 30, 2010**

CLASSIFICATION	E	F
Police Lieutenant	...	\$41,3909 \$86,093
Police Captain	...	\$45,9438 \$95,563

The Association has amplified its Last Best Offer in its Brief:

The methodology used to reach these proposed amounts begins with the average maximum base salaries earned by the Panel's selected comparables. Among these six communities, the 2009 averages are currently \$86,093 for Lieutenants and \$93,646 for Captains. The Association's Last Best Offer, therefore, seeks to raise the Lieutenants to the \$86,093 average. Notably, this does not alter their respective ranking among the other six comparables; Grand Rapids Lieutenants still remain fifth out of the seven comparable.

For Captains, the Association used a "differential" approach. Based on the adjustment for Lieutenants (i.e., \$86,093), the adjustment proposed for Captains reflects an 11% differential between the two ranks, equating to \$95,563. While the current differential is 12.26%, the Association's offer purposefully took this reduction into account. Overall, the adjustment would move Captains from their current rank of fifth among seven to fourth place.

Moving the Captains to the average, as with the Lieutenants, would have drastically compressed the current differential between the two ranks. The 2009 average for comparable Captains is \$93,646. (UX 145.) Consequently, bringing the Captains to "average" would have compressed the rank differential from 12.26% to approximately 8.77%, amounting to a reduction of almost 30%. Rather than propose such a dramatic change (which would have moved the Captains to third [\$96,648] on the list of comparables), the Association proposes an 11% differential as a fair accommodation of the respective interests at stake.

Mathematically, the Association's proposal amounts to an additional 6.84% increase to the "F" Step for Lieutenants, and a 5.64% increase to the "F" Step for Captains by the end of the contract.

The City

A. The City of Grand Rapids proposes that no equity adjustment to the current wage scales be provided;

-or-

B. The City of Grand Rapids proposes that a 5.00% equity adjustment with no retroactivity be provided effective the date of issuance of the award and the captains and lieutenants be considered to be salaried exempt employees who are not entitled to overtime payments for any work outside of their regular working hours.

**THE CITY'S CONTINGENT LAST BEST OFFER**

The City's Last Best Offer is objected to by the Association on both procedural and substantive grounds. It points to a finding of contingent offers as improper by Arbitrator C. Barry Ott in *City of Livonia and Livonia Fire Fighters Union, Local 1164*, MERC Case No. D06 G1704 (March 20, 2008). There, the city argued against the submission of a contingent offer by the union. In support, the city relied on a previous ruling of Arbitrator Theodore St. Antoine, issued in a 1998 Act 312 award involving the same parties, which stated:

For whatever value it may have, however, the Chairperson's own personal opinion is that such an alternative, contingent proposal is indeed contrary to the scheme of Act 312, at least absent the agreement of the other party.

Ultimately, Arbitrator Ott concluded that the contingent proposals were contrary to the scheme of Act 312. Specifically, he stated:

The chairperson of this Panel agrees with the observation of Arbitrator St. Antoine made in the earlier Act 312 case involving the parties; that alternative, contingent proposals such as we have before us are contrary to the scheme of Act 312. Section 8 of the Act contemplates last best offers on each economic issue and in this case we are confronted with an either/or situation.

Beyond this, the parties exchange arguments on the substantive claim by the City that the Command Officers should properly be considered exempt under FLSA standards. It is unnecessary, however, for the Panel to reach a decision on this question. The Panel is in agreement with arbitrators Ott and St. Antoine that the form of the City's offer is improper under

the statute, for the reasons stated by them. The Panel assumes It is the City's preference, if one of its contingent offers were to be struck, that its monetary offer remain the viable one.

## **CONTENTIONS OF THE PARTIES**

### **The Association**

The Association has pointed to a variety of factors which it argues are supportive of its Last Best Offer:

**Education:** Twenty of the 24 members in the unit have attained a bachelor's degree, and two of the remaining four have Associate's degrees. Ten have earned master's degrees. This unit has far exceeded the attainments of most other law enforcement agencies throughout the state.

**Training:** Many members have participated in voluntary training and education programs. The level of training within the department was recently praised in a 2008 study conducted by the Michigan Municipal Risk Management Authority.

**Dangers:** Command Officers face the same risks as the lower ranks, and are required to maintain the same proficiencies.

**Increased Responsibilities:** In 2000-2001, the new chief implemented a decentralization of command authority from the chief to the Lieutenants and Captains. A variety of new responsibilities devolved upon the command officers and new geographical boundaries were set. As a result of these changes in responsibilities, a negotiated equity adjustment was put in place. After this adjustment, Grand Rapids lieutenants ranked seventh statewide, far below other City officials. Since then lieutenants have fallen to 16<sup>th</sup> in the state, while other City administrative positions retained their top rankings. The chief continues in his high-ranking, notwithstanding that the position no longer carries the responsibilities it previously did. Additional restructuring occurred in 2004, reducing the number of geographic service areas from 6 to 4. This reduction brought increased responsibility to the command officers. Cuts in civilian support personnel have also increased the responsibilities which have fallen to the command officers.

Internal Administrative Compensation: The Association compares not only wage rates from the comparable communities, but also the pay given to managers and administrators within the City. The Association asserts that the City's compensation practices are inconsistent.

According to the Association, in 2007, maximum pay rates reveal the lieutenants and captains both ranked fifth out of seven. This equated to 92% and 95% of the average. Other leadership positions within the City had much more favorable rankings. City Commissioners, the City Manager, City Attorney, City Clerk, Director of Finance, Treasurer, and Police Chief, were each well above average in 2007. Rankings were generally either first or second among "comparable counterparts." This trend has continued through 2008 and 2009.

Given the resources and advantages of Grand Rapids, the Association observes, one would expect that all City employees would be at the top of the rankings. But there is a double standard which the Association seeks to address in its Last Best Offer. Even after the implementation of the recent Partial Settlement Agreement, it argues, the current 2009 pay rates remain well below average, keeping them in fifth place among the comparables.<sup>1</sup>

Internally, the Association notes that the City has voluntarily given adjustments to the lower police unit, both during the current negotiations for their recent successor agreement and after the conclusion of their Act 312 process. These equity adjustments were in addition to the same wage increases agreed upon in the Partial Settlement Agreement with the Command unit. Adjustments were given to the Police Officers and Sergeants in the amount of 1.25% and 1.75%. Further, an additional 2% step was added to the police officer's salary schedule by the City after the conclusion of their act 312 proceedings. The Association points to this payment not so much as evidence of a double standard but rather as going to the City's financial ability to meet its Last Best Offer.

The Association has presented additional data which it says is relevant pursuant to Section 9(h): In the Michigan Municipal League's annual survey of wages for 2002-2003, Lieutenants in Grand Rapids ranked seventh overall out of the participating municipalities across the state. The City Manager ranked third, and the Police Chief fourth. In 2007, maximum pay

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<sup>1</sup>Throughout the arguments and exhibits, there are multiple instances of divergence in what would appear to be easily verifiable statistical data. Thus, the City has Grand Rapids ranking 4<sup>th</sup>, the Association 5<sup>th</sup>.



rates for the select leadership positions in the City as a whole ranked between third and sixth among the surveyed municipalities with the exception of the Deputy Police Chief. Captains and Lieutenants, however, ranked 9<sup>th</sup> and 11<sup>th</sup> among those same communities.

The Association addresses the original lists of comparables first proffered by the parties before the Panel made its final selection from those lists. The rankings for a select group of City officials were second, third or fourth. Captains and Lieutenants were 10<sup>th</sup> and 12<sup>th</sup>. The Association argues that this demonstrates that the City prefers that its administrators remain at the top but that, no matter what communities are examined, a double standard is found; the City's politicians and administrators are at the top, while the Command staff ranked much lower.

Ability to Pay: The Association contends that the negotiations on the current contract were politicized, with the City turning to an elite, largely business advisory committee, and then adopting that committee's recommendations argument on the budget. This included a "laundry list" of concessions brought to the bargaining table. This lack of bargaining give-and-take ultimately led to three difference Act 312 proceedings. The Association points to the inaccuracy of the city's budget making process which consistently produced forecasts for the general fund which proved to be much lower any actual final number.

The Association argues that the City presents itself through its publicity, its audits and its website as being a world-class city. It contends that under the standards introduced by GASB, "unrestricted net assets can be used for any purpose the government chooses."

### The City

The City contends that the Panel should not deal with the issue of equity adjustment at all, since that matter is better addressed to the City Civil Service Board. Its position is that when addressing issues of pay equity, the first area to be reviewed is the comparison of wage rates within the City. Grand Rapids maintains a comprehensive classification and salary schedule which is administered by the City Civil Service Board. That Board reviews the job duties of the various classifications and maintains salary parity among these classifications.

Under Article 6, Section 3 © of the contract, classification grievances may only be presented to the Civil Service Board. The City contends that the purpose of this section is to allow employees in a particular classification, or the Association on their behalf, to petition the

Civil Service Board to review the pay being provided to that classification based upon the job duties being performed and the labor market for those services.

There is precedent, says the City, for this procedure, involving the Police Officers and the Sergeants. In 2008 they sought equity adjustments based upon the duties they assumed in 2000 as a result of the change to community policing. As a result, in May 2008, the Civil Service Board approved a 1.75% wage increase for Sergeants and a 1.25% wage increase for Police Officers. When this wage increase caused a parity conflict with the emergency dispatchers, a new pay step of Senior Police Officer was approved by the Civil Service Board in July 2009 to provide an additional 2.0% wage increase for those police officers with 10 or more years of service with 10 or more years of service who had not moved on to sergeant positions. The City further maintains that the Captains and Lieutenants also utilized this procedure to receive additional equity wage adjustments of 1.50% on July 1, 2001 and an additional 1.50% on July 1, 2002.<sup>2</sup>

The City submits that the Act 312 Panel should decline to grant any equity adjustments to the Captains and Lieutenants in order to avoid conflicts with the Civil Service Board and the classification and salary schedule that it maintains for all City classifications. That classification schedule contains 413 separate classifications, and the Civil Service Board attempts to maintain salary parity among all of the various classifications.

The City argues that virtually all positions that are paid \$80,000 or more are considered to be FLSA exempt and do not receive extra pay even though they routinely work at times outside of and above their regular scheduled hours. The exception is employees in police and fire positions other than Chief or Deputy Chief, and Police Captains who average \$6,154 in yearly overtime while Police Lieutenants average \$10,964 in yearly overtime. The City maintains that this ability to earn overtime pay is not insignificant. Captains have averaged \$6,154 in overtime each year. The average gross earnings in excess of the \$83,776 base pay was \$7,947 in 2006, \$10,585 in 2007, \$7,400 in 2008 and \$7,487 in 2009 which was then adjusted down by \$1000 education allowances and \$1200 for longevity. Lieutenants have averaged \$10,964 in overtime each year. The average gross earnings in excess of the \$74,603 base pay was \$11,591 in 2006,

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<sup>2</sup>The Association has disputed this portrayal, and Mr. George H. Childers Jr., the City Panel Delegate, conceded that the arrangement was a product of the negotiating process under the collective bargaining agreement

\$14,780 in 2007, \$14,302 in 2008 and \$13,164 in 2009; which was then adjusted down by \$1000 education allowances and \$1200 for longevity.

Moving either of these positions significantly up the salary grid will cause internal compression within the City salary and compensation plan not deemed appropriate by the Civil Service Board. The compression will be most significant in the relationships among the classifications of Deputy Police Chief (\$103,414), Police Captain (\$90,458), Police Lieutenant (\$80,580), Fire Battalion Chief (\$78,307) and Fire Captain (\$73,173). There is absolute parity between the salaries paid to the Police Chief and the Fire Chief, but the salary levels paid to the Police Command positions are currently higher than the Fire command position of Battalion Fire Chief. The grant of an equity adjustment for the Police Command positions will further expand this wage disparity and will very likely cause perceived pay disparity with the Fire command staff. It will also create a situation where the Police Captains with overtime may routinely make the same or more than the Deputy Police Chief. The Civil Service Board classification review process is the only appropriate method to address such equity issues and the Act 312 Panel should grant the City Final Offer of no equity adjustment.

The City next argues that the Panel should not grant an equity adjustment because there is not sufficient support for taking such an extraordinary action. The purpose of Act 312 arbitration, it says, is to address disputes that have not been resolved in the collective bargaining process. The party advocating a particular change has the burden of convincing that Act 312 Panel that their position is so well supported that it must be adopted.<sup>3</sup> Radical changes in the bargaining relationship such as granting an equity adjustment after agreeing on the wage package for the period of the agreement are not normally implemented in the Act 312 process, and the Panel should not take such an action unless it finds that the existing pay scale are significantly out of line with the market. An examination of the salaries paid in comparable communities and in the local labor market does not support such a finding.

The City strongly argues that the Association's characterization of the unrestricted net assets is available for any purpose the government chooses is wholly misplaced. As Mr. Buhrer

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<sup>3</sup>The Panel is faced with two opposing economic offers. It must choose one of the two. That choice is based on which of the two most closely comports with statutory criteria. The standard proposed by the City is incorrect.

testified, the income tax , which provides 50% of the funding for the general fund was dropping rapidly and was down 11.4%. The City instituted a job freeze, and there are now about 50 vacancies. There is an expectation that state shared revenues will decline dramatically.

Mr. Buhner was insistent that the Association's interpretation with respect to unrestricted net assets was incorrect. Monies that are in funds other than the general fund are there for a specific purpose and are not readily available for general purposes. The City has drained unspent capital wherever it was able to do so. Mr. Buhner stated that even if it was concluded that the command deserves an equity adjustment, this was just horrible timing. " We just don't have the money to pay it."

### **DISCUSSION**

From the outset of these proceedings, it has become clear that comparability would be a matter of great importance. Each side proposed comparable communities with significant demographic and economic variance from the City of Grand Rapids. In addition, the City argued for the virtual primacy of geographic location.

In their arguments in support of their Last Best Offers, the parties continue, directly or indirectly, to expand or contract comparability, including, at times, simply ignoring the list of comparable communities chosen by the Panel. The Panel's Interim Award on Comparability provided that the non-selected communities from the original proposed lists could be looked to under Section 9(h) of the act. Looking to yet other communities throughout the state may be permissible, but data from such sources have little weight. Unspecified communities from surveys, and/or surveys, the methodology of which is unrevealed, provide little in the way of substantive comparability. Because of the wide ranging and tenuous sources for the arguments presented by the parties, it seems prudent to hew even more closely to the chosen list of comparable communities. The reasons for the selection of those communities have been laid out in the Panel's interim decision and need not be reiterated here, except to say that an attempt to create a single list of communities drawn from lists, from each side, representing extreme positions, must inevitably result in a final list with which each party is unhappy. This unhappiness undoubtedly explains the attempt to resort to data derived from sources wholly beyond those dealt with by the Panel in arriving at a final list of comparable communities. The data from 9(h)

communities originally proposed have a tendency to further skew the results, the main reason these communities were not included in the first instance. The information relied on by the parties from communities outside of their original lists, such as statewide surveys, survey data from select cities, etc., does not fit comfortably within the analytical scheme dictated by the statute — comparability, and thus shall be accorded little, if any, weight.

The City objects to the Panel's entertaining the Association's proposal. It argues that the Civil Service Board has, in effect, an evaluative mechanism which keeps wages and salaries in a state of relative equilibrium. Where inconsistencies or inequalities are claimed, the Board may be petitioned, and proposals for remedying any such can be evaluated.

The City has presented no reason, despite its rather idyllic description of employees and management joining together to conform to the Civil Service Board's wage and salary framework, why this statutorily authorized Act 312 Panel should defer to the Civil Service Board, or why statutorily guaranteed collective bargaining rights should be subordinate to the City Civil Service Board. The Panel concludes that it has complete authority to hear and adjudicate the issue before it, and is in no way required to defer to the City's internal wage mechanism.

The Association points to the dangers attendant upon the execution of Command Officers' duties. That the command officers encounter perils and hazards is unquestioned. Yet there is nothing in the course of the past decade, in the record, to suggest that those perils and hazards have increased in any significant manner, or that they have brought them substantially closer to those experienced in Metro Detroit.

As to education, the City answers the Association's argument by noting that there is compensation for educational achievement. This is an answer to the financial aspect, but the Association does have an argument with respect to the excellence of the department in terms of educational attainment, wholly apart from the question of "who paid."

With respect to the post-act 312 payment to the Police Officers, there is little on the record to explain why such a payment was made. While this payment to the lower ranks may appear to be supportive of the Association's demand for an equity adjustment, it cannot serve as such without there being more information on the record than currently exists. Since this was a post-decision action, the 312 record below offers no assistance.

The Association has made an argument for an equity adjustment based on increased duties carried out by captains and lieutenants as a result of geographical shrinkage and support staff attrition. Both have occurred. That they have increased the burdens of command officers seems clear. However, this attrition and reallocation of resources, occurrences which almost always follow as a consequence of straitened economic circumstances, appear not to have been dramatic or unduly burdensome. Moreover, this attrition speaks in support of the City's claim of financial distress.

The Association has argued that its members have been falling behind other communities in the state, where it once enjoyed very high-ranking. Here is an instance where the determination to stay close to the data from the comparable communities comes into play. The Association has presented a historical, panoramic view, relying heavily on data over time and beyond the scope of decided-upon comparables. The Panel would prefer to concentrate on a snapshot. This is not to suggest that there has or has not been some decline in rankings, as claimed by the Association. Rather, it is an attempt to focus on the current circumstances, using, as much as possible, Section 9(d) comparisons.

As to the external comparables, the City has presented a picture of rankings and wage differential:

<b><u>CAPTAINS</u></b>		<b><u>Current</u></b>	<b><u>% GR</u></b>	<b><u>Proposed</u></b>	<b><u>% GR</u></b>
1.	Lansing	\$81,054	89%	\$81,054	84%
2.	Kalamazoo	\$85,251	94%	\$85,251	88%
3.	Wyoming	\$87,630	97%	\$87,630	91%
4.	Grand Rapids	\$90,458		\$95,563	
5.	Livonia	\$96,553	106%	\$96,553	<1%
6.	Warren	\$99,272	109%	\$99,272	103%
7.	Sterling Heights	\$102,535	113%	\$102,535	107%

<b><u>LIEUTENANTS</u></b>	<b><u>Current</u></b>	<b><u>% GR</u></b>	<b><u>Proposed</u></b>	<b><u>% GR</u></b>
1. Lansing	\$73,709	91%	\$73,709	83%
2. Kalamazoo	\$77,407	96%	\$77,407	89%
3. Wyoming	\$79,976	>99%	\$79,976	93%
4. Grand Rapids	\$80,580		\$86,093	
5. Livonia	\$82,763	102%	\$82,763	96%
6. Warren	\$90,259	112%	\$90,259	104%
7. Sterling Heights	\$93,381	115%	\$93,381	108%

The foregoing chart for Captains shows that with the current raise which was a part of the Partial Negotiated Settlement, the three communities whose wages are below those of Grand Rapids are shown to be 11%, 6%, and 3% below. The proposed equity adjustment would change those disparities to 16%, 12% and 9%, a 5-6% widening of the gap. For those above Grand Rapids, they were 6%, 9% and 13% above Grand Rapids. The proposed adjustment would produce roughly the same 6% differential, this time lowering the gap.

The City makes the argument that the present wage rate for Grand Rapids places it exactly in the middle of the comparable communities. The average of all communities, including Grand Rapids, is \$91,821, \$1,363 higher than the current Captain rate in Grand Rapids. This results in a 1.5% deviation from the average, an amount insufficient, says the City, to justify the substantial raise called for by the Association.

Without the inclusion of Grand Rapids, the figures change very little. Grand Rapids' wage scale is approximately \$1,590, or about 2%, below the average. The Association's proposal would raise the wage scale for Captains by \$5,105. As can be seen from the list above, this would not change the rankings; Grand Rapids would still rank 4<sup>th</sup> out of 7.

As to Lieutenants, Grand Rapids is again 4<sup>th</sup> out of 7. The average of the seven communities is \$82,867, \$2,287 higher than the Grand Rapids rate. The City argues that a 2.8% deviation from an average is not sufficient to justify any equity adjustment, and certainly not an increase of \$5,513. The average without Grand Rapids is \$83,249. By this calculation, there is a \$2,669 difference, or slightly over 3%. Again, the City argues that the deviation from the average is too small to warrant such a substantial raise.

The City contends that the Panel should not grant an equity adjustment because its financial situation is such that no extraordinary wage increase should be given. The City urges that the testimony at the hearings established that it is facing significant financial difficulties, and is having difficulty paying for the necessary public services. It notes that every other union in the City has recognized this. The Association's contention that the City is free to sell assets to meet its wage demands is wholly without foundation.

The equity adjustment, as proposed by the Association, would be an extraordinary remedy. It is certainly not a commonplace event in Act 312 proceedings. The Association has made strong arguments reflecting the decline, in terms of wages, of its members. Yet, much of the data relied on by the Association comes from "unstructured" comparisons, e.g., statewide rankings derived without recourse to the traditional strictures followed under Act 312.

The argument made by the Association concerning the high rank enjoyed by administrative personnel in the City is accurate, so far as it goes. Actual annual income, of course, must be looked at with an eye toward the overtime income available to command officers. This narrows the income gap to a substantial degree. Moreover, comparisons in rank between union and exempt personnel are fraught with difficulty. The labor market for services such as those provided by the exempt City officials is likely to be quite different from that applicable to the Command Officers. In addition, those positions are fairly circumscribed, and the need to fill them with persons of specific qualifications may be such as to require relatively higher pay scales.

The discontinuity in rank and percentage of average between the administrative, exempt, personnel and the Command Officers does exist. Even so, the settlement wage arrived at by the parties keeps this unit in the same relative position it previously held. While this may not be seen as an advance by the Association, it is certainly not a decline. In addition, the Association chose to settle the issue of wages, rather than leave it to the determination of the Panel. It can be assumed that this was deemed to be in its best interests, and the wage bargain a reasonable one under the circumstances. It now seeks relief from the Panel by way of an adjustment it could not achieve by bargaining or through settlement.

In order for the Association to achieve its goal it would be necessary for it to show an erosion of earnings of somewhat dramatic proportions. While the Association has demonstrated



a disequilibrium between administrators and its members, it is arguing more from principle of fairness than from statutory requirements of comparison. And, while that principle may be valid, its comparative value is tenuous.

According to the testimony of Mr. Scott Buhner, the City is suffering from a "functional budget deficit" that must be corrected in order to avoid the difficulties which have befallen cities such as Detroit, Pontiac, and Flint. It is anticipated that income tax revenue in fiscal year 2010 will be more than \$2,500,000 lower than in fiscal year 2009. At the same time, it is likely that state shared revenue will be sharply curtailed. In addition, the City argues that taxable property values will not show any increases because the CPI has decreased over the last year, and may significantly drop in mortgage foreclosures and lower selling prices are factored into the budget. Pension costs continue to escalate and healthcare costs have yet to be fully contained.

The City says it is having significant difficulties in funding all of the services contained in the current fiscal year 2010 budget. Employee groups have not been willing to agree to contract modifications that would allow the City to implement temporary furlough programs and it is likely that the City will be required to implement mid-year layoffs of police and fire employees to balance this year's budget. In the face of these funding difficulties and the reality that many Grand Rapids citizens have lost their employment or had reduced work hours, it is simply not the time for Command Officers to request more than \$5000 in equity adjustments to bring their pay up to the standards of the Detroit metropolitan area.

Witnesses for the parties argued over audits vs. budgets. At the conclusion of the hearing, the picture of the availability of funds to meet the Association's demand remains clouded. However, on this record, the City has made its case that it does not have various caches of unrestricted net assets with which it can do anything it chooses. The palpable decline in income sources for the general fund, together with the realistic possibility of further erosion in the immediate future, further sustain the City's position. Were the economic position somewhat more secure, matters might be different. Nonetheless, on the record as a whole, the Association has failed to demonstrate its claimed position of decline and inequality *relative to comparable communities*.

As this matter has unfolded, virtually everything has proceeded from the comparative position of this unit relative to its comparables. And the record demonstrates that the rank and

annual income of the unit does not show such a divergence from its comparables as to warrant an extraordinary equitable remedy. In order to apply the sought after remedy of equity adjustment, the case would have to be deemed compelling. Given its position among its comparables, it cannot be said that such a case has been made out.

The Association has two burdens to meet in order to achieve its demand for an equitable remedy. It must show that its compensation package is significantly out of line with its comparable communities. And, it must demonstrate the City's ability to pay. It has not met its first burden, rendering the second moot. And even as to that, it has fallen short, though the matter is not entirely clear.

The Panel has concluded that based on this record, the contract should not be further altered, and should be left as it was at the conclusion of the Partial Settlement Agreement.

Respectfully Submitted,



Martin L. Kotch  
Panel Chair

On the single issue before it, the Panel votes as follows:

**Consenting to the Award:**

  
\_\_\_\_\_  
Martin L. Kotch  
Panel Chair


\_\_\_\_\_  
James J. Chiodini, Esq.  
Association Delegate

  
\_\_\_\_\_  
Ken Deering  
City Delegate

February 19, 2010

**Dissenting from the Award:**

\_\_\_\_\_  
Martin L. Kotch  
Panel Chair

  
\_\_\_\_\_  
James J. Chiodini, Esq.  
Association Delegate

\_\_\_\_\_  
Ken Deering  
City Delegate