

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CITY OF HASTINGS,
Employer,

Arising pursuant to Act 312, Public Acts
of 1969, as amended

- and -

MERC Act 312 Case No. L10 D-4001

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

Union.

OPINION AND AWARD

Panel Chair Thomas J. Barnes
City Delegate, Jeff Mansfield
Union Delegate, Jim DeVries
July 29, 2011

Chronology

Petition Date: November 15, 2010
Prehearing Dates: March 18, May 18, 2011
Last Best Offers: July 7, 2011
Hearing: July 21, 2011

COUNSEL

Counsel for the City

Kevin Krauss

Counsel for the Union

Jim DeVries

WITNESSES

Witnesses for the City

Jeff Mansfield

Witnesses for the Union

Lynda Pittman

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
WESTLAND OFFICE

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The parties held prehearing sessions at the City of Hastings on March 18 and May 18, 2011. In addition the parties have had several other communications via telephone and e-mail. The parties have reached agreement on a number of issues on a new 3-year collective bargaining agreement and those tentative agreements are incorporated herein and attached hereto. As a result of the foregoing, there remain three issues for resolution: (1) wages, (2) pension, and (3) part-time and casual employees. Set forth in the order listed above are the last best offers of the respective parties with respect to each of the three issues as well as a discussion and Award on each. Attached at the end of the Award are the parties' tentative agreements which are hereby incorporated herein and made a part hereof. Preliminarily, however, the City's ability to pay issue warrants attention.

Ability to Pay

The City has presented an ability to pay argument as a part of its case. It is clear at least through 2014 (City Ex. 4, p. 2.1.2) the City will not be in serious financial difficulty since its General Fund balance will exceed 15% (regarded as a prudent level) of the budget for each year until 2014/2015 when it drops precipitously to \$40,761, less than 1% of total expenditures and transfers that year. The City has wisely anticipated its declining financial position foretold by some large businesses which left the area or substantially reduced operations over the past several years. Added to declining property tax revenues and reduced State shared revenues the City has been actively engaged in a wide variety of cost containment and cost cutting measures (City Ex. 2, 3, and 4). These measures included reductions in personnel at all levels including the Police Department. The City has imposed a wage freeze on all City employees for 2010 and 2011, and even beyond that is uncertain. No doubt in large part due to the City's strong and balanced fiscal management efforts, the Union here has made very modest bargaining requests.

In just one sterling example where the parties have worked together the healthcare issue was resolved without the need for an Award on that issue. Thus, the differences which remain on the three issues are not great due in large part to the mutual recognition that, while the City is nowhere near broke, neither party is desirous of reaching that precipice.

I. WAGES – Year 1 – 7/1/2010 – 6/30/2011

City Position

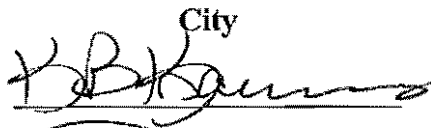
Zero (0%) percent increase.

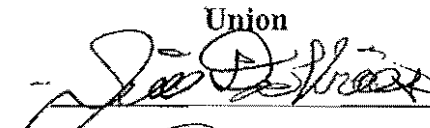
Union Position

Zero (0%) percent increase

AWARD

With respect to year 1 wages, July 1, 2010, through June 30, 2011, the parties are in agreement that there will be no wage increase as a result of new Michigan legislation prohibiting retroactivity.

City

Concur Dissent

Union

Concur Dissent

WAGES – Year 2 – Date of Award - 6/30/2012

City Position

The City proposes wage increase of 1% effective when a new CBA is in place

Union Position

Two (2%) percent increase for all steps in all classifications on date of Award


Discussion

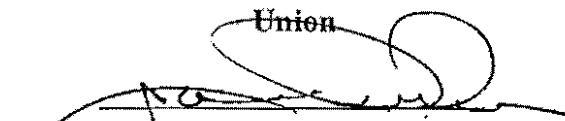
With respect to year 2 wages, July 1, 2011, through June 30, 2012, the Union last best offer of a 2% increase for all steps and all classifications is adopted for the following reasons:

(1) the increases for two of the comparables for which there are negotiated wage increases from July 1, 2010, to July 1, 2011, are 1.5% for Allegan and 1.75% for Dowagiac. (2) for the last year in which all of the comparables had negotiated rates, July 1, 2009, Hastings of all the comparables had the next lowest Patrol Officer rate, \$84 more annually than the City of Dowagiac, which had the lowest rate. Compared to the average of the comparables at that time, the Hastings' Patrol Officer rate was 5.8% less than the comparable average, or \$2,630 less annually. Since Hastings is at the low end of the comparables on wages, a 2% increase is justified and is further supported by the wage freeze from July 1, 2010, to June 30, 2011 (the same freeze which applied to all other City employees). Moreover, since Hastings starts nearly 6% behind the average of all the comparables, a 2% increase is reasonable and responsible. (3) finally, given the freeze for the first year, a 2% increase effective with the date of this Award does not keep the Officers apace with the cost of living for that period of time (3.6%).

AWARD

With respect to year 2 wages, July 1, 2011, through June 30, 2012, the Union position as set forth above is Awarded.

City

Concur Dissent

Union

Concur Dissent

WAGES – Year 3 – 7/1/2012 – 12/31/2012

City Position

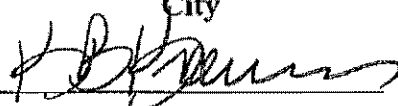
The City proposes a wage increase of 1% effective July 1, 2012

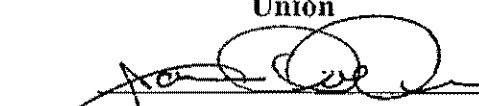
Union Position

Effective 7/1/2012, one (1%) percent increase for all steps in all classifications

AWARD

With respect to the third year of the contract, the parties are in agreement to a 1% increase effective 7/1/2012 for all steps and all classifications, and those two positions being identical are adopted.

City

Concur Dissent

Union

Concur Dissent

WAGES – Year 3 – 1/1/2013 – 6/30/2013

City Position

The City proposes a wage increase of 1% effective January 1, 2013

Union Position


Effective January 1, 2013, one (1%) percent increase for all steps in all classifications

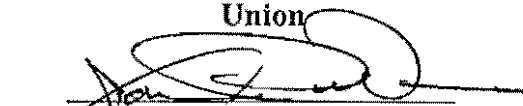
Discussion

With a 2% increase in the Patrol Officer rate of \$45,198 the new rate becomes \$46,102. Assuming the Officers chose to keep their B-3 Bridge pension, that out of pocket contribution (estimated to be 5.5%) results in a net pay decrease of \$1614 in the second year of the contract (\$46,102 x 3.5%). Even with a 1% bump on 7/1/2012 and another 1% on 1/1/2013, the Patrol Officer will have \$2,549 less take home pay over the three years (3.5% less 7/1/2011 to 6/30/2012; 2.5% less 7/1/2012 to 12/31/2012; and 1.5% less 1/1/2013 to 6/30/2013 with base salary being \$46,102 (2%), \$46,563 (1%), and \$47,029 (1%) on the 3 effective dates – not counting the approximately one month variance of the effective date of this Award from 7/1/2011). Dollar wise that is a fair sacrifice being made by the Patrol Officers relative to all other City employees.

AWARD

With respect to January 1, 2013, six months prior to the expiration of this contract, the parties have both proposed a 1% increase for all steps and all classifications and those positions being identical are adopted herein.

City

Concur Dissent

Union

Concur Dissent

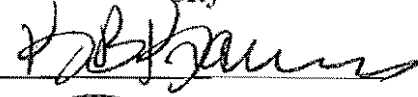
Bonus of \$500 Effective with the Date of the Award

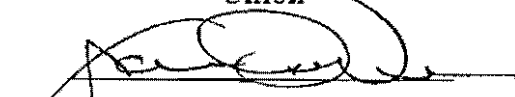
The Union has advanced the above proposal. The City has not made any such proposal. The City has argued strongly that both the 2% wage increase sought by the Union and the \$500 bonus are a subterfuge to avoid the new Michigan legislation proscribing any retroactivity. While the parties and impartial Chair have had discussions which would have provided for some retroactive wages, those discussions did not produce an agreement and thus should be disregarded since they were settlement talks. As indicated above, the 2% wage adjustment stands on its own as reasonable based on the external comparables, the cost of living, and the significant net pay reduction the Officers will incur in order to keep their pension or even a reduced one if B-3 is elected. The bonus stands on a different footing and is not awarded since:

- ... It was advanced only at the last best offer level and thus not negotiated over.
- ... It would distort further differences between the Patrol unit and all other City employees since 2% wage adjustment alone stands apart from the 0% accorded all other City employees.
- ... The bonus could be viewed as skirting the retroactivity prohibition and a panel should not undercut the current public policy whether it agrees or disagrees with such policy.

AWARD

No \$500 bonus.

City

Concur Dissent

Union

Concur Dissent

II. PENSION

City Position

Section 15. Pension. Full-time employees hired before July 1, 2010 shall be provided with a defined benefit "Bridge" pension plan administered by Municipal Employees Retirement System of Michigan (MERS). Pension benefits under the plan shall be determined according to the terms and conditions of the plan using final average compensation calculations of 5 years (separately for the two parts of the bridged benefit – "frozen FAC") and benefit multipliers of 2.5% for service accumulated prior to the date this new CBA is in place, or as soon thereafter as allowed by MERS regulations and the terms of the plan, and 2.0% for service accumulated thereafter. The minimum age and service required for unreduced benefits shall be 50 and 25 years respectively (F50/25).

Provided, however, Employees eligible for the pension plan described in the foregoing paragraph may collectively elect to "buy up" to the prior MERS B4 plan pursuant to the terms of the plan and MERS regulations by contributing by payroll deduction the difference in cost from the B2 Bridge plan and the B4 plan as determined by a supplemental valuation provided by MERS actuaries and paid for equally by the City and Union. This election shall be made and communicated to the City not less than 10 days after receipt of the valuation. This election is by the whole bargaining unit. Individuals may not elect other than what the group elects. In the bargaining unit fails to elect the payroll contribution to maintain the B4 plan, or if it fails to provide timely notice of such election, the B2 Bridge plan will be implemented.

Either the Union or the City, or both, may request that a new supplemental actuarial valuation be made at future times during the life of this contract to determine the then current cost difference between the B4 plan and B2 Bridge plan. The requesting party will pay for the cost of such valuation. If the parties jointly request a new valuation, the cost shall be split equally. The results of a new valuation study shall be applied in the pay period next following receipt of such results. The Employee contribution may either increase or decrease based on the new study. In no event shall such increase or decrease be applied retroactively. Employee contributions shall be made through payroll deductions.

Full-time employees hired after July 1, 2010 and after the adoption date of the Plan will be covered by the MERS Hybrid Plan H (Plan). The Plan will consist of a Defined Benefit (DB) component with a 1.0% benefit multiplier and a Defined Contribution (DC) component. The city will make contributions to the DC component of the Plan in an amount equal to 10% of the employee's payroll less the cost to the City of the DB component of the Plan. The employee will be responsible for a minimum 1% contribution to the DC component of the Plan, and will be allowed to make additional contributions as allowed under the Plan, MERS regulations, and any applicable laws. Employees will be 100% vested for employer contributions to the DC component of the Plan after five (5) years of service. Vesting in the DB component of the plan shall be after six (6) years of service. Full-time employees hired before adoption of the Plan may convert to the Hybrid Plan at their option in accordance with the terms of the Plan and MERS Uniform Hybrid Program Resolution as adopted by the Hastings City Council.

Union Position

The Union and employer shall obtain an actuarial valuation to determine the cost of the following:

- A. The cost of "bridging" back from the current 2.5% (B-4) multiplier to a 2.0% (B-2) multiplier.
- B. The cost of "bridging" back from the current 2.5% (B-4) multiplier to a 2.25% (B-3) multiplier.

Within seven (7) days after receipt of the actuarial valuation, the Union shall have the option to:

- A. "Bridge" back to the B-2 multiplier, with the employer paying the full cost of the pension.
- B. "Bridge" back to the B-3 multiplier with the employees paying the difference between the B-2 and B-3 multiplier through payroll deduction.
- C. Continue the current B-4 multiplier with the employees paying the difference between the B-4 and B-2 multiplier through payroll deduction.

The cost of the actuarial valuation shall be split 50/50 between the employer and Union.

Employees hired after July 1, 2011 shall be provided MERS hybrid Plan H. The plan shall consist of a Defined Benefit (DB) component with a 1% multiplier and a Defined Contribution (DC) component. The City shall make contributions to the Defined Contribution (DC) component in an amount equal to ten percent (10%) of the employee's earnings, less the cost to the City of the Defined Benefit (DB) component of the Plan. The employee shall be responsible for a minimum of 1% contribution to the DC component of the Plan, MERS regulations and applicable laws. Employees shall be

vested 100% for employer contributions to the DC component of the Plan after six (6) years of service. Employees shall be 100% vested for the employer contributions to the DC component of the Plans after five (5) years of service.

Discussion


The City's last best offer is adopted because it obtains for the City its financial objective of getting control of its future pension costs by placing some of that responsibility on the Patrol Officers and at the same time affords the Officers the option of continuing their current plan where they share all of the cost increase above the City's proposed B-2, or the Officers paying less of a contribution for a lesser B-3 plan.

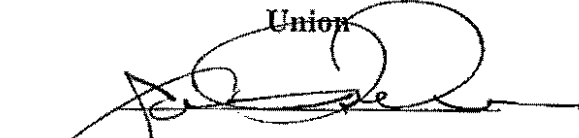
As mentioned above, this is a significant addressing by the City of its serious long-term pension costs and it puts a plan in place that should serve it well for future years as well as the current two years left on the contract covered by this Award. Moreover, the Union and City's last best offers adopt the MERS hybrid plan H for employees hired after July 1, 2011, which would further afford the City and the parties better control over future pension costs. Even without considering the future value of this hybrid the savings to the City in year 1 alone is \$39,852 (City Ex. 19, p. 10) for a frozen FAC.

AWARD

The City's position as set forth above is Awarded. However, the parties have agreed that the Union B-3 buy-up option is a separate economic issue and since there is no economic downside for the City for that option, it is awarded to the Union. Thus, the following language will be added to the above City last best offer after the first sentence of the second paragraph:

Employees may also buy up to the B-3 Plan by paying the difference between the B-2 Bridge Plan and the B-3 Plan on the foregoing basis.

City

Concur Dissent

Union

Concur Dissent

III. PART-TIME AND CASUAL EMPLOYEES

City Position

Section 3. Use of Part-Time Employees Questions. The City shall have the right to utilize part-time employees in lieu of and in place of offering overtime to full time employees of the City.

Union Position


Status quo; no change in the current language


Discussion

The Union's last best offer is adopted for the following reasons. First, the current language affords, in some cases, considerable overtime pay to bargaining unit members which could be seriously impacted by the utilization of part-time employees in lieu of offering that work to full-time employees in the bargaining unit. Overtime for the 10 Officers runs about \$45,000 a year or an average of \$4,500 per Officer. Moreover, if holiday overtime is counted another approximately \$2,300 per Officer would be added. That would be far too large a potential diminution of take home pay. Moreover, the City could, even under the current contract, employ part-time employees. Thus, there is at least a limited way in which to begin to explore the efficacy of such personnel. Finally, there is no particularly compelling reason to upset the status quo since the use of part-time employees, albeit perhaps economically feasible, does have some drawbacks in terms of the quality and consistency of police work and protection.

AWARD

The Union position as set forth above is Awarded.

City

Concur Dissent

Union

Concur Dissent

Respectfully submitted,

July 29, 2011


Thomas J. Barnes, Panel Chair

K. B. Kaus signs these items in behalf of City Delegate Jeff Mansfield

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TENTATIVE AGREEMENTS

1. ARTICLE X, HOURS OF WORK. The City and the Union agree (TA) to add the following language to Section 6 of Article X just prior to "(See examples on schedule B next pages)":

However, the City shall have the ability to change the schedule of the Detective/Sergeant position from one shift to another for the purposes of job assignment, including placement into a patrol shift opening, after giving the affected employee at least 24 hours notice, unless the affected employee waives such notice. The affected Detective/Sergeant shall suffer no loss in pay rate or grade as a result of being used temporarily in the patrol category.

ARTICLE XI, WAGES. The City and Union agree (TA) to add Section 5 to Article XI as follows:

Section 5. Compensatory Time. As a result of working approved overtime, Officers shall be allowed to accumulate up to twenty-four (24) hours of compensatory (comp) time (sixteen hours at time and one half). Officers shall be allowed to use accumulated compensatory time off at the Chiefs, or the Chief's designee's discretion. The intent in allowing time off as a result of accumulated compensatory time will be to prevent the creation of additional overtime.

Comp days shall not be allowed to bump or supersede scheduled vacation days that have been previously approved. Approved time off using comp time shall be granted on a seniority basis, and as per the above paragraph, up until 72 hours prior to the requested time off. At that point, the requested time off cannot be bumped by a more senior officer.

The City shall have the exclusive right to nullify and to end this section at its sole discretion at any time by simply paying off any outstanding compensatory time according to the Fair Labor Standards Act requirements

ARTICLE XII, VACATION, SECTION 7. The City and the Union agree (TA) to add a Section 7 to Article XII as follows:

All employees shall give at least 24 hours notice of requested vacation or use of personal time. Advance notice may be waived at the direction of the Chief or Chief's designee in a time of urgency or emergency.

ARTICLE XIII, HOLIDAYS. The City and the Union agree (TA) to add the following language to the end of Section 2 of Article XIII:

The City shall have the right to determine the need for the Detective/Sergeant to work on a holiday. If the Detective/Sergeant is scheduled but not required to work a holiday, he shall receive the day off and eight hours of holiday pay. With the agreement of both the City and the Detective/Sergeant, and in lieu of the eight hours of holiday pay, the Detective/Sergeant may receive another eight hour day off. If the Detective/Sergeant is scheduled to work and required to work a holiday, he shall receive holiday pay according to other provisions in this Agreement.

Patrol Officers and Patrol Sergeants who are not scheduled to work on a holiday shall have the option of a floating holiday by forfeiting their eight hours of holiday pay for an additional day off. The floating holiday shall be used on a date agreed to by both the employee and the City. Floating holidays shall be used within 90 days of the original holiday date, but prior to the end of the fiscal year. Failure to use a floating holiday within the 90 days/fiscal year shall result in payment being made for the original holiday under the terms of this Agreement. The intent here is to allow the use of a floating holiday without incurring overtime costs.

ARTICLE XVI, SICK LEAVE. The City and the Union agree (TA) to revise Section 2

of Article XVI to read as follows:

Section 2. Qualified employees shall be eligible for paid sick leave from (and to the extent of) their unused accumulated paid sick leave credits in the following situations:

- a) When an employee's absence from work is due to a non-duty illness or injury, provided that such illness or injury is not covered by another City's liability policy or workers' compensation plan.
- b) When an employee's absence from work is due to an illness or injury arising out of and in the course of his employment with the City and which is compensable under the Michigan Workers' Disability Compensation Act, after the first day of absence necessitated thereby, he shall be entitled to utilize his unused paid sick leave credits to make up the difference between the amount of daily benefits to which he is entitled under such Act and the amount of daily salary he would have received in his own classification had he worked, but not to exceed the total equivalent of what the employee would have received in daily pay on an 8 hour per day, 40 hour per week basis.
- c) After two (2) days absence due to such illness or injury, upon the City's request, an employee on sick leave shall provide the City with an authorization for the release to the doctor verifying the illness. Further, the City may, at its expense, require an employee on sick leave to undergo examinations and tests by medical personnel of its choice.

- d) An employee may be required to supply documentation from a physician authorizing an employee to return to work after an employee's absence after two consecutive days absence from work due to personal illness or injury at the discretion of the City.

ARTICLE XXI. GROUP INSURANCE.

Section 1. Health Insurance.

- a) During the term of this Agreement, full-time employees and their eligible dependents shall continue to be covered by the City's standard health insurance plan.
- b) Retirees and future retirees hired after July 12, 2002 and their dependents shall not be eligible for, receive, or continue to receive City paid health insurance following their retirement from employment with the City.
- c) Retirees and future retirees hired prior to July 12, 2002 and their eligible dependents, during the term of this Agreement, may continue to be covered by the City's health insurance. Retirees with at least 10 years of employment with the City, who are fully vested in the MERS plan, who are eligible for, and who enroll for and receive MERS retirement benefits immediately following the termination of their employment with the City, will be granted the same insurance plan options with related level of benefits as the current working employees. Retirees will receive only the employee plan without any additional benefits, payments, or conditions. This includes the Medicare supplement coverage provided in the plan as specified by the plan description and as specified by law and regulation. Only those dependents who were the employees' dependents at the time of retirement are eligible for any portion of their premium to be paid by the City.
- d) The City shall pay up to the following maximum monthly amount for health insurance coverage for eligible employees and retirees:

2011 Maximum City Share

Single	\$470.57
Two (2) Person	\$1076.08
Family	\$1311.61

- e) The City's share of the cost of the premium for the City's standard health insurance plan shall be increased annually by an amount equal to 50% of any increase in the cost of the premium for the City's standard health insurance plan. During the term of this agreement in calendar year 2012 and 2013, any employee premium share resulting from increasing premium costs shall not exceed 20% of the total premium paid.

- f) The City's payment for the cost of health insurance premiums for retirees and their eligible dependents shall be capped at the following amounts (based on percentage of the premium cost for the standard plan paid for active employees):

Years of City Employment	City Paid Portion of Premium Cost
At least 10 but less than 15	50%
At least 15 but less than 20	70%
20 or more	90%

Employees who are not fully vested and/or do not enroll or are not eligible to enroll in the MERS Plan to receive full MERS retirement benefits without penalty for early enrollment in the MERS Plan immediately following termination of their employment with the City of Hastings will not be entitled to post-retirement health insurance benefits.

- g) During the term of this Agreement, the City's standard health care plan shall be the BC/BS FB-4 Plan unless otherwise mutually agreed to by the City and the Union. During calendar year 2011, the City shall contribute \$1,050 to the employee's HSA account for employees enrolled in single person plans, and \$2,150 for employees enrolled in two person and family plans and there shall be no employee premium contribution. Should the premium cost for the FB-4 plan continue to be less expensive than the City's maximum premium share as calculated in Section d. above in years 2012 and 2013, the City shall contribute \$1,050/\$2,150 as noted above or in the premium savings amount, whichever is less, to the Employee's HSA account.
- h) The City may offer additional health insurance plans subject to availability by the insurance carrier. The City has the exclusive right to determine the level of benefits of such plans. Employees choosing to enroll in more costly plans, if offered, shall exclusively bear the difference above the City's cost share as defined above. For any plan for which the total premium cost is less than the City share defined above, the City shall pay the entire premium only, less an premium sharing required.
- i) Employees and retiree's may opt-out of the City's Health Insurance Program by signing a waiver of enrollment and providing proof of other health insurance coverage with benefits equal to or greater than health insurance plans offered by the City. Employees and retiree's opting out of the City's Health Insurance Program shall receive additional weekly salary in the amount of \$46.16 for an average monthly increase of \$200.00.

ARTICLE XXVII, DURATION

The City and the Union agree (TA) to revise the language in Section 1 of Article XXVII as follows:

This Agreement shall be effective as of its execution and continue in full force and effect until midnight, June 30, 2013.