

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312
Arbitration Between:

MERC Case No. L12 A-0009

CITY OF MUSKEGON HEIGHTS

Employer

-and-

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN

ACT 312 OPINION AND AWARD

Micheal J. Falvo, Chairman
John Patrick White, Employer Delegate
James DeVries, Union Delegate

APPEARANCES:

FOR THE CITY OF MUSKEGON
HEIGHTS

John Patrick White
VARNUM

Peter Haefner, CPA
Natasha Henderson, City Manager
Lynne Gill, Chief of Police
Lori Doody, Finance Director

FOR THE COMMAND OFFICERS
ASSOCIATION OF MICHIGAN

James DeVries
COAM

Kevin Loftis, Analyst
Scott Sinclair, Sergeant

BACKGROUND

The Command Officers Association of Michigan is the collective bargaining representative for members of the Muskegon Heights Police Department holding the ranks of Sergeant or Lieutenant. However, presumably because of budgetary constraints, the rank of Lieutenant has been phased-out and the bargaining unit currently consists of three sergeants. In the last decade the size of the department has significantly diminished. Sergeant Scott Sinclair joined the department in 2001 and was promoted in 2006. He testified that the Department has been reduced from five sergeants and approximately 25 officers. The current sworn strength is 14. Because of a recent increase in gun violence, officers from the Muskegon Police Department, the Muskegon County Sheriff, and the Michigan State Police supplement the patrol force.

The expired collective bargaining agreement covered the period January 1, 2007 to December 31, 2010 but the parties agreed to a one-year extension.

Muskegon Heights is located in Muskegon County in the western part of Michigan. It covers 3.2 square miles. The 2010 census counted 10,856 residents. Between the 2000 and 2010 census the population decreased 9.9% from 12,049. The United States Census Bureau estimates the median household income as \$20,632. The statewide median household income is more than double that amount.

In addition to this bargaining unit, City employees are represented by six unions. Police officers and the clerical unit in the police department are represented by the Police Officers Labor Council (POLC). Firefighters are represented by the International Association of Firefighters, Local 615 (IAFF). The supervisory and technical units are represented by the Office and Professional Employees International Union (OPEIU). Employees in the Department of Public Works are represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Housemen and Helpers of America, Local 214. The Patrol Officer contract expires at the end of 2013 and the IAFF contract expires at the end of 2014. The agreements of the remaining units expired on December 31, 2012.

The City is currently operating under a deficit reduction plan mandated by state law because of deficits in its budget. The purpose of the plan is to avoid insolvency. The City is required to provide the state monthly reports of revenues and expenditures. It must document and explain the progress (or lack of progress) it is making. The duration of the current plan is five years. It expires at the end of 2013. However, if the City has not made adequate progress the plan may be extended. Even worse, in the absence of sustained progress toward financial stability, the state is empowered to place a community into receivership and appoint an Emergency Financial Manager.¹ To state it mildly, an Emergency Financial Manager has extensive authority. An Emergency Financial Manager appointed to oversee the Muskegon Heights School District laid-off teachers and hired a private enterprise to run charter schools.

STATUTORY STANDARDS

Act 312 of 1969, MCL 423.321, as amended by Act 116 of 2011, is intended to implement the public policy of the state to provide an alternate, expeditious, effective and binding procedure for the resolution of labor disputes involving public safety employees. The legislature deemed interest arbitration a requisite to the high morale of public safety employees as well as the efficient delivery of public safety services. Section 9 provides that the Panel's findings, opinion and order shall be based on the following criteria.

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the unit of government to pay:
 - (i) The financial impact on the community of any award made by the arbitration panel.
 - (ii) The interests and welfare of the public.
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
 - (iv) Any law of this state or any directive issued under the local government accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.

¹ The Panel takes notice that subsequent to the hearing Public Act 4 was repealed in a referendum and that a successor Emergency Financial Manager statute has been passed by the Legislature and signed by the Governor. The new statute has not yet taken effect.

- (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 in both of the following:
 - (i) Public employment in comparable communities.
 - (ii) Private employment in comparable communities.
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) 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.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
- (i) Other factors that are normally or traditionally taken into consideration in the determination of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

Public Act 116, which became effective on July 20, 2011, added a significant provision.

- (2) The arbitration panel shall give the financial ability of the local unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

While Public Act 116 makes financial ability to pay the preeminent factor, this must be understood along side the Michigan Supreme Court's explanation that the Legislature did not intend each Section 9 factor to be afforded equal weight.

The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in § 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word shall in §§ 8 and 9. In effect then, the § 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. Since the §9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with answers. It is the panel which must make the difficult decision of determining which factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered.²

The reader should not conclude that the failure to discuss every factor on each issue means it has not been considered since that is not the case. All pertinent factors have been painstakingly

² *City of Detroit v. Detroit Police Officers Association*, 408 Mich. 410, 484 (1980).

considered.³ It should be understood that the word "Panel" is used to signify a majority of the Panel. The concurrence of a Panel member in the disposition of a particular issue does not necessarily signify that he agrees with the Chairman's rationale or statements.

By agreement of the parties the term of the collective bargaining agreement shall be for 3 years, January 1, 2012 to December 31, 2014. The parties have stipulated that all issues are economic issues. Consequently, Section 8 requires the Panel to adopt the last offer of settlement that more nearly complies with the applicable Section 9 factors. The record contains a stipulation that issues other than those considered in this hearing have been settled or waived and that all uncontested provisions of the prior agreement and any tentative agreements reached during negotiations are incorporated into the new agreement.

The parties stipulated to the following comparable communities:⁴

1. Big Rapids
2. Cadillac
3. Grandville
4. Niles
5. St. Joseph
6. Sturgis

CONTESTED ISSUES AND LAST BEST OFFERS

There are three issues remaining before the Panel. The last best offers pertaining to these issues are shown below. Issues on health insurance, retiree insurance, and insurance opt-out were settled.

Issue 1: Wages

City's Last Best Offer

2012 – 0.5% Effective First Pay Period After Issuance of Award (No Retroactivity)
2013 – 0%
2014 – 0%

³ No evidence pertaining to Section 9 factors (b) and (f) has been made a part of the record.

⁴ Because the Niles Police Department does not have the rank of Sergeant it is excluded in some comparisons.

Union's Last Best Offer

2% lump sum payment (\$515) effective on date of award
July 1, 2013 – 2% (\$515) lump sum payment
July 1, 2014 – 2% increase to wage scale

Issue 2: Vacation

City's Last Best Offer

1-5 years	10 days
6-10 years	12 days
11-12 years	17 days
13 years	18 days
14 years	19 days
14-24 years	20 days
25 and over	25 days

Union's Last Best Offer

The maximum amount of vacation hours granted to employees hired after January 1, 1992 shall be 212 hours.

Employees who work 12-hour shifts shall accrue vacation as follows:

1-10 years	96 hours
11-15 years	144 hours
16 years	156 hours
17 years	168 hours
18 years	180 hours
19 years	192 hours
20 years	212 hours

Issue 3: Dental Insurance

City's Last Best Offer

Effective upon execution, the City will contribute up to \$30 per month, per employee, to pay the monthly premium for a Dental/Optical Plan selected by the Union.

Union's Last Best Offer

Status Quo - (Currently \$60 per month per employee).

THE CITY'S FINANCIAL CONDITION

A number of Act 312 arbitrators have noted that the phrase used in Section 9(a) – “the financial ability of the unit of government to pay” – is not self-defining. In one sense it might be said that a unit of government necessarily has the financial ability to pay as long as there exists sufficient cash flow to meet payroll. That is not the intended meaning. Subsections (i) – (iv) require that the Panel take account of additional factors: (1) financial impact on the community; (ii) the interests and welfare of the public; and (3) other financial liabilities.⁵ Exacting consideration of these things is imperative since Public Act 116 requires, if supported by substantial evidence, that the financial ability of the local unit of government to pay be accorded the most significance.

In his opening statement the City's advocate asserted that the proofs would demonstrate that Muskegon Heights has experienced a “financial crisis” that has improved but not subsided. He claimed that even with the progress the picture is not a pretty one. He characterized Muskegon Heights as located at the bottom rung of Michigan cities facing financial challenges. Regrettably, he did not overstate the case. The City's precarious financial condition today and in the near future is beyond reasoned debate. Unquestionably, by any criteria the City's current financial ability to pay is significantly diminished.

Peter S. Haefner, a Certified Public Accountant, testified on behalf of the City and explained **CITY EXH. A(1)**, titled “City of Muskegon Heights, Michigan—Financial Statement for the Year Ended December 31, 2011.” He is well-credentialed and qualified and his firm has performed financial audits in Muskegon Heights for five years. He explained that under the City's financial structure a number of separate funds are maintained in accordance with legal requirements and accepted accounting guidelines. The identified funds include major roads and local streets fund, cemetery fund, recreation fund, sewer and water funds, and the general fund. He testified that funds are either restricted or unrestricted. Restricted funds cannot be used to

⁵ The fourth factor references Public Act 4 of 2011. Because the successor Act has not yet taken effect, the Panel has not based its award, in whole or in part, on the repealed or successor statutes.

pay general expenses. For example, street funds can be used only for repairs and improvements. Bond obligations require that sewer funds be used for those purposes. The recreation fund has been closed as recreation programs have been eliminated as an austerity measure. The cemetery fund has been merged into the general fund. **TABLE 1** shows the number of funds in deficit between 2006 and 2011 as well as the approximate cumulative fund deficits. It should be kept in mind that the lower number in the last two years reflects the changes in the recreation and cemetery funds. Mr. Haefner testified that generally accepted accounting principles dictate that no fund should have a deficit balance and that any fund being in deficit can have repercussions from the state.

TABLE 1 – ALL FUNDS DEFICITS

(Numbers are approximations)

	<u>Number in Deficit</u>	<u>Cumulative Fund Deficit</u>
2006	2	\$50,000
2007	2	\$150,000
2008	5	\$700,000
2009	4	\$1,250,000
2010	4	\$1,000,000
2011	2	\$550,000

A city's general fund is a chief financial indicator. In the same way that **TABLE 1** shows that numbers are heading in the right direction, the City has made encouraging progress in its general fund. Nevertheless, according to Mr. Haefner, it falls below the 15% to 25% fund balance recommended by the Government Finance Officers Association. He explained that an insufficiency in the general fund balance can lead to cash flow problems in covering payroll and paying other expenses during times of the year when property taxes are not being received.

TABLE 2 -- GENERAL FUND BALANCE (DEFICIT)
DECEMBER 31, 2006 THROUGH 2011

<u>Year</u>	<u>Deficit</u>	<u>Amount</u>
2006	No	\$100,000
2007	No	0
2008	Yes	(\$425,000)
2009	Yes	(\$600,000)
2010	Yes	(\$100,000)
2011	No	\$675,000

TABLE 3 indicates that even with the substantial improvement in 2011 the general fund balance is considerably less than comparable cities.

TABLE 3 – 2011 BUDGET AND GENERAL FUND BALANCE

	<u>General Fund Balance</u>	<u>Total City Budget</u>
<i>Muskegon Heights</i>	\$675,683	\$1,562,669
Grandville	\$2,866,059	\$8,531,916
Sturgis	\$2,759,463	\$6,184,341
Cadillac	\$2,435,043	\$6,599,645
Niles	\$2,090,723	\$6,542,126
Big Rapids	\$1,522,769	\$10,632,135
St. Joseph	\$1,253,143	\$6,888,580

State revenue sharing is a significant source of income for Michigan cities. Mr. Haefner explained that revenue sharing funds are in two categories: constitutional and statutory. The first category consists of a proportionate share of sales and use taxes based on population. The amount and distribution of statutory revenue sharing is determined year-to-year by the Legislature. He testified that the legislature can (and in fact has) reduced non-constitutional revenue sharing because the state needs the money for its own purposes. TABLE 4 indicates the amount of state revenue sharing (constitutional and statutory) received between 2006 and 2011.

TABLE 4– REVENUE SHARING FROM SALES AND USE TAXES

2006	\$1,800,000
2007	\$1,750,000
2008	\$1,750,000
2009	\$1,700,000
2010	\$1,500,000
2011	\$1,500,000

A principal reason for the substantial decline in 2010 and 2011 is the population loss in the 2010 census. Although a modest increase in the constitutional component is expected because of the improving state economy, the witness explained that the legislature’s abolishment of statutory revenue sharing and its replacement with the Economic Vitality Incentive Program (EVIP) will negatively affect Muskegon Heights because it has not yet achieved several benchmarks required as a condition of receiving funds.

As is true throughout the United States and Michigan, taxable property values in Muskegon Heights have declined substantially in the last five years. In addition to the foreclosures found in most cities Muskegon Heights has had several major employers leave the City. In some cases they demolished the abandoned structures in order to reduce the taxable property value. For instance, Consumers Power Company moved its customer service facility from Muskegon Heights to the neighboring community of Norton Shores and the building is slated to be demolished. Lifetech Equipment Company has manufacturing facilities throughout the United States. It has demolished the building that it previously occupied. According to Mr. Haefner, the City Assessor estimates that property values will further decline in 2013. City Manager Henderson expressed the concern that population may continue to drop off because Muskegon Heights has closed its public schools and this could cause residents with school age children to move out. On the other hand, nothing in the record leads to the conclusion that over time Muskegon Heights will not benefit from improving trends in housing markets. Taxable property values over the last five years are shown in **TABLE 5**.

TABLE 5 -- TAXABLE PROPERTY VALUES

<u>Year</u>	<u>Value</u>
2007	\$134,000,000
2008	\$137,000,000
2009	\$138,000,000
2010	\$134,000,000
2011	\$124,000,000
2012	\$123,000,000

The closure of manufacturing and other businesses has adversely affected income tax collection. The income tax rate is .5% for non-residents and 1% for residents. The city collected approximately \$1,050,000 in income tax in 2006. It declined to approximately \$750,000 in 2010. The closure of the Muskegon Heights Public Schools did not help the situation because Mosaica Education Co. hired fewer teachers and the replacement teachers are paid slightly over \$30,000 as opposed to the previous salary range of \$60,000 to \$70,000. On an encouraging note, income tax revenue increased by approximately 11% between 2010 and 2011. The witnesses attributed the improvement to a decline in the rate of unemployment and an aggressive collection effort modeled on a successful program in the City of Muskegon. Despite the improvement, income tax collections in 2011 trailed 2006 by approximately \$200,000.

Mr. Haefner testified that the achievement of a positive fund balance in 2011 after three years of deficits was also attributable to federal grant funds and \$300,000 in increased charges for city services. The City received a \$350,000 "SAFER" grant in 2009. SAFER is an acronym for "Staffing for Adequate Fire & Emergency Response" and is funded by the Federal Emergency Management Agency (FEMA). The grant expired in August, 2012. The City is hopeful that its renewal application will be approved but the City has not received any indication that it will be. When all of this is considered it is not difficult to understand the reasons for Muskegon Height's acute financial difficulties.

WAGE PROPOSALS

Sections 9(C) of the Act requires the Panel to consider the wages, hours, and conditions of employment with employees performing similar services in public and private employment in comparable communities. The evidence introduced by both parties, as is customary in Act 312 proceedings, is limited to public employment. Section 9(D) of the Act requires the Panel to consider the wages, hours, and conditions of employment of other City employees. Because the data tends to support their position, the Union emphasizes "external" comparables and the City emphasizes "internal" comparables.

In the same way that the record compels the conclusion that Muskegon Heights has faced and continues to face monumental financial challenges in its efforts to avoid insolvency, the evidence compels the conclusion that Muskegon Heights Sergeants are paid less than counterparts in the comparable cities. In light of the elimination of the Lieutenant rank, the decreased number of Sergeants to carry the load, and the challenges of crime that the police department faces on a daily basis, there is no question that they should be more adequately compensated for the valuable and dangerous work they perform. This proceeding is much less about what is deserved as what progress can realistically be accomplished during the 2012-2014 agreement. **TABLE 6** shows the salaries of Sergeants at top pay five years ago.

TABLE 6—SERGEANT'S TOP PAY – 2007

<u>City</u>	<u>Salary</u>	<u>Difference</u>
<i>Muskegon Heights</i>	\$45,898	--
Grandville	\$58,966	\$13,068
St. Joseph	\$53,799	\$7,901
Sturgis	\$52,437	\$6,539
Big Rapids	\$49,066	\$3,168
Cadillac	\$47,240	\$1,522

Grandville is clearly an outlier: it would have taken consecutive annual raises of 5% between 2008 and 2012 (perhaps unrealistically assuming zero percent pay raises for Grandville) to catch up to the 2007 salary. Indeed, in 2007, the average salary of the five other agencies was \$8,600 less than the salary in Grandville. Of course, none of the agencies have remained at 2007 pay levels. Keeping in mind that two cities (Big Rapids and Muskegon Heights) had expired contracts in 2012 making a comparison for that year speculative, **TABLE 7** shows top Sergeant's pay on July 1, 2011. The second column shows the cumulative percentage raises received between January 1, 2007 and July 1, 2011.

TABLE 7 – SERGEANT'S TOP PAY ON JULY 1, 2011
AND CUMULATIVE PERCENTAGE INCREASES
JANUARY 2007 TO JULY 2011

	<u>Salary</u>	<u>Wage Increase</u>
<i>Muskegon Heights</i>	\$49,605	9.15% increase
Grandville	\$65,404	10.5% increase
St. Joseph	\$60,861	12.5% increase
Sturgis	\$58,178	10.3% increase
Big Rapids	\$55,246	12.0% increase
Cadillac	\$51,576	12.0% increase

If one were to proceed from the hypothesis (admittedly not necessarily correct) that more affluent communities have greater resources to pay public safety officers, the demographic data in **TABLE 8** is interesting. It shows the population, the State Equalized Value (SEV) of property as listed by the Michigan Department of Treasury for 2012 and per capita SEV. **TABLE 9** describes median household income.

TABLE 8 – COMPARISON OF STATE EQUALIZED VALUE

	<u>Population</u>	<u>SEV</u>	<u>Per Capita SEV</u>	<u>Rank</u>
<i>Muskegon Heights</i>	10,856	\$127,600,000	\$11,755	7
Grandville	15,378	\$648,052,155	\$42,411	2
St. Joseph	8,365	\$525,864,202	\$62,585	1
Cadillac	10,355	\$258,585,300	\$24,792	3
Sturgis	10,994	\$248,108,300	\$22,568	4
Big Rapids	10,601	\$166,011,700	\$15,560	6
AVERAGE	10,856	\$342,243,930	\$31,006	*

The relatively lower property value in Muskegon Heights in comparison to the other communities is of obvious consequence in terms of tax revenues. Significantly, the two cities that pay Sergeants above \$60,000 ranked first and second in both SEV and median household income.

TABLE 9 – COMPARISON OF MEDIAN HOUSEHOLD INCOME (2006-2010)

	<u>Median Income</u>	<u>Rank</u>
<i>Muskegon Heights</i>	\$20,362	6
Grandville	\$50,594	1
St. Joseph	\$49,982	2
Sturgis	\$36,452	3
Niles	\$31,757	4
Cadillac	\$31,452	5
Big Rapids	\$20,068	7
AVERAGE	\$36,783	*

Although by no means conclusive in deciding the disputed issues, the per capita SEV and median household income data substantiate an economic reality that cannot be overlooked: some of the comparable communities have substantially more revenue to work with.

A review of recent Act 312 awards confirms that arbitrators frequently take into account the notion of shared sacrifice when cities or counties are working their way out of financial quandaries created from unavoidable revenue shortfalls. In such circumstances arbitration panels carefully consider how each group of employees has contributed to the solution. But

internal comparisons must be approached with care and the recognition that bargaining units are not alike in all respects. Ildiko Knott explained the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners. (MERC Case No. L92 F-0095, July 5, 1993), p. 8.

Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends on the particular circumstances of their negotiations, their bargaining history and their job market. These circumstances cannot be automatically transferred to another group. Each group must be judged on objective standards appropriate to that group.

The City introduced the Annual Actuarial Report dated December 31, 2010 of the Municipal Employees' Retirement System of Michigan (MERS). The required employer contribution to the retirement system for the fiscal year beginning July 1, 2012 for the "police command" division (which includes the Chief of Police) is 43.3%. This contribution is more than double the highest division for other employees (Fire Department) whose contribution rate is 18.45%. Consequently, each dollar of salary requires a pension contribution of 43.3%. An explanation for the higher rate for the police command division is not contained in the record.

CITY EXH. C(3) summarizes the internal comparable information from 2005 to 2014. Two points must be restated. All except two agreements expired on December 31, 2012. The patrol officer agreement expires on December 31, 2013 and does not provide a pay increase in 2013. The firefighter agreement expires on December 31, 2014. A 2% off-scale payment will be made on December 31, 2013. Second, although the exhibit lists percentage raises received by each group in 2005 and 2006, the Panel has limited the comparison to 2007, 2008, 2009, 2010, 2011 and 2012⁶ **TABLE 10** shows the percentage wage increase by year from 2007 to 2012.

⁶ For units other than this unit percentage increases were approximately the same (2.4 to 2.5%) in 2005 and 2006 (2.5 to 2.75%).

TABLE 10 – WAGE INCREASE PERCENTAGES

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>EXPIRES</u>
<i>Police Command</i>	2.4%	2.75%	2.00%	2.0%	0%	0%	12/12
Firefighters	2.5%	0%	0%	0%	0%	0%	12/14 [*]
Police-Clerical [†]				0%	1%**	0%	12/12
Patrol Officers	2.0%	2.0%	0%	0%	0%	0%	12/13
Dept. Public Works	0%	0%	0%	0%	0%	0%	12/12
Supervisory-OPEIU	0%	0%	0%	0%	0%	0%	12/12
Technical Unit-OPEIU	0%	0%	0%	0%	0%	0%	12/12

[†] 2% off-scale payment on December 31, 2013.

^{**} 1% off-scale payment on December 31, 2012.

The record contains a number of exhibits concerning the compensation of City Manager Henderson. Her initial employment contract is dated August 4, 2008 and was for 5 years but was terminable by a majority vote of City Council. The annual salary was set at \$78,000 with an annual increase of up to 2% based upon performance appraisal and Council approval. It provided for 20 days of annual vacation, 10 days of discretionary leave, and other benefits including medical, dental, and life insurance. She testified that she received a defined contribution pension benefit with a variable employer contribution⁷ and an employee contribution of 5.7%. On April 26, 2010, City Council voted to grant her 10 additional vacation days in lieu of a 2% increase. An additional 10 days in lieu of a 2% increase was approved on October 11, 2011. City Council approved a contractual addendum on June 25, 2012 that raised her salary to \$82,000. It also increased the automobile allowance from \$300 to \$425 and awarded a monthly contribution of \$400 for a 457 deferred compensation plan. City Manager Henderson testified that when hired she served as Human Resources Manager/City Manager but that in cost-cutting moves she took on the duties of the Director of the Downtown Development Authority. She subsequently assumed the responsibilities of Planning Director when that individual retired. She testified that her typical workweek is 50 to 55 hours and that her work is not reassigned when she is away from the office.

⁷ The employer contribution was 15.63% in 2008; 13.93% in 2010; 21.9% in 2011; and 19% in 2012.

Chief of Police Lynne Gill has been employed by the Muskegon Heights Police Department for 22 years and was promoted from Lieutenant to Chief in June 2010. His salary is \$62,500. He testified that he has received no salary increases since his appointment but was aware that a salary increase of .5% was approved at the most recent City Council meeting. He is included in the "police command" division of the MERS defined benefit pension plan.

EMPLOYER'S POSITION ON WAGE PROPOSALS

The City of Muskegon Heights is a city in a financial crisis. Through significant efforts at reducing its expenditures, including the reduction of a significant number of personnel (approximately 20) in all departments, the City has been able to make progress on its state mandated deficit reduction plan. However, the revenue picture remains bleak and may well decline further over the short term. The improvement in eliminating the deficit in the general fund after several years of deficits must be placed in perspective. It was largely attributable to the influx of cash from a federal grant that has expired. Two of the five major funds are spending more than the incoming revenue. The improved collection of delinquent taxes is not a sustainable source of revenue. The decline in income tax and property tax revenue caused by the closure of businesses has placed the City in a position that granting the Union's proposals, particularly on wages and vacation, could well prove a fiscal cliff to what has been a very difficult and fragile recovery.

As the external comparables show, Muskegon Heights has always been the poor sister of the comparable communities. Given its overall revenues and budget, it is not surprising that out of the six comparables having Sergeant positions, Muskegon Heights ranks sixth. The City simply is not in any position to attempt to play catch-up.

The real question confronting the Panel is the equality of sacrifice between the bargaining units to achieve a balanced budget. Command officers have been the privileged unit in terms of compensation over the last five years. Even considering the 0% increase in their contract

extension in 2011, the command unit had an average wage increase during that period of 1.83%.

The comparison to the other units over this period of time is revealing.

2007-2012	COAM	1.83% per year
	Patrol/FOP	0.8% per year
	Firefighters/IAFF	0.5% per year
	Police Clerical	0.0%
	DPW	0.0%
	Technical – OPEIU	0.0%
	Supervisory – OPEIU	0.0%

In addition, every one of those units has already agreed to a 0% wage increase for 2012, although the police clerical unit gets a 1% off scale bonus paid in December 2012. That would give them an average of 0.166% over six years, with no schedule improvements. The firefighters, another Act 312 eligible unit, have also agreed to no wage increases for 2013 and 2014. They will receive a 2% off scale payment in December 2013. For the firefighters, that constitutes a seven-year period with no increases to the wage schedule and a single 2% off-scale payment (0.286% average). The wage comparables alone do not tell the entire story. The pension contribution rate for command officers is 43.3% of payroll and has been increasing at about 10% over the last couple of years.

UNION'S POSITION ON WAGE PROPOSALS

The Employer's exhibits provide a history of the financial position of the City of Muskegon Heights since 2006. Muskegon Heights has not been immune from the financial collapse of 2008. Property values have decreased and revenue sources such as income tax, fees, and state shared revenue have been reduced. In addition, the city has incurred increased costs in providing services to its citizens, including but not limited to, increased costs for health care and other employee benefits.

The most relevant exhibit is titled "City of Muskegon Heights General Fund Balance, December 31, 2006 through 2011." After several years of deficits, the city has done a commendable job of achieving a positive fund balance of \$675,683 within a period of slightly less than two years. This fund balance as a total percentage of the general fund is approximately 12.6%, which is only 2.4% short of what the Government Finance Officers Association recommends as an acceptable fund balance. The City has eliminated or not replaced positions,

monitored expenditures, eliminated wasteful spending, and required employees to forego wage increases and to make greater contributions to health care insurance.

The question before the Panel is: Can the City afford to provide a wage increase to the three Sergeants in the bargaining unit, along with an increase in vacation accrual? The answer is a resounding yes. The Union has demonstrated that the City has been very generous to the highest paid employee, the City Manager, and the City Manager's wages and benefits far exceed the total cost of the Union's last best offer on outstanding issues.

Examination of the external comparables shows that Sergeants in Muskegon Heights are the lowest paid of all external comparables. When the parties last executed an agreement the average Sergeant salary in the comparable cities was \$53,427, a difference of \$7,529 or 16.4% more than the salary of bargaining unit members (\$45,898). On July 1, 2011, the average had climbed to \$56,253, a difference of \$7,188, or 14.6% more than the salary of bargaining unit members (\$49,065). This shows the reasonableness of the Union's demands.

Internal comparability also supports the Union's wage demands. The Chief of Police received a .5% raise in 2012 and his contract allows the City to increase his salary by up to 2% annually. In addition, the Chief receives fully paid dental and a clothing allowance of \$1,000. He also receives longevity pay that far exceeds that of command officers whose longevity base is capped at \$10,000. A bargaining unit member with the Chief's seniority would receive \$800. The Chief's longevity based on his 2012 salary is \$5,024.

The City Manager has received the largest increases of wages and benefits during the last three years. The initial contract signed in August 2008 provided for a \$78,000 annual salary and the same level of benefits provided to all other non-union employees, with the addition of a 100% pay-out of unused sick leave up to 90 days, vacation annual accrual of 20 days, longevity with no cap, fully paid dental, life insurance at two times her salary, short and long-term disability, business and training reimbursement in the amount of \$4,500, and a communications allowance of \$100 per month. The 2012 contract increased her salary to \$82,000, an increase of 5.13%. In addition, her monthly car allowance was increased to \$425 monthly. She also receives \$4,800

annually in deferred compensation and a \$125 communication allowance. In addition, she was previously given 10 additional vacation days in lieu of pay raises in 2010 and 2011.

The wage increase proposed by the Union for 2012 and 2013 would cost the employer \$3,090 (\$1,545 each year) for the entire bargaining unit. The Union's wage proposal for 2014 would bring the entire cost for all 3 years for all members of the bargaining unit to \$4,635 and bring top pay in 2014 to \$50,046. Even if the Union's modest wage demands are granted bargaining unit members would remain behind.

The Employer's LBO of a .5% increase would increase the top Sergeant's pay to \$50,046. The cost to provide the .5% increase would be \$245 per bargaining unit member. Cumulatively, the cost of the 3-year contract would be \$2,207. The difference between the Union's LBO and the Employer's LBO is \$2,428.

The Union has accepted the Employer's issues on health care and changes to the retiree health care. In the prior contract period bargaining unit members did not contribute to the health care premium. In July 2011 Public Act 152 mandated an employee monthly contribution of \$388 (family), \$311 (2-person), and \$135 (single). The monthly cost to bargaining unit members under the agreed program is \$421 (family), \$336 (2-person) and \$140 (single). Employees in other units make lesser contributions to health care.

DISCUSSION ON WAGE PROPOSALS

Based upon the record evidence and the positions put forth by both parties, the Panel concludes that the last best offers most closely corresponding to the statutory criteria are:

2012 - City's Last Best Offer

2013 - City's Last Best Offer

2014 - City's Last Best Offer

Although all applicable factors have been considered, the Panel concludes that Muskegon Height's extraordinarily challenging financial condition requires rejection of the last best offers advanced by the Union. The Panel has reached this determination notwithstanding the

fact that the Union has amply demonstrated that the modest monetary increase being awarded does not appreciably shrink the wage disparity with the comparable cities.

As the Employer has emphasized, none of the comparable cities have been mandated by the State of Michigan to enter into a deficit reduction plan. This is of overriding significance. The Panel believes that an award that will help the City sustain progress in restoring financial solvency is in the best interests of the public and the employees.

The \$675,000 general fund balance in the last audited financial statement -- compared to the 2009 \$600,000 deficit -- looks good. It is. However, it is a single indicator and the overall assessment of the City's financial condition is, as the City's post-hearing brief puts it, not pretty.

TABLES 8 and 9 show the per capita SEV is about one-third of the average of the other cities. The median household income of \$20,362 in Muskegon Heights is \$16,000 less than the average of the comparable cities and \$30,000 less than the highest city. This directly affects the amount of property and income taxes collected. The City has not met the EVIP criteria. No witness predicted that the SAFER grant will be renewed. City Manager Henderson expressed concern that the alarming 9% population decline between 2000 and 2010 could continue in part because of dissatisfaction with the new school arrangement.

Consideration of **TABLE 10** forecloses the contention that command officers have already shouldered a disproportionate share of the sacrifice. Other bargaining units have zeros under each year. The percentage increases for the last five years in this bargaining unit -- while by no means excessive -- are significantly higher than all Act 312 eligible and non-eligible units. In light of this and the severe limitations on the City's present and anticipated ability to pay, the Panel is persuaded that the City's last best offers on wages most closely correspond to the Section 9 criteria.

The Union has relied extensively on what it calls the "very generous" wage and benefit improvements received by the City Manager. The argument that rank and file employees should not be expected to accept concessions or minimal wage increases when top-level officials are spared is a reasonable one. Indeed it can be compelling. However, the Panel is not persuaded that the evidence before it factually supports that argument or diminishes the credence of the

City's case concerning its financial condition. No one could contend that the job of being the Muskegon Heights City Manager is unchallenging. (Nor could that be said about supervisors and officers in the police department.) The Panel has no information concerning how the City Manager's salary compares with other cities. Differences in educational requirements, professional background, career opportunities, and job responsibilities are relevant. Moreover, it is clear that the job she was hired to do did not include the additional responsibilities she has taken on. Under these circumstances the Panel is unable to conclude that the Union has convincingly established that the City Manager's remuneration is out of line. The same conclusion holds true with regard to the vacation improvements as they were awarded in lieu of the merit salary increase delineated in her employment contract.

VACATION ACCRUAL PROPOSALS

Changes have been proposed to Sections 20.1.B, 20.1C, and 20.1F of the current collective bargaining agreement. The current agreement provides:

SECTION 20.1 – VACATION LEAVE

B. Employees hired after July 1, 1992 shall be eligible for the following vacation amounts.

One (1) to five (5) years	=	Ten (10) days per year
Six (6) to ten (10) years	=	Twelve (12) days per year
Eleven (11) to fifteen (15) years	=	Seventeen (17) days per year
Sixteen (16) to twenty-four (24) years	=	Twenty (20) days per year
Twenty-five (25) years and over	=	Twenty-five (25) days per year

C. The maximum amount of vacation days granted to the employee hired after January 1, 1992 shall be twenty-five (25) days.

F. Employees who work twelve (12) hour shifts shall accrue vacation as follows:

One (1) to five (5) years	=	84 hours per year
Six (6) to ten (10) years	=	96 hours per year
Eleven (11) to fifteen (15) years	=	144 hours per year
Sixteen (16) to twenty-four (24) years	=	168 hours per year
Twenty-five (25) years and over	=	212 hours per year

Union Proposal

The Union proposal does not amend 20.1B.

The Union proposes to amend 20.1C to read:

C. The maximum amount of vacation hours granted to employees hired after January 1, 1992, shall be two hundred twelve (212) hours.

The Union proposes to amend 20.1F to read:

F. Employees who work twelve (12) hour shifts shall accrue vacation as follows:

1-10 years	96 hours
11-15 years	144 hours
16 years	156 hours
17 years	168 hours
18 years	180 hours
19 years	192 hours
20 years	212 hours

Accrual to be effective July 1, 2013.

City Proposal

The City proposal does not amend 20.1C

The City proposes to amend 20.1B to read:

B. Employees hired after July 1, 1992 shall be eligible for paid vacation on the following basis:

1-5 years	10 days per year
6-10 years	12 days per year
11-12 years	17 days per year
13 years	18 days per year
14 years	19 days per year
15-24 years	20 days per year
25 years and over	25 days per year

The City proposes to amend 20.1F to read:

F. Employees who work twelve (12) hour shifts shall accrue vacation as follows:

1-5 years	84 hours
6-10 years	96 hours
11-12 years	144 hours
13 years	152 hours
14 years	158 hours
15-24 years	168 hours
25 years and over	212 hours

A word of explanation is in order. At the present time all three Sergeants work 12-hour shifts and the Union has not proposed an amendment to Article 20.1B because it covers the vacation accrual schedule for Sergeants who could at a future time be assigned to 8-hour shifts. On the other hand, the Employer's intent is to make Article 20.1B (stated in days) correspond to an equivalent number of hours for employees working 12-hour shifts.

Complicating a comparison with the other agencies is that some of the departments have 8-hour shifts. **UNION EXH. 13** helpfully clarifies this. It shows the total vacation hours that would be earned over 25 years and the equivalent number of 8-hour days. The information is shown in **TABLE 11**.

TABLE 11 - VACATION ACCRUED DURING 25 YEARS OF SERVICE

	<u>Total Hours</u>	<u>Total 8-Hour Days</u>
<i>Muskegon Heights</i>	3,344	418
Big Rapids	3,976	497
Niles	3,720	465
St. Joseph	3,696	462
Sturgis	3,520	440
Cadillac	3,416	427
Grandville	3,376	422
AVERAGE	3,617	452

A similar comparison was completed for internal comparables. **UNION EX. 14** contains a footnote pointing out that the FOP Clerical Unit and OPEIU Technical and Supervisory Units work 7.5 hours a day and the "Total 8-Hour" day figures are based on 7.5 hours. The number of vacation hours and 8-hour days accrued during 25-years of service are shown in **TABLE 12**.

TABLE 12 – VACATION ACCRUED OVER 25 YEARS OF SERVICE

	<u>TOTAL HOURS</u>	<u>TOTAL 8-HOUR DAYS</u>
<i>Command Officers</i>	3,344	418
Police Officers	3,200	400
Firefighters	5,880	735
Teamsters Local 214	3,566	446
FOP Clerical Unit	3,301	440
OPEIU Technical Unit	3,301	440
OPEIU Supervisory Unit	3,263	435
AVERAGE	3,752	483

UNION'S POSITION ON VACATION ACCRUAL

The Union points out that its proposal would not change the amount of vacation that will be used in 2013. Under the current agreement one Sergeant would be eligible for 168 hours and the two other Sergeants would be eligible for 144 hours. This is the same amount that they would have earned under the expired agreement. Increases would occur in years 18, 19, and 20 and for bargaining unit members with less than 10 years of service. The total that could be earned after 25 years of service is 216 additional hours, bringing the total to 3,550 hours. The average of all of the external comparables during that time period is 3,617 hours, or 273 more hours than members of this bargaining unit.

It is important to note that the Union's proposal only applies to Sergeants working 12-hour shifts. These individuals work 42, not 40 hours per week. This adds up to 104 hours extra hours per year. With regard to internal comparability, the firefighters and Teamsters 214 earn more total hours over a 25-year career. Three units – OPEIU Technical, OPEIU Supervisory, and FOP Clerical – earn more days off than members of this bargaining unit if one factors in that they work 7.5 rather than 8 hours.

The Chief of Police, who has been employed by the police department for 22 years, receives 25 vacation days annually. When hired the City Manager received 20 days annually but in 2010 she received 10 additional days in lieu of a 2% pay increase and 10 additional days in lieu of a 2% increase in 2011. Both receive 100% payout of unused sick time, up to 120 days. Command officers receive no payout of unused vacation time unless the employer cancels a pre-approved vacation.

EMPLOYER'S POSITION ON VACATION ACCRUAL

According to the Employer, the record confirms that Muskegon Heights is somewhat lower at some steps than its external comparables. But it is not drastically out of line, and this is consistent with its economic rating as the poorest of the communities. However, the relevant comparison should be to the internal comparables given the City's economic situation. This is not a time to keep up with the Joneses. Any increase in vacation at this time is problematic for a department that is already staffed at bare bones. More time off means increased overtime or less patrol presence. Neither option is in the public interest.

The Employer, however, has recognized that it has very little capacity to fund wage increases. Therefore, it has proposed a modest but manageable increase in the vacation schedule. This adds an additional 8 hours per year in years 13 and 14. By contrast, the Union's last best offer creates a huge increase in future vacation liability. Compared to the current COAM schedule, the proposal of increasing the hours at year 18 and reaching the maximum in year 20 (rather than year 25) adds 246 hours of additional vacation time per command officer over the current schedule. On a 12-hour schedule that is an additional 20.5 days of vacation. Modifications for the future should be addressed in future negotiations when the economic strength of Muskegon Heights is better known. Therefore, based on the internal and external comparables, the interest and welfare of the public, and the Employer's ability to pay, the City's proposal should be adopted.

DISCUSSION ON VACATION ACCRUAL

Especially in a law enforcement agency that has undergone this level of personnel cuts, time away from the job is important. Undeniably the exhibits do reveal a disparity. However, the disparity in vacation time is not as stark as the wage disparities. Over a period of 25 years, two of the six departments (Grandville and Cadillac) accrue less than one additional 12-hour vacation day and another (Sturgis) accrues less than two 12-hour days. The gap is considerably greater when Big Rapids, Niles, and St. Joseph are considered.

Although **UNION EXH. 14** shows that the average of the internal comparables is 483 total 8-hour days over a 25-year career, that number is derived by including the 735 8-hour vacation days (5,880 hours) of firefighters over that time period. Remarkably, this is 335 8-hour days (2,680 hours) over the comparable figure for police officers (400 8-hour days; 3,200 hours). Excluding firefighters the average is 432 8-hour days rather than 483 8-hour days. As previously discussed, what one bargaining unit has gained in their negotiations depends on the particular circumstances of the negotiations and other factors. Those circumstances cannot be automatically transferred to another group with a different bargaining history. Without a firm understanding of how and why firefighters came to have such a disproportionate number of days the Panel is unable to confidently conclude that this is an appropriate benchmark.

Central to the Union's rationale is that the 3 members of the bargaining unit would receive the same amount of vacation during the term of the agreement that they would have earned under the expired agreement. The problem with that approach is that the Act does not contemplate that the Panel's assessment of proposed contract changes be limited solely to that which occurs during the term of the agreement. On the contrary the Panel must evaluate both the near and longer-term consequences. It is to be hoped that when the parties return in a few years to the table to negotiate a successor agreement the nation, the state, and Muskegon Heights will all be in a better position than today. The City's creditable progress -- greatly attributable to sacrifices by its employees -- provides a basis for optimism. The Panel is

persuaded that the Union's demand should not be granted at this time. It should be understood that statement is not based on the conclusion that the proposal to increase the number of vacation days lacks merit. Rather, it is based on the uncertainty of the City's financial situation when what would be ordered today would eventually ripen into a significant cost.

DENTAL INSURANCE

The City seeks to decrease the City's contribution for dental insurance from \$60 per month per employee to \$30. In doing so the City points out that a 2011 Act 312 award involving patrol officers made that change. The City concedes that other units currently have more generous dental coverage but explains that the differential will be addressed in the next round of negotiations. It says that its proposal "is a fair and equitable tradeoff" for the City agreeing to pay 80% of the deductible on the PPO-3 medical plan.

The Legislature apparently believed that the interest arbitration process would work better if parties were required to give last best offers before the hearing. At that juncture neither side has heard the strength of the other side's case and can only speculate how well its own case will stand up to critical dissection. Nor can either side predict how successful it will be in persuading the Panel. The Panel understands that the City would like to have one dental insurance contribution rate for all members of the police department. The City contemplates that a favorable award on this issue would help in upcoming negotiations. However, the Panel must consider the resolution of this issue in light of the rest of the Award and on that basis is persuaded that the Union's demand should be adopted. A decrease in the City's contribution for dental insurance for employees in this bargaining unit is not justified.

Finally, the Chairman would like to express his appreciation for the professionalism shown by the advocates and all of the participants in this proceeding. The quality of the presentations and the thoroughness of the briefs were of great benefit.

ORDER OF THE PANEL

WAGES

1. A majority of the Panel adopts the last best offer of the Employer on the subject of wages for the first year of the agreement.

Micheal J. Falvo Dated 1/18/13
Micheal J. Falvo, Chairperson

John Patrick White CONCUR DISSENT Dated 1/16/13
John Patrick White, Employer Delegate

James DeVries CONCUR DISSENT Dated 1/17/13
James DeVries, Union Delegate

2. A majority of the Panel adopts the last best offer of the Employer on the subject of wages for the second year of the agreement.

Micheal J. Falvo Dated 1/18/13
Micheal J. Falvo, Chairperson

John Patrick White CONCUR DISSENT Dated 1/16/13
John Patrick White, Employer Delegate

James DeVries CONCUR DISSENT Dated 1/17/13
James DeVries, Union Delegate

3. A majority of the Panel adopts the last best offer of the Employer on the subject of wages for the third year of the agreement.

Micheal J. Falvo Dated 1/18/13
Micheal J. Falvo, Chairperson

John Patrick White CONCUR DISSENT Dated 1/16/13
John Patrick White, Employer Delegate

James DeVries CONCUR DISSENT Dated 1/17/13
James DeVries, Union Delegate

VACATION ACCRUAL

A majority of the Panel adopts the last best offer of the Employer on the subject of vacation accrual.

Michael J. Falvo

Michael J. Falvo, Chairperson

Dated 1/18/13

John Patrick White

John Patrick White, Employer Delegate

CONCUR

DISSENT

Dated 1/16/13

James DeVries

James DeVries, Union Delegate

CONCUR

DISSENT

Dated 1/17/13

DENTAL INSURANCE

A majority of the Panel adopts the last best offer of the Union on the subject of dental insurance.

Michael J. Falvo

Michael J. Falvo, Chairperson

Dated 1/18/13

John Patrick White

John Patrick White, Employer Delegate

CONCUR

DISSENT

Dated 1/16/13

James DeVries

James DeVries, Union Delegate

CONCUR

DISSENT

Dated 1/17/13