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In the Matter of Statutory Interest Arbitration between:

WAYNE COUNTY AIRPORT AUTHORITY,
Employer,

-and-

AFSCME, LOCAL 3317
Union (supervisory), and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 502,
Union (patrol officers)

MERC Case No. D04 A-0123 (Supervisory) 0110
MERC Case No. D04 A-0109 (Patrol)

Hearings: March 22 and 28, 2007

**ARBITRATION PANELS' PRELIMINARY FINDINGS,
OPINION, AND ORDER (COMPARABLES)**

BEFORE TWO PANELS BOTH CONSISTING OF:

Benjamin A. Kerner, Chair
Joseph Martinico, Employer Delegate
Jamil Akhtar, Unions' Delegate

Appearances:

For the Employer: Gary R. Danielson and Kenneth M. Gonko
The Danielson Group

For the Unions: Jamil Akhtar
Akhtar, Webb and Abel

Present for part or all of the proceedings: Russell Arney, Timothy Calhoun,
Nancy Ciccone, Michelle Farmer, Gerard J. Grysko, Richard Johnson, Aram T.
Kaloian, Patrick Melton, Kurt Metzger, Tom Naughton, Lynda Racey, Mike Royal,
Michael Wasiuranis.

Dated: May 11, 2007

COMPARABILITY: INTRODUCTION.

The Employer offers the following employers' police officers as comparables in this proceeding: the City of Detroit, the City of Dearborn, the City of Livonia, Oakland County Sheriff, Michigan State Police, Wayne County Sheriff, and a group designated the downriver communities¹, as well as 9 internal bargaining units.² The Employer offers the first 5 of these employers as traditional comparables observed in prior arbitrations between the Wayne County Sheriff and the AFSCME, Local 3317 (which formerly represented the supervisory employees of this Employer as part of its Wayne County supervisory unit.) The Union concurs on the selection of the City of Detroit, the City of Dearborn, the City of Livonia, Oakland County Sheriff, Michigan State Police as traditional bargaining units, formerly utilized by the parties for assessing wages, hours, terms and conditions of employment.

The Union emphasizes that the Wayne County Sheriff is appropriate because it was the employer of many, if not most of the employees involved in this proceeding, until the statutory creation of the Wayne County Airport Authority as a separate employer in 2002. The Employer does not disagree that the Wayne County Sheriff is appropriate. In addition, the Unions would have the Panel consider three airports which they consider to be comparable as appropri-

¹ Allen Park, Brownstown Twp., Ecorse, Flat Rock, Gibraltar, Grosse Ile, Lincoln Park, Melvindale, Huron Twp., River Rouge, Riverview, Rockwood, Romulus, Southgate, Taylor, Trenton, Woodhaven, and Wyandotte.

² Gov't Bar Ass'n; heating & air conditioning; heating & air conditioning supervisory; Firefighters; AFSCME Local 101 (Clerical); AFSCME, Local 1862 (Supervisors); AFSCME, Local 2057 (Foremen), and AFSCME, Local 2926 (Engineers).

ate communities for comparison, those being Houston International Airport, Orlando International Airport, and Newark Liberty International Airport.

PART A: CLAIMS OF THE UNIONS RE: NATIONAL AIRPORTS.

The Unions looked at the factor of enplanements to select the 3 national airports it offers as comparables here. Enplanements, as that term is used in the aviation industry, means number of passengers taking off. The Union's witness specified that the three airports under consideration were selected because they are close to Detroit Metropolitan Airport (DTW) on the national registry. The Union eliminated Minneapolis, which is closer than Houston Intercontinental, as shown below, on the basis that it could not obtain the comparative collective bargaining information:

DTW	17,580,000 enplanements in 2005
Minneapolis-St. Paul	17, 972,000 enplanements in 2005,
Houston Intercontinental	19,032,000 enplanements for 2005.

In the national registry, Orlando and Newark Liberty International were the next two smallest airports under DTW: Orlando International is 5.6 % smaller; Newark Liberty is 6.5 % smaller.

The Union did not, however, evaluate the nature of the employer, i.e., who has the authority to operate the airports, a city, a county, or a regional authority; did not evaluate fiscal status of the employer (revenues derived from airline agreements based on landed weight, or some other source); did not evaluate the physical location of the airports (inside of city limits or not); did not evaluate whether police jobs at the airports required law enforcement certification; did not

evaluate the extent of duty-related deaths or disabilities at the asserted comparables; did not evaluate the number of arrests made at the asserted comparables; did not evaluate whether there was on-site dispatching; did not evaluate whether the employees are represented by unions for purposes of collective bargaining; did not evaluate the extent of the union contracts' involvement in these asserted comparables, i.e., whether they extended to other facilities of the employer; did not look at threats or safety-specific issues, did not look at international enplanements vs. domestic enplanements.

The Employer contends that the Union-asserted airport comparables are not comparable for purposes of Act 312 because of a number of factors. First and foremost, says the Employer, the employing agency is radically different in the 3 asserted comparables. In the case of Houston, it is city government; in the case of Newark Liberty International, it is part of a multi-facility employer comprising the tunnels, bridges, waterfront docks, and airports under the umbrella of the Port Authority of New York and New Jersey.

Secondly, says the Employer, the factor of the financing of operations at the other three airports is significantly different than at DTW. Related to Newark Liberty International, the employer collects fares, which compose a major part of operating revenue; the Houston International Airport must obtain approval of its budget as a department of city government and derives financing from City government; the Orlando International Airport is a separate independent entity, but the police services are part of and subject to the command structure of the city. W.C.A.A. is a separate statutory entity, with its own bonding authority; it is em-

powered to negotiate with its employees' collective bargaining representatives, without intervention or approval of any other entity; it derives 40% of its funding from so-called "residual" airline agreements whereby the airlines doing business at DTW agree to pick up the operating costs of the airport that are not generated by leases, food, beverage, and retail concessions and parking fees. The Employer cites other pertinent differences, related to the factors above-summarized.

It is the determination of the Panel that the employees involved in the three asserted national airport comparables are employees of entities that are significantly different than the W.C.A.A. The nature of the employer has a logical and experiential bearing on the conduct of collective bargaining at these other airports. For example, it is certainly relevant that only 2% of the Port Authority of New York and New Jersey's police employees are employed at Newark Liberty. That has a strong bearing on the wages and working conditions of the airports' police employees. We are not concerned with the wages and working conditions of other Port Authority employees; but the wages and working conditions of airport police officers must be set in reliance on their place in a larger group. This factor, the nature of the employee group, makes Newark Liberty International an inappropriate airport for comparison with DTW.

Similarly, the other two asserted comparables are inappropriate because they, or their police forces, are subject to the demands of a local city council, and their budgets are approved by those city councils. They are not independent, as is the W.C.A.A. The fiscal accountability system is significantly different for both the asserted comparables compared to W.C.A.A. The traditions of labor rela-

tions are different. For example, Houston has a "me-too" clause with its municipal fire fighters' union that must enter into the determination of police officers' wages and working conditions at the airport. On the factors considered, the Panel is convinced that the nature of the employer, its fiscal operations, and the nature of the employment relationships at the three asserted national airports is such as to make them unsuitable as comparables for this hearing.

PART B: THE EMPLOYER'S CLAIM FOR DOWNRIVER

COMPARABILITY.

The Employer lists 18 communities, commonly known as the downriver communities, as part of its list of comparables. There was no individual data on each community to indicate why, aside from inclusion in a mutual aid pact, each community should be considered comparable. The nearest we come to any individualized data is the Employer's expert delineation of where employees of this Employer come from. Mr. Kurt Metzger, the Employer's expert, showed that approximately 80% of the current bargaining units resided in Wayne County and 20% of the members of the bargaining units reside outside of Wayne County.

Looking just at patrol officers who number (variously, depending on the counter) 93 or 94 [Tr. 3/22/07, p. 25] 21 live in jurisdictions outside of Wayne County altogether. Of the remaining 73, 31 live in one of the downriver communities. Mr. Metzger's map [E'er. Exh. 510] shows that 1 lives in Grosse Ile, 1 lives in Gibraltar, 1 lives in Woodhaven, 1 lives in Southgate, 1 lives in Wyandotte, 1 lives in River Rouge, 2 live in Riverview, 2 live in Brownstown Twp., 2

live in Romulus (where DTW is located), 2 live in Ecorse, 3 Live in Flat Rock, 3 live in Trenton, 3 live in Taylor, 3 live in Allen Park, and 5 live in Lincoln Park. There were no residents of Rockwood, or of Brownstown Twp., or of Melvindale, or of Huron Twp. (immediately adjacent to the Airport) represented among the current patrol officers' bargaining unit membership. That leaves 42 officers who live in Wayne County but not in one of the downriver communities. They live in Detroit (5), Dearborn (7), Livonia (7) and in various western Wayne communities as well as Harper Woods, and the Grosse Pointes (eastside communities). Mr. Metzger would draw the conclusion from these data that the downriver communities, taken together, constitute a primary labor market for the patrol officers of the W.C.A.A. The Union would draw the conclusion that just as many officers live in western Wayne County, and in surrounding counties including Washtenaw, Lenawee, Monroe as live in the downriver communities, and that there is nothing special about the downriver communities that indicates they are more primary than other relevant communities.

Regarding the labor market relevance of the downriver communities, the Employer's Director of Labor Relations, Joseph Martinico, testified that the usual method of recruiting new patrol officers is through internet ads. He continued:

The vast majority of applications are local applications; meaning from geographical areas surrounding the airport. Of that group, the majority has—of employees and applicants come from downriver communities. But that's—I think that answers your question.
[Tr. 3/22/07, p. 193]

It should be noted that Mr. Martinico does not state that the majority of new applicants come from the downriver area; but rather he testified that the majority

are from *the surrounding area*, and that of those, the majority are from downriver. That would be consistent with the statistics for current employees we see from Mr. Metzger's testimony, as summarized above.

There are a couple of additional factors that must be mentioned as contributing to the decision on this matter. First is the statement of Mr. Metzger that it's a balancing act to find a sufficiently large number of comparables that you get a representative sample; and, on the other hand, you don't have an unwieldy number of comparables. He testified:

[Getting a large number of comparable communities] I was going to say it's not necessarily statistically irrelevant, because really the more samples you get the more accurate your final number. Just like you do a census versus a sample, you get a better number. But it—there comes a point where it becomes unwieldy if you're starting to do comparison and in this case if you're comparing two contracts across 43, 50 different areas, it becomes very unwieldy. So it's kind of trying to strike that balance where you don't have too few, but you don't have too many as well. We felt that this [adding the 18 communities of the downriver area to the realm of comparables] was a very good way of doing it.
[Tr. 3/22/07, p. 221]

Thus, there is the factor of the appropriate number of total comparables vs. the number that becomes unwieldy for the parties to examine, and to prepare evidence concerning, and for the Panel to absorb.

In addition, there is the factor of the degree to which the individual downriver communities are shown to be similar to the work force, or the Employer characteristics of the W.C.A.A. The Downriver Mutual Aid Pact, after all, is not the employer of constituent municipalities' police officers. Rather, a police officer employed by the City of Taylor remains a Taylor police officer, even when he is dispatched pursuant to Downriver Mutual Aid Pact guidelines to a massive police

emergency in Woodhaven or in Romulus. A patrol officer of the W.C.A.A. remains a patrol officer of the W.C.A.A, even if dispatched pursuant to Downriver Mutual Aid Pact guidelines to Trenton or to Ecorse. However, the state of this record indicates that W.C.A.A. officers have been dispatched only once to any of the surrounding municipalities. (Demonstration at a restaurant in Van Buren Twp.) There is surmise that on some occasions neighboring communities have utilized W.C.A.A.'s specialized dog bomb-sniffing capability. The testimony is less than definite as to when and where, and how often, and involving what communities. Nor does the record contain any specific indication that the W.C.A.A. has relied upon its membership in the Downriver Mutual Aid Pact to request assistance from any surrounding community (except possibly on Sept. 11, 2001, and then in the context of massive requests for assistance, extending across the Downriver Mutual Aid Pact.).

The Employer's membership in Downriver Mutual Aid Pact is a fact. But the implications of this fact have not been developed to show that there ever was any significant interactions between police officers of the W.C.A.A. and other jurisdictions, or that the kind and quality of the police effort is the same in W.C.A.A. as it is in Brownstown Twp. say, or Southgate. There is no showing, in other words, that the membership of W.C.A.A. in the Downriver Mutual Aid Pact confers any commonality in regard to the type of crime encountered, the purposes of deploying police officers; the nature and extent of the threats and safety-specific hazards faced. There is some evidence that the nature of the

policing work performed by W.C.A.A. patrol officers is unique, in that it concerns civil aviation safety at the public checkpoints in the airport, and not garden variety crime prevention, detection, or apprehension. In short, the patrol officers of W.C.A.A. are not shown to perform similar services to those of the downriver group, not any more so than would be shown by a comparison with any random group of police officers' employers.

In addition, although the employee statistics shown in the expert's evidence may be creditable as showing that a significant number of current bargaining unit members—31 out of a total of 94 live in downriver communities, this is not particularly persuasive in the face of the competing data which the Union offered. I would say that the evidence supports a finding that *the surrounding communities* (including those in western Wayne, Washtenaw, Lenawee, and Monroe) constitute a primary labor market. The downriver communities are just part of that broader primary market.

Finally, the Panel must give some weight to the factor of the unwieldiness of adding 18 communities to the cauldron. Each of those communities' police labor contracts (including command and patrol officers' contracts) must be reviewed and analyzed, across the wage, and benefit, and non-economic working conditions which will be considered in these proceedings. It is the judgment of the Panel Chair that such an undertaking is unwieldy, as expressed in Mr. Metzger's testimony.

However, when reviewing the Employer-proposed group of 18 downriver communities, the Unions grant that the City of Taylor is an appropriate compara-

ble, based on the factor of approximately the same sized bargaining units as the W.C.A.A. Thus, the Panel will acknowledge this implied agreement of the parties, and include City of Taylor in the list of comparables.

For the above-stated reasons, the Panel is of the opinion that the employees of the 18 communities composing the Downriver Mutual Aid Pact are generally not comparable within the meaning of MCL 423.239(d) to the patrol officers and command officers of the W.C.A.A. (with the exception of City of Taylor).

SUMMARY

We have considered the appropriate comparables to be considered in these proceedings under MCL 423.239(d). The backdrop of this Panel's determination is the stipulation and amended stipulation of the parties that the police employees of the following employers constitute appropriate comparables: City of Detroit, City of Dearborn, City of Livonia, Oakland County, and Michigan State Police. In addition, the parties are in agreement that the Wayne County Sheriff's Department and the City of Taylor should be considered comparable. Furthermore, there appears to be agreement [Tr. 3/22/07, p. 206] for the inclusion of other non-police employees of the Employer as appropriate comparables under MCL 423.239(d) [comparison with other "employees performing similar services *and with other employees generally*" taken usually to mean other employees of the employer]. These employees, as summarized in Footnote 2 above, are organized in 9 separate bargaining units, each with its own collective bargaining agreement.

The Panel has considered the claim of the Union to add three major airports as comparable communities. This claim is rejected for the reasons that there are significant divergences in the scope of the bargaining units; in the nature and legal basis of the employing entity; in the command and control function of the police effort; and the financing of the airports. The divergences were felt to be more significant than the commonality represented by a similar number of enplanements among the asserted comparables.

The Panel has considered the claim of the Employer to add 18 municipalities which are located in the downriver area and which are signatories to the Downriver Mutual Aid Pact, as is the Employer. This claim was rejected for a number of reasons. The communities of the Downriver Mutual Aid Pact were shown to be part of the primary labor market for this Employer, but it actually comprises the broader area of the balance of Wayne County and surrounding counties. There was no showing that the individual communities composing the Downriver Mutual Aid Pact are substantially similar in regard to the nature of the policing function, the nature of threats and safety-specific hazards affecting police work, the nature of the training required, and other labor-related factors. In fact, there was some evidence that the policing function performed by W.C.A.A. employees is unique in that involves the threats to civil aviation and the containment of those threats, as opposed to community crime prevention, detection, and apprehension. Finally, adding 18 municipalities to the analyses which must proceed following the issuance of this opinion is unwieldy. However, the community

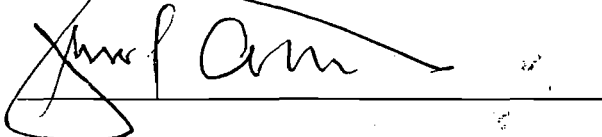
of City of Taylor was the subject of implied agreement between the parties, and will be added.

The parties are commended to utilize their resources, talents and expertise to analyze the communities of the City of Detroit, the City of Dearborn, the City of Livonia, Oakland County Sheriff's Department, Michigan State Police, Wayne County Sheriff's Department, and the City of Taylor and the internal comparables of other non-police officer employees of this Employer as well as to prepare testimony and exhibits related to the other Section 9 factors on which the Panel will rely. We have much work to do. The scope of the job is now delineated.



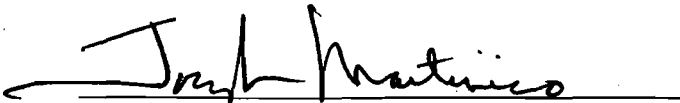
Benjamin A. Kerner
Panel Chair of both panels.

I concur in Part B, but dissent from Part A.



Jamil Akhtar
Unions' Delegate in Case No. D04 A-0123 and D04 A-0109

I concur in Part A, but dissent from Part B.



Joseph Martinico
Employer's Delegate in Case No. D04 A-0123 and D04 A-0109

Dated: May 11, 2007
Detroit, Michigan