

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION UNDER ACT 312
(PUBLIC ACTS OF 1969 AS AMENDED)

In the Matter of:

CITY OF DETROIT

-and-

MERC Case No. D02 J-2360

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
MICHIGAN COUNCIL 25, LOCAL 1023,
EMERGENCY SERVICES OPERATORS
CHAPTER

OPINIONS AND AWARD OF ARBITRATION PANEL

ARBITRATION PANEL

George T. Roumell, Jr., Chairman
Barbara Wise-Johnson, City Delegate
Saundra Williams, Union Delegate

APPEARANCES:

FOR THE CITY OF DETROIT:

Allen Lewis, Chief Labor Relations Specialist
Shawn Junior, Labor Relations Specialist

FOR AFSCME, MI COUNCIL 25:

Ben K. Frimpong, Staff Attorney
Kim Harris, President, Local 1023
Sheila Pennington, Chief Steward, Local 1023

INTRODUCTION

Local 1023, American Federation of State, County and Municipal Employees, Michigan Council No. 25, Emergency Service Operators Chapter, is recognized as the collective bargaining representative "for all employees in the emergency service operator (01-31-33) classification at

the Police Department." The Emergency Service Operators Chapter of Local 1023 evolved from the civilianization in the Detroit Police Department of certain telephone service. These civilian operators are sometimes known as "911" Operators. The civilian operators not only perform telephone services identified with the mission of the Detroit Police Department, but also similar services for the Detroit Fire Department.

This is the fourth time since 1992 that Local 1023 has invoked procedures of Act 312 of Public Acts of 1969, as amended, to resolve the terms and conditions of the Collective Bargaining Agreement between the City and the Local. A Panel, chaired by Joseph P. Girolamo in MERC Case No. D92 G-1533, issued an opinion and award in the late summer of 1995 which resulted in the parties' 1992-1995 Agreement. On April 10, 1997, an Arbitration Panel chaired by this Chairman in MERC Case No. D96 C-0423, issued an opinion and award that addressed the parties' 1995-1998 Collective Bargaining Agreement. On May 1, 2001, in MERC Case No. D00 J-1038, a Panel chaired by this Chairman issued an opinion and award that became the basis for the parties' 1998-2001 Collective Bargaining Agreement.

The parties commenced negotiations for a successor to the 1998-2001 contract. After negotiations and mediation, on August 24, 2004, AFSCME Council 25 petitioned the Michigan Employment Relations Commission for the formation of an Act 312 Panel to resolve the remaining issues that the parties had not been able to resolve through negotiations and mediation. On April 14, 2005, the Michigan Employment Relations Commission appointed George T. Roumell, Jr. as Chairman, Barbara Wise-Johnson was designated by the City as its Delegate, and Sandra Williams was designated as the Union's Delegate.

The parties, at the hearing on this matter on May 19, 2005, agreed that the issues before

the Panel were:

1. Wages
2. Retirement
3. Duration of Contract

There was a fourth issue, namely, the holiday schedule, but the parties acknowledged that once the issue of wages and retirement had been resolved, they could agree on a holiday schedule.

The parties did not question the proposition that the issues in dispute are economic and, as such, are subject to last best offers. *See*, MCLA 423.238. However, on the record, at the urging of the Panel, because of the circumstances as will be later discussed in this Opinion, the parties waived the opportunity to present last best offers. Instead, the parties agreed that the Panel should have flexibility without last best offers to formulate an Award in this matter.

THE CRITERIA

The criteria that must be followed by the Act 312 Panel in resolving the issues in dispute is set forth in Section 9 of Act 312 of Public Acts of 1969, MCLA 423.239, which reads:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the ages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.

- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 9(c) addresses the financial ability of the unit of government. Section 9(d) addresses comparables. These two criteria are most influential in arriving at an Act 312 award, for financial ability and comparables represent the basic economic driving force in any collective bargaining. The comparables would include both external and internal comparables where applicable.

Act 312, Section 9(h) acknowledges that there are other factors that are considered by fact finders in resolving both economic and non-economic issues and, therefore, can be similarly considered by Act 312 panels. Among these criteria are the bargaining history and the “art of the possible.”

The bargaining history criteria would consider the parties' negotiations in recent years plus the current bargaining history. The bargaining history, both historically and currently, can provide a gauge toward resolving the bargaining impasse that resulted in an Act 312 arbitration

panel. The "art of the possible" criteria stands for the proposition that in any bargaining, parties have respective positions; that each party's table position or doctrinaire position, if there is to be an agreement, will not be the basis for an agreement. Instead, the parties, to reach an agreement, must move toward the middle. And this is the origin of the "art of the possible" concept, namely, applying compromise to reach agreement?.

Although all of the Section 9 factors are to be considered by an arbitration panel, in any particular situation, and certainly in this situation, certain criteria become key in resolving the dispute because of the nature of the circumstances. As to the issues now before the Panel, the key criteria is the recognition of the City of Detroit's financial circumstances, along with the internal comparables and the "art of the possible."

The above comments bring the Chairman to a discussion of the City's finances.

THE CITY'S FINANCES

To put it bluntly, in 2005, because of declining population, a declining tax base and changes in State aid adversely affecting Detroit, coupled with rising costs, including health care costs, the City's financial situation is critical. It is more than just continuing "to be precarious," as this Chairman noted at page 9 of the May 1, 2001 opinion and award.

In the April 10, 1997 opinion and award authored by this Chairman in MERC Case No. D96 C-0423, the Chairman, in discussing the City's finances in 1997, beginning at page 10, wrote:

On April 12, 1996, Mayor Dennis W. Archer presented a report to the City Council of Detroit concerning the budget and his administration's cornerstone of "restoring financial solvency." In part, he stated:

In my budget message last year, I presented a stronger

financial picture than the City had seen in many years. Revenue was up, costs were under control, services were better, the difficult experience of DOWOP days were behind us, confidence in city government was growing, and, for the first time in this decade, the new budget was built on the base of a surplus from the previous year.

Honorable Council Members, I am pleased to report that the progress of the first two years is now emerging into a promising trend. Our discipline and hard work are starting to pay off. Tax collections are up, value in city property is rising, services are better and crime is down. And, because I can once again report a small general fund surplus of \$11.1 million, I am able to present a new budget built on back-to-back budget surpluses -- something that has happened only six other times since 1950.

* * *

During the coming budget year, the city will make its final payment of \$30 Million on the deficit funding bonds. As a point of reference, in January 1994, the city was saddled with \$82 Million of outstanding deficit bonds and faced a potential year-end deficit of an additional \$88 Million. This year, just 27 months later, we are looking at a second surplus budget, almost \$16 million in our savings account and complete freedom from deficit bond obligations. That is a \$185 million turnaround achieved without a tax increase.

Mayor Archer's report did note that real estate tax revenues had increased due to increased valuations and construction activity in Detroit. He also made certain growth assumptions as to municipal income tax receipts. On the other hand, Mayor Archer noted that there had been federal funding cuts and that some City agencies had lost funding as a result of changes in the State equity package. Though Mayor Archer was able to advise the City Council that "the financial condition of the City is good," the referenced federal and state equity package cuts do suggest that the City must move with caution in managing its financial resources.

In this regard, the parties are invited to read pages 16 through 34 of the Act 312 Award that this Chairman signed as the Panel Chairman in the Act 312 proceedings between the City of Detroit and the Detroit Police Officers Association on February 20, 1995. Though there have

been improvements in the financial situation in Detroit since the Act 312 Award, the description of the financial condition in that opinion highlights that care must be exercised in managing the City's financial resources.

Particular reference is made to page 25 of the Act 312 opinion where this Chairman noted that, "...in 44 years, the City has experienced deficits for 31 years." Then, at page 25, this Chairman continued:

There came a point, beginning in 1984-85, that the City "fixed" the tendency toward deficits and had five successive years of surpluses through careful budgeting and cost containment. During those five years, the City accumulated a surplus, namely, from 1984-85 through 1988-89, of approximately \$151.5 million. This may have explained the reason why the Act 312 arbitration awards during this period provided for police officers' wage increases.

In the five subsequent years beginning 1989-90 through 1993-94, the City projected deficits of \$347.9 million. The difference is a deficit of approximately \$196.4 million. This explains the previous debt bonding and the difficulty in creating a current bonding package so that for the upcoming 1994-95 fiscal year, services will not be devastated because of a need to budget for the \$63 million 1993-94 deficit. (Footnote omitted.)

The point is, if economic history is any indicator, the City must proceed with care. Otherwise, the City will repeat the economic cycle of 1984-1994.

Writing in MERC Case No. D00 J-1038 on May 1, 2001, this Chairman, addressing the City's finances, wrote:

From the 1949-50 fiscal year through the 1998-99 fiscal year, a period of 49 fiscal years, the City has had a surplus for only 18 of those years, meaning that in 31 fiscal years, it has had a financial deficit. By the fiscal year 1989-90, the City began a path of fiscal year deficits that ran through the fiscal year 1993-94. In two of the years during that period, 1990-91 and 1991-92, the deficit reached over \$105M, or approximately 9% of the total expenditures. By 1993-94, the deficit still remained at \$53M annually.

It was during this period that the City took drastic action

including wage freezes and concessions from many of its unions, including Teamsters 214. By the fiscal year 1994-95, the City operated with a surplus, namely, \$19M. However, despite careful budgeting, the 1998-99 budget only produced a \$1,600,000 surplus as compared to the \$19M surplus in 1994-95.

The significance of this limited surplus is this: the 1998-99 daily expenditures for the City is \$3.4M. If, for some reason, there is an extraordinary event or a miscalculation, the projected surplus for 1998-99 of \$1.6M would only cover one-half day of operations.

The City of Detroit receives its revenues from six major categories of major sources, namely:

<u>Revenue Source</u>	<u>Amount</u>	<u>% of totals</u>	<u>10 yr. ave.growth</u>
Municipal Income Tax	\$ 387,400,000	27.4%	2.8%
Property Tax	\$ 159,322,689	11.3%	2.0%
Utility User's Tax	\$ 54,600,000	3.9%	0.0%
State Revenue Sharing	\$ 332,000,000	23.5%	2.9%
Wagering Tax (Casinos)	\$ 80,700,000	5.7%	N/A
Other Revenue	\$ <u>399,348,883</u>	<u>28.3%</u>	<u>2.6%</u>
TOTAL	\$1,413,371,572	100.0%	2.6%

"Other revenue" includes revenue from federal sources.

A review of the above chart which is based upon the fiscal year 2000-01 budget, indicates that the growth in revenue in Detroit has averaged 2.6%. This chart also demonstrates that the expected growth of revenue is approximately 2.6%. However, in making this observation, there are two fallacies. It is not clear how much revenue will be generated in the future from the casinos. Likewise, as result of Public Act 532 of 1998, the state revenue sharing for the City of Detroit has been frozen at \$332M for the next ten years, even though the experience in the past has been that state revenue sharing has increased on an average of 3% per annum. This means that the City cannot expect additional increases in state revenue sharing. Furthermore, as a result of Public Act 500 in 1998, the income tax on both residents and non-residents will gradually be reduced which will further reduce the projected growth of tax revenues from income tax sources, which in fiscal year 2000-01, produced 27.4% of the City's revenues.

What also should be noted is that the property tax valuation has not grown per year at the same rate as other sources of revenue. Furthermore, contrary to the experience in surrounding suburbs, the property tax base has been reduced or is stabilizing in Detroit, and thus

is not a major source of revenue. With the freezing of state revenue sharing and the reduction of the municipal income tax, the primary area of potential growth is from the wagering tax. In the fiscal year 1999-00, the wagering tax brought the City approximately \$51M, with two casinos operating. The third casino, the Greektown Casino, was not open during that fiscal year. However, with the anticipation of its opening, the City may receive \$80.7M from the wagering tax which could increase the percentage of revenue in relation to the total revenue from that source.

Speaking for the Panel in the DPOA Act 312 Arbitration (July 21, 2000), Chairman Donald F. Sugerman, at pages 6-7, emphasized the precarious nature of the City's financial situation when he wrote:

To finance its operation, the City still has one of the highest income tax rates in the State, levies a unique utility tax and has extremely high property taxes. Virtually all of the taxes that the City is authorized to levy are at the maximum legal limit. To raise taxes to underwrite increased costs for police payroll is not an option.

The Union's financial expert testified that the City has the "capacity" to grant the increase in wages and benefits that the Association seeks in this proceeding. I am compelled to disagree. For 1997-98, the City had a surplus of \$13,380,061. The Union's expert cited several funds with high balances that he said were surpluses that could be used to pay wages and benefits. These funds (risk management and health care) are specifically earmarked and cannot be used for general fund purposes. Moreover, the City cannot be expected to use all unallocated funds. It needs to maintain reasonable reserves. While the parties argue over what is reasonable (and clearly experts in the field have different views on the subject) the amount of the City's reserve is inadequate for Detroit. The estimated surplus for 1998-99 was only \$245,000.00.

Furthermore, by ordinance, half of any surplus must be placed in the City's Budget Stabilization Reserve Fund, a "rainy day" fund, that can only be used for special purposes such as covering general fund deficits, restoring a reduction in the number of employees or paying expenses involving natural disasters. The other half of any surplus is incorporated into the following year's budget to fund operations for

that year. The Employer puts it this way, "A surplus as thin as those for the past four years is not evidence that the body is robust but only that it is surviving." I agree with the Employer that the surplus cannot be used to fund the improvements sought here.

Detroit has put great hopes for its financial well being on the gaming industry; three "temporary" casinos were to be up and running in early to mid 1999. Within about four years these casinos are to move into permanent facilities. The wagering tax was expected to generate \$51,500,000.00 in fiscal year 1999-2000. One casino opened on time and has done better than expected, the second was delayed for some months and the third is not yet open and it is uncertain when it will commence operations. In any event, it is expected that the two casinos will produce somewhat less revenue than was anticipated.

The City budgeted increases for all employees of 2% for the first year of the contract and 3% for the second year. Labor organizations representing a substantial number of other City employees accepted this offer. Were the City to experience a deficit, it most likely would affect its standing with the bond rating agencies. This in turn would increase the rates of interest the City pays to borrow money. These factors, among others, would have an adverse effect on the City's ability to fairly compensate its police officers.

I do not mean to suggest that everything about the City is bleak; it certainly is not. Good things are happening in Detroit....

On April 12, 2001, Mayor Dennis W. Archer, in an address to the City Council discussing the proposed budget for the 2001-2002 fiscal year, highlighted the need to be cautious, fiscally conservative and responsible when he noted in part:

Yet, while an impressive volume of rebuilding continues, we must observe caution and be fiscally conservative as a government, due to the ongoing reduction in the City's income tax rates, the freeze in state revenue sharing dollars, and the uncertainty of the future direction of the national, state and local economies. These factors will challenge the City's ability to meet our Core Service Priorities of

neighborhood stabilization, improved public safety services, and improvements to the support service departments of City government.

Thus, no responsible panel can ignore the necessity to be cautious in issuing awards having economic impact because Detroit's financial situation continues to be precarious. This fact was emphasized by the Sugerman panel in the recent DPOA Act 312 proceedings.

Although this Chairman referenced "Detroit's financial situation continues to be precarious in 2001," as matters turned out, for the reasons already enumerated, the City's finances became critical. While the State of Michigan's population continued to grow, the City of Detroit's population continued to decline. The decline in 2003 was another 3.1% to 921,758 persons. Whereas the rest of Southeastern Michigan saw a substantial increase in new units, there was only a 2.6% increase in new units in Detroit versus an 80% increase in demolitions. There was a 65% drop in businesses in Detroit from 1972 and continuing into the 2000's. Whereas in 1950, 61% of the general fund expenditures came from property tax revenues in Detroit, by 2001 and continuing to 2004, the percentage hovered between 11-12%. This is to be compared to figures in the suburban areas running between 66% and 43%. In Dearborn, the comparison is 79%.

As to the City income tax, the number of resident and non-resident tax returns, as well as corporate and partnership returns, are dropping as is, by State law, the tax rate. The revenue from income tax, as compared to 2000-2001 (\$341,000,000) is now for 2004-2005 down to \$270,000,000. The State revenue sharing in 2000-2001 was \$332,000,000 and is now for 2003-2004 down to \$286,000,000. The history for the last three years of the general fund surplus-deficit reads:

<u>Fiscal Year</u>	<u>Total Expenditures</u>	<u>Final Operating Results</u>		<u>Surplus/(Deficit)</u>
		<u>Surplus</u>	<u>Deficit</u>	<u>As a Percent of Total Expenditures</u>
2000-01	1,488,793,205		26,395,130	-1.77%
2001-02	1,5776,041,291	1,555,594		0.10%
2002-03	1,601,368,138		69,063,211	-4.31%
2003-04	1,757,349,140	0	95,032,523	-5.41%

For 2004-2005, the deficit is predicted to be \$67,000,000.

As required by State law, a deficit must become part of the subsequent year budget to be made up as State law requires a balanced budget. After a period of 11 years without a layoff, the last layoff being October 16, 1992, the City in recent times has laid off among civilians as follows:

June 30, 2003	136
June 30, 2004	377
March 7, 2005	645

Although the three casinos are up and running, the revenues from the casinos has not been sufficient to stem the financial tide as just explained. And the fact is that State aid to Detroit has been frozen for ten years. During the period when the State was increasing State aid to other cities, Detroit was not a recipient of such increases because of the casino agreement. There has also been a drop in the State's equity funding for the Zoo, the Historical Museum, the Art museum, and the crime laboratory which accentuates the City's critical financial circumstances. The City is making efforts to address the financial problem.

There unfortunately have been layoffs, as just noted. There is also a financial technique used by other cities that the City of Detroit is in the process of adopting, namely, a pension obligation certification which is a form of borrowing.

As the Chairman has just laid out, this Panel is facing a far different and, by any

definition, a critical financial situation as compared to the Panel considerations in 1997 and 2001. And as illustrated above, the situation, because of demographics and State law, came about because of circumstances beyond the control of the City.

The critical financial situation of the City makes it difficult for any Act 312 Panel in appraising the situation. This is a situation where at least three cities in Wayne County have in recent times been in receivership and the State's third largest city has been receivership. Therefore, an Act 312 Panel must proceed with caution in these critical circumstances.

THE BARGAINING UNIT

The Emergency Service Operator chapter of Local 1023 consists of 89 members working 24 hours a day, seven days a week. The scatedgram in terms of assignment for the Emergency Service Operators (ESO's) is day shift 16, afternoon shift 19, and midnight shift 14.

It is a job that is stressful because the ESO's, by phone, are faced with stressful situations such as a life threatening situation by a citizen reporting same, citizens calling while emotionally distraught, calls during a delivery of a child, and there are cases where dire circumstances are occurring that are being reported over the phone.

It is no exaggeration to suggest that there are times when the Service Operator must be, so to speak, a diplomatic, a psychologist, a person of action.

The job of an Emergency Service Operator and the stress of the job is not lost on this Chairman. The Chairman also recognizes that there is a burnout rate among ESO's because of the stress on the job. Though the Emergency Service Operators do receive a break every hour, the stress is still there and cannot be ignored, nor has it been by the Chairman.

THE BARGAINING HISTORY AND COMPARABLES

The local comparisons in the Metropolitan Detroit area, recognizing that the Detroit

ESO's have not received a pay raise since June 30, 2000, are as follows:

ESO SALARY COMPARISON LOCAL MICHIGAN CITIES

City	ESO/Equiv.	Eff. Date	Dispatches?	Fringes(1)	Police Officer	Eff. Date	% Diff. at Max
Dearborn	\$33,944-\$39,460	7/1/03	Yes	Civilian	\$37,167-\$53,941	7/1/03	73.15%
DETROIT	\$31,800-\$42,000	1/1/01	NO	Civilian	\$27,865-\$45,488	1/1/01	92.33%
Flint	\$38,916-\$39,790	7/1/04	Yes	Civilian	\$26,000-\$43,578	7/1/04	91.31%
Livonia	\$37,960-\$42,390	11/30/03	Yes	Civilian	\$37,460-\$49,961	11/30/03	84.85%
Pontiac	\$32,032-\$38,750	7/1/03	Yes	Civilian	\$36,442-\$47,133	7/1/03	82.21%
Royal Oak	\$34,548-\$38,126	7/1/04	Yes	Civilian	\$38,563-\$54,412	7/1/04	70.07%
Southfield	\$35,707-\$40,188	7/1/04	Yes	Civilian	\$39,837-\$57,585	7/1/04	69.79%
Sterling Hts.	\$35,426-\$46,257	7/1/04	Yes	Civilian	\$38,288-\$62,529	7/1/04	73.98%
Troy	\$33,515-\$44,127	7/1/04	Yes	Civilian	\$36,968-\$60,420	7/1/04	73.03%
Warren	\$38,777-\$46,920	7/1/04	Yes	Civilian	\$43,948-\$62,839	7/1/04	64.67%

AVG w/o Detroit \$36,647-\$41,778

(1) basic fringe benefit package, including longevity and pension

This would suggest that though there are some communities such as Warren, Troy and Sterling Heights, growing communities, that do pay more than Detroit at the top schedule, Detroit wages are competitive in the local area.

On the national level, Detroit even fares better than the national figures, which are:

ESO SALARY COMPARISON (NATIONAL CITIES)

City	ESO/Equiv.	Eff. Date	Dispatches?	Fringes(1)	Police Officer	Eff. Date	% Diff. at Max
Chicago	\$34,176-\$39,288	7/1/03	Yes	Civilian	\$36,984-\$43,164	7/1/03	91.02%
DETROIT	\$31,800-\$42,000	1/1/01	NO	Civilian	\$27,865-\$45,488	1/1/01	92.33%
Milwaukee	\$34,457-\$45,981	12/19/04	Yes	Civilian	\$41,436-\$55,868	12/19/04	82.30%
Philadelphia	\$31,472-\$34,376	7/1/03	Yes	Civilian	\$37,297-\$48,438	7/1/04	79.97%
Pittsburgh	\$31,444-\$38,401	1/1/04	Yes	Civilian	\$37,297-\$52,142	1/1/04	66.94%
St. Louis	\$28,873-\$38,401	7/1/04	Yes	Civilian	\$34,182-\$52,518	7/1/04	73.12%
St. Louis	\$26,047-\$34,878	7/1/04	NO	Civilian	\$34,182-\$52,518	7/1/04	66.41%

AVG w/o Detroit \$31,078-\$37,971

(1) basic fringe benefit package, including longevity and pension

However, though the national comparables are interesting, it is the local employment market that should be the focus of attention because it is the local market in which the ESO's are competing.

Against this observation, there is a pattern of wage evaluations for the ESO's that was adopted over vigorous objection of the City by the Panel chaired by Arbitrator Girolamo. On this point, Chairman Girolamo in MERC Case No. D92 G-1533 at pages 28-30 wrote:

The distinguishing feather of this dispute is that while the other negotiations, Arbitrations and fact-findings involving the City and other units were grounded on economic considerations, this one is additionally and primarily grounded on a contention of incorrect assessment of job skills and responsibilities.

After careful consideration, the Panel concludes that the Last Best Offers of the City and the Union have serious deficiencies. While the City agrees to an enhanced Wage Offer it also seeks a 10% Wage Sacrifice with the net result that an increase of only 4.5% obtains for the period 6/12/93 to 6/11/95. The Union, on the other hand, appears fixated on a demand for parity with Police Officers. While it is true that the Assistant Fire Dispatchers have such parity, the rationale for extending a parity relationship to yet another group of employees is not readily apparent. The Panel does not denigrate the work performed by the ESOs but merely notes that the extent to which their work has a parity relationship with Police Officers is tenuous at best.

With reference to the matter of wages to which the ESO's are entitled, the Panel concludes the Union's Offer has more merit. That is to say the Union's Last Best Offer in dollars and cents is accepted, however, all reference to a parity relationship to Police Officers is rejected - it is determined the latter is not an economic demand in the sense that the Panel must accept it as part of the Union's Last Best Offer.

The ESO salary effective June 30, 1995, will be as follows:

\$25,628 - \$33,851

The above amount will be implemented in incremental amounts as follows:

	<u>Minimum</u>	<u>Maximum</u>
6/30/93	\$23,438	\$29,242
6/30/94	\$24,533	\$31,546
6/30/95	\$25,628	\$33,850

It is the Panel's assessment that with this Award any pre-existing inequity has now been corrected.

The Panel is aware that the Award herein does not impose a ten (10%) percent reduction in earnings over a two (2) year period in the same manner that all other City non-uniformed employees experienced. For purposes of this case, the Panel determined that the Union's Last Best Offer was the one more justified at this point in time. The Panel does not intend that the ten (10%) percent reduction has necessarily been put to rest by virtue of this Award.

In MERC Case No. D96 C-0423 (April 10, 1997), in adopting the Union's last best offer in that case, this Chairman in discussing the Girolamo award wrote at pages 17-20:

As a result, for the first year of the 1992-95 Agreement, Local 1023 members did not receive a pay raise. But they did for the last two years of their Agreement, during the same period that the Police Officers were taking a wage freeze for three years, and other employees were experiencing wage reductions by use of DOWOP days.

Yet, what was central to Chairman Girolamo's vote on his panel was his comment, "This one [referring to Local 1023] is additionally and primarily grounded on a contention of incorrect assessment of job skills and responsibilities." The Girolamo panel heard from expert opinions. There was also in the background the lawsuit in Wayne County Circuit Court.

Essentially, the Girolamo award resulted in approximately 92% of an Assistant Fire Dispatcher wages. The Girolamo panel rejected wage parity with police and fire dispatchers.

What Local 1023 is attempting to do is to preserve the job skill assessment reflected in the economic value awarded by the Girolamo panel, with its last best offer in these proceedings, as well as taking heed of the Rasch dissent in providing for some relief in the way of a reduced wage scale, as compared to the wage scale of current employees, for newly hired Operators. Although this is not the same degree of relief that was provided in the DPOA 1992-98 Act 312 Award or the 10% reduction of other employees, it is a recognition that Local 1023 members have offered to take some responsibility for the City's continued fiscal health. As this Chairman has emphasized, without caution, the City could experience in the future a fiscal crisis that would be to the disadvantage of Local 1023 members and other City employees.

The City's last best offer mirrors the settlement that it reached with Michigan Council 25 and the locals it represents other than Local 1023 for the 1995-98 period. Relying on the bargaining history that produced the internal bargaining patterns, the City argues that its last

best offer should be adopted. As the Girolamo panel also made the assessment of the job skills, there is no reason to reassess those job skills here by awarding an economic pattern greater than adopted in negotiations between Michigan Council 25 and the City; that the assessment should have been on a one-time basis, and not continued in these proceedings.

These arguments cannot be ignored and presents a serious challenge to Local 1023.

To meet these arguments, Local 1023's Advocate introduced transcripts from the hearing before the Girolamo panel, making particular reference to the expert testimony. This was done to emphasize that the majority view on the Girolamo panel as to the job assessment of 911 Operators was correct and can only be continued by adopting Local 1023's last best offer in these proceedings.

It certainly was not a given before this Panel that this position could be maintained in these hearings, particularly with the settlement of other AFSCME locals for 1995-98.

Yet, when one reviews the Girolamo award, it is not a question of a ratio, but rather an "assessment of job skills and responsibilities." Local 1023 is maintaining that its last best offer is more consistent with the assessment of 911 Operator job skills and responsibilities than the City's offer, considering the background of this matter.

THE ART OF THE POSSIBLE

Though there are the internal comparables, this bargaining history, coupled with the fact that there has been litigation concerning the 911 Operator job skill assessment, all lead to the conclusion that, in terms of the art of the possible, the wage pattern at this point in time should be continued for Local 1023 911 Operators based on Local 1023's last offer.

The City believes that the Girolamo panel incorrectly assessed the testimony before it. Certainly, this Chairman is not suggesting that the City should forever be reassessing job skills, particularly when its fiscal integrity is involved. But the City's arguments in the context of the hearing before this Panel at this point in time are not persuasive when weighed against the bargaining history and the reaction of a bargaining unit whose members believe that Local 1023's last best offer is necessary and consistent with the "assessment of job skills and responsibilities."

Therefore, the Chairman, along with the Union Delegate, will

vote to adopt the monetary figures of the last best offer of the Union. But in doing so, the Chairman is relying on the figures rather than the 92% ratio as he believes that the figures represent a classification adjustment because of the skills involved.

This Chairman in the Panel's opinion and award dated May 1, 2001 in MERC Case No. D00 J-1038, wrote at pages 13-14 when adopting the Union's last best offer as to wages:

The Union has proposed as its last best offer a wage package as set forth in Appendix B attached hereto. Until July 1, 2000, the wage offers are the same, but the Union adds a 3% increase effective January 1, 2001. In addition, the Union has added paragraph 7 to the language which reads:

All Emergency Services Operators covered by this Agreement, whose wages are classified as a yearly salary with minimum and maximum rates more than \$20,000 annually, and which rates, as a result of any required change to be made to their wages causes the resulting amounts to fall between even hundred-dollar levels, shall have these rates adjusted to the next higher hundred dollar level.

The City maintains that its wage offer should be adopted as it represents the agreements reached with the civilian unions on a general basis, although in some of the civilian contracts there are special wage adjustments for certain classifications.

The Union, in support of its proposal, harks back to this Panel's April 10, 1997 Opinion and Award in MERC Act 312 Case No. D96 C-0423 wherein, in effect, the panel awarded a wage increase comparable with the wage increase that the Detroit Police Officers Association received. The Union's Advocate noted that the dispute involved in the 1995-1998 Act 312 proceedings called "for a further reassessment of the job skills and responsibilities in relation to the police...." What the Union is suggesting is that, by the very nature of dispatch work with the Police Department, there is stress on the job; that ESO work is concomitant with police work; that for these reasons the relationship between police wages and ESO wages established by the 1997 Panel award should continue; that the stress continues and therefore there is no reason not to continue the comparable with the Police. The Chairman, and obviously the Union Panel Member, would agree because, by the very nature of dispatch work with the Police and Fire Departments, wherein the ESO is serving as a part of the communication system between persons often needing immediate

response to an emergency that is happening during the actual time of the call. There is stress on the job under such circumstance, stress that is concomitant with the stress of police officer and fire fighter work.

The Union's last best offer is thus based upon the percentage wage increase awarded the Detroit Police Officers by the Sugerman Panel Opinion and Award dated July 21, 2000 covering the July 1, 1998-June 30, 2001 period which adopted the City's last best offer for the first two years and the DPOA's last best offer for the third year of the contract beginning July 1, 2000. The rationale stated for so doing was that "given the City's slim surpluses in 1998 and 1999, the importance of avoiding a deficit at this time in its recovery, the amount accepted by other unions, the overall compensation of officers...." The Sugerman panel then proceeded to adopt the DPOA's last best offer for the third year of the contract based upon potential revenues from the casinos. (See pages 12-13 of Sugerman Panel Opinion.) It would seem that, based upon the bargaining history, albeit a history that included a previous Act 312 award, there is no reason why the pattern should not be continued as to the relationship between the wages of ESO's and police officers. It is based upon this rationale and the factors proffered by the Union as to the nature of the work, the majority of the Panel adopts the Union's last best offer as to wages. This is the Award of the Chairman and the Union Delegate with the City Delegate dissenting.

Even in Panel discussions in this matter, the City's Delegate expressed the City's displeasure with the result of the Girolamo award, namely, an award the resulted "in approximately 92% of an Assistant Fire Dispatcher wages." (MERC Case No. D96 C-0423, Roumell, Ch. April 1992 at page 18). The City maintained that there should be no such ratio. The Union Delegate, in her discussions with the Panel, suggested there should be a 100% ratio, namely, that there should be parity.

COMPARISON – COUNCIL 25 (NON-SUPERVISORY BARGAINING UNIT) AND DPOA

Michigan Council 25, on behalf of the non-supervisory bargaining unit, negotiated an agreement for July 1, 2001 - June 30, 2005 wherein the wage pattern was as follows:

WAGE INCREASE:

1. General Wage Increases:

- a. Effective July 1, 2001 0%
- b. Effective July 1, 2002 0%
- c. Effective July 1, 2003 2%
- d. Effective July 1, 2004 2%

2. Cash Bonus:

Members of the bargaining unit who are on the payroll on the date of the Union's ratification of this Agreement shall receive a \$400 cash bonus. This payment will be made as soon as possible following the date of Union ratification and the City Council's resolution approving the economic terms. This payment shall not increase the employee's base rate of pay, nor shall it be included in average final compensation for pension purposes.

Persons who are on approved leave of absence, workers compensation, long-term disability or other absence from the payroll on the date of ratification shall be eligible for the \$400 bonus upon their return to active employment.

Two points are made. For the first two years of that contract, there was no wage increase. The second two years the wage increase was 2% each year. There was also a \$400 cash bonus. As pointed out, the previous Act 312 involving the ESO's did not always follow the wage pattern with the Council 25 non-supervisory employees.

The 1998-2001 wage settlement with Local 1023 as a result of the Act 312 panel chaired by this Chairman, was as follows:

WAGE INCREASE

- (1) Effective July 1, 1998 2%
- (2) Effective July 1, 1999 3%
- (3) Effective July 1, 2000 3%
- (4) Effective January 1, 2001 3%

During the same period, the DPOA wages, which were the result of an Act 312, were as follows:

Employees in the classification of Police Officer shall receive the

following wage adjustment:

Effective July 1, 1998	2%
Effective July 1, 1999	3%
Effective July 1, 2000	3%
Effective January 1, 2001	3%

In other words, as a result of the three previous Act 312's involving Local 1023 and the Emergency Service Operators, the wage pattern that emerged followed the police wage pattern increases rather than the non-supervisory bargaining units of Council 25.

The DPOA had another Act 312 that covered the period from July 1, 2001 through June 30, 2004. The general wage increase for police officers as a result of Act 312 was that for the first two years of the contract (July 1, 2001 and July 1, 2002), there was no increase; that effective July 1, 2003, there was a 5% increase across-the-board.

ABILITY TO PAY REVISITED

As discussed in the section entitled City's Finances, as of May 2005, the City's finances have deteriorated with the City facing substantial deficits. When the AFSCME non-supervisory contract was entered into, the City was in a more favorable financial situation than presently, even though, then, it was precarious. The point is that, as of May 2005, the City makes a forceful argument that it cannot even consider agreeing or offering to Local 1023 the 2% for 2003 and 2% for 2002 as to wages that are part of the Michigan Council 25 non-supervisory bargaining unit contract. Likewise, the City argues that it cannot even offer a wage package for 2003 because of the City's deteriorating financial situation. Thus, the dilemma for this Panel.

THE ART OF THE POSSIBLE

There has been a pattern, although it is open to debate on whether or not, in the words of Chairman Girolamo, the pattern was in consideration of an "assessment of job skills and

responsibilities” rather than any parity. As this Chairman has pointed out, the Girolamo award resulted in approximately 92% of the Assistant Fire Dispatcher wages which followed the police wages. The last three contracts with Local 1023 for the ESO’s have followed this pattern. Whether this issue should be revisited is open to question. But because of the City’s financial crisis, this is not the time to revisit it. What this is the time to do, consistent with the City’s financial concerns, the job skills involved for the ESO’s and what has happened between 2001 and 2005, is to attempt to come to some resolution to address the economic issues that separate the parties here, namely, that wages and pension or retirement, to resolve their dispute.

Unfortunately, at least from the view of the Emergency Service Operators, the Chairman is asked to deal with the issues in 2005 and not earlier in 2004, 2003 or 2002. In 2005, there is a different set of facts than in 2002, 2003 and 2004 that must be acknowledged.

What this means is that there should be a four year contract, beginning July 1, 2001 and expiring June 30, 2005, which is about five weeks away; that following the pattern of both the Michigan Council 25 non-supervisory unit and the DPOA agreement that came about as a result of Act 312, there should be years in which there are no pay increases. Furthermore, to deal with the City’s financial crisis, the contract here, as pointed out, should be a four year contract. The wage increase should be 5% in the last year of the contract with the retroactivity to February 1, 2005. This wage increase comes a year after the DPOA increase.

The Chairman is advised that the DPOA is now in Act 312 for the period beginning July 1, 2005. What may result there is not yet known. But when one looks at the Council 25 non-supervisory unit and the two year period that unit received 4% (2% each of two years), the Chairman suggests that a 5% retroactive to February 1, 2005, although not exactly equivalent to

the general employees particularly with the \$400 cash bonus, nevertheless represents somewhat of a pattern in the past that the ESO's have followed with the DPOA.

One is reluctant to even consider retroactivity. But the ESO's are entitled to some recognition for their services. The DPOA received a wage increase at least in one year of their contract. The Council 25 non-supervisory unit received a wage increase in two years of their contract. And though the City's financial situation is now critical, the ESO's are entitled to some recognition. There are 89 persons involved. This retroactivity goes back approximately three and one-half months.

The Chairman recognizes in the City's critical financial situation that every dollar counts. But the ESO's cannot be expected to bear the entire brunt of the City's current financial situation when other employees have received some wage increases.

The saving grace to the City is that the number of employees involved, as a result of this Award, is small, namely, 89 as compared to bargaining units represented by Council 25 non-supervisory units or the Police or, for that matter, the Fire Fighters. It is based upon this rationale that the Chairman will opt for 5% for a four year contract beginning July 1, 2001 and expiring June 30, 2005 with a wage increase effective February 1, 2005 of 5%.

The Union Delegate reluctantly will sign the Award as to wages but, in doing so, is only concurring and does not accept the rationale of the Chairman.

As to pensions, the thrust of the Union's offer is to reduce the retirement age from 30 to 25. There are arguments in support of this, including the burnout rate of ESO's. However, because of the City's critical financial situation, this is not the contract to obtain this benefit. For this reason, joined by the City's Delegate, the majority of the Panel will award a *status quo* as to

pension (retirement).

As to duration, the Chairman, along with the City Delegate, will opt for the four year duration with the Union's Delegate reluctantly concurring. But, in doing so, the City Delegate does not agree with the retroactivity.

It will be noted that the Chairman was appointed by letter dated April 15, 2005. The Chairman gave an early hearing date, namely, about a month after his appointment which he did not actually receive until April 19, 2005. The Chairman has gone one step further by issuing the Award within one week of the hearing so at least to give the ESO's the benefit of a wage increase as soon as possible.

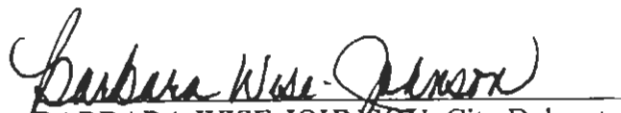
Finally, it should be obvious by now that the reason why the Chairman asked and received waivers from the parties as to last best offers is because the critical financial ability of the City is a situation that required flexibility that is not normally available in last best offers for the Panel to come up with an "art of the possible" award in these circumstances. This has happened.

The parties will be back to negotiations shortly. What this Opinion and the Awards that follow do is to at least address the period that just passed.

A W A R D S

1. The contract period between Local 1023 Emergency Service Operators Chapter and the City of Detroit shall commence July 1, 2001 and expire June 30, 2005.


GEORGE T. ROUMELL, JR., Chairman

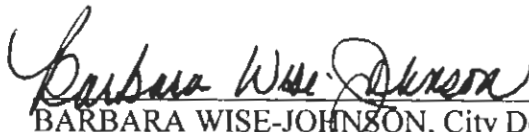

BARBARA WISE-JOHNSON, City Delegate,



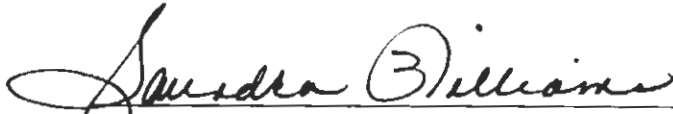
SAUNDRA WILLIAMS, Union Delegate, concurring

2. The wages shall be as follows:

July 1, 2001	0%
July 1, 2002	0%
July 1, 2003	0%
July 1, 2004	0%
February 1, 2005	5%


GEORGE T. ROUMELL, JR., Chairman

BARBARA WISE-JOHNSON, City Delegate,
concurring except as to the 5% commencing February
1, 2005 as to which she dissents



SAUNDRA WILLIAMS, Union Delegate, dissenting
as to the wages for July 1, 2001 to February 1, 2005,
but concurring reluctantly as to the 5% effective
February 1, 2005

3. Pensions. There shall be no improvement in pensions during the life of the agreement, with the *status quo* being maintained.


GEORGE T. ROUMELL, JR., Chairman

BARBARA WISE-JOHNSON, City Delegate,



SAUNDRA WILLIAMS, Union Delegate, dissenting

May 23, 2005