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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION TRIBUNAL
ACT 312, PUBLIC ACTS OF 1969 AS AMENDED.

In the Matter of the Interest Arbitration Between:

CITY OF RIVERVIEW, MICHIGAN

Employer,

MERC Case No. D09 A-0101

and

**POLICE OFFICERS LABOR COUNCIL REPRESENTING
THE RIVERVIEW POLICE PATROL OFFICERS (POLC)**

Union.

ARBITRATION PANEL OPINION AND AWARDS

**Stanley T. Dobry, Chairman
John Hajkus, City of Riverview Delegate
John Viviano, POLC Delegate**

I. APPEARANCES

FOR THE CITY OF RIVERVIEW:

FOR POLICE OFFICERS LABOR COUNCIL:

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Dated: April 6th 2010

II. EXECUTIVE SUMMARY

After negotiating for over a year during a period of unprecedented fiscal challenges, the City of Riverview and representatives from the Police Officers Labor Council, working together were able to reach a tentative agreement in principle on key provisions a new three year labor contract. Unresolved terms and final language, however, will be submitted to an Arbitrator who will decide on a final agreement. The parties did concur that the agreement with the Police Patrol Officers Union will expire on June 30, 2013.

Good faith negotiations over the past year have resulted in the Union and the City recognizing the need for substantial savings. The Union proposals shifted greatly from its original proposals to focus instead on assisting the City and the residents of Riverview during these difficult financial times. The final Union proposals focused on job preservation for the Union membership which has resulted in an award in everyone's best interest. Savings in wages, 12 hour shifts, and the Union proposed health insurance shall greatly assist the City and the residents, as well as protect the jobs of the Union membership.

Negotiations were unique in the fact that for the first time ever, the parties discussed "rolling back" wages of all patrol officers to their 2005 wage rates. Specifically, all members of the Police Patrol Union will be subjected to a **6.2% wage reduction** in the first year of the new agreement which is scheduled to begin on July 1, 2010. Thereafter, the Union will receive **no wage increases** for the remainder of the new agreement through June, 30, 2013. Furthermore, the arbitrator mandated the implementation of a modified health care plan that results in the City saving a substantial amount in monthly health care premiums.

Other matters sought or opposed by Labor and Management are decided by this Award.

III. OVERVIEW

Background

The City of Riverview is a Metropolitan Detroit suburb located in Southern Wayne County. Geographically, the community is located 20 minutes south of Downtown Detroit and the Port of Detroit along the shore of the Detroit River. Metropolitan Airport lies 15 minutes west of the city and the Ohio border (and Toledo) 30 minutes south. Riverview has a population as of the 2000 census of 13,272. The community encompasses an area of 4.4 square miles. Riverview was incorporated in 1922 as a Village in the state of Michigan.¹ Riverview was chartered as a City in 1959.

The City has a police department whose officers are represented by two unions. This Union represents employees classified as patrol officers and civilian employees classified as police dispatcher. A separate unit represents supervision and command officers. There are approximately 17 officers represented by the Police Officers' Labor Council. The contract began on July 1, 2006, and expired on June 30, 2009.

As the termination date approached and passed, the parties attempted to negotiate a successor agreement. Unable to reach agreement, the parties engaged in mediation on two occasions. Following these mediation sessions which did not result in an agreement, the Union filed a petition for Act 312 Arbitration on October 30, 2009.

The seventeen issues stated in the Union's Petition as being in dispute as of the date of the Petition were: (1) Five year agreement; (2) 12 hour Permanent shifts w/seniority shift selection; (3) Rewrite contract to reflect 12 hour permanent shifts; (4) 3% Wage increase each year of contract; (5) Physical fitness bonus for \$500.00 or 36 leave hours; (6) Vacation/Personal

¹ In 1950 Riverview only stretched as far as the west end of the northernmost of Trenton, Michigan's two northern boundaries. The rest of modern Riverview was then part of unincorporated Monguagon Township.

Bonus Day pay-out option up to 5 days; (7) increase sick time buyback to 180 days; (8) Short term disability program; (9) Eliminate insurance co-pay; (10) Wage increase for attaining bachelor/master's degree; (11) wage increase for officer's having additional duty jobs (i.e. Community Services Officer, Range Officer, K-9); (12) Increase in Cleaning/clothing Allowance; (13) Increase in on call pay for detectives; (14) Floating holiday to use in lieu of pay; (15) Change testing format for Sergeants' promotional examination; (16) The union reserves the right to add to, delete from or amend its proposals at any time during the bargaining process; (17) Any and all wage increases shall be retroactive to July 1, 2009.

The Employer filed a reply, which listed five issues: (18) Patrol retains Cops Trust Medical plan only, but they must pay 6% of their monthly health care premium in year 1 of the CBA, 7% in year 2, and 8% in year 3 of the CBA. Riverview also sought to delete the Blue Cross Blue Shield option; (19) No wage increases for duration of CBA as the prior contract is really no guide here since revenue has changed dramatically since 2005; (20) Remove existing minimum staffing language; (21) Add language that states that if officer takes a sick day in conjunction with a leave day or an off-day, that officer must bring in a doctor's note establishing treatment on the days off. (22) All new hires after ratification are indelible for participation in the Riverview Pension System.

Stanley T. Dobry was appointed Chairman of the Act 312 Panel along with the City Delegate **John Hajkus** and POLC Delegate **John Viviano**.

The parties thereafter met at a prearbitration meeting, and substantial progress was made, thereby eliminating many of the issues.

The parties then proceeded issue by issue. All issues were deemed to be economic. During negotiations, the parties agreed to incorporate into the contract previously agreed upon language concerning transitioning from 8 hour shifts to 12 hour shifts, and crediting of vacation

time under certain instances for probationary employees. These terms were agreed upon during negotiations and made a part of the agreement and this award by stipulation of the parties.

IV. STATUTORY CRITERIA

In determining an award, a Panel under Act 312 is required to follow the statutory criteria set forth in Section 9 (MCLA 423.239) of Act 312. Article 9 reads:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) in public employment in comparable communities
 - (ii) in private employment in comparable communities.
- (e) The average consumer prices for good 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.** [Emphasis added.]

There is no question that an Act 312 arbitration panel is expected to consider **all** of the Section 9 factors in making an award, at least as they are pertinent to the record made. It also should be recognized that the particular circumstances may dictate that certain criteria may be emphasized more than other criteria. But as the Michigan Supreme Court has noted in *Detroit v. DPOA*, 408 Mich 410 (1980) at 484, that since the:

“factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular 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.”

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as with other similarly situated public and private employees. In other words, the economic realities – for both sides and the public – of the situation must be considered.

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements which are not specifically enumerated in Section 9.

The panel in the instant case considered all of these factors, consistent with the Supreme Court's opinion in *Detroit v. DPOA*. Yet there were certain key criteria, namely, 9(c) “the financial ability of the unit of government to meet those costs,” 9(e) overall compensation, and 9(h) the other factors criteria which would include the bargaining history and the general economic climate in Southeastern Michigan as well as the pending millage vote discussed below.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

In addition to the enumerated criteria the Legislature, in setting forth Section 9(h), incorporated criteria sometimes used by fact finders in making recommendations as to collective bargaining agreements which are not specifically enumerated in Section 9. This means that, in addition to the enumerated Section 9 criteria, an Act 312 Arbitration Panel can utilize criteria

used by fact finders.

Act 312 Arbitration is first and foremost an extension of the collective bargaining process. Although the following determinations are not necessarily the only solutions to the problems the parties' mutually confront, the Arbitrator finds they are most in conformity with the terms of the statute. The Arbitrator has reviewed each of the statutory criteria as they may apply to the respective issues and the record made, and concluded that these criteria virtually command these determinations.

On the economic issues, it is respectfully submitted that the Award represents a fair compromise between the needs of the City for fiscal responsibility and public accountability, and the Union members' requirement for job and economic security. I find maintenance of internal comparability to be a persuasive factor. This resolution also takes into account settlements in comparable communities and bargaining units, and generally maintains the historical pattern and relationship these parties have freely bargained for in the past. As such, it reflects the parties' clear historical consensus of their relative worth.

V. ANALYSIS

The Judicial Prototype v. the Negotiation Prototype

The arbitrator notes that he largely tries to work an Act 312 proceeding in the model of a negotiation prototype. Thus, I reject the notion that the proceeding is analogous to a civil trial. Formalities are generally cut to a minimum, provided the parties consent. There is a requirement for advance disclosure of exhibits, but it is done in such a way that examination of witnesses and procedural rigor are cut to a minimum.² It is an extension of practical negotiation, not a model of rarefied adjudication. Indeed, the Chair believes that the optimal way to proceed is Mediate/ then Arbitrate to finality.

² See Anderson, Arvin, Interest Arbitration: The Judicial Prototype v. the Negotiation Prototype, Proceedings of the National Academy of Arbitrators.

One important aspect of Act 312 that is often overlooked is the role of delegates. They are to provide their unique understanding and perspective on the evidence that is adduced. During executive sessions they are encouraged to prioritize amongst various demands. Thus, the panel is more likely to come up to a solution that is closer to the needs of the parties, does not violate their expectations, and avoids unacceptable solutions.³

In assessing the overall ability of the City to pay as required by Act 312, an understanding of the City's financing situation were drawn by observations of the Chairman based on financial data made available by the City. Moreover, it is recognized that the middle class – including members of this bargaining unit – have also been financially squeezed.

For instance, from 1980 to 2008, nationwide worker productivity grew by 75 percent, while workers' inflation-adjusted average wages increased by only 22.6 percent—meaning that workers were compensated for only a small share of their productivity gains. Higher union wages reward workers for a larger portion of their productivity gains.⁴

In evaluating wages, the panel must take into account many conflicting factors. Act 312 itself only hints at the possibilities, although it has an ‘escape clause’ that permits consideration of such other factors as are commonly considered by interest arbitrators. Reference to §(h) is

³ Judge Kenesaw [(Mountain)] Landis, about to leave the federal bench to become ‘czar’ of baseball in the backwash of the [Chicago] Black Sox scandal, inflicted the worst interest arbitration ever. He ignored the historical relationships in the construction industry and remade the wage system in Chicago. This resulted in chaos, violence, bombings and killing of policemen for the better part of a decade. The lack of a tripartite panel, and his lack of understanding of the parties’ needs, were roots of this misjudgment. “The advantage stemming from information sharing works two ways: the neutral learns what the parties really want (and don’t want) and they know what he intends to do. Obviously, it is of importance that the arbitrator discover how much in cents per hour each side will ‘take’ In fact, nothing else is as significant. It is entirely possible, however, to endure a dozen days of formal hearing without acquiring this knowledge.” See Bernstein, Irving, *The Arbitration of Wages*, (Berkeley and Los Angeles: University of California Press, 1954), pps. 41-43.

⁴ The cost of benefits — especially health insurance — has increased over time and now accounts for a greater share of total compensation than in the past, but this increase is nowhere near enough to account for the discrepancy between wage and productivity growth. For example, according to analysis by the Center for Economic and Policy Research, between 1973 and 2006 the share of labor compensation in the form of benefits rose from 12.6 percent to 19.5 percent.

broader than the rest of the factors, and is to be “liberally construed” to effectuate the purposes of the act.

The mosaic may also include, *inter alia*, historical and future comparisons and relationships to other internal bargaining units; external communities and bargaining units, prevailing wages paid in similar communities; wage settlement patterns in the public and private sectors; ability to pay; local, regional, state and national economic events and prediction; labor market rates; costs of maintaining other benefits (especially health care and retirement costs); cost of living increases; adequacy of staffing, needs and expectations of the public; tax effort; hiring patterns; settlement patterns; and other factors applicable to the wage proposals.

The interest arbitration panel must try to establish a fair rate in the context of the historical relationship of the parties, and taking into account the labor economics concept of “orbits of coercive comparison,”⁵ also called “wage contours.”⁶ Internal comparability is a factor. The arbitrator has taken notice of the fact that this is *not* the first time that wage rates were established for the Riverview Police patrol unit.

Additionally, it is understood that taking money back from a union, even in hard economic times, is a difficult sell for Management who must backtrack against a history of bargaining and agreements. There are also likely to be diverse political repercussions, one way or another. Wage comparisons between bargaining units, and among related groups, is inevitable. While higher wages is a goal, maintenance of employment and avoidance of layoffs

⁵ Arthur M. Ross, *Trade Union Wage Policy* (Berkeley and Los Angeles: University of California Press, 1948), Chapter III, pp. 53-70).

⁶ Institutional economists remarked that unions impose wage standards. Dunlop (1957) called the standards “wage contours” and Ross (1948) called them “orbits of coercive comparisons” Bewley, Truman F., *Why Wages Don't Fall During a Recession*, page 109 (Harvard University Press 2-2 ISBN 0674009437, 9780674009431 (pp. 527).

is another (sometimes competing) goal for a labor organization.⁷ An economic theory of a trade union requires that “the organization be assumed to maximize (or minimize) something.” John T. Dunlop, *Wage Determination under Trade Unions* (New York: Macmillan Co., 1944), p. 4. Here maintenance of maximum employment for its members is an important goal for the Union.

Among the criteria utilized by fact finders are the bargaining history of the parties, both past and current, as well as the "art of the possible," namely, finding a possible settlement based upon the parties' competing needs and interests, in light of the give and take of negotiations.

As Arbitrator George T. Roumell, Jr. stated, this process is about the "art of the possible.” *County of Lake and Command Officers Association of Michigan*, MERC Case No. LO2 H-9004 (2004), where he wrote at page 4: “As Dean Theodore J. St. Antoine of the University of Michigan Law School wrote: ‘the soundest approach for an outsider in resolving union-employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful.’”⁸ This is, indeed, an appropriate consideration and falls within the concept of section 9(h).

In other words, the concept of the art of the possible is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, fully recognizing that the art of the possible is the essence of compromise and that without give and take, no compromise is possible.

Neither Management nor Labor should to come to arbitration with a list of demands, expecting to walk away with their list fully granted. Arbitration is not a mechanism to get what you want, but rather a process empowering both sides to live with what they get.

⁷ Reed, Albert, *The Economics of Trade Unions 3rd Ed.* (University of Chicago Press, 1989) (ISBN 0226707105, 9780226707105, 44-56, 204 pages.

⁸See, *County of Saginaw and Fraternal Order of Police*, MERC Case No. I90 B-0797 (1992).

The criteria are there to be followed. In the view of the Chairman, the dominant consideration present here is the financial ability of the City of Riverview, recognizing the financial realities facing southeast Michigan and for that matter the entire State of Michigan. In addition, the bargaining history in terms of differentials cannot be overlooked, as well as the art of the possible, in these financially difficult times. When the criteria are considered along with the economic realities, then the path to the Award becomes clear.

This panel considers the City's Ability to Pay and internal comparability to be crucial factors for the Arbitration Panel to consider in making its findings in regard to the ruling on its wage proposals.

The settlement breaks with traditional labor negotiations, in that this arbitration panel is imposing give backs.⁹ Truly, give backs are in the nature of an offer of partnership with the taxpayers. The Union will be suffering a decrease in base earnings. This decrease will survive throughout the life of this contract, provided that proposed tax increase (discussed below) goes through, and the City is able to avoid layoffs as a result.

It is anticipated that the concessions could also have a multiplied beneficial effect on the City's condition. In particular, the City will now be able to approach its other bargaining units with the example that is being cast by this Union.¹⁰ In any event, the fact that the City received

⁹ Traditionally Act 312 panels avoid breaking new ground. This is a conservative institution. As Theodore St. Antoine wrote: "The chairman of the panel, at least, would ordinarily prefer to leave most of the pioneering in labor agreements to voluntary collective bargaining, rather than impose new provisions through the compulsory process or statutory arbitration." Arbitration decision in the *Matter of City of Dearborn, Michigan, and Police Officers Association of Dearborn*, Theodore J. St. Antoine, Arbitration Panel Chairman, 545 GERR 3/11/74, at E-2.

¹⁰ Historically, this Union has been a leader in wage increases among the city's many bargaining units. In part, this is because of the nature of the work. It also has the benefit of compulsory interest arbitration, that is an outsider finally determining the content of the collective bargaining agreement. This includes wage rates. In contrast, other bargaining units (except the Fire Department) have only fact finding (which is advisory, essentially formalized mediation) and collective bargaining without the right to strike. This results in less leverage at

these substantial wage concessions from the police can foreseeably strengthen its hand in bargaining with the other units. If the police have been the wage leaders for purposes of internal comparisons, this pattern may continue. If it does, this could go a long way toward the preservation of services, even in the face of declining tax revenues – provided the tax proposal goes through and layoffs are avoided.

Despite initial disagreements about the contract term in dispute, the parties ultimately agreed that the arbitrator would decide a three year contract from July 1, 2010, to June 30, 2013, that being the duration of the contract issues.

The City's Financial Situation

No collective bargaining agreement can be reached in the City of Riverview without recognizing the City's financial condition which is one of the statutory criteria.

As compared to several years ago, the State of Michigan is presently facing an economic downturn which is now prevalent. As a result, the City of Riverview's financial situation has become unstable, through no fault of the administration. There are a number of factors that have destabilized the City's financial position. The financial structure established by the State of Michigan for local governments and Riverview, is hurting the City and, in fact, is imposing hardships on the City's budget. These issues include:

- Constitutional and statutory property tax limitations with the Headlee Amendment, Proposal A and other statutory provisions.
- Added restrictions on other revenues such as fees and charges for services with the *Bolt* Case and the State Construction Act.
- The City's General Fund is in (and has been in) for the last several years a structural deficit. The City's recurring revenue sources in the General Fund do not provide enough resources to support recurring operating expenditures.

the bargaining table for many public sector (non-uniformed) employees. Some labor leaders have derisively called this combination – under the Michigan Public Employment Relations Act – “collective begging.”

- As a result of the State's budget condition, Riverview's state shared 2010 projected revenue is \$597,000 million less per year than in 2001, dropping from \$1,655,000 million to approximately \$1,057,000 million. Since 2001, the City has lost over \$2,845,000 million cumulatively in state shared revenue. It is understood that decreased state revenue sharing is an everyday fact of life. Indeed, the utter unpredictability of state revenue sharing, where it is here promised for the fiscal year, delivered late, and reduced without warning in mid-year, is a fiscal nightmare for the City.

- In fiscal year 2008-2009 labor related costs represent over 77% of recurring General Fund expenditures.

- Police related labor costs for wages and fringe benefits for fiscal year 2008-2009 represent 33% of the general fund. This was an increase from 2002 levels of approximately 29% of the general fund.

- As a result of past contract negotiations and other factors (including the downturn in financial markets), the City faces increased pension and health care costs. Police pension contributions alone rose from about \$18,533 in 2002 to almost \$472,181 per year in 2009. During the same time period, health insurance for all active Police employees increased from \$267,725 to \$395,931 thousand and the City pension system contribution for its General Employees group went from \$14,483 in 2002 to over \$236,241 in 2009.

- The net impact of these developments is that the City's General Fund unreserved undesignated fund balance has been reduced from \$640,579 in 2002 to less than \$181,534 as of June 30, 2009. This decrease has diminished the City's reserve for contingencies and has made cash management very difficult. The City has inadequate funds set aside for capital reserves and no money set aside to fund accumulated sick and vacation payouts for employees at separation of service. As a rule of thumb, on a General Fund budget that exceeds \$10 million, an unreserved undesignated General fund balance of less than \$2 million is inadequate.

- The City is presently levying all available millage capacity for operations. The interaction of the Headlee Amendment and Proposal A has also rolled the City's millage rate back with no statutory relief available for this situation.

- The dramatically increased cost to the employers of maintaining health care benefits is effectively a 'tax' on operations that has diminished the available resources. It is a fact that this employer has been constantly looking for ways to be more efficient, and 'to do more with less.' Thus, many employees who have quit or retired have not been replaced. The problems with such well-intentioned efforts are four-fold: (1) the quality and quantity of services does decline; (2) the notion that 'we are cutting away fat' is outmoded – we are well past that, and are 'cutting away sinew and muscle'; (3) decreased staffing levels and increased responsibilities have a predictable negative effect on employee morale and efficiency; and (4) to the extent that foreseeable emergencies develop, the work does not go away, and employees have to work more overtime. Overtime at time and one half under the Fair Labor Standards Act may be a relative bargain, given the 'roll-up' costs of salaries and the costs of benefits. It is a fact that the FLSA has been an increasingly less effective deterrent to overtime.

- New accounting standards require all local governments – including Riverview – to

actuarially measure and record the liability for retiree health care if the City does not fund the annual liability calculated by the actuary. The City has no money set aside for the purpose (*i.e.*, no accumulated assets to offset the liability) and the City does not have the ability in the budget to fund the annual liability calculated by the actuary.¹¹

- The City has deferred necessary capital outlay for the last several years to balance its budget. Spending in this area will have to increase to keep the City in working order.

- Riverview's taxable value is being negatively impacted by decreases in residential home values, Michigan's economy, foreclosures and other market forces which could impact the City's General Fund structural deficit in coming years. It is reasonably foreseeable that commercial real estate values will decrease in the near term. As taxable values tank, this will have a foreseeable long term effect on tax revenues. Comparisons of per capita taxable value between communities is a basis for comparison. Availability and likelihood of future new growth can be considered.

It is a fair conclusion that the above cited factors are exhausting the City's fund balance reserves. This supports the argument that Riverview has an unbalanced structural budget deficit. For this reason, one must proceed with caution because it is in the interest of all of the City's employees that the financial health of the City be stabilized as much as possible, even though in these financially challenging times stabilization may be difficult to do.

Increased wages and additional benefits become more implausible, if not impossible, where the whole state and local community are in an economic downturn. Substantial lay-offs and the attendant reduction in services to residents loom on the horizon; the competition for scarce economic resources becomes acute. It is not 'business as usual' for the City, the Union, or the Arbitration panel.

The City of Riverview has projected revenue for the 2010-11 fiscal year to be \$9,303.243 million, and expenditures to be \$10,892,873 resulting in a deficit of \$1,589,630. The largest

¹¹ Two overriding issues in health care are: (1) double digit increases in health care costs, while the cost of living goes up in the low single digits; and (2) legacy costs, that is, the need to pay for the health care costs of present and future retirees. As background, the relatively new Government Accounting Standards Board (GASB) Rule 45, which now requires government to recognize on its balance sheets the projected costs of these liabilities. While the rule did not create new liabilities, it did require that they be more prominently stated. Typically in the new millennium, retiree health care costs have soared, with further increases reasonably anticipated going forward.

single item for expenditure in the 2010-11 budget is for the police department (Command and Patrol), namely, \$3.6 million or 39% of the general fund. Property values have also fallen across the region. In Riverview, 2009-2010 revenue from property taxes of \$5,039,285 fell for 2010-11 projected to \$4,559,583. Forecasts beyond this are \$4,207,058 for 2011-2012 and \$4,064,071 for 2012-2013. This is a property tax revenue loss of over a half million dollars in the first year with compounding reductions in each contract year thereafter.

What we have is a synergy of events and circumstances. Riverview, the Union and the community are pawns in an unfairly rigged game. The cumulative whole is worse than the sum of the parts.

The arbitration panel seeks to balance out the situation, and to create opportunities where they were not easily apparent.

Due to the current state of the economy with State budget cuts and the continual decrease in State Revenue Sharing, the loss of industrial tax base, decreased property valuations resulting in less tax revenues, together with increasing health care costs, the City is currently forecasting a deficit of \$1.6 million dollars for the 2010-2011 fiscal year. Moreover, in order to balance the budget, the City is faced with major cuts in services as well as layoffs of several personnel, including police officers and public works employees.

Cities have variable millage authority.¹²

To address this deficit the Riverview City Council authorized a Special Election to be held on Tuesday, May 4, 2010, and hereby adopted the following language to place a three and four-tenths (3.4) mill increase on said ballot; to wit:

¹² The arbitrator can examine the amount of taxes which the involved municipality is permitted to levy by law, and that which it actually levies (actual tax effort). For example, many have unlimited Act 33 millage with which to fund its police, fire and EMS services. Some Cities have Act 345 millage to fund its police and fire pension systems, but some City pension contribution come directly from the general fund.

CITY OF RIVERVIEW OPERATING MILLAGE PROPOSAL

The City Council would be authorized to levy up to three and four-tenths (3.4) additional mills upon the successful passage of the following question:

“Shall the City of Riverview levy new additional millage of up to three and four-tenths (3.4) mills on all taxable value of real and personal property for a three (3) year period of time, commencing July 1, 2010 and ending June 30, 2013, for operating purposes, in excess of the limitation imposed by the Headlee Amendment to the State Constitution? Three and four-tenths (3.4) mills are equal to \$3.40 on each \$1,000 of taxable value. If approved and fully levied, the additional millage will raise approximately \$1,167,563 in the first year.”

YES _____ NO _____

Health Care Issues

Regarding Health Care Labor proposes to amend Article 13 concerning Hospitalization to reflect the Coalition of Public Safety Employees (COPS Trust) Wrap Plan E Health Insurance with an imbedded no co-pay Rx once the deductibles are met. A no cost preventative provision to also be included. Labor seeks to have the employer agree to fully fund the premiums and deductibles. This change would apply to all active unit employees and prospective retirees who are pre-Medicare. Labor asserts that this will result in a savings to the employer of \$86,000.00 per year, over the current BC/BS base plan.

Management however proposes a graduated health care premium contribution continuing with Patrol Cops Trust Medical plan only. The contributions would require unit members pay 6% of their monthly health care premium in year 1 of the CBA, 7% in year 2, and 8% in year 3 of the CBA. Riverview also seeks to delete the Blue Cross Blue Shield option.

An analysis of the various options and cost savings suggest a greater savings with the Union’s proposal, but Management indicates that its desire to continue the trend set with its prior Command contract of employee contribution to premiums is of greater importance. After reviewing all of these arguments, I am not persuaded that the savings with Plan E should be subordinated to Management’s desire to require contributions with other units. They are still free to seek premium contributions equal to or comparable to the percentages of savings incurred

by the City with Plan E. Plan E savings can be converted to a percentage of savings and can be sought from other unions in the city as a percentage of premiums.

The Millage and Layoffs

The instant arbitration, occurring prior to the millage presents a unique opportunity for the City and the Union under the Act. Ultimately, the voters will make a significant choice. Do they want services to remain at or close to current levels? Or do they want reduced Police and other services in the City of Riverview?

The parties submitted this matter to arbitration taking into account the decisional process under Act 312 and recognizing that there is a give-and-take in collective bargaining. The Union needs to protect wage rate integrity and not make concessions while trying to protect all of its members, not just the most senior members of the unit. The employer needs to be able to demonstrate wage leadership and internal comparability. Both sides and the arbitrator need to work with the economic realities that exist. We deal with things as we find them, and not with dreams as we would wish them to be.

Unfunded mandates,¹³ the problems posed by diminished revenues (tax base, Headlee, Proposal A), diminished revenue sharing, the lack of a coherent state legislative solution and the potential foreseeable impending commercial real estate valuation decline are among these realities.

The parties have submitted the above last best offers with a full understanding of this larger economic context. But they have done more than this. They submitted their last best offers with a clear recognition of the importance and stature of the voter in the 312 process. The

¹³The *Final Report of the Legislative Commission on Statutory Mandates* released December 31, 2009, found that over \$2.2 billion dollars in unconstitutional unfunded state mandates existed. These are mandates made by the State which local governments are Constitutionally not required to bear, but do so because the State is emboldened by the disproportionately small number of suits to hold it accountable to the Constitution, Article 9, section 29.

See <http://council.legislature.mi.gov/lcsm.html>

parties recognize that the voters of Riverview have a say in the consequences of bargaining. The challenge, therefore, is to shape an award within the four corners of the Public Employment Relations Act (which includes Act 312) which correspondingly recognizes what the parties have acknowledged – that the voters are empowered to make certain final decisions with direct effect on wages and service levels. These decisions are, in turn, based on the Award’s analysis and decision choosing between the last best economic offers of the parties.

All recognize that without the millage passing, that layoffs are inevitable, but may be diminished or avoided if it is approved by the voters. Labor has demanded that in the event the City should layoff a police officer, then the July 1, 2009, wage schedule shall be immediately re-implemented for those remaining officers for the balance of the agreement. Management objects arguing that this would eliminate and gut the historic rollbacks sought, and would essentially nullify progress to date. The Arbitrator is asked to decide an issue which in turn is largely dependent on the will of voters and how they will act. Yet, as between the present positions, it is foreseeable that the need for layoffs will likely be reduced or eliminated if the millage passes. If it does not, the trade off will be reduced manpower through layoffs with wages frozen at 2009 levels for three years.

This is an acceptable tradeoff, reversion of wages to 2009 levels but then zeros for the remainder of the contract, but only if layoffs occur. Layoffs are within management’s core authority and though they may be likely if the millage does not pass, are not a forgone conclusion or beyond management’s control. Other options such as early retirements throughout the City are still a possibility.

Thus, the Arbitrator is called upon to decide upon and issue an extraordinary award. The award must recognize that empowerment of the voters is contemplated by the parties and that the Voters will have a say in meeting the economic sacrifices that are being offered by the parties.

The voters have the opportunity to maintain (or at least stabilize the losses) of essential public services. The power to provide the tax revenue to do so is in their hands. While this may be regarded as a “tax increase”, it may more accurately be regarded as an attempt to maintain taxes at the same level given decreased valuations. But that is for the voters to decide and not to be decided in an Award.

In evaluating the last best offers I am mindful that the issue of reversion of wage rates from stipulated 2005 levels to 2009 levels if unit layoffs occur is a function of the decision of voters in regard to the millage, but not a foregone conclusion as Management retains the final say in this regard.

The City has maintained that it is important to put in place a mechanism for controlling costs that have and will continue to impact its retirement system. Its position is to not allow any new hires into the pension system and move to a defined contribution plan so that it can cap and/or contain legacy costs especially within the Police Department. The Union believes it has given enough by rolling back wages to the 2005 level and the savings generated from COPS Trust Plan E insurance proposal. Effectively, like someone facing a request for a charitable contribution at home, it opines, ‘I already gave at the office.’ These extraordinary Union positions on these issues are above and beyond what other internal and external contracts have in place. These immediate savings are a strong argument against the elimination of the current pension system for new hires that shall result in no immediate savings for the City since there is no expectation of hiring new officers during the term of this agreement. The Union believes the issue should be revisited in the context and circumstances of 2013 and not 2010, with no immediate sayings to be generated. Finally, the Union argues that an actuarial study needs to be done to determine the long term effect of closing the current pension system as a closed system could generate higher costs. The chair agrees.

AWARD

During negotiations and arbitration proceedings, the Parties recognized and agreed that wages would be rolled back to the July 1, 2005, wage schedule, constituting a reduction of approximately 6.2%. This was followed by no wage increases on July 1, 2011 (0% increase) and no wage increase on July 1, 2012 (0% increase.) My award implements this understanding.

Regarding health care, for the reasons stated above the Union's proposed COPS Trust Plan E is implemented. The City will realize savings.

Regarding the pension issue, the Union's view is more persuasive. New hires are not reasonably contemplated during the contract period. The status quo should remain in effect.

The parties also agreed that a one year MOU extending the contract from July 1, 2009, to June 30, 2010, and a three year contract from July 1, 2010, to June 30, 2013, would resolve the duration of the contract issues.

During negotiations, the parties also agreed to incorporate previously agreed upon language concerning transitioning from 8 hour shifts to 12 hour shifts, and crediting of vacation time under certain instances for probationary employees. The parties mutually agreed to implement a 12 work hour schedule for all uniformed officers. Officers shall work an eighty four hour 2 week pay period. 3 hours straight time shall be paid to the officers in their regular biweekly pay and 3 hours straight time shall be posted biweekly to each officer's Compensatory Bank. Other provisions, mutually agreed by the parties, within the agreement shall be amended to accommodate the 12 hour work schedule.

These terms were agreed upon during negotiations and made a part of the agreement by stipulation of the parties. The thornier dispute, however, is over the timing of the rollback, whether layoffs are the proper subject of bargaining, and the effect of layoffs on the wage rollback. In the event the City should layoff a police officer, the July 1, 2009, wage schedule

shall be re-implemented for the remaining officers for the balance of the agreement.

With these agreements and forgoing factors in mind, and recognizing that Act 312 arbitration is a give and take process, *the Union's last best offer is accepted as follows:*

Issue 1: Wages

- 1. Rollback wages to 2005 levels is effective July 1, 2010. Wages resume 2009 wage levels on June 29, 2013. (Contract Article 8).
- 2. If the City lays off unit members, then wage rates automatically revert to 2009 wage levels when layoffs occur.

Issue 2: Health Care

- 3. Adopt new COPS Trust Plan E.

Issue 4: Retirement

- 4. Status quo.

The City of Riverview's last best offer is accepted as follows:

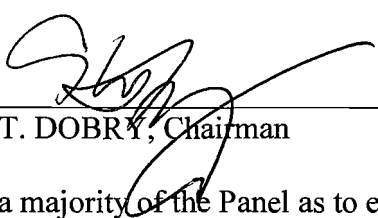
Issue 1: Wages

- 1. The City has no duty to bargain over a core management right and its authority to layoff is affirmed.
- 2. Pay holiday pay, gun allowance, uniform allowance over a 26 pay periods per year, rather than in lump sum intervals, but if layoffs then revert to lump sum intervals.

Miscellaneous

The Award also provides that all terms and conditions of the expired agreement that are not modified by this Award shall remain continuously in effect. The Arbitrator incorporates by reference all of the Tentative Agreements of the parties, as though they were set forth in full herein. The panel retains jurisdiction for thirty days to correct ministerial or editorial errors, if any (since the proceedings were extremely expedited in the public interest).

The foregoing Award is entered by a majority of the Panel based upon the last best offers of one or the other party and, as already noted, the Panel members have waived their Signatures and have agreed that the signature of the Chairman represents the majority as to each Award.



 STANLEY T. DOBRY, Chairman

Dated April 6th 2010

Signing for a majority of the Panel as to each award set forth above.