STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration
Under Act 312 (Public Acts of 1969)

City of Livonia,

Employer,

-and-

MERC Case No. D09 B-0220

Livonia Lieutenants and Sergeants Association

Union.

OPINION AND AWARD

Chairman of the Arbitration Panel:	Kenneth P. Frankland
City Delegate:	Robert Biga
Union Delegate:	Richard McQueen
Representing Township:	Gregory J. Schultz
Representing Union:	L. Rodger Webb
Pre-Hearing Conference	January 12, 2010
Hearing Held	May 17, 2010, June 8
Post-Hearing Briefs Received:	July 16, 2010
Executive Session	August 23, 2010
Opinion and Award Issued:	August 24, 2010

STATEMENT OF THE CASE

The Livonia Lieutenants and Sergeants Association (hereafter Union or LSSA), filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on August 11, 2009. On December 15, 2009, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter. A pre-hearing conference was held on January 12, 2010, and a report was generated by the chair the same day. During the pre-hearing conference, the parties identified one primary issue with one subpart; Pension Plan Article 32, 25 and out for Defined Benefit participants and lump sum payments to Defined Contribution participants based on 1998-1999 conversion amounts under the 25 and out provision.

The parties also took under consideration the issue of comparability and agreed to meet and confer with respect to communities that might be comparable. At the hearing the parties stipulated to Dearborn, Southfield, Sterling Heights and Westland as comparable. Further, the Union submitted Warren and Troy and the City Novi and Ann Arbor as comparable. At the hearing the parties stipulated to a waiver of the statutory time limits. Hearings were held on May 17, 2010 and June 14, 2010, at the Livonia City Hall and Public Library respectively at which time testimony was taken and exhibits introduced on the pension issue . Subsequent to the hearing, last best offers were received from each of the parties and post hearing briefs were received by the panel on or about July 16, 2010.

As provided in Act 312, the panel consists of a delegate chosen by each party and an impartial chair appointed by MERC. The chair of the panel is Kenneth P. Frankland, Robert Biga, Human Resource Director is the City delegate, and Richard McQueen, LLSA President, is the Union delegate. As required by the Act, on economic

issues, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9(a).

STANDARDS OF THE PANEL

Act 312 of 1969, MCL 423.231, specifically §9, contains eight factors upon which the panel is to base its opinion and award. Those are:

a. lawful authority of the employer;

b. stipulation of the parties;

c. interests and welfare of the public and financial ability of the unit of government to meet those costs;

d. comparison of 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 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 a determination of wages, hours and conditions of employment through voluntary collective bargaining, medication, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

The panel may give more weight or less weight, as it deems appropriate, to any one factor. *City of Detroit v Detroit Police Officers Ass'n.,* 408 Mich 410, 483-484 (1980). In the ensuing discussion, the panel will discuss the Section 9 factors which are most pertinent on this issue especially 9(c) and 9(d).

DISCUSSION OF 25 and OUT ISSUE

Union's Last Best Offer

Article 32 §I B.2

> Retirement. Effective **December 1, 2006**, employees who are **fifty-two (52)** years of age and have ten (10) years of police service with the City of Livonia or at any age with **25** years of police service with the City of Livonia, at a rank of Police Cadet or higher, may retire at full pension benefits as provided in the City Pension Ordinance. Any employee may retire prior to age **fifty-two (52)** provided the employee has ten (10) years of service with the City and is at least fifty (50) years old. Employees electing early retirement (i.e., retirement prior to age **fifty-two (52)** (with less than **twenty-five (25)** years if service) shall have their pension amount computed and based on actual years of service, with that dollar amount then reduced by one-half (½) percent per month remaining to age **fifty-two (52)** as follows:
>
> [No change in schedule]

Article 32 §I F.

> Employee Contribution. **Effective upon the implementation of the parties' 2010 arbitration award**, the employee contribution to the retirement system shall be **6.25%** of compensation as defined by Retirement Ordinance Section 2.96.050 Paragraph 7. **In any year thereafter where the City's recommended contribution as a percentage of police division payroll (excluding health) in the annual actuarial valuation is calculated to be 4 .18% or more, and the City makes a contribution from its general fund in that amount or more, the employee contribution shall be 7.30% for that fiscal year.**

Article 32 §I G.

1. An eligible employee's **annuity factor shall be 2.8% for the first twenty-four (24) years of service, to a maximum ("cap")** of seventy-five (75%) percent of final average compensation, provided that after twenty-five (25) years of service the employee will automatically receive the seventy-five percent (75%) maximum cap of final average compensation **by virtue of a 7.8% annuity factor for the 25th year.**

Article 32 §II Defined Contribution Plan

LLSA unit members of the Defined Contribution plan shall be paid the amounts listed below, which represents the difference between the amount paid to them as determined by the actuarial valuation of their Defined Benefit pension at the time they elected to transfer to the Defined Contribution Plan, and the amount that would have been determined by an actuarial valuation had the valuation been based upon the assumption that members of the bargaining unit were eligible to retire at 25 years at any age at 75% of final average compensation.

Charles Lister, Jr.	22,394.42
Thomas Goralski	0.00
Ronald Taig	14,643.46

These figures are adopted from the City's calculation of November 14, 2008 (LLSA Arb Ex 39). They are subject to actuarial review at the Union expense. The actuarial valuation shall be binding on both parties.

City's Last Best Offer

Article 32 §I B.2.	Status quo
Article 32§I G.1.	Status quo
Article 32§II	Status quo

TABLE OF EXHIBITS

Employer 1. June 10, 2009 Settlement Agreement
Employer 2. Contract December 1, 2003 – November 30, 2006

Employer 3. Livonia Financial Report November 30, 2006
Employer 4. Retirement System Actuarial Report November 30, 2009
Employer 5. Ott Opinion, March 20, 2009
Employer 6. Dobry Opinion re LPOA, November 24, 2008
Employer 7. Act 312 Petition
Employer 8. City Organizational Chart
Employer 9. Department of Public Safety Chart
Employer 10. Police Department Organizational Chart
Employer 11. SEMCOG Livonia Profile
Employer 12. U.S. Census Bureau Livonia Fact Sheet
Employer 13. Contract Status and Duration External Comparables
Employer 14. Schedule of Funding Progress, Ann Arbor Retirement System
Employer 15. Schedule of Funding Progress, Dearborn Retirement System
Employer 16. Schedule of Funding Progress, Novi Retirement System
Employer 17. Schedule of Funding Progress, Southfield Retirement System
Employer 18. Schedule of Funding Progress, Sterling Heights Retirement System
Employer 19. Schedule of Funding Progress, Troy Retirement System
Employer 20. Schedule of Funding Progress, Warren Retirement System
Employer 21. Schedule of Funding Progress, Westland Retirement System
Employer 22. Livonia GF Revenues Chart
Employer 23. Livonia GF Expenditures Chart
Employer 24. External Comparables Fund Balances
Employer 25. GF Property Tax Revenues
Employer 26. 2010 Property Tax Values
Employer 27. History GF Revenues and Expenditures
Employer 28. GF Revenues and Expenses Compared to PD Expenses
Employer 29. Property Tax Levies
Employer 30. Public Safety Millage Requests
Employer 31. Millage Results Troy
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Employer 38. External Comparables Annuity Factors Command
Employer 39. External Comparables Cumulative Annuity Factor at 25 & 27 Years
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Employer 46. FF and Police Rank at Retirement
Employer 47. Police and Fire Salaries
Employer 48. LPOA, Fire & Command Retirees 1995 – March 2010
Employer 49. Distance and Geography Disputed External Comparables

Employer 50. External Comparables Act 345 Funding
Employer 51. External Comparables Fund Balance Comparison
Employer 52. Blue Cross/Blue Shield Rates

Union 1. Settlement Agreement June 10, 2009
Union 2. LSSA History of Retirement Provisions in CBAs
Union 3. LPOA Retirement Provision 12/1/06-11/30/10
Union 4. Timeline Summary LPOA Retirement Provisions in CBAs
Union 5. Population Trends
Union 6. Median Home Values, Household Income
Union 7. SEV Graph
Union 8. SEV per capita
Union 9. Comparables Taxable Value
Union 10. Comparables Taxable Value per Capita
Union 11. Comparables Net Assets
Union 12. Disputed Comparables Data
Union 13. Livonia Financial Report November 30, 2008
Union 14. Comparables Financial Reports
Union 15. Comparables GF Balances
Union 16. Unallocated Fund Balances as Percent of Expenditures
Union 17. Comparables Operating Millages
Union 18. Livonia Retirement System Actuarial Report November 30, 2008
Union 19. Comparables Retirement Reports
Union 20. Comparables Funded Ratio Retirement Systems
Union 21. Livonia Retirement Board Minutes DB Plan
Union 22a. Rodwan Report October 13, 2008 25 and out
Union 22b. Rodwan Report November 6, 2009
Union 22c. Rodwan Letter to Webb, March 15, 2010
Union 22d. Rodwan Report June 3, 2010
Union 23. Chamber of Commerce Information re Livonia
Union 24. Gross National Product Graph
Union 25. Eligibility for Retirement in Comparables
Union 26. Multiplier/Cap Information all Comparables – officers and command
Union 27. FAC Information all Comparables – officers and command
Union 28.Parity Between Officers and Command all Comparables
Union 29. Dearborn, Novi CBA Excerpts
Union 30. Distribution by Rank/Maximum Salary Fire and all Police
Union 31. Average FAC LPOA v LLSA v LFFA
Union 32. Average Combined Police Retirees
Union 33. What the City Data Shows
Union 34. Contribution Level History, Fire, Police, Command
Union 35. Financial Report Livonia, 11/30/09, 11/30/04
Union 36a. Resolution Board of Trustees, January 7, 2004
Union 36b. Resolution Board of Trustees, June 17, 2009
Union 37. November 11, 2008 Contract Proposal
Union 38. Biga to Rodwan Letter, September 16, 2008
Union 39. Biga to Rick Handwritten Note, October 27, 2009

Union 40. Retirees in Comparables – Last Three
Union 41. Domizain Handwritten Notes February 12, 2009 Bargaining Session

STATEMENT OF FACTS

The City of Livonia is located in western Wayne County. It contains about 36 square miles of land and 466 miles of public roads, including I-96 and I-94 that permit easy access to Metropolitan Airport and most Detroit area attractions. Livonia has an estimated population of 95,269 according to SEMCOG with reasonable steady population through 2035 and Chamber of Commerce uses 100,545. (U-23) There were 79, 569 jobs in 2005 and the forecast through 2035 remains fairly constant with the exception of a projected decrease in manufacturing industry, primarily in the automotive sector. About 27.5% of the Livonia work force lives in Livonia. 54.2% of the land use is residential; 7.3 % woodland and wetlands and about 35% commercial and office and of that 11.4% is industrial. The real property tax base for 2010 is about 70% residential and 30% commercial and industrial. (statistical information from E-11). Total millage levied in 2009-10 was 11.4353. (E-29) Real property taxable value is declining and is expected to continue in the short run. Total general fund revenues for 2008 were $53, 055,304 and $50,060,306 for 2009. (E-27) Police Department expenditures for 2008 were 41.4% of GF expenditures and 42.5% for 2009. (E-28)

There are five bargaining units in Livonia three of which are police and fire and most germane to this case. They are LLSA, this unit; LPOA, Livonia Police Officers Association and; LFFU, Livonia Fire Fighters Union. As of the November 30, 2008 actuarial evaluation there were 97 active police members in the retirement system and 47 firefighters. (C-4, U-18, p.3). Of the 97 police members, 22 are in LLSA. (U-22(d), p.3)

COMPARABILITY

Act 312 Requires a Panel's Award to consider all factors enumerated in Section 9 including (d) "a consideration of the employees involved in the particular case with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in "comparable communities" and in private employment in "comparable communities". However, the Act contains no definition of "comparable community". Comparability is not an exercise in computer analysis but rather a matter of judgment, the best assessment of the most relevant factors in a specific case.

Experience has demonstrated that several criteria are commonly asserted as indicia of comparability. These include: type of political subdivision; location (proximity to the subject political jurisdiction): size, (square miles, population); economic considerations such as ability to raise revenue as measured by State Equalized Value, fund balance of the entity in terms of percentage of budget, history of percentage of budget allocated to this unit vs other units in the entity as compared to suggested comparables; composition of the unit; bargaining history of the unit including any prior 312's with stipulated comparables and any prior panel awards on comparability.

In this case, the parties have stipulated that Dearborn, Southfield, Sterling Heights and Westland are comparable communities. Additionally, the Union offers Troy and Warren and the City offers Ann Arbor and Novi. Of the stipulated cities, two are in Wayne county, Dearborn and Westland, none of the four disputed cities is located in Wayne county.

The parties offered a plethora of Exhibits on this issue, (Union 5-12 and the City 49) on the usual statistics. The City suggests that there is not a very significant differ-

ence between any of the proposed comparables. For example, Troy and Novi are higher in rank than Livonia in median income, SEV per capita and taxable value per capita and Ann Arbor and Warren are each lower than Livonia for the same categories.

The Union stresses prior 312's of the police units in Livonia and the City suggests some of those are too old to be used as evidence. This panel favors a balanced approach and does give considerable weight to communities deemed comparable in past 312's in Livonia. In this regard, we agree with the City that a 1978 arbitration may be too remote in time; many factors have changed since then and it is noted that Detroit was included at that time. The Union footnote at Brief, page 3 outlines the history of 312's with police and firefighters up to 2006 and all were stipulated. The four cities stipulated here were common in all those case where comparability was not contested. Apparently, Ann Arbor was utilized at some point. In 1983, the LPOA panel used our four stipulations and also Warren and Troy, and that's why the Union proposed them here. Troy, Warren, and Ann Arbor had recent 312's in which Livonia was a comparable. The Union argues and quite persuasively that it's two additions have been agreed by the City in police cases and most recently in 2006. Clearly, this seems significant and a good reason to include them here. The Union concedes that Ann Arbor may be added. (Brief, p. 7)

That leaves Novi. It is true Novi has not been used by the parties historically. The Union argues its exhibits show Novi should not be included and the City counters that those same exhibits do not render a basis to exclude Novi. Both parties are correct, there are similarities and differences that can be used for argument purposes. Proximity is often used as a significant factor and it the best argument for the City as Novi does abut Livonia in part. The City also offers the observation that inclusion or exclusion of

any comparable will not tip the scale in this case and the Panel agrees. Internal comparables may play a larger role in the outcome of this case. By adding Novi to the mix, the Panel believes that it would truly round out the selection process. It is usually not harmful to err on the side of inclusion. Thus, Troy, Warren, Novi and Ann Arbor when added to the four stipulated communities provide a broad and fair list of comparables for use in this case.

ABILITY TO PAY DISCUSSION

Section 9(c) requires a panel to consider the interests and welfare of the public and financial ability of the unit of government to meet those costs; better know as "ability to pay" or as some have suggested "the inability to pay". Unions typically paint the picture as a City has "the ability to pay" while Cities more often than not argue "inability to pay".

In this regard, the City presented many exhibits and the testimony of Mr. Slater to demonstrate that revenues are declining and expenditures are increasing, a phenomena not unusual given economic conditions in Michigan and the paralyzed political culture in Lansing. Clearly, the City is challenged to contain expenditures within available revenues. The City must be prudent in its decisions regarding general fund expenditures in relation to demand for wage and fringe benefit increases. But, indeed, the City must have taken those considerations into proper perspective as it agreed to items in the new contract that could present a financial strain on the general fund. Union Exhibit 1, outlines the parties' agreements on the new contract; the "concessions" in one view and the "modest quid pro quos" on the other side. In reality, the City has the ability to pay as it has already agreed to these items and built them into the GF budget

for this contract.

But more importantly, this arbitration is primarily about a defined benefit pension enhancement that is not a direct general fund outlay unless actuarially required; thus the focus of the City argument regarding precarious GF revenues and expenditures is misdirected. The City offered no exhibits on the retirement system. As the Union has correctly pointed out, the cost of its pension proposal will be borne by the City of Livonia Employees Retirement System, not the City general fund. Rodwan Consulting Company performed an actuarial examination of the Union proposal on June 3, 2010, including the 2.8% of the member's average final compensation times the first 24 years of credited service, plus 7.8% of AFC for the 25th year of credited service (maximum is 75% of AFC). [This is the most recent and complete actuarial report of those offered in evidence]

The June 3, 2010 actuarial report, Union Exhibit 22(d) states:

> The increase in the City contribution rate based on the Proposal would be 1.03% of total Police Division payroll if there is unfunded liability. This translates to an annual contribution increase of $73,318 in terms of total Police Division 2008 payroll, which is 4.18% of Lieutenant/Sergeant payroll.
> **However, since the proposal does not result in unfunded liability in the Police Division, there would continue to be no City contribution required based on the November 30, 2008 valuation.** (EMPHASIS ADDED)

The analysis of the record shows that the City has not been required to make a contribution to the Retirement System from GF since 2003 and that will not change based upon the Rodwan report for the initial year. Should a contribution be required in the foreseeable future from the GF, it is the view of the majority of the panel that such expenditure by itself would be within the ability of the City to pay. The report does

contain the normal, standard, precautionary language that assumptions could change and thus require a contribution in the future. However, the panel has only this record and not suppositions to rely on and the record is clear that the Retirement System is currently adequately funded and there would be no current financial impediment to the System if the proposal is adopted by the panel.

The City does argue there are "hidden costs" to the proposal that could impact the GF which it describes as precarious. The Panel disagrees. No true cost figures were presented, just speculative generalities. Of the possible negative impact on retiree health costs by earlier retirements, raised by the City, this is manageable, as the retiree health cost is paid by the VEBA which is presently 45.3% funded; having started in 1998 at zero funding. In contrast, two more years before retirement of health benefit costs to members would be a hit on the GF. Further, the record discloses that all police and fire members are paying 2% of wages into the VEBA per this contract for LSSA and earlier agreements for the other two Unions. City contributions from the GF in the future for retiree health is unknown on this record and thus speculative and of little probative value to our discussion.

The City also raised the spectrum of future unspecified impacts to the GF if this proposal is adopted because it "assumes" the fire fighters will get it also. First, the assumption may not come to fruition. Second, this Panel cannot base a decision on speculation but only follow the record developed and the current impact based upon that record. Here, there is no question that there would be very nominal, if any, current impact on the GF and the Retirement System would have no current impact. It is noted, that the Union, perhaps envisioning some impact in the future, proposes to shoulder some of a future contribution by proposing, in any year where the City's recommended

contribution as a percentage of police division payroll (excluding health) in the annual actuarial valuation is calculated to be 4.18% or more, and the City makes a contribution from its general fund in that amount or more, the LSSA employee contribution shall be 7.30% for that fiscal year. While this concept was first added in the LBO, it is nonetheless permissible to modify a LBO based upon the record developed. This aspect simply means the Union is willing to bear some of the cost, albeit minor in the view of the City. This is another important factor to consider when gauging the City ability to pay.

When the Panel evaluates the record for ability to pay considerations, we believe that the City does have the ability to pay and this factor could not be used by the City to argue against the Union proposal.

25 and Out

Having discussed ability to pay, the Panel now turns to the second factor of Section 9 that has the most bearing on this case, (d):

> Comparison of 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.

After reviewing the entire record, the Panel is of the opinion the Union's last best offer more closely conforms to the factors in 9(d) than the City last best offer. The following discussion explains the Panel rationale.

The Union argues that LLSA only wants parity with LPOA regarding defined

benefit (DB) retirement eligibility and the final year annuity factor that is contained in the LPOA contract.

While the City offers several reasons in opposition to the Union proposal the primary argument is that the Ott arbitration Opinion of March 20, 2008, (City Exhibit 5) between the City and LFFU addressed this issue adverse to the Union position. LFFU argued for 25 and out, the same as in the arbitration-awarded LPOA contract. But the Ott panel denied that proposal as a "close call" suggesting the proper comparison was between the LFFU and LLSA, not LPOA.

Without belaboring the bargaining history of pension benefits between LLSA and LPOA (very adequately presented in Union Brief at 7-9) the fundamental difference between the two is the arbitration award for the LPOA1997-2006 contract provided for full retirement at 25 years, irrespective of age, at 75% of FAC with the 2.8% annuity factor increased to 7.8% in the 25th year to reach the 75% maximum immediately. The employees' contribution rate is 2.55%. Conversely, the LLSA have 27 years of service irrespective of age and a contribution rate of 5.21%. Thus, the Union wants 25 and out irrespective of age; 7.8 annuity factor in year 25; increase the contribution rate to 6.25%; and increase the contribution rate to 7.30% if the City actually makes a pension contribution if the actuarial valuation is calculated at 4.18% or higher.

THE OTT OPINION

While this Panel is considerate of what another panel may have awarded on a similar issue, we believe this case is distinguishable from the Ott case on several bases.

1. The Ott panel was very concerned with economic reality and that was the guiding factor as it considered 24 economic proposals. C-5 at page 10, the panel said,

"The City has established ... that it is faced with a serious financial challenge in containing **general fund expenditures**. This fact simply cannot be ignored . . . and consequently must be very carefully considered in evaluating **each issue in dispute**. . . . it is the opinion of a majority of the panel that **economic reality** must play a major role in our deliberations over those factors that simply compare both internal and external comparable data as to wages and benefits." **(Emphasis Added.)** The focus was on which proposals could be adopted within the constraints of Livonia's resources.

In contrast here, as outlined above, ability to pay from the general fund is not the key factor; we have only one issue, pension that is paid from the Retirement System.

2. The Ott panel had 24 issues, all economic and had to choose from one or the other proposal. We have one issue that is not dependent upon ability to pay as were all Ott issues. Indeed, the City offered no exhibits regarding the affects on the retirement system and relied on the alleged inability and/or potential costs to the general fund, a position that has not been accepted by this panel.

3. While the Ott panel, in our view, seemed to de-emphasize internal comparables, (see quote above) that was the only criterion used to negate the fire fighter proposal. Ott noted 92.1% of firefighters retired at Lieutenant or higher rank and thus should be compared to LSSA on that sole basis. But, they did concede there were differences in benefits and employee contributions of those plans that were not at issue. This panel believes the Ott analysis was too narrow and circumscribed by potential unknown economic implications. Here we have the Rodwan report as to economic impact as well as a complete record on all important factors of a pension such as retirement age, annuity factor and FAC.

4. While focusing on rank at retirement, the Ott panel seemed not to consider

that fire fighters get to a higher rank solely by seniority while LSSA must obtain a higher rank by tougher standards of promotions. This coupled with the fact that there are two police unions, police and command, but only one unitary fire Union skews the analysis when one looks only at rank at retirement. If there were but one police and one fire union, internal comparability would most likely be a non-issue. It is unexplained why there are two law enforcement units but only one fire unit.

5. Ott said, "this is a close call" but did not explain why. The Opinion does say the "Section 9 factors" support the City. But as stated above, the over-riding emphasis was economic reality on **all issues**. Was that the factor that tipped the balance and not internal comparability?

6. While the Union overstates the City position on the effect of another panel's opinion, this panel believes other opinions regarding the same parties on similar issues should be given all due consideration but are neither binding nor precedential. We have read in great detail City Ex 5 but come to a different conclusion based upon our record.

INTERNAL COMPARABILITY

The emphasis in 9(d) is "other employees performing "*similar services* and with other employees generally". From this we usually say internal units when discussing similar services or employees generally. For example, public safety units that are Act 312-eligible. It is the nature of the work performed that controls. Here, that means public safety, law enforcement and fire suppression. Of those, LSSA and LPOA do law enforcement and should be compared with each other along with external law enforcement comparables. While fire fighters may be compared with law enforcement in some situations, if there is only one law enforcement unit, e.g. or in multiple issue

cases, it seems strained to compare firefighters vis-à-vis command officers simply because they may retire with similar ranks. This is even more compelling when only 65% of police officers retire as command officers but 94 % of fire fighters retire as command officers. (U-33). This is so because of the automatic seniority advancement of fire fighters. As you stay longer and get closer to retirement age you rise in rank, your pay increases, the FAC increases and if the annuity factor is comparable, the pension benefit increases as well. For purposes of this case, the better comparison is with people who do the same kind of work in law enforcement. It is better to compare apples to apples.

LLSA and LPOA Retirement Contributions.

The LLSA contribution rate is 5.21 and the LPOA rate is 2.55. As the Union has pointed out, those contributions would be made in years 26 and 27 thus contributing significant dollars to the retirement system not done by their subordinates and at the same time reducing by two years the time they can draw a pension before death. These payments are obviously deductions from the gross wages available to LSSA members and at a higher rate than LPOA. The disparity in rates means that the LSSA is contributing 2.66 more in gross wages to the retirement system and in the Union perception for naught. These contributions could well have assisted in the general overall health of the system and why there has been no actuarially required City contribution of late. This manifests in a major gap in the relative pension benefits between LLSA and LPOA.

External Comparables

Livonia - Livonia Lieutenants and Sergeants Act 312 Opinion

The Union has established that the external comparables supports its DB position in this case. Union Ex 25 shows almost all have 25- and-out pension eligibility (Southfield has 20); and that there is parity between officers and command on eligibility. In fact, Livonia is the only entity that does not have parity within the law enforcement units on eligibility.

City Negotiations with Fire Fighters

A primary City argument against the Union DB proposal is that it assumes if granted it will be used by the fire fighters to gain the same benefit and threaten the City's ability to pay. However, the record here seems to undermine that City contention. Mr. Domizain, a fire fighter representative at the bargaining table, testified and offered Union Ex 41, his notes of the February 12, 2009 negotiations, to the effect that the City offered a 25-and-out proposal with a 75 % cap assuming the fire fighters would pay for it; apparently an increase from 3.56% of wages to 5.02% along with the retiree medical VEBA contribution. The City argued that this testimony was not probative as the proposal was not in writing and not actuarially verified as to actual cost. [The City seemed not to deny the fact of a proposal but the contents; it could easily have clarified any ambiguities on the proposal via testimony had it chosen to do so] Regardless of the latter arguments, it is inescapable that the City was willing to discuss this item in negotiations with the fire fighters and perforce had taken into consideration the financial impacts of the proposal. Why then the fear of the Union proposal here being a fait accompli for the fire fighters? Apparently the fire fighters did not accept the City proposal as being to costly for DC members who are almost half the membership. But

as it relates to DB, the 25 and out at 75% with an increased contribution rate to pay for it was on the table. Thus, the panel is not impressed with the City contention that it fears the result with inure to its disadvantage vis-à-vis fire fighters.

The DB Proposal in Context of other Settled Benefits

The Panel has also considered section 9(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 and concludes that the Union proposal more closely comports to this section than the City proposal.

Union Ex 1 and City Ex 1 is the outline of the agreed upon changes to the contract. It is noted the # 18 "adopts the LPOA master language" and # 20 also is language from the LPOA Interesting that LPOA was okay for comparison on these items but not pensions!

Further, # 19 a Letter of Understanding relates to city-owned vehicles that the Chief may withhold from use by bargaining members. Sergeant McQueen testified that the Union gave up six vehicles and the Chief controls the use of 11 more and this was, in his view, the price the Union would pay to get 25 and out. The City contends otherwise. He also went over each item and explained the differences and the Union view of importance. While he was subject to cross-examination and Mr. Biga gave the City perspective on each item, the Panel believes that on balance the Union perception of what were the trade-offs makes sense and lends support to the DB award.

The total package of wages and benefits for LSSA parallels other internal units

including LPOA. The City tried to get uniformity within its Unions on many benefit programs and succeeded, pensions notwithstanding. We do not see this DB proposal as tipping the balance in favor of the Union but rather an appropriate equilibrium.

Conclusion

On this DB proposal a majority of the Panel believes that the Union LBO more closely conforms to the applicable Section 9 factors as noted above and the Union LBO on DB is awarded.

AWARD

Article 32 §I B.2

> **Retirement. Effective December 1, 2006, employees who are fifty-two (52) years of age and have ten (10) years of police service with the City of Livonia or at any age with 25 years of police service with the City of Livonia, at a rank of Police Cadet or higher, may retire at full pension benefits as provided in the City Pension Ordinance. Any employee may retire prior to age fifty-two (52) provided the employee has ten (10) years of service with the City and is at least fifty (50) years old. Employees electing early retirement (i.e., retirement prior to age fifty-two (52) (with less than twenty-five (25) years if service) shall have their pension amount computed and based on actual years of service, with that dollar amount then reduced by one-half (½) percent per month remaining to age fifty-two (52) as follows:**
>
> [No change in schedule]

Article 32 §I F.

> **Employee Contribution. Effective upon the implementation of the parties' 2010 arbitration award, the employee contribution to the retirement system shall be 6.25% of compensation as defined by Retirement Ordinance Section 2.96.050 Paragraph 7. In any year thereafter where the City's recommended contribution as a percentage of police division payroll (excluding health) in the annual actuarial valuation is calculated to be 4 .18% or more, and the City makes a contribution from its general fund in that amount or more, the employee contribution shall**

be 7.30% for that fiscal year.

Article 32 §I G.

1. **An eligible employee's annuity factor shall be 2.8% for the first twenty-four (24) years of service, to a maximum ("cap") of seventy-five (75%) percent of final average compensation, provided that after twenty-five (25) years of service the employee will automatically receive the seventy-five percent (75%) maximum cap of final average compensation by virtue of a 7.8% annuity factor for the 25th year.**

Dated: 8/24/10

Kenneth P. Frankland
Chairperson

Dated: 8/25/10

Robert Biga
Delegate for the City
☐ Concur
☒ Dissent

Dated: 8/25/10

Richard McQueen
Delegate for the Union
☑ Concur
☐ Dissent

Defined Contribution Discussion

The second issue is the Union proposal to have members of the defined contribution (DC) plan receive a benefit in the form of a cash payment for the retirement eligibility change as if they had not converted from the DB.

Neither party presented much evidence on this issue and did not devote much attention in their Briefs. Essentially, it is a me-too proposal for the DC members of the unit apparently based upon lump sum payments that may have been made in 1998-1999. The record is unclear as to what actually transpired at that time.

Members hired directly into LSSA and those promoted who already were in a DC

with LOPA are in the DC plan per the expired contract. Further, there was a one time irrevocable option between June 1, 1998 and October 2, 1999 to participate in a DC instead of a DB. The members who made that irrevocable election eliminated the concept of retirement service from their pension benefit. Whatever sum of money is available at the time of retirement is then available to the DC member based upon federal and state regulations regarding disbursement at the time of retirement.

The City argues that employees electing the irrevocable option should not be able to receive the benefit of a later bargain that does not pertain to them as contrary to the concept of a one-time election. There is significant merit to that statement. An election was made to enter a different plan. Even if there was a lump sum payment in consideration of the election, once made the choice is irrevocable and the party must assume the consequences of that action, be it good or bad. The members made a decision and must live with it. There is no information in the record from to rebut this assessment; simply names of members and the potential amount they might be paid without further comments as to the merits of such proposal. The Union has the burden of proof on this issue and the majority of the Panel does not find sufficient basis for that burden.

Moreover, if granted, the cost would come from the City GF not the retirement system as the panel understands the proposal. While we did say the City has the ability to pay the DB from the retirement system, this cost would be assessed to the GF, as we understand the payment, a different scenario.

For the above reasons, the Panel adopts the City proposal of status quo as more closely conforming to the standards of Section 9.

AWARD

The City proposal of status quo is adopted.

Dated: 8/24/10

Kenneth P. Frankland
Chairperson

Dated: 8/25/10

Robert Biga
Delegate for the City
☒ Concur
☐ Dissent

Dated: 8/25/10

Richard McQueen
Delegate for the Union
☐ Concur
☒ Dissent

At the Executive Session, the City Delegate stated the City would provide a written document to explain the City dissent on the DB issue. Accordingly, that dissent is attached as an Exhibit to this Opinion and Award.

DISSENT OPINION of Robert F. Biga , Human Resources Director, in the matter of the Act 312 Arbitration between the City of Livonia and the Livonia Lieutenants and Sergeants Association MERC Case Number D09- B-0220.

As the Panel Representative for the City of Livonia in this 312 Arbitration, I am writing this dissent to express the City's extreme disappointment in the decision of the Chairman. My dissent addresses a number of specific issues the City has with the Chairman's Opinion as well as comments from the Chairman in the Executive Session. But, in addition to the specific concerns detailed below, the City's disappointment stretches well beyond those specific issues.

One major issue the City had with the Chairman's approach is its complete failure to recognize the very serious impact granting the improvements to the defined benefit pension formula will have on the City's General Fund. Some of these issues are addressed below, but it is apparent that the Chairman failed to grasp the long-term nature of the Union's proposal. The cost described in the actuary report was a long term cost, amortized well beyond the life of the City's defined benefit program which was closed to new members in 1998. When one considers that the Fire Fighters are surely going to seek and obtain this benefit, it is a virtual certainty that the General Fund will be paying for this benefit in the very near future. To pay for this the City will have to reduce staffing and thereby reduce services to the citizens of Livonia.

Also, on the ability to pay issue, the Chairman seemed to adopt a standard that would completely invalidate the concept of the "ability to pay" issue. During Executive Session the Chairman suggested that the City **did have the ability to pay and that to do so it would just have to cut future services and "layoff" employees if that becomes necessary.** Taking such a

literal interpretation of the "ability to pay" concept – that a municipality can always cut elsewhere to cover the proposed benefit – completely eliminates the possibility of a non-bankrupt municipality prevailing on the "ability to pay issue." **The legislature never intended such a literal reading of the phrase.** There will always be something to cut. But it should be the function of City Government to make those decisions when times are tough as they currently are in Livonia and everywhere in the surrounding area.

Also particularly troublesome was the complete lack of reliance on the prior opinion of Arbitrator C. Barry Ott. Arbitrator Ott, who worked in City Government, was faced with the exact same issue, at a time when the retirement system was in better shape and at a time before the economy of this City (not to mention the country and state) went downhill. Arbitrator Ott understood the potential impact on the General Fund that could come from a reduced retirement age that this Chairman did not grasp. The City understands that one Chairman is not bound by the decision of a prior Chairman. But the City has a serious problem with this Chairman completely rejecting a prior decision, especially when one considers that factors were significantly more in the City's favor today.

Even though it is addressed below, I cannot leave out of this general section of my dissent the Chairman's complete refusal to address the significant **7.8% increase in the annuity factor** in the final year that was awarded to Union members by virtue of this proposal. **None of the comparables have anything remotely like what was provided by this Panel.** Union members went from having an arguably better plan than most of the comparables to having a plan that so exceeds that of the comparables it is preposterous. **Using the terms the chairman use in executive session, this changes a Cadillac plan to a Rolls Royce plan!** The failure to

even address this fact in the Opinion shows how incredibly detrimental this fact would have been to the Chairman's decision.

Finally, it should be noted that the other victims of this proposal are the employees within the LLSA bargaining unit who are on the lower end in terms of service time as well as future LLSA members who are in the defined benefit plan. By adopting the Union's last second proposal to have members pay for a portion of the cost, the Chairman has basically thrust the burden on those employees who will retire down the road. This cost-sharing aspect of the proposal will not hit the members who are already eligible for retirement and will have much less impact on those close to the 25 year retirement plan adopted by the proposal.

In addition to the general concerns expressed above, the City also has the following specific concerns with the Chairman's Decision:

The Opinion Erroneously Determined that the City Has the Ability to Pay Based on the City's willingness to Agree to Items in the Parties' Agreement

One of the main arguments presented by the Union in support of its proposal was the fact that the Union had taken a concession contract and therefore deserved the pension improvement. Despite the Union's claim that it had given up too much in the parties' agreement, the Opinion finds that "[i]n reality, the City has the ability to pay as it has already agreed to these items and built them into the GF budget for this contract."

It was explained during the hearing that the prior agreements were accepted by the City to be consistent with agreements reached with other unions. Furthermore, the Agreement covered a period beginning in 2006, thus implicating budgets that have already been finalized, and which had been approved long before the recent economic downturn. Wage improvements

budgeted for and given in 2006 cannot offer support for a strong General Fund budget in 2010 and beyond, particularly when the un-refuted evidence points to a serious budgetary problem.

More importantly though, it is illogical to suggest the City has an ability to pay because it gave benefit improvements in the previously agreed to settlement. The Panel must assess the ability to pay in light of the current financial situation. Currently, the City has a serious General Fund problem as recognized by the Opinion in regard to the improvement sought by the Union on the defined contribution issue.

The Opinion Erroneously Suggests that there is Only a POTENTIAL for Impact on the General Fund From Granting the Union's Proposal

The Opinion claims because the defined benefit pension enhancement is not a General Fund outlay, "the focus of the City's argument regarding precarious GF revenues and expenditures is misdirected." This is simply not true. The General Fund is guaranteed to take a direct hit from the granting of this benefit. The Opinion rejects this irrefutable fact, failing to recognize what the City clearly explained at the hearing, that the VEBA is funded directly from the General Fund. The Opinion reads at page 13:

> Of the possible negative impact on retiree health costs by earlier retirements , raised by the City, this is manageable as the retiree health cost is paid by the VEBA which is presently 45.3% funded; having started in 1998 at zero funding.

As of November 30, 2008, the VEBA was underfunded in the amount of $66,756,000. It is illogical to suggest that the VEBA can handle this payment when the fund is completely underfunded, and when the General Fund has serious problems as testified to at the hearing by the City's Finance Director in testimony that was not disputed by the Union. Furthermore, the VEBA is funded directly by the General Fund. So, it will fall upon the "precarious" General

Fund to continue to fund the VEBA, and to continue to fund the cost of retiree health care. Granting the Union's proposal will absolutely impact the VEBA as explained at the hearing by virtue of the fact that employees will retire earlier. The City can't even assess this cost because the Union, the party upon whose burden this issue fell upon, failed to obtain an actuary study, another item completely left out of the Opinion.

The Opinion erroneously claims that any costs from the proposal would be offset by the fact that the City will not have to pay the retired employee's health care costs for the additional two years. This claim completely ignores the fact that the General Fund will be paying health care costs for the employees who are hired to replace the retired Union members, thus completely deflating any claim that there is an offset by virtue of the employee's early departure from the City. In fact, the City will be paying the health care costs for two employees for every one that retires. Not only will the City be paying health care for an additional employee, but the City will also have to pay a higher amount into the VEBA fund, which, as was explained at the hearing, is over $66 Million underfunded. The City's annual payment from the General Fund to the VEBA, which has averaged well over $6 Million per year over the last six years, will now be increased, to permit members of one union to retire earlier in their 40's!

The Opinion Fails to Recognize the Obvious Future Impact from this Award to the Livonia Fire Fighters Union

The Opinion suggests that the Livonia Fire Fighter Union will not necessarily obtain the same pension benefit that would be given by this award. This is not true. The reason the Livonia Fire Fighters Union was not given this benefit was because of the fact that the LLSA did

not have it, as Arbitrator Ott pointed out that the appropriate comparison to the LFFU was the LLSA.

The Opinion also suggests that even if the LFFU was to ultimately get this benefit, this panel cannot base its opinion on the fact that the LFFU may indeed obtain that benefit. This is not true. It is clearly within this Panel's discretion to consider the potential impact of an award on other comparable units within the City.

Finally, the Opinion claims that the LFFU already rejected the proposal being granted in this matter so the City's concern that the LFFU would even seek this proposal was unwarranted. The Opinion fails to recognize a key component of the alleged offer to the LFFU as discussed by the witnesses from the Fire Department. Specifically, the LFFU witnesses explained that the alleged proposal would have required all employees, including members of the defined contribution who would not benefit from an improvement to the defined benefit plan, to pay the additional VEBA cost associated with the proposal. LFFU members testified that they turned down this alleged proposal because defined contribution members would never have accepted paying a higher cost for no additional benefit. The proposal granted in this arbitration does not require defined contribution members to make any payment, thus completely changing an important aspect of the issue, and eliminating the very basis upon which the LFFU bargaining team rejected the alleged City proposal on the defined benefit issue.

The City submits that granting this benefit to LLSA members, a benefit that will inure to the benefit of the LFFU, sends this City on a course that could mean layoffs of public safety employees, all so that the members of one Union can retire at age 44-46 rather than 46-48. That

is the harsh reality of this award, particularly when one considers the declining level of the retirement fund even since the hearing in this matter concluded.

The Opinion Misconstrues the Potential Impact of Smoothing on the General Fund

The Opinion also misconstrues the potential impact on the General Fund based on the current status of the pension fund. It is stated at page 13 of the Opinion that " . . . the Retirement system would have no current impact."

First, it is not a given that the retirement system would not be impacted by this proposal. The funding level of the retirement system as of November 30, 2008 was 116%. But that number is within months of being two years old. Since the conclusion of the hearing, the City received the 2009 Actuary report. While the market value of the retirement fund assets increased from $154,380,064 to $182,543,122, the smoothed value of the assets actually decreased from $210,518,968 to $207,958,812. The result is a retirement system that was 116% funded was 109% funded as of November 30, 2009. Because of the impact of smoothing, which was thoroughly explained at the hearing and in the City's Brief, the numbers as of November 30, 2009 reflect a declining funding level, even in a year where the value of the assets increased.

The City does not have an actuary report as of the current date. Sometime in approximately June 2011 the City will know what the pension funding level will be as of November 30, 2010. However, the assets have significantly decreased this year. The value of assets as of November 30, 2009 was $182,543,122. Since November 30, 2009, that number has once again dropped. As of June 30, 2010, the value of the assets is $174,258,731, meaning,

depending on the impact of smoothing, the City is closer, if not already at, a situation where the Union's proposal will result in an underfunding situation and therefore will be a direct hit on the General Fund. In fact, just comparing assets as of June 30, 2010 with the liabilities as of November 30, 2009 (The City can determine assets up to date, but only an actuary could determine up-to-date liabilities) the City's retirement fund is underfunded at a level of only 91.7%.

Second, the nature of this proposal is long term. That is why actuaries, and not financial experts, prepare the impact on retirement systems from defined benefit plans, on an annual basis. The Union has not asked for a one year plan change in the pension. The plan potentially awarded by the Opinion will last for many years, and based on current trends and the impact of smoothing, which was clearly explained at the hearing and in the Union's post hearing brief, there is a very serious threat to the retirement fund and, it is very possible that there will be a direct negative impact on General Fund in the very near future.

It is interesting that the Opinion criticizes the City's attempt to discuss potential costs to the retirement fund but gives much credence to the comments of the actuary over the future status of the pension fund, comments that were received prior to the current economic downturn. At the same time, the Opinion simply dismisses the actuary's "normal, standard precautionary language that assumptions could change and thus require a contribution in the future."

The Opinion Improperly Considered Factors relating to the Promotion and Makeup of the Livonia Fire Department.

The Opinion suggests that the City failed to explain why there are two law enforcement units and one fire unit. Since the law in Michigan is clear that supervisors are generally

precluded from being in the same union as their subordinates, with an exception for fire fighting personnel, the City saw no reason to make this point at the hearing. More importantly though, the Opinion inexplicably relied on the promotional systems within the two departments to support the granting of the benefit to the Union. The systems in place are the result of collective bargaining. None of the 312 factors indicate that this item should be considered.

The Opinion Does Not Recognize the Failure on the Part of the Union to Perform an Actuary Report on its Modified Last Best Offer or on the VEBA portion of the Proposal

Granting the Union's defined benefit last best proposal, without an actuary report reporting on the impact of the employee contribution aspect of the proposal, arguably is against the law. Public Act 728 of 2002 amends the Public Employee Retirement System Act (Public Act 314 of 1965, as amended) to require all state and local government retirement systems to provide a supplemental actuarial evaluation before adopting or implementing pension benefit changes. A supplemental actuarial evaluation has to be conducted by the retirement system's actuary and must include an analysis of the long term costs associated with the proposed benefit change. The supplemental actuarial evaluation must be provided to the pension board and to the decision making body that approves the proposed benefit change at least seven (7) days before the proposed benefit change is adopted. The burden of proof in this matter was on the Union, and it failed to offer any actuary report at all on the issue of health insurance and failed to offer an actuary report consistent with its last best offer in violation of Act 728.

Because, as the City explained in its brief, an employee's contribution is not the same as an employer's contribution the City submits that a new actuary report would be required under the law. The Opinion completely ignores the fact, as explained in the City's brief, that an

employee contribution to the pension fund is not worth the same as a payment to the plan by the employer. This is because an employee is allowed to withdraw all contributions at the time of retirement.

The Opinion Improperly Relied Upon a Comment Arbitrator Ott Made in His Opinion Rejecting the Fire Fighters Attempt to Obtain a "25 and out"

While basically rejecting Chairman Ott's Opinion, the Opinion actually gives great credence to a non-essential comment from Chairman Ott that rejection of the LFFU proposal was "a close call." Even if any credence could be given to that comment, the fact that it was rejected by the Panel, before the recent economic downturn, even by a close call, would seem to be more relevant than a comment that could easily have been written simply to lessen the blow to the union.

The Opinion Incorrectly Asserts that the Internal Comparables Was the Only Criterion Used to Negate the Fire Fighter Proposal.

Contrary to the statement in the Opinion ("While the Ott Opinion seemed to de-emphasize internal comparables (see quote above) that was the only criterion used to negate the fire Fighter proposal"), internal comparables was not the only criterion used to negate the fire fighter proposal. In fact, as the City pointed out in its brief, Arbitrator Ott relied on the undisputed cost to the General Fund and the very real potential impact on the General Fund based on the future status of the retirement fund. Specifically, Chairman Ott stated:

> There are also real costs associated with the Union's proposal. The present funding status of the defined benefit plan may tend to mute such cost at the present time, but they are still real because if the level of funding should fall due to market changes the cost of the benefit improvements would be imposed on the City.

Arbitrator Ott was absolutely correct in his expressed fears, as the declining economy has absolutely impacted the funding level of the retirement system, which is currently only 109% funded.

The Opinion Failed to Address the City's Position that Bargaining History Contributed to the Distinction Between the Livonia Police Officers Association and the LLSA Defined Benefit Plans.

The Opinion accepted the Union's position in support of their proposal that there is a discrepancy between the defined benefit plan between the Livonia Police Officers Association ("LPOA") and the LLSA. In doing so the Opinion completely fails to address the City's claim that bargaining history supported that distinction. As explained in the City's post hearing brief, the "25 and out" pension plan was given to LPOA members at the same time the City received the significant defined contribution plan for future employees. This was a major item the City received in return, as opposed to this case, where the City gets nothing. It should also be noted that Chairman Dobry did not issue an opinion granting the 312 as suggested in the Opinion. That agreement was stipulated to by the parties. As such, the City is unaware of any 312 arbitration where a 312 arbitrator has awarded a major reduction in the years of service to bargaining unit members. This is clearly the first time in Livonia.

The Opinion also failed to recognize other discrepancies between the two units within the two bargaining agreements which greatly impacted final average compensation between the two units and supported the City's argument that the discrepancy was justified. Exhibits were presented on the difference between LPOA and LLSA final average compensations, and the Opinion did not even reference those critical exhibits.

Finally, the Opinion failed to address the City's charge that this discrepancy could not have been that significant of a problem for the Union as it had negotiated two collective bargaining agreements prior to the current since the LPOA was given the "25 and out" without addressing this issue in the ultimate Agreement. This was not an urgent concern for the Union for the past 10 years, and there was nothing put in the record as to why it was so important at this time.

The Opinion Failed to Address the City's Claim that the CBA's Current "27 and Out" was Already on Par with the Comparables "25 and Out."

The City introduced a series of documents illustrating that the Union's current 27 and out pension plan was on par with the "25 and out" benefits of the comparables. The reason for this, as the exhibits illustrated, was that the current multiplier provided for a higher percentage of FAC for members of the Union as compared to their counterparts in other communities. City Exhibits 40, 41 and 42 establish that under the current plan, after 25 years of service, the percentage of final average compensation provided to bargaining unit members is 70%, which is on par with four (4) of the comparable communities and above the four (4) remaining comparable communities, significantly above three (3) of those. Even more telling, at 27 years of service under the current plan, bargaining unit members have a slightly less final average compensation percentage than one community (only because of rounding) and at 75% are well ahead of every other community.

The Opinion does not even reference these very significant documents and does not attempt in any manner to refute this extremely relevant point – that bargaining unit members already have a better pension plan at "27 and out" than any of the comparable communities.

Instead, the Opinion simply relies on the meaningless fact that the comparables all have a "25 and out" plan, and fails to give any consideration whatsoever to the details of the various plans.

The Opinion Failed to Address the City's Claim that if the Union was Awarded the "25 and Out" as Proposed, Union Members Would Have a Far Superior Pension than Any of the Comparable Communities.

The City argued that granting the Union's proposal would give the Union a benefit far superior than any of the comparables. This would be so because unlike any of the comparable communities, the Union would have a bump of 7.8% in the 25th year immediately pushing union members up to 75% of final average compensation. Exhibit A of the City's post hearing brief illustrated that the members of the Union would obtain 75% of FAC way ahead of any of their counterparts in the comparable communities. In fact, the comparable communities will have the following percentages of FAC after 25 years:

Comparable	FAC at 25 years of service
Ann Arbor	68.75%
Dearborn	62.5%
Novi	62.5%
Southfield	70%
Sterling Heights	70%
Troy	70%
Warren	62.5%
Westland	70%
Livonia	**75%**

As the City pointed out in its post-hearing brief, the purpose of the comparable aspect of 312 Arbitration is not to put union members in a superior position to its counterparts in the comparable communities, but to ensure that there is relative comparability. Under the current pension plan, as noted above, there was relative comparability among the comparables. Granting

the Union's proposal destroys the relative comparability by granting the Union a far superior pension plan. The Opinion fails to even address this concern.

The Opinion Improperly Relied on the City's Alleged Willingness to Offer a "25 and out" to the LFFU

The Opinion relies on an alleged proposal the City made during bargaining to the LFFU. In doing so the Opinion states that "the Panel is not impressed with the City contention that it fears the result will inure to its disadvantage vis-à-vis the fire fighters." There are a number of problems with this claim.

First, the evidence put on by the witness was very weak. The Union simply presented notes from a member of the LFFU bargaining team, who admitted there was no formal written proposal on this issue. Furthermore, there was no actuary report related to this proposal so it is not even possible that the proposal could have been at a point where the City could have adopted it. Finally, even if such a proposal was made, there are concerns that limit its value in this case. One, it was never put into context with the rest of the negotiations so it is impossible to know what the LFFU would have given up to get this proposal. Also noteworthy, to the extent such a proposal was made, it was made early in 2009, well before this arbitration hearing.

The Opinion suggests that the City has been disingenuous in fighting the "25 and out" because of an alleged proposal in some notes from a bargaining unit member of the LFFU. The City asserts that the fact that it has argued this issue in two 312 arbitration opinions, provides a much stronger statement of the City's opposition to the "25 and out." Such deep reliance on

bargaining notes from a Union that is sure to benefit from the granting of benefits in this case is extremely problematic.

The Opinion Improperly Asserts the Union's Claim that the Agreement Reached by the Parties Supports the Granting of this Proposal.

Of all the items discussed during bargaining the most significant item was the defined benefit. The parties both reached an agreement without the major issue of a significant increase in the defined benefit being granted (in fact, the Union members were given an increase in the defined benefit that was completely ignored in the Opinion), and yet the Opinion determined that "on balance the Union perception of what were the trade offs makes sense and lends support to the DB award." This despite the fact that the Union members had received a 13% wage increase over the life of the Agreement, with minimal health care modifications, many of which do not even impact the employees who will benefit from the pension improvement. As explained in the City's post hearing brief, many of the health care changes only impact future employees and many impact the City's PPO plan, in which only a small percentage of Union members participate. As noted at the hearing and in the brief, everything gained by the City in these negotiations was also gained by the City from its negotiations with the LFFU for essentially the same period in question. The Fire Fighters agreed to those terms without the major improvement given to the Union in this case.

In this light, the Opinion missed two major analysis methods consistently utilized by 312 Chairmen. First, it should have been clear that the City would never have reached an agreement

on this item. While a parties' willingness to agree to an item is not an essential item for 312 determination, it is always an important consideration.

The panel also ignored the City's argument as to why the "25 and out" was so important and necessary to the Union. The City explained in its brief that the only support the Union offered was that others had it (failing to recognize that others did not really have the same lucrative benefit as requested by the LLSA). The Union failed to present any argument as to what was wrong with the current system. NOTHING! In failing to address this concern, the Opinion ignored a vital aspect of 312 Arbitration which requires a party to provide a need for the change.

Respectfully submitted,

Robert F. Biga

Robert F. Biga,

Human Resources Director