

2357

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION**

CITY OF ST. CLAIR SHORES,

Arising pursuant to Act 312, Public Acts  
of 1969, as amended

Employer,

- and -

MERC Act 312 Case No. D10 K-1302

MICHIGAN ASSOCIATION OF POLICE,  
PATROL UNIT,

Union.

**OPINION AND AWARD**

**Panel Chair Thomas J. Barnes  
Michael Smith, City Delegate  
Fred Timpner, Union Delegate  
April 22, 2011**

**Chronology**

Dates of Hearing: January 3, 4, 5, 7, 2011  
Last Offers of Settlement: January 18, 2011  
Post Hearing Briefs: March 9, 2011

**COUNSEL**

**Counsel for the City**

Craig Lange

**Counsel for the Union**

Fred Timpner

**WITNESSES**

**Witnesses for the City**

David Herrington  
Michael Smith  
Curtis Powell  
Joel Clark

**Witnesses for the Union**

Howard Bunsis  
Gary Crandall  
Henry Winokur  
Daniel Gorczyca  
Jack LaTour  
Jim Steffes

## **I. SUMMARY OF PROCEEDINGS**

The St. Clair Shores Police Officers Association, represented by the Michigan Association of Police ("MAP"), and the City of St. Clair Shores are parties to a collective bargaining agreement which expired on June 30, 2010, covering all employees within the rank of Patrol Officer. Failing to reach an agreement after extensive negotiations and mediation, the City filed a Petition for Act 312 arbitration on November 17, 2010, pursuant to Act 312 of the Public Acts of 1969, as amended. The impartial panel member was timely appointed to hear this case and the City designated Michael Smith, Assistant City Manager and Human Resource Director as its delegate and MAP designated Fred Timpner, Executive Director of MAP as its delegate.

On December 7, 2010, a prehearing conference was held between the parties telephonically and on December 8 the Panel Chairman confirmed by letter the agreements and understandings reached during the prehearing conference and set forth how matters would proceed. Two issues were to be decided prior to the hearing and on December 17, 2010, the parties submitted their positions and supporting documents regarding the issues of comparable communities and duration of the contract. The parties had mutually agreed on 8 Cities with the exception of the City of Sterling Heights.

On December 21, 2010, the Panel Chair issued an Interim Award which is hereby made part of this Award regarding the issues of duration and comparables. In that Award, it was determined that the comparables for purposes of this proceeding would be the following 9 communities: the Cities of Dearborn Heights, Farmington Hills, Livonia, Roseville, Royal Oak, Southfield, Warren, Westland, and Sterling Heights. The Panel Chair further determined that the

duration of the proposed contract at issue in the proceeding would be 4 contract years beginning on July 1, 2010, and ending on June 30, 2014.

Hearings were held at the MERC offices on January 3, 4, 5, and 7, 2011, and last offers of settlement on the issues in dispute were submitted to the Panel Chair on January 18, 2011. Finally, the parties submitted Post-Hearing Briefs on March 9, 2011, and the matter is now ready for determination. The parties were well represented by seasoned professionals and submitted extensive well reasoned Briefs.

## **II. BACKGROUND**

The parties have had collective bargaining agreements for over 40 years. The City of St. Clair Shores is located in Macomb County on the western edge of Lake St. Clair and consists of 11.6 square miles and 14 miles of shoreline along Lake St. Clair (City Ex. 11). The Police Department has approximately 85 sworn officers and a total Department of approximately 90 employees; the St. Clair Shores Police Officers Association consists of approximately 67 Patrol Officers for purposes of this proceeding. The community is residential and most recently in 2008, 94.5% of the community consisted of residential housing, 3.85% of the community was commercial and about 3% was industrial and slightly over 1% was tax exempt. (City Brief, p. 1-2.)

## **III. PANEL CRITERIA**

The Panel was chartered to adopt the last offer of settlement which more nearly complies with the applicable statutory factors prescribed in Section 9 of Act 312, MCL 423.239, which provides in its entirety as follows:

Sec. 9. 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) Stipulation 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 or other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### **IV. ISSUES**

There are 18 issues that the parties have agreed are to be resolved through this proceeding, 16 of which are economic and 2 of which are non-economic. For convenience and ease of reading, the Opinion and Award will follow the numbering system and identification of issues used by the Union in its Brief. Also for ease of reference each issue will be introduced by reciting the City's position followed by the Union's position. The respective positions are then followed by a discussion and a conclusion. The Award will then refer back to which position is adopted. Before, however, addressing each issue, it is important to address the City's ability to pay argument issue since that is a statutory criteria that has been raised for which evidence has been adduced and an issue that pervades all economic issues.

## ABILITY TO PAY

Undoubtedly one of the reasons that the parties are before this Panel are their differences with regard to the perception of the City's financial condition. On the one hand, the City contends that its "current fiscal crisis must be the primary focus of this arbitration panel's deliberation and decision in the economic issues before it." (City Brief, p. 5.) The Union on the other hand asserts that the City is crying wolf, "acting like the old children's fable of chicken little and that it is taking advantage of a comment made by President Obama's former Chief of Staff 'never let a good crisis go to waste'." Each party has made good points for its respective positions and there is a fair bit of truth in each of their positions as supported by the evidence. The City's 3 primary witnesses, Mike Smith, David Herrington, and Curtis Powell, see impending considerable financial problems based on decreasing revenue sources and increasing costs. The Union's expert, Howard Bunsis (J.D., MBA, Ph.D. – University of Chicago, Tr. 2:4-5), basing his testimony on the City's financial history and not on projections of the future, finds no present financial inability on the part of the City. (Tr. 2:6, 7, 31, 49.)

Without going into great detail as the evidence itself relates, it is clear, at least to the Panel Chair, that the City is not in a current fiscal crisis. It budgets conservatively on revenues and expenses. (Tr. 1:132-133.) It is not broke, it is not anticipating a deficit or the specter of a deficit any time soon. It has a current year budget surplus of nearly \$15 million at June 30, 2011, the current budget year. Over the past 4 years, the City has over estimated its expenses by an average of \$3.7 million, or 9%. (Tr. 2:37, Union Ex. 69, slide 38.) It has a very good (Aa3) debt rating the fourth highest rating of 23 that Moody's publishes. (Tr. 2:41.) It under estimates revenues by an average of 1/2 million or 1.1% per year. (Tr. 2:32, Union Ex. 69, slide 37.) In addition, in November of 2010 the voters in St. Clair Shores approved a new increased tax

millage dedicated to public safety that will help maintain the current level of staffing and the costs that go with that. In that connection, it should be noted that the millage also requires that the current staffing levels for the Police and Fire Departments be maintained. That is a two-edged sword for the bargaining unit since it maintains full-time employment for unit members but it ties the City's hands in terms of trimming manpower to finance improvements for a smaller patrol force. In addition, there is evidence that the bargaining unit has had a reduction in staffing levels on June 30, 2010, that resulted in a significant reduction in mandatory overtime costs that were caused by minimum staffing requirements.

Conversely it is not a mortal sin for the City to operate with a surplus, nor has the Union suggested it is, in order to maintain a so-called "rainy day" fund. Historically the City has had a general fund unrestricted budget surplus in the neighborhood of 10-15% of its operating revenue. (Tr. 1:83.) The City did produce substantial evidence, however, demonstrating that going forward with a 4-year contract, its revenues are projected to be declining and its expenses rising.

Eighty-one percent (81%) of the City's revenues derive from the property tax and State shared revenues. (Union Ex. 69, p. 50), City Ex. 32.) Between fiscal year 2009 and fiscal year 2013, the City's tax revenues for its general fund from which all employees' wages and benefits are paid (excepting pension and retiree healthcare) is projected to decline over 16%. ((City Ex. 32.)

Particularly troublesome to the City is that the gap between taxable value (upon which its millage is assessed) and State Equalized Value (SEV) (1/2 of market value) is disappearing. The City projects the gap of \$375 million for 2009 to shrink to \$10 million in 2014. (City Ex. 34.) The ominous conclusion is that when parity is reached, further declines in SEV result in a dollar for dollar decrease in taxable value. The City observes that taxable value dropped 2.9% in 2009,

dropped another 12.6% for 2010, and the City Assessor projects an additional 7.5% drop for 2011, further supporting the contention that property values won't recover any time in the near future. (City Ex. 37-A, 38.) The City's expert, David Herrington, concludes that even by 2014, the City will not return to taxable values that existed in 2009. (Tr. 1:108.) And that is assuming a 2.5% increase in taxable value each year (State average from 1995-2009). That scenario results in \$100 million less taxable value and discounts entirely the actual reductions in taxable value of 12.6% for 2010 and 7.5% for 2011. (City Ex. 34.)

The outlook for revenue from State shared revenue, while a much much smaller percentage of the City's revenue, is also in decline. Since 2000, State shared revenues for the City have declined from approximately \$7 million to \$4.7 million or nearly 1/3. (City Ex. 35, p.2.) Breaking down the State shared revenue into its 2 components, the Constitutional component and the statutory one, does not provide any refuge. The City's expert, David Herrington, testified that he believes the State will completely eliminate the statutory component due to the State's financial crisis. This is borne out by the new Governor's budget which calls for the elimination of the statutory portion of State shared revenues, replacing part of it with a receipt of such funds based upon an incentive for consolidating municipal services.

With regard to the Constitutional share of State revenues, since the City's population has been declining, that portion of its revenues will decline as well. As indicated above, the City estimates that it will not be able to regain its taxable value status of 2010 until at least 2014, if then. (Tr. 1:108.) That projection utilizes the average historical taxable value increases between 1995 and 2009 (2.507%) in spite of the fact that the City already knows there will be a 7.5% decline in taxable value for 2012 based on its assessments already made. (City Ex. 33, p. 2.) In short, the City has been advised by its financial consultant, Mr. Herrington, that it faces a

structural deficit, meaning that the City's decreasing income sources are no longer capable of covering the City's increasing expenditures. (Tr. 1:24.) Thus, in attempting to balance its budget for 2011 (ignoring the general fund surplus carried forward), the City took actions to reduce its expenditures. The budget for 2011 contained a built in 5% reduction in the salaries of all municipal employees (Tr. 1:75). It also included substantial reductions in overtime (Tr. 1:75) and the complete discontinuance of pre-funding OPEB obligations (Tr. 1:75).

The evidence clearly indicates that the two biggest cost hurdles for the City concern its pension and healthcare obligations. The City points out that even assuming a 10% return on pension assets (a very aggressive inflation rate given the market's gyrations over the last 3 years) and reducing payroll to a very conservative level, the City's contribution from July 1 to the last year of this contract under consideration will increase by 51% in monies paid from the general fund operating levels (from \$1,880,000 in 2007 to \$2,831,664), City Ex. 137, p. 3. Healthcare costs are also increasing at a rate of over 9% per year (Tr. 3:65). Finally, the City observes that its \$95 million unfunded liability for retiree healthcare (City Ex. 30, p. 75) is not recorded as yet in its scheduled liabilities on its balance sheet, but that servicing that will require an increasing and larger proportional share of the City's budget. (Tr. 1:36.) While it is true that the public safety pension costs and unfunded liability for Police and Fire service healthcare can be financed through Act 345 tax levies, over \$45 million of the \$95 million liability which is for the City's general employees retirement healthcare cannot.

Last but not least, the City points out and the evidence establishes that it has substantially reduced the size of its non-public safety workforce. Since 2001 its full-time equivalent workforce has gone from 414 employees to 343 and of that 343, 44% are connected with the Police or Fire Departments, City Ex. 39, pp. 144-145. Finally, as indicated above, the City, by

virtue of its recently passed millage for public safety, is precluded from reducing the size of the Police Department below 90 employees and reducing the Fire Department below 50 employees.

There is no evidence the City is not prudently using its resources within and outside of the Police Department. No pet projects have been pointed out in the record nor has any real estate been mentioned that is being held by the City that could be put on the tax rolls. While there has been some suggestion that the City could increase its tax revenue without a vote of its citizens under Act 345, there has been no evidence introduced which would suggest that that would be a wise decision given the current economic situation in the State and region. In that connection, since the City just obtained an increased millage for public safety 6 months ago, a noteworthy accomplishment, in the heart of a State and region that is besieged by economic problems, this may be a good indicator of the confidence that the City's citizens have in the City's fiscal management (and respect for the functions performed by public safety and the Union members therein). There are no other revenue sources that the City can turn to since it is already taxing at its highest mileage rate without a vote of the citizens. (Tr. 1:64.)

With respect to the general fund balance of approximately \$14,701,000 (Tr. 1:55-56) (\$488,000 of which was contributed by the 2011 budget, albeit that was done by not funding healthcare and not filling vacancies – Tr. 1:51-54), the City views this rainy day fund as a bridge in which to provide a source of funds until the structural deficit can be corrected by reducing expenditures to a level to meet revenues. According to the City's projections, unless the structural deficit is eliminated quickly, the City's unreserved fund balance will be depleted by June 30, 2014, the last day of the labor agreement under consideration. (Tr. 1:89.)

The City's tale of future woe, at least with respect to the pension and healthcare issues, is mitigated in large part by the Act 345 tax levy which supports not only funding the pension but

also the OPEB retiree healthcare fund. The Union correctly observes (Union Brief p. 3) that the Police Officer's pension and retiree healthcare burdens are borne by the Act 345 pension millage which the City can increase at any time without a vote of the electorate.

In summary, then, while the City has not claimed a present inability to pay for this or the next fiscal year, it has presented projections based on sound accounting and actuarial principles, that unless its structural deficit is dealt with, sooner or later the City would approach and be in financial distress. Thus, when it comes to issues such as wages, healthcare, firearms allowance, etc., issues that are dependent on the general fund for resolution, that analysis will be important. However, for those benefits that concern the bargaining unit's pension and retiree healthcare, since those burdens are borne by totally separate funding under Act 345, that analysis is more appropriate and the general fund's potential disrepair, should not be visited directly upon those issues.

**ISSUE 1. WAGES**

**City Position:**

Effective with the first pay ending after the issuance of the Act 312 Award, wage rates for all steps contained in the collective bargaining agreement shall be reduced by 5.0% to the following:

	<u>Upon Issuance Of Award</u>
Academy	\$40,827.37
Start	\$47,108.33
One Year	\$50,249.43
Two Years	\$53,389.79
Three Years	\$56,529.66
Four Years	\$59,670.75
Five Years	\$62,811.36
Ten Years	\$63,993.25
Fifteen Years	\$65,247.27
Twenty Years	\$66,354.57

**Union Position:**

Issue 1. Wages: Effective July 1, 2010 – Zero (0%) percent wage increase.

**Discussion**

In the first year of the agreement, July 1, 2010, through June 30, 2011, which is already budgeted for a 5% reduction of all City employees by the City, the evidence strongly favors the City's position. First, the Officers in the bargaining unit are currently well compensated relative to their peers in the other 9 comparable communities. In 2009, at the 5-year step, the Union Officers are ahead of all comparables except Sterling Heights, Warren, and Farmington Hills. (City Ex. 55.) At the 10-year step, behind only Sterling Heights and Southfield. (City Ex. 56.) A comparison of total cash compensation is also favorable for the St. Clair Shores Officers. In 2008, a 15-year Patrol Officer in St. Clair Shores ranked third out of 10 comparables (City Ex. 62) and fourth out of 10 in 2008 for a 20-year Officer (City Ex. 63). Save for the executive and administrative offices of the City and the Command Unit, the Patrol Officers are the next highly compensated group, as one might expect they would be.

The internal comparables are particularly compelling in this case. It is impossible to escape the fact and reality that 3 other very strong and reputable unions, the Firefighters, AFSCME, and the UAW, have all agreed to a 5% wage reduction. It takes two things for that to happen: Good union leadership and trust that the employer, in this case, the City, is being as candid and responsible as possible.

Looking at the statutory criteria, Section 9(d) does generally refer to comparing to the wages of "other employees performing similar services and other employees generally" however it is only the last group of employees, "other employees generally," that appears to have any application here and it's not totally clear that refers to internal comparables which are not

specifically called out in the statute. However Section 9(h) does recite the factor of wages, hours, and working conditions obtained through voluntary collective bargaining. Clearly the unified response of the City from its top officials down through the ranks of all of the unions as well as the non-union employees buying into a 5% wage reduction is compelling evidence. The Union does observe that the Firefighters' 5% cut in pay was offset by increases in longevity pay and expansion of the EMT licensing annual bonus. Those issues are dealt with below.

With respect to the Firefighter longevity payment increase, that increase was very modest and it also needs to be observed that the Police Unit had a longevity schedule that was folded into the wage schedule several years ago and upon which wage schedule there had been incremental percentage increases upon the base rates and the longevity payments folded in. The EMT licensing bonus was expanded to other members of the Fire unit but I conclude that such a bonus is based upon additional effort required to maintain a license for a bonus that was already in place for several Firefighters. That license carries with it added responsibilities and thus it is not a *quid pro quo* for 5%, or some other wage reduction. Moreover, the Firefighters contract expires this coming June and presumably the City will seek to maintain the historical parity between the Police and Fire units.

A complete comparison of the total wage and fringe benefit package for the Police Officers and for the Firefighters was not presented nor if it had been, would it have been particularly helpful. There are always likely to be some differences between the 2 units driven by their duties and responsibilities and their respective exposure to hazards.

The City further argues that the percentage wage increases have remained uniform among all the City's employees for at least the last 5 years (City Ex. 53). Thus, the City urges that the Union's proposed wage rates disregard this wage rate parity among City employees. While wage

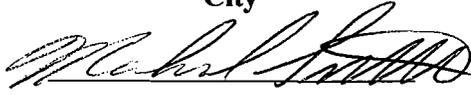
parity may be something that can certainly be recognized under the statute, it is not always compelling since it is only Police and Fire that have the statutory protection of Act 312 and presumably therewith the preferred status that the legislature chose to give these public safety employees. While pay parity may be sound labor relations policy and may be a recipe for fairness and harmony among employee groups, it is not conclusive by any means since other statutory factors can, and often do, take on greater importance. Sudden inability to pay may be one of those factors, or alternatively external comparables may suggest that the Patrol Officers are underpaid or are under-benefitted. Or, the parity among employees can often be short lived where there are skills shortages or just plain manpower shortages. Recruiting someone to be the City HR Director or Finance Director or Department of Public Works Director and any number of other administrative and professional positions may be more market driven than driven by any notions of pay parity within the City. The same can certainly be true for certain employee groups or classifications among all of the employees that the City employs.

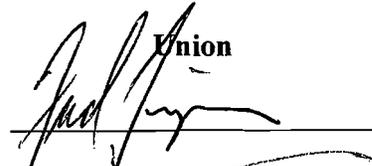
A major contention of the Union is that one of the internal comparables, the Firefighters, while agreeing to a 5% wage reduction in effect got that back by virtue of a 5% paramedic license bonus and an enhanced longevity scale. Leaving aside for the moment whether the additional paramedic bonus is justified on the additional duty grounds discussed above, these two enhanced benefits fall far short of a 5% "make up." First, of the 48 Firefighters (Tr. 2:111) 18 were already receiving the 5% bonus for working the ambulance plus 5% premium pay for working overtime. They actually lost 5% premium pay for working overtime as paramedics. That left 24 "inactive" Firefighters who gained the 5% bonus, but they gave up a \$1,500 annual bonus plus 5% for riding ambulance. (Tr. 2:113.) If one assumes an average straight time pay of \$60,000 in fire, the \$1,500 bonus amounted to a 2 1/2% give up for the 24 Firefighters. If one

assumes they rode the ambulance only an average of 300 hours annually (6 hours a week), they gave up another \$450 in the 5% kicker for riding ambulance. That puts the percentage give back for the 24 at well over 3%. Since only 24 Firefighters (out of 48) got the net gain of 2%, the percentage increase when spread across the whole unit (the proper comparable when measuring the impact on a bargaining unit) was actually 1.1%. It was likely less than that since the 18 who already were receiving the annual bonus gave up the 5% premium pay for working overtime. The analysis on the enhancement of the longevity pay isn't much different.

The City's focus with respect to the wage issue has been on the future. It has no evident interest in running as close to the financial red line as possible without tipping over into a financial crisis. If this were a 1-year contract, things might be different, but it is not, nor is it in either party's interest to have a 1-year contract. Since this is a 4-year agreement, some amount of trust needs to be given to the City's managers and governing body that they know what they are doing, particularly where there is no evidence that they have been spending money foolishly or not pursuing all available revenue sources. The fact that they have not increased the millage rate for Act 345 obligations in the light of the current financial situation is understandable. In fact, the City's prudence may have contributed in part to the successful millage increase for public safety functions just last November. That is not a trust that the City and the public safety unions have with the citizens that should be tampered with at present. For all of the foregoing reasons, the City's Last Best Offer of a 5% wage reduction in the first year of the Agreement is well supported by the evidence and is awarded.

**AWARD:** The City's position as set forth above is awarded.

City  
  
Concur      Dissent

Union  
  
Concur      Dissent

**ISSUE 2. ECONOMIC. WAGES - EFFECTIVE JULY 1, 2011**

**City Position:**

Effective with the first pay ending July 1, 2011 - 0%

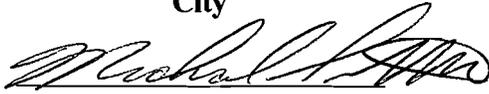
**Union Position:**

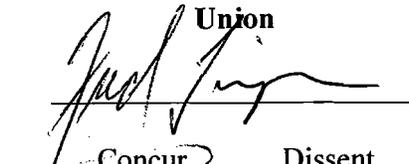
Effective July 1, 2011 – Zero (0%) percent wage increase.

**Discussion**

Since the parties have mutually agreed to a wage freeze the second year on this Agreement, that position is adopted by the Panel. It should be noted that the small increase in the public safety millage (1.56 to 2.0 mills) goes into effect on July 1, 2011. (Tr. 1:119.)

**AWARD:** The City's and Union's positions set forth above are adopted.

City  
  
Concur      Dissent

Union  
  
Concur      Dissent

**ISSUE 3. ECONOMIC. WAGES – EFFECTIVE JULY 1 2012**

**City Position:**

Effective with the first pay ending July 1, 2012 – 0%.

**Union Position:**

Effective July 1, 2012 – Two (2%) percent wage increase for all steps of the wage scale.

## Discussion

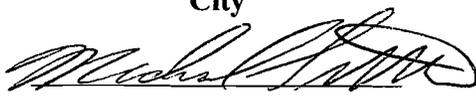
Obviously, the further one gets away from the budget years of 2010 and 2011 the less certain revenues and expenses become. However, unlike private businesses where revenues or sales can be stimulated by any number of factors such as advertising, marketing, rebates, coupons, etc., a municipality has very limited means of stimulating revenues. On the other hand, the wild swings in revenues that often occur in private industry is moderated to a great extent in the public sector where property taxes and State shared revenue, historically at least, have provided a consistent source of revenue.

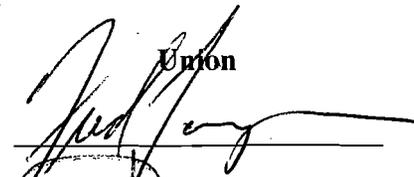
Looking back from 2012, the Panel would recognize that the 5% wage reduction in the Police Department which had a 2010 budget of approximately \$13 million (City Ex. 30, p. 70) should have generated a wage savings for 2010 in that Department alone of \$256,000. (Tr. 3:286.) In fact, the wage savings will be only \$64,000 since only approximately 3 months (from April 1, 2011) are left in the final year. In the second year, 2011, with a 0% increase there is an additional wage savings of approximately \$256,000 or approximately \$320,000 over 2 years. A 2% wage increase for 2012 results in a give-back of approximately \$102,000 - not chicken feed but not an alarming number in view of the nearly \$15 million surplus in the 2011 budget (less than .7 of 1% of the 2010 surplus). In addition, the Fire Department will already be in negotiations in 2011 this year with respect to their expiring contract and the AFSCME and UAW contracts will have but one more year to run. The non-union employees have been told that they are under a wage freeze but that is indefinite. There is evidence that the City expects a somewhat brighter (or less dim) financial picture beginning in 2012 as reflected in City Ex. 137 which is a projection for the general employees' pension system for the City. The Director of Finance for the City instructed the actuaries at Gabriel Roder Smith to use a payroll projection

of 0% for the years 2009, 2010, and 2011, and a 2.5% increase for each year thereafter through the end of the 5-year period. While this isn't any assurance that the City intends to commit to a 2.5% increase for its employees for the years 2012 and 2013, it at least is some evidence that the Director of Finance for the City believes that is a reasonable assumption for purposes of calculating future pension contributions for the general employees. The external comparables are not of great help but they do indicate that Roseville Officers will be receiving a 2% increase on July 1, 2011, and Westland a 3% increase on the same date (Union Ex. 18), both fully a year ahead of any increase for the Patrol Officers in this proceeding.

On balance, it appears that based on the above evidence, the City could afford to give a modest 2% increase to the bargaining unit for the third year of the contract without causing itself any significant financial stress. Moreover, a 5% reduction in the first year of the contract and freezes in the next 2 years, as the City has proposed, is too aggressive given its budget surplus and given the projections of the Director of Finance for the City. Moreover, the City will still save \$153,000 in unit wages in 2012-2013 since it is restoring 2% out of the 5% reduction. Total wage savings through the third year then equals \$473,000 (\$320,000 + \$153,000). Therefore, the Union's proposal of a 2% wage increase for the third year, beginning July 1, 2013, most nearly comports with the record evidence.

**AWARD:** The Union position set forth above is adopted.

City  
  
Concur       Dissent

Union  
  
 Concur      Dissent

## **ISSUE 4. ECONOMIC. WAGES – EFFECTIVE JULY 1, 2013**

### **City Position:**

17.1. Effective with the first pay ending July 1, 2013, there shall be no across-the-board salary increases unless the audited Unreserved Fund Balance for the St. Clair Shores General Fund (including those funds designated for subsequent years' expenditures, designated for committees and undesignated as of June 30, 2013 exceeds \$5,853,581; in which case, members of the bargaining unit will receive a 2.0% across-the-board salary increase retroactive to July 1, 2013.

### **Union Position:**

Effective July 1, 2013 – Two (2%) percent wage increase for all steps of the wage scale.

### **Discussion**

The parties agree that a 2% wage increase is appropriate for the 4th year of the contract commencing on July 1, 2013, save for the City making its 2% proposal contingent on an unreserved general fund balance for the City as of June 30, 2013, being at least \$5,853,581. Stated otherwise, the City's proposal is if its unrestricted general fund balance exceeds \$5,853,581 all bargaining unit members would receive a 2% across the board salary increase retroactive to July 1, 2013.

While the City's proposal of linking the wage increase to a general fund surplus balance is not totally novel, it still nevertheless is a creative idea in which to tie wage increases to some measure of the financial stability of the City Employer. The City's projections indicate that by the year 2014, there should be some recovery in its revenue picture and hopefully some stabilization of its expense outlay based on its ongoing efforts to balance the two and avoid a continual structural deficit. It is relevant that the City has set the threshold of nearly \$6 million surplus as the benchmark for any wage increase. That will be significantly below what has been

the historical surplus carried by the City and significantly below what the accountants think is a generally accepted fair amount for a rainy day fund. It is a fair number everything considered.

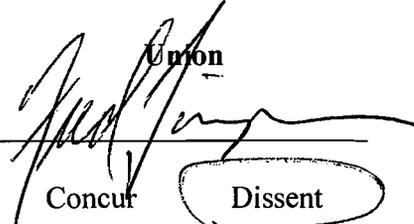
If it turns out that the City can afford that 2% increase, the bargaining unit will then have recovered 4% of the 5% wage reduction that it is absorbing in 2010. At that point, the bargaining unit will have done its part to help address the City's structural deficit and will only be 1% behind standing still on wages for a 4-year contract or, in this case practically speaking, 3 years and a couple of months. Such a proposal tied to a modest unrestricted general fund balance could also foretell a responsible way of negotiating wages into the future.

Of course it is always possible that the City could budget and spend in such a way that the threshold is never achieved and the 2% incentive is frustrated. There has been no suggestion of the City doing that presently, or in the past, and therefore it is a fair assumption that the City has set that threshold in good faith with the expectation that it is a realistic number that would then result in modest wage increases for the bargaining unit. However, on the off chance that someone does manipulate the budget in a way in which to avoid this modest 2% increase, the Union will have plenty of opportunity in the negotiations preceding the expiration of this Agreement to make their views known in negotiations and, if necessary, again proceed to 312.

The Union's proposal of a certain 2% wage increase in 2013, a little over 2 years from now, is not unreasonable. The City proposal, however, provides the same increase with the flexibility built in that if the financial picture of the City does not improve, it would have one more year of a wage freeze at the end of this 4-year Agreement. The wage concession by the Patrol Officers for 2013 is either \$51,000 assuming the 2% triggers or \$153,000 if it doesn't. The 4-year wage concession then becomes either \$524,000 (\$473,000 + \$51,000) or \$626,000 (\$473,000 + \$153,000). Then when the 1% of pay employee contribution to the healthcare fund

is initiated on July 1, 2011, the grand total wage concession for 4 years becomes either \$677,000 (\$524,000 + \$51,000 (1%) x 3) or \$779,000 (\$626,000 + \$51,000 x 3). Those wage cost savings or wage concessions are fairly hard, but however do not factor in the large fringe benefit cost savings (much of which is predicated on total wages), the reduction in pension costs for the new two-tier pension plan, or the new 2% healthcare fund contribution for new hires. Since the City's proposal provides for the same increase as the Union's but contains some flexibility relative to its financial integrity, it is adopted.

**AWARD:** The City's position set forth above is adopted.

<p>City</p>  <p style="text-align: center;">Concur <span style="margin-left: 100px;">Dissent</span></p>	<p>Union</p>  <p style="text-align: center;">Concur <span style="margin-left: 100px;">Dissent</span></p>
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**ISSUE 5. ECONOMIC. EMPLOYER ISSUE – NEW HIRE WAGE SCALE**

**City Position:**

17.5. The following wage schedule will be used for all employees hired after January 1, 2010:

	(Alternative 2.0%*)				
	7/1/2010	7/1/2011	7/1/2012	7/1/2013	7/1/2013
Academy	\$36,744.63	\$36,744.63	\$36,744.63	\$36,744.63	\$37,479.52
Start	\$39,571.18	\$39,571.18	\$39,571.18	\$39,571.18	\$40,362.60
Six Months	\$42,397.50	\$42,397.50	\$42,397.50	\$42,397.50	\$43,245.45
One Year	\$45,224.49	\$45,224.49	\$45,224.49	\$45,224.49	\$46,128.98
Two Years	\$48,050.81	\$48,050.81	\$48,050.81	\$48,050.81	\$49,011.83
Three Years	\$50,876.69	\$50,876.69	\$50,876.69	\$50,876.69	\$51,894.22
Four Years	\$53,703.68	\$53,703.68	\$53,703.68	\$53,703.68	\$54,777.75
Five Years	\$56,503.22	\$56,503.22	\$56,503.22	\$56,503.22	\$57,660.82

**Union Position:**

The Union proposes a new hire wage sale as follows:

Effective with the first new hire employee covered by the bargaining unit employed after the effective date of the award: The intent of the Union's proposal

is to reduce the current steps for new hire employees for steps Academy through four years with the fifth year step equal to that of employees hired prior to the effective date of the award. Steps 10 year, 15 year and twenty year shall also be identical to the rate of pay for both new employees and those previously employed prior to the date of the award. The current 10 year, 15 year and 20 year step shall be maintained with the current differentials between the steps maintained. Employees shall move from one step to the next, on their anniversary date of employment.

Academy	55% of the five-year step
Start	60% of the five-year step
One year	70% of the five-year step
Two years	80% of the five-year step
Three years	90% of the five-year step
Four years	95% of the five-year step
Five years	100%

**Discussion**

This issue can be disposed of rather quickly. Leaving aside the Union's contention of whether a 2-tier wage system creates unrest and conflict among Police Officers making different rates of pay for doing the same work, there are other more compelling reasons to adopt the Union's proposal. The City's proposal is dramatic; it seeks to reduce the new hire wage scale for the steps Academy through 5th year by 10% on top of the 5% reduction in the wage scale for all current employees. (Tr. 2:88.) In addition, the pay steps at 10, 15, and 20 years are completely eliminated. The Union's proposal is more reasonable since it reflects a 5% reduction in all steps from the Academy through 4 years. There are no other 2-tier systems on record in the City, nor were any found among the external comparables. The Union's last best offer has more than substantial evidence to support it.

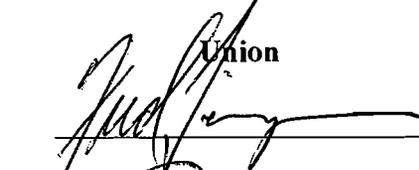
**AWARD:** The Union's position set forth above is adopted.

City



Concur      Dissent

Union



Concur      Dissent

**ISSUE 6. ECONOMIC. EMPLOYER ISSUE - HOSPITALIZATION INSURANCE**

**City Position:**

18.2. Medical and Hospitalization

- (a) Effective as soon as possible after issuance of the Act 312 award, the Blue Cross/Blue Shield Healthy Blue Incentive Option G program shall be implemented with the accompanying Rx program Option B and RXP Rider for each employee (probationary employees included) and their family.
- (b) The members of the bargaining unit may use the alternative health care provider HAP. However, the employer agrees to pay the cost for these providers up to the Blue Cross/Blue Shield Healthy Blue Incentive Option G program with the accompanying Rx program Option B and RXP Rider rate. If any one coverage rate exceeds that rate, then the employee agrees through payroll deduction to pay the monthly premium difference.

**Union Position:**

Effective thirty days after the issuance of the award, there will be an open enrollment period for thirty days. During this time, employees of the bargaining unit will be allowed to select their health care provider for the year. The following Blue Cross/ Blue Shield product will be one of the options for the employees to choose from:

Blue Cross/ Blue Shield Healthy Blue Incentive Option G.

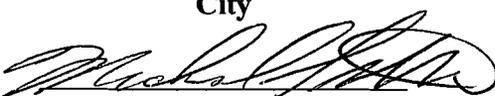
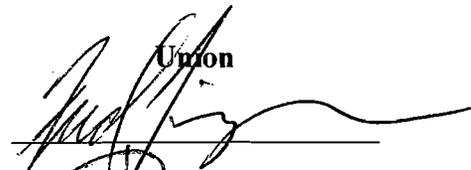
The Employer shall pay 100% of the premium for the Employee, Spouse and dependents.

**Discussion**

The parties are essentially in agreement on adopting the Blue Cross/Blue Shield Healthy Blue Incentive Option G program with an open enrollment period for 30 days effective 30 days after the date of this Award. While the parties are in agreement and little discussion is warranted, it should be noted that the City has been very aggressive with shopping and administering its healthcare coverage. In the past 2 years, 2009 and 2010, the City saw increased healthcare costs of 9.32% and 11.84% (City Brief p. 27). The City's study determined that the

Healthy Blue Incentive it was proposing was 4.09% less than the Community Blues One plan for the plan year beginning September 1, 2008, and 7.06% cheaper for the plan year beginning September 1, 2009, and 4.48% cheaper for the plan year beginning September 1, 2010. The Healthy Blue Incentive program involves an uncomplicated health risk assessment (Tr. 4:105-108). In short, as long as the employee is willing to take an assessment and participate in recommended coaching, the employee maintains the same level of benefits and the City's costs are less. Three of the City's unions already have the Health Blue Incentive program in place and the level of benefits offered compare favorably with the comparables (City Ex. 73).

**AWARD:** The City's position set out above is adopted.

<p>City</p>  <p>Concur      Dissent</p>	<p>Union</p>  <p>Concur      Dissent</p>
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**ISSUE 7. ECONOMIC. EMPLOYER ISSUE – PRESCRIPTION DRUG RIDER**

**City Position:**

18.2 Medical and Hospitalization.

- (a) Effective as soon as possible after issuance of the Act 312 award, the Blue Cross/Blue Shield Healthy Blue Incentive Option G program, shall be implemented with the accompanying Rx program Option B and RXP Rider for each employee (probationary employees included) and their family.

**Union Position:**

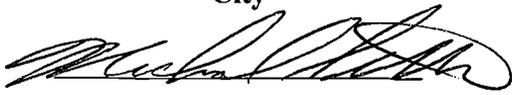
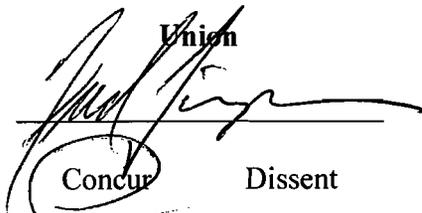
18.2 Medical and Hospitalization.

The prescription drug rider for the Healthy Blue Incentive Option G Plan shall be the Blue Cross/Blue Shield option 10 with MOPD and RXP riders.

**Discussion**

The City's last best offer on medical and hospitalization is adopted since it is the same as the Union position which had a minor typographical error.

**AWARD:** The City's position as set forth above is awarded.

<p>City</p>  <p>Concur</p>	<p>Dissent</p>	<p>Union</p>  <p>Concur</p>	<p>Dissent</p>
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**ISSUE 8. ECONOMIC. EMPLOYER ISSUE- RETIREE HEALTH CARE SAME AS ACTIVE**

**City Position:**

Clarify that, after July 1, 2007, retirees receive same health care as active employees, subject to all future changes.

18.2. Medical and Hospitalization.

- (c) Effective with retirements after July 1, 2007, retiree and dependent(s) will have the same medical benefits available to the bargaining unit, subject to all future changes in plan design, until they become Medicare eligible, then the retiree and dependent(s) will have Blue Cross/Blue Shield Medicare Supplemental coverage.

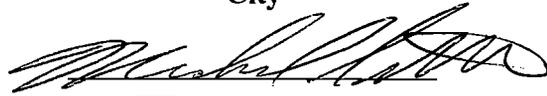
**Union Position:**

Retirees receive the same health insurance coverage as active employees and are subject to all future changes in the benefit schedules excluding any premium sharing requirements, if any, that may be required of active employees.

**Discussion**

There is essentially no difference between the Union and City proposals, except the Union last best offer makes clear that premium sharing only applies to active employees. Therefore, the Union's language is added so that Section 18.2 will read as recited in the following award.

**AWARD:** Union's position – language is 18.2 Medical and Hospitalization c. Effective with retirements after July 1, 2007, retiree and dependents will have the same medical benefits available to the bargaining unit until they become Medicare eligible, then the retiree and dependents will have Blue Cross/Blue Shield Medicare Supplemental Coverage. Retirees receive the same health insurance coverage as active employees and are subject to all future changes in the benefit schedules, excluding any premium sharing, if any, that may be required of active employees.

City  
  
Concur Dissent

Union  
  
Concur Dissent

**ISSUE 9. ECONOMIC. UNION ISSUE – HEALTHCARE. ADD NEW ARTICLE PROVIDING FOR COALITION OF PUBLIC SAFETY (COPS) HEALTH AND WELFARE TRUST AS AN OPTION FOR ALL EMPLOYEES IN THE BARGAINING UNIT AND THEIR SPOUSES AND DEPENDENTS**

**City Position:**

Status quo. None to be added to collective bargaining agreement

**Union Position:**

Add new section to Article 18. Insurance.

Effective thirty days after the issuance of the award, there will be an open enrollment period for thirty days. During this time, employees of the bargaining unit will be allowed to select their health care provider for the year. The following COPS product will be one of the options for the employees to choose from:

Add the COPS Trust Option Plan B with the \$10 OV Rider and \$50 ER Co-pay with the \$10/\$20 Rx Rider. The Employer shall pay 100% of the premium for the Employee, Spouse and dependents as long as the premium for the COPS Trust is less than the illustrative rates for the Blue Cross/Blue Shield Option G \$10 Rx rider. Should the premium exceed the illustrative rates for the BC/BS Healthy Incentive Option G with the \$10 Rx rider, then the employee will pay the difference through payroll deduction.

In order to ensure a fair comparison of rates since the Blue Cross product is a self-funded plan and the COPS Trust premium is for a fully insured plan, the following methodology for determining the cost of the Blue Cross product shall be used:

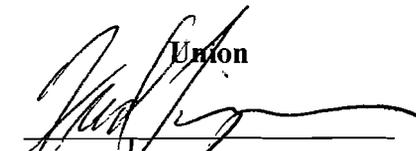
Blue Cross/Blue Shield of Michigan, in determining the illustrative rates, will maintain the same formulas and relative plan value relationships for each suffix, plan, and rate class as used by Blue Cross in the BCBSM Administrative Services Contract Renewal for the September 2010 to August 2011 document for the City of St. Clair Shores. These illustrative rates established by BCBSM are not subject to modification by the Employer.

**Discussion**

The Union's offer would essentially add no additional cost to the City since the option of the COPS Trust plan with the requested riders would be paid for by the employee if the cost exceeds the illustrative rates for the Blue Cross/Blue Shield Plan B awarded by this Panel which is option G - \$10 Rx rider. One internal comparable, the Command Unit, already has the COPS Trust plan as an option and one external comparable, Sterling Heights. There is no sound reason for denying the Union this option since it is cost neutral. In addition, competition is always a good thing from the City's point of view when it comes to healthcare providers and there was strong testimony from the Union's expert, Daniel Gorczyca, that COPS Trust does a better job of negotiating discounts with doctors (Tr. 4:168) than does Blue Cross/Blue Shield, its administration fees are lower (Tr. 4:167), and its prescription drug plan more generous than Blue Cross/Blue Shield (Tr. 4:172-173). Those are additionally good reasons for having an alternative plan available to those Officers who so elect and want to pay the additional cost, if any.

**AWARD:** The Union position as set forth above is adopted.

City  
  
Concur  Dissent

Union  
  
 Concur Dissent

**ISSUE 10. ECONOMIC. EMPLOYER ISSUE – MEDICAL AND HOSPITALIZATION CONTRIBUTION**

**City Position:**

18.2 Medical and Hospitalization.

- (b) Employees hired after the issuance of the 2011 Act 312 Arbitration Award shall contribute 2% of all remuneration received through payroll checks into the City's Police and Fire Health Care Trust Account. Monies contributed by the employee will not be subject to annuity withdrawal.

**Union Position:**

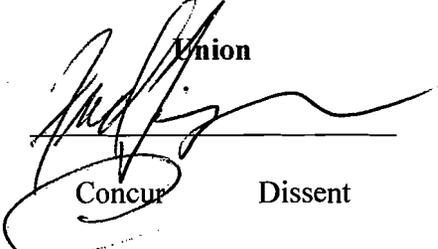
New hire employees after the date of the award will pay 2% of their pay to the retiree health care fund. These employees shall be vested for purposes of retiree health care, after ten years. Effective July 1, 2011, all current employees shall contribute 1% of their pay to the retiree health care fund. All current employees who have not attained ten years as of July 1, 2011, shall become vested on their tenth anniversary date of employment for purposes of retiree health care. All current employees who have ten years or more of employment as of July 1, 2011 shall be immediately vested for purposes of retiree health care.

**Discussion**

Because the Union proposal is more advantageous to the City since it proposes a 1% contribution to the retiree healthcare fund from current employees, it is adopted. It should be noted that this is in effect another 1% contribution that the employee is making toward the City's structural deficit. Stated differently, current bargaining unit members are taking a 5% reduction in their pay effective with the date of this Award and in 3 months, on July 1 of this year, will be taking an additional 1% pay deduction for healthcare premiums contributed to the retiree healthcare fund. It is understood between the parties that the Union's language with regard to vesting means only that if an employee terminates employment before the employee becomes eligible for retiree healthcare, the employee would get the value of the employee's contribution returned to him upon termination. Vesting was not intended to mean that an employee will be eligible for health insurance at a time different from that which is already provided for in the

parties' Agreement. It is also understood that an annuity withdrawal of contributions by the employee made to the retiree healthcare fund is not permitted. The Union position is responsible and recognizes the long term mounting unfunded liability for retiree healthcare and thus is worthy of adoption.

**AWARD:** The Union position set forth above is adopted.

City	Union
	
<input checked="" type="radio"/> Concur	<input checked="" type="radio"/> Concur
<input type="radio"/> Dissent	<input type="radio"/> Dissent

**ISSUE 11. ECONOMIC. EMPLOYER ISSUE – ANNUITY WITHDRAWAL**

**City Position:**

16.7 Annuity Withdrawal. Members of the bargaining unit may, thirty (30) days prior to separation from service, and upon meeting eligibility for service retirement, elect to withdraw in a lump sum all amounts standing to the credit of the member in the annuity savings plan (defined contribution plan) which consists of the employees annuity plan contributions and regular interest (or defined in the plan provisions) credited thereon. The election of annuity withdrawal will result in an actuarial reduction in the benefit received by the retiring employee and/or their surviving spouse for any amounts credited by the employee on his/her behalf after the date of the issuance of the 2011 Act 312 Award. The amount of the reduction shall be calculated by the actuarial firm designated by the City of St. Clair Shores Act 345 Pension Board, utilizing the applicable assumptions in place at the time of the evaluation.

**Union Position:**

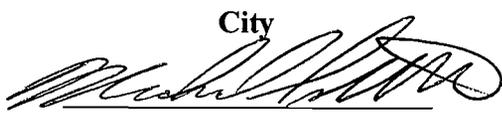
No change in status quo, keep current contract language.

**Discussion**

In a fairly unusual arrangement that has existed for several years, the City's pension plan for members of the Union permits an employee to withdraw in a lump sum all of the money which they contributed toward the pension as well as any interest earned and yet receive an unreduced full pension. The City would propose to do away with that annuity withdrawal

benefit and, if the employee does elect the annuity, the pension would be actuarially reduced by some amount for such withdrawal. This benefit has been in existence since July 1, 1998, when Union President Crandall testified that employees in the bargaining unit received this withdrawal benefit in exchange for an increase in the pension contribution that employees were making. (Tr. 4:6.) Moreover, this benefit does not cost the City anything, as the Union points out, since the pension is funded pursuant to Act 345 which is funded by a separate dedicated millage with no general fund monies going to support the Police-Fire pension system. For those reasons, the Union's proposal does not result in any cost to the general fund and since the Command Officers and Firefighters have that benefit (City Ex. 103) and 2 external comparables, Sterling Heights and Southfield (City Ex. 104), there is no reason to disturb the status quo. While it may be said that this creates a double benefit of sorts for retirees, it might also be viewed, as the Union suggests, as just one of the options that an Officer would be considering when making retirement plans. Without any immediate financial benefit to the City and a significant loss for bargaining unit members if the City proposal is adopted, there is no reason to abandon a benefit that has been bargained for, particularly where significant concessions are being visited upon the Union members in other areas by this Award.

**AWARD:** The Union position set forth above is adopted.

City  
  
Concur      Dissent

Union  
  
Concur      Dissent

**ISSUE 12. ECONOMIC. EMPLOYER ISSUE – EMPLOYEE CONTRIBUTION TO THE PENSION FUND**

**City Position:**

16.5 The City’s contribution to the retirement system (Defined Benefit Plan) shall be increased to the extent necessary, if any, so as to offset the reduction in the member’s contribution to the retirement system and assure the actuarial sufficiency of the system as required by MCLA 38.559. Employee pension fund contribution effective the pay period after both parties have ratified the agreement as follows:

<u>Step</u>	<u>Pension Contribution</u>
Academy	3%
Start	3%
Six months	3%
One Year	3%
Two Years	3%
Three Years	3%
Four Years	3%
Five Years	3%
Ten Years	4%
Fifteen Years	4%
Twenty Years	4%
Twenty Five Years	4%

Effective with the first pay period after the issuance of the 2011 Act 312 arbitration award the employee contribution rate for all Employees shall be 5%.

**Union Position:**

Effective July 1, 2011, all members of the bargaining unit will contribute 4% of their pay to the Act 345 pension system.

**Discussion**

The respective proposals to increase the employee contribution to the Act 345 pension system are straightforward. The Union proposes to move all employees, present and future, from the Academy level step up through year 5 to 4% instead of the present 3%. All employees at 10 years or more are already at a 4% contribution level. The City proposes to move everyone to 5%

the first pay period after issuance of the Award. The Union's proposal is more reasonable for the following reasons:

- The City's 2% increase for steps at Academy through 5 years is a 66 2/3% increase which is too large
- Pursuant to this Award, the employees will be giving back 5% of wages and will be contributing 1% of pay to their healthcare, which are significant concessions given that the history of the parties has not contained concessions and there is currently a significant budget surplus
- The Firefighters unit has a graduated system at 3, 4, and 5%
- General employees of the City who still have a defined benefit plan are contributing 2%
- Although favoring the City, the comparables are mixed with Dearborn Heights, Royal Oak, and Sterling Heights all contributing 5% and the Officers in Roseville contributing 7%; Farmington Hills contributes 4.5%, Livonia contributes less but is a defined benefit plan, and Southfield is at 3.5%
- The Union's proposal does increase the employee's contributions from years 1 through 9
- Last but not least, as observed previously, these are not monies that drain the general fund since the Police and Fire pension system is funded by a separate and distinct millage through Act 345
- The Public Safety Employees Pension Fund is 82.6% (Tr. 3:27, 29) fully funded, considered a safe level and almost exactly the same level it was in 1984 (83.1% - Tr. 3:104).

**AWARD:** The Union position set forth above is adopted.

City  
  
Concur Dissent

Union  
  
Concur Dissent

**ISSUE 13. ECONOMIC. EMPLOYER – LIMIT OVERTIME INCLUDED IN FAC TO 900 HOURS**

**City Position:**

16.1 The Final Average Compensation shall include all remuneration received through payroll checks issued to employees before the retirement date excluding ICMA, military, prior service time and layoff lump sum payments to members. It

shall exclude only accumulated sick pay paid in a lump sum upon retirement and vacation pay paid upon retirement. Effective for retirements after ratification of the 2006-2009 agreement, total overtime compensation included in FAC calculations shall be capped at one thousand six hundred (1,600) hours. Effective January 1, 2011 the total overtime compensation included in FAC calculations shall be capped at nine hundred (900) hours. If it is necessary to remove overtime compensation from FAC calculations due to a member exceeding the overtime cap, the following provision shall apply: Excess overtime compensation shall be removed from the combined total of the three (3) years of highest annual compensation at the lowest rate in effect during those three (3) years.

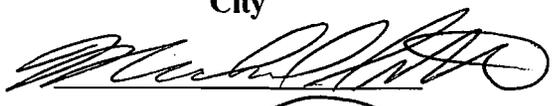
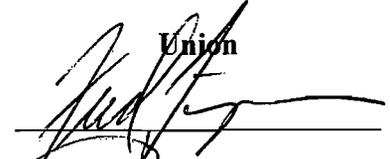
**Union Position:**

No change in status quo. Keep current contract language.

**Discussion**

The record evidence clearly supports the Union's last best offer of maintaining the current cap on overtime hours at 1600. With respect to the internal comparables (City Ex. 108), none of the comparables have a cap as low 900 hours as proposed by the City. The Firefighters have no cap, albeit those hired after January 1, 2010, will have a cap at 1200 hours. The Command Officers have a cap of 1500 hours and 2 groups in the general employees pension system have no cap whatsoever. The external comparables (City Ex. 109) are mixed. Four of the comparables do not include overtime in final average compensation, the other 5 external comparables allow overtime to be included, although it is noted again that Livonia is a defined contribution plan (City Ex. 109). As discussed before, there is no impact on the general fund since pensions are financed via Act 345. Finally, in early 2010 the City and Union did agree to reduce mandatory minimum staffing levels which resulted in the Department's overtime budget being reduced by approximately 31% (Union Ex. 70).

**AWARD:** The Union position set forth above is adopted.

City	Union
	
Concur	Concur
	Dissent

**ISSUE 14. ECONOMIC. EMPLOYER ISSUE – PENSION FOR NEW HIRES**

**City Position:**

16.14. Effective for any members hired after January 1, 2011, the pension multiplier to be applied for each year of service shall be 2.25% for the first 25 years of service. The pension multiplier shall be 1% for each year of service thereafter to maximum of 70% times the final average compensation. An employee hired after January 1, 2011 shall contribute 5.0% of his/her pay towards funding of the Police and Fire Pension Plan. Overtime hours counted towards final average compensation shall not exceed 900. Any annuity withdrawal of a member's contributions for those hired after January 1, 2011 shall result in the proportionate reduction in the monthly pension as determined by the Act 345 Pension Board's actuaries, utilizing the applicable assumptions in place at the time of the evaluation.

**Union Position:**

No change in current contract language. Keep the status quo.

**Discussion**

The City seeks 4 changes with regard to a 2-tier pension system proposal: (1) reduce the multiplier from 2.8 to 2.25 for the first 25 years of service and 1% for each year of service thereafter to a maximum of 70% of final average compensation; (2) employees hired after January 1, 2011, would contribute 5% instead of the present 3%; (3) overtime hours would be capped at 900 rather than the present 1600; and (4) the annuity withdrawal would be eliminated such that an employee electing the annuity withdrawal of his own monies plus interest would obtain a lesser pension determined by the Act 345 Pension Board Actuaries. While these changes are significant, they do not affect any current member of the bargaining unit and those changes would provide significant savings in the City's pension contribution, calculated by its

actuaries at being 4.81% (City Ex. 102). While this proposal of the City does not benefit its general fund, it does address its startling large contribution (30%) it is currently paying to maintain its public safety pension system (City Ex. 137, p. 3, Tr. 3:35-36 – as well as a 51% increase in the pension obligation for general fund employees from 7/1/2008 to 7/1/2013). Primarily for the reason that this does not impact current members of the bargaining unit, the City's proposal is adopted since it is supported by the following:

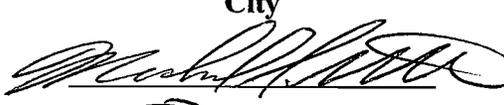
- All City unions (except the Command Unit) and non-union employees presently have a 2-tier pension system in place. Two unions, UAW and AFSCME, have moved to a defined contribution plan instead of a defined benefit plan.
- The Firefighters agreed to a plan identical to what the City is proposing here with the exception that the Firefighters will have an overtime maximum of 1200 hours while a 900-hour cap will obtain here
- The external comparables indicate that 5 of 9 had 2-tier pension plans that include a 5% employee contribution (Dearborn Heights, Livonia, Warren, Westland, and Farmington Hills at 4.5%). Over time, the City's proposal will significantly help addressing the pension liability, albeit not one of the general fund. (City Ex. 106.)

If one's keeping score on the magnitude of the economic concessions, the pension concession on new hires deserves mention. The City's actuary testified credibly that the two-tier proposal being adopted in its entirety herein would result in an immediate reduction in the pension contribution of 4.81%. (Tr. 3:99.) Using the accepted "ultimate normal cost method" that's a potential cost reduction of about \$244,000 (\$51,000 = 1%) each year in pension contributions. Over the remaining 3 years (2011-2014) that results in pension contribution savings of \$732,000. Added to the wage savings, that brings total savings to the City to between \$1,409,000 (\$677,000 + \$732,000) and \$1,511,000 (\$779,000 + \$732,000). Moreover, those amounts do not include the roll-up on wages, which in this case is admittedly well over 40%. That pushes savings to the \$1,973,000 to \$2,115,000 range, some serious money for the City and bargaining unit. Finally, that too is not a total accounting for all the savings. The increase in

some of the present Patrol Officers' contribution to the pension plan (to 4%), the savings of moving to the Blue Cross/Blue Shield Healthy Incentive medical plan, the 2% healthcare fund contribution for new hires, and the reduction in overtime are all additional cost savings that will redound to the City's financial benefit and for the remainder of this contract and future contracts.

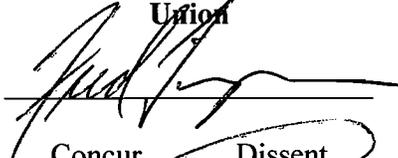
**AWARD:** The City position set forth above is adopted.

City



Concur      Dissent

Union



Concur      Dissent

**ISSUE 15. NON-ECONOMIC. UNION – FULL DISCLOSURE**

**City Position:**

- 1) Upon request, the City shall provide copies of in-car audio or video recordings and applicable dispatch tapes, if any, to the Union at the Step 3 grievance hearing.
- 2) The City shall disclose the existence of any physical evidence to the Union that would otherwise not be available to the Union and provide opportunity for inspection of same at the Step 3 grievance hearing.
- 3) The City and Union shall provide the names of witnesses expected to testify at an arbitration hearing at least thirty (30) days prior thereto. Any written statement of witnesses expected to testify which is not otherwise protected by attorney-client privilege or as attorney-work product shall be provided to the other party at the same time. This provision may be waived for good cause shown and shall not be applicable for rebuttal witnesses.

**Union Position:**

Effective date of the award.

The City shall provide copies of any video or audio tapes or recordings which are part of the investigation file to the Union at the Step 2 hearing.

The City shall disclose the existence of any physical evidence to the Union that would otherwise not be available to the Union and provide opportunity for inspection of same at the Step 2 hearing.

The City and Union shall, provide the names of witnesses expected to be called at an arbitration hearing. Names of witnesses shall be provided at least 30 days prior to the hearing. Any written statement taken from a witness scheduled to

testify shall be provided to the other party at the same time the list of witnesses is provided. No evidence or witness may be used at the arbitration hearing unless the parties have complied with this step. The Union shall receive a complete copy of the Internal Affairs Report regarding a grievance concerning a bargaining unit member who is subject to discipline up to and including termination however, any Internal Affairs Report may exclude attorney work product, documents protected by attorney client privilege and notes by the Department's Internal Affairs officer that would constitute mental impressions. The Internal Affairs Report shall be provided at the Step 2 hearing but in no case later than the Step 3 hearing.

The parties' last best offers with respect to how much and what information to disclose in the grievance procedure represents substantial agreement with, however, 10 points of departure which are discussed seriatim.

1. Requirement that the City automatically provide relevant recordings. This point can be disposed of quickly. The City's argument that time and other resources should not, in all cases, have to be expended in order to reproduce copies of audio, video, and dispatch tapes makes good sense. Having language requiring the Union to make a request for such information does not diminish the Union's ability to obtain the information and properly represent their members.

2. Requirement that information be furnished at step 3. The Union's position that the information be presented at step 2 is more in keeping with a good grievance procedure. Information that is relevant to a grievance should be made available as soon as possible. Too often it has been the Panel Chair's experience that his own past clients did not dig up all of the information necessary to present a case until well into the grievance procedure. Such a lack of information prevents the parties from making good, sound decisions early on or from changing courses abruptly in mid-stream as dictated by the information. The early exchange of information has the best chance of resolving the grievance at the lowest possible level and since

step 2 involves the Police Chief, that is an important step at which both parties need to have as much relevant information as possible so that each can make a proper decision.

3. Audio and video recordings. The Union's proposal expands the audio and video recordings that are to be made available beyond "in-car" to the broader scope of audio and video recordings in general. As the City observes in its Brief, it could and would include recordings of witness interviews which are made during the course of Internal Affairs investigations. That runs the risk of confidentiality breaches where witnesses, either internal or external, who have cooperated with Internal Affairs investigators do not wish to be identified. The chilling affect feared by the City is a valid concern and, as importantly, the Union is appreciative of that issue as Mr. Steffes testified (Tr. 3:181-182). In order to preserve the Internal Affairs investigations, however, all that is necessary is to allow discovery of all audio and video recordings, except Internal Affairs investigations. This expands the City's language beyond in-car audio and videotapes.

4. Dispatch tapes. The City's proposal includes disclosing applicable dispatch tapes whereas the Union's last best offer did not specifically refer to such tapes. Since the City is willing to produce that information, which may connect to some of the audio and video "in-car" recordings, it makes sense for that to be included in the final language.

5. Witness statements. The Union's last best offer contains an unqualified requirement that witness statements be provided 30 days in advance of the hearing. The City's language contains a caveat that there be an exemption for information contained in witness statements protected by the attorney/client or work product privileges. Since that is a fairly universally recognized privilege that would obtain even in the absence of language, there is no harm to either party in including such language in the final language ordered by the Panel.

6. Information furnished prior to arbitration. This issue concerns what information is to be furnished 30 days prior to arbitration, the City limiting this duty to the provision of witness identities and statements and the Union expanding that to include all evidence which would be presented at arbitration. The Panel Chair agrees with the City's position that the inclusion of all evidence is overly burdensome and unnecessary. Arbitration is not intended to be a court proceeding and to a large extent is informal. This Article, as awarded by the Panel, will contain significant disclosures and protections for Union members that are not found in many other public sector contracts, including the external comparables in this case, and rarely found in private sector contracts. Too much rigidity built into the grievance procedure prior to arbitration inhibits a free flow of information, evidence, and an opportunity for all witnesses to tell their story and be candid at the arbitration hearing. Moreover, the Union has not been hampered in the past in its effort to have sufficient information to represent its members in an arbitration hearing (Tr. 3:185) (in fact the Union was able to review a complete Internal Affairs file).

7. Penalty for not furnishing witness names and statements prior to arbitration. The Union proposed language with respect to furnishing witness names and statements would prohibit the use of such information if it is not provided 30 days prior to arbitration. This provision also introduces too much rigidity into the grievance procedure which needs some flexibility and is not a proceeding fraught with motions, depositions, interrogatories, requests for admissions, etc. It is also possible that either party could unintentionally fail to provide witness statements 30 days prior to the arbitration and thus would be severely prejudiced if some information were not allowed to be presented. Moreover, the reality is that parties often do not get serious about preparing their arbitration cases 30 days prior to a hearing. There is always the

likelihood that documents and witnesses will occur to the representatives of the parties that don't occur to the parties themselves. It is not helpful to either party to have such a rigid rule that would preclude such information that may be critical to their case from being presented.

8. Waiver of 30-days for furnishing witness names and statements. The City's language contains an additional caveat on the providing of witnesses and witness statements 30 days prior to the hearing that such requirement may be waived for good cause. Since that provision may be advantageous to both parties, there is no harm in including it in the Panel's Award but the question arises what happens if the parties don't agree to waive the 30-day requirement. In this regard the Chair has included language that the good cause shown may be presented to the arbitrator and he or she can break the tie.

9. Rebuttal witness names and statements. The City's proposal includes a provision that the witness name and statement disclosure requirement does not apply to rebuttal witnesses while the Union's offer contains no such exemption. The Union may well have assumed that this would be the case, but in any event, there is no harm in including the City's language since it is often the case that rebuttal witnesses being known 30 days prior to a hearing is seldom the case.

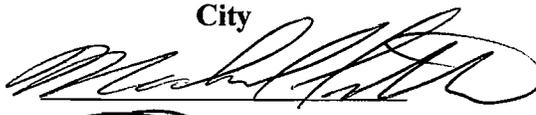
10. Internal Affairs report. Finally, the Union would require disgorgement of the Police Department's Internal Affairs report excluding attorney work product, documents protected by the attorney/client privilege, and notes made by the Internal Affairs Officer which would constitute mental impressions. First, it needs to be reiterated that in this case, this has not presented an issue up to this time for these parties and therefore the necessity for such language is not presently apparent. Second, it should be noted that while any employer through an internal affairs report may possess some information the union doesn't at an arbitration hearing, the employer is still charged, particularly in a discharge case, with carrying its burden of proof and

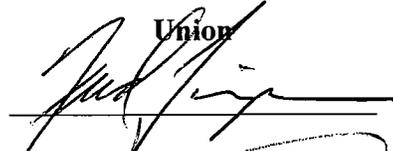
justifying that the discharge was for just cause. This can seldom if ever be done by hearsay evidence and mere reports. An employer is always well advised to present witnesses to the events and relevant documents which are solid evidence and not subject to hearsay and other objections and certainly there are cases where an employer could present a much stronger case on discipline if it were simply able to use its internal investigative report and the investigator. Obviously if those documents and witnesses are presented in the hearing, they are subject to rigorous cross examination by the Union. In the interest of protecting the confidentiality of witnesses, internal and external, an employer has a tough choice to make in terms of trying to preserve the confidentiality of the purposes of the internal affairs department while at the same time trying to prove the legitimacy of its discipline. In fact, I suppose it could be argued that a union is better off not having access to that information and having all of that information disgorged in an arbitration hearing if the employer chooses not to use it for confidentiality purposes. While the 2 cases cited by the City, *Kent County Sheriff*, 4 MPR 194 (1991), and *City of Battle Creek Police Department*, 12 MPR 25 (1998), are not completely dispositive of this issue, the language used by the Commission was very strong in pulling the curtain over allegations of misconduct by public employees. The City's proposal is included in the Award since it protects the integrity of an Internal Affairs investigation and no prejudice has been shown by the bargaining unit in representing its members.

**AWARD:**

1. Upon request at the step 2 hearing, the City shall provide to the Union copies of audio or video recordings of any kind, applicable dispatch tapes, if any, except Internal Affairs investigations.
2. The City shall disclose the existence of any physical evidence to the Union that would otherwise not be available to the Union and provide opportunity for inspection of same at the step 2 grievance hearing.

3. The City and the Union shall provide the names of witnesses expected to testify at any arbitration hearing at least thirty (30) days prior thereto. Any written statement of witnesses expected to testify which is not otherwise protected by attorney-client privilege or as attorney work product shall be provided to the other party at the same time. This provision may be waived by the parties or waived by the arbitrator for good cause shown and shall not be applicable for rebuttal witnesses.

City  
  
Concur      Dissent

Union  
  
Concur      Dissent

### ISSUE 16. NON-ECONOMIC. UNION ISSUE – OUTSIDE EMPLOYMENT

#### City Position:

An Employee who desires to obtain secondary employment, prior to accepting the position, shall first notify the Chief of Police in writing describing in detail the job being sought including the name, address and telephone number of the potential employer, as well as the expected days and hours of work. Upon written notification, the Chief of Police shall have thirty working days to approve the employment and notify the Employee in writing. Failure by the Chief of Police to respond in the thirty working days shall be grounds for automatic approval. Among the factors the Chief may consider in determining to grant or deny such a request is whether the secondary employment has the potential to create a potential conflict of interest or constitute a threat to the dignity or status of law enforcement as a profession or the status of the St Clair Shores Police Department; conflict with the Employee's working hours or impair the employee's efficiency. Approval of the Chief of Police shall not be unreasonably denied. Should the Chief of Police deny the request, he shall state in writing all his/her reasons for the denial. The Chief may require an employee to update informing concerning approved secondary employment. An Employee must resubmit a request should conditions surrounding such secondary employment substantially change.

Employment as a St. Clair Shores Police Officer is primary and shall take precedence over any secondary employment. Employees shall not carry a weapon during such employment unless the Employee has a current permit to do so which would otherwise allow the Employee to carry it. Employees shall not directly or indirectly display a St. Clair Shores police badge or other form of City identification during such employment. No City issued equipment may be used while working for another Employer.

### **Union Position:**

An Employee who desires to obtain secondary employment, prior to accepting the position, shall first notify the Chief of Police in writing describing in detail the job being sought including the name, address and telephone number of the potential employer, as well as the expected days and hours of work. Upon written notification, the Chief of Police shall have seven working days to approve the employment and notify the Employee in writing. Failure by the Chief of Police to respond in the seven working days shall be grounds for automatic approval. Approval by the Chief of Police shall not be unreasonably denied or withheld. Among the factors the Chief may consider in determining to grant or deny such a request is whether the secondary employment has the potential to create a potential conflict of interest or constitute a threat to the dignity or status of law enforcement as a profession. Should the Chief of Police deny the request, he shall state in writing all his/her reasons for the denial. An Employee must resubmit a request should conditions surrounding such secondary employment substantially change.

It is further agreed and understood by all the parties that employment as a St. Clair Shores Police Officer is primary and shall take precedence over any secondary employment. Employees shall not carry a weapon during such employment unless the Employee has a current CCW that would otherwise allow the Employee to carry it. Employees shall not directly or indirectly display a St Clair Shores police badge or other form of city identification during such employment. No City issued equipment may be used while working for another Employer.

### **Discussion**

While there are some minor differences in the proposal, as the Union has indicated in its Brief, the offers appear to be remarkably similar in form and substance. The Union does, however, take issue with a significant difference and that involves the amount of time that the Police Chief has in approving or denying the Officer's request for outside employment. The Union has proposed 7 days; the City has proposed 30 working days. The Union makes a good point in that if an Officer has the opportunity for outside employment, he may not be able to keep the secondary employer waiting for 30 working days while the Chief decides. Thirty days is just unreasonably long. Seven days is a little too short given all the daily activities the Chief encounters. Since this is not a request to be taken lightly, given the number of considerations

that are contained in the City's language, the Police Chief should under all circumstances be able to render a decision within 10 working days. If he is out of his office or out of town for some period of time, his designee ought to be able to fill in.

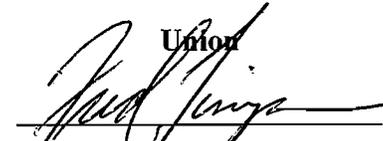
**AWARD:** The City's position is awarded with the exception of changing the 30 working day time period to a 10 working day time period.

City



Concur      Dissent

Union



Concur      Dissent

**ISSUE 17. ECONOMIC. UNION ISSUE – LONGEVITY**

**City Position:**

No change in status quo.

**Union Position:**

- A. Effective July 1, 2011, All members of the Bargaining Unit shall, after completion of ten (10) years total service, receive longevity pay.
- B. Longevity will be paid on November 1 each year in a separate check. The payment shall be based on the employee's anniversary date in the current calendar year and paid at a rate of compensation in effect on November 1 of each year.
- C. All members of the Bargaining Unit shall receive longevity pay in accordance with the following schedule;

Length of Service	Percentage of Base Wage
10 years of service	2%
15 years of service	4%
20 years of service	6%

**Discussion**

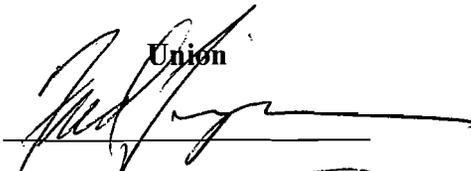
The City's position to maintain the status quo with longevity is well supported by the record based on the following evidence:

- When compared to the external comparables, the Patrol Officers rank 4 out of 10 when base pay plus longevity is considered (City Ex. 127).

- On January 1, 1995, the parties agreed to a wage scale which included a longevity percentage into the base rates for Officers with 5 years or more of service in the Department (City Ex. 125). Thus, the Officers have obtained the benefit of the wage increase roll-up on the original inclusion of the longevity payments into the wage schedule. Each time percentage increases were negotiated that has had a similar impact on the final average compensation for Officers in computing their pensions as well. It has also benefitted their overtime payments as well as vacation and holidays (Tr. 3: 263). With the new elongated wage schedule, the 20-year officer actually received \$1,000 more than the longevity "fold in" would have allowed. (Tr. 3:265-266.)
- The City calculated the Union's proposal at a cost of \$128,716 per year (Tr. 3:282); far too expensive a benefit to confer, particularly since the parties decided about 16 years ago to negotiate longevity as part of the extended wage scale steps.

**AWARD:** The City position is awarded as set forth above.

City  
  
 Concur       Dissent

Union  
  
 Concur       Dissent

**ISSUE 18. ECONOMIC. UNION ISSUE – FIREARMS QUALIFICATION PAY**

**City Position:**

No change in language. Keep the status quo.

**Union Position:**

Effective July 1, 2011, each employee required to maintain qualification with firearm, shall receive an additional 5% increase in their hourly wage in each classification and step of the wage scale.

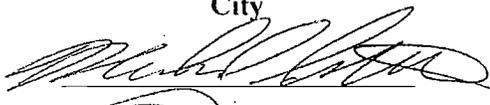
**Discussion**

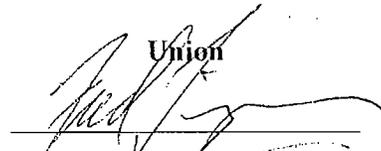
In essence, the Union's proposal seeks a 5% wage increase for each classification and step of the wage scale. To grant such a benefit would completely undo the 5% wage concession that is being award herein. Moreover, the requirement to qualify annually in accordance with the Michigan Commission of Law Enforcement Standards (MCOLES) is nothing new. It is different in character from the EMT licensure pay which the Firefighters receive. The former is required in order to work and has been part of the Patrol Officers' duties and responsibilities, whereas the

latter EMT certification requires far more extensive training and is appropriately compensated given the additional qualifications allowing the Firefighter to do a wider variety of duties essential to the community. The EMT training is extensive, i.e., 1200 hours of course and clinical work and a couple hundred hours continuing education each year. (Tr. 2:172.)

In addition, the cost to the City of the EMT licensure does not begin to approach the financial magnitude of adding 5% firearm qualification pay which would cost the City approximately \$257,000 (Tr. 3:283). The Union does fairly point out that failure to qualify annually with a sidearm could result in the loss of MCOLES certification and therefore could lead to loss of employment, however that has not happened since everyone has passed the tests (Tr. 4:180). Even in the case where it was a close call, the Training Officer was able to assist an Officer in passing the firearms certification after more than 1 effort. EMT certification requires additional duties be performed by the Firefighter. The weapons certification does not require the Patrol Officer to take on greater responsibilities, albeit the public and officers themselves want and would expect Patrol Officers to be very competent in the handling of weapons, albeit they all won't be marksman.

**AWARD:** The City position as set forth above is awarded.

City  
  
Concur      Dissent

Union  
  
Concur      Dissent

Respectfully submitted,

  
Thomas J. Barnes, Panel Chair

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April 22 2011