

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION ARISING  
PURSUANT TO ACT 312, PUBLIC ACTS OF 1969,  
AS AMENDED BETWEEN:

THE CITY OF ADRIAN,

and

MERC Case No. D-08-A-0098

POLICE OFFICERS LABOR COUNCIL  
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**ARBITRATOR AND PANEL CHAIRPERSON'S**  
**OPINION AND AWARD**

**APPEARANCES:**

**Arbitrator- Panel Chairperson**  
Allen J. Kovinsky, Esq.  
2000 Town Center, Suite 900  
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**City of Adrian**  
By: Gary P. King, Esq.  
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**Police Officers Labor Council**  
By: Thomas R. Zulch, Esq.  
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**PANEL MEMBERS:**

**City of Adrian**  
Gary P. King, Esq.

**Police Officers Labor Council**  
Duane Smith  
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I. **EXHIBITS**

A. **CITY EXHIBITS**

1. POLC Collective Bargaining Agreement, dated November 21, 2005 to June 30, 2008;
2. Petition for Act 312 Arbitration;
3. Notice of Appointment of Arbitrator, Allen J. Kovinsky;
4. Summary of Pre-Hearing Conference;
5. Public Act 63 of 2011 (selected provisions);
6. Tentative Agreement;
7. Findings, Opinion and Orders – MERC Case No. D-08-B-0239;
8. Health Insurance Plans – Savings;
9. Simply Blue PPO-HRA-Plan 1500 Benefits-At-A-Glance;
10. First Conference Report – Senate Bill 7;
11. Firefighters Collective Bargaining Agreement (1-16-07 to 7-01-08);
12. Firefighters Settlement Agreement;
13. Firefighters Tentative Agreement;
14. Technical, Professional and Office Workers Collective Bargaining Agreement (05-05-96 to 07-01-08);
15. Technical, Professional and Office Workers Tentative Settlement Agreement;
16. Employee Groups;
17. Budget Recommendations – March 24, 2011;
18. City's Fiscal Condition;
19. Comparable Communities – Fiscal Distress Scores
20. Vacation Schedules – POLC and Non-Union (Grade 9 and under);
21. Vacation Schedule – Fire;
22. Vacation Schedule – TPOAM;
23. Comparable Communities – Taxable Value Per Capita;
24. Comparable Communities – Household Income;
25. Comparable Communities – Family Income;
26. Comparable Communities – Per Capita Income;
27. Comparable Communities – Health Insurance;
28. Comparable Communities – Dental Insurance;
29. Comparable Communities – Deferred Compensation Plan;
30. Comparable Communities – Number of Holidays
31. Comparable Communities – Maximum Accumulated Vacation;
32. Comparable Communities – Sick Leave Pay Out Included in FAC; and
33. Comparable Communities – Compensatory Time Accumulation.

B. **UNION EXHIBITS.**

Tab 1. Petition for Act 312 Arbitration

Tab 2. Comparable Communities

- Tab 4. Collective Bargaining Agreement between City of Adrian and Police Officers Labor Council, effective November 21, 2005 – expired June 30, 2008;
- Tab 5. Wages, including Synopsis of Wages – Appendix A; Base Wage History Top Paid Sergeants in Comparable Communities; Percentage Increase History of Top Paid Sergeants in Comparable Communities; Base Wages of Adrian Sergeants versus the Consumer Price Index; Economic Compensation for an 18 Year Sergeant as of July 1, 2007, July 1, 2008, July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012; Educational Incentives of Comparable Communities; Longevity of Comparable Communities; Shift Premiums of Comparable Communities; Uniform and Cleaning Allowance of Comparable Communities; and Gun Allowances of Comparable Communities.
- Tab 6. Issue Synopsis of Vacations; Vacation Time of Comparable Communities; and The Arbitrators Award in the Matter of the Arbitration between the City of Adrian and Police Officers Association of Michigan MERC Case No. D-08-B-0239.
- Tab 7. Pensions-Current and Proposed Contractual Language and Pension Comparables of Comparable Communities. Pension Comparison of Deferred Compensation/Retiree Health Insurance Coverage of Comparable Communities.
- Tab 8. Health Insurance, Appendix B, Sections A and B, Health Insurance of Comparable Communities, and a portion of an Arbitrators Award regarding Health/Dental Insurance.
- Tab 9. Dental Insurance. Current and Proposed Contractual Language and Comparable Community Dental Insurance Comparison.
- Tab 10. Vacation Payout at Retirement; Current Contractual Language and Proposed Modifications of the Union and Employer.

## II. INTRODUCTION.

The City of Adrian (hereinafter referred to as the "City") and the Police Officers Labor Council (hereinafter referred to as the "Union") have been parties to a series of Collective Bargaining Agreements for a unit described as Sergeants and Administrative Sergeants employed by the City. The last Collective Bargaining Agreement had an effective date of November 21, 2005 and an expiration date of June 30, 2008. On January 27, 2011, the City filed a Petition for Arbitration pursuant to the provisions of Public Act 312 of 1969, as amended. Subsequently, the undersigned was appointed as the Impartial Arbitrator and Panel Chairperson with regard to the issues raised in the Petition, as well as those that had been a subject of negotiation between the parties, raised by the Union.

On July 6, 2011, a Pre-Hearing Conference was conducted with respect to the pending Act 312 Arbitration case. The parties were and are represented by Mr. Thomas Zulch, on behalf of the Union and Mr. Gary King, on behalf of the City. The Panel Members are Mr. Gary King, on behalf of the City and Mr. Duane Smith on behalf of the Union. The parties requested an Executive Session prior to the issuance of an Award. The Award has been drafted by the Panel Chairperson; however, based upon the parties' expressed desire, an Executive Session will take place on December 8, 2011.

Pursuant to the request of the parties, one day was scheduled for Hearing which took place on September 20, 2011.

At the commencement of the Hearing, the parties stipulated that the proceedings were timely; and that with one exception, the Panel had jurisdiction over all matters and issues which were to be presented to it. It should be noted that Mr. King specifically objected to the jurisdiction of the Panel with respect to any health care issues involving premiums due to Senate Bill 7, which subsequently became Act 152 of the Public Acts of 2011. Otherwise, the parties stipulated to the jurisdiction of the Panel with respect to all other issues. It should further be noted that subsequently, the Governor did, in fact, sign into law Senate Bill 7. As a result, an interim decision was issued by the Panel Chairperson which held that the provisions of Act 152 did not constitute mandatory subjects of bargaining, but rather vested total discretion in the local unit of government legislative body with respect to the determination as to whether or not they wished to abide by the hard caps for the payment of premiums set forth in Section 3 of Act 152 or they wished to opt for the provisions of Section 4 of said Act which provides for an 80% payment by the local unit of government and a 20% payment by Employees for their health care premiums, or pursuant to Section 8 of the Act, whether or not they wished to opt out of the provisions of the Act entirely. In addition to my ruling with regard to the fact that the provisions of said Act did not constitute mandatory subjects of bargaining, I further ruled that the contract, which will be executed upon the issuance of this Award, could not relate back in time for purposes of determining when Act 152 could be effectuated. Thus, pursuant to the decision of the *Michigan Employment Relations Commission in the case of the City of Wyandotte Police Department and the Command Officers Association of Michigan and the Police Officers Labor Council, Case No. R-98-I-113*, the date of execution, pursuant to that decision, is literal, and therefore, becomes the date upon which the new Collective Bargaining Agreement is actually signed. This is true even though the contract may relate back in time to an earlier date insofar as

the contract itself is concerned. Finally, I further ruled that the provisions of Act 152 could not be effectuated until the Award is issued and a new contract is executed. It should be noted that the Union has objected to my findings with respect to the first two issues, and the City has objected to my finding with respect to the last issue regarding Act 152.

Currently, the bargaining unit consists of three Sergeants. In the past there have been as many as six individuals in the bargaining unit consisting of one Lieutenant and five Sergeants.

It should further be noted that the parties submitted Last Best Offers in a timely fashion, and the Last Best Offers of both the City and the Union are attached to this Award and incorporated herein by reference.

Act 312 of the Public Acts of 1969 was designed to prevent strikes by municipal police and fire departments, including dispatch personnel and/or certain first aid responders. Among its provisions, Section 8 provides that at or before the conclusion of the Hearing held pursuant to Section 6 of the Act, the Panel is required to identify the economic issues in dispute and direct each of the parties to submit, within such time limit as the Panel shall prescribe to the Panel and to each other, their Last Best Offers of Settlement on each economic issue. It further provides that the determination of the Panel as to the issues in dispute and as to which of the issues are economic shall be conclusive. It has been determined that all of the issues in dispute are in fact economic.

The Act further provides in Section 9 as follows:

"Section 9. Where there is no agreement between the parties, or whether 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 orders upon the following factors as applicable:

- (a) The lawful authority of the Employee.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the Employees involved in the arbitration proceeding, with the wages, hours and conditions of employment of other Employees, performing similar services and with other Employees generally:
  - (i) in public employment in comparable communities.
  - (ii) in private employment in comparable communities.
- (e) The average consumer prices for 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 taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.”

Section 10 of the Act requires a majority decision of the Panel with respect to each issue if supported by competent, material and substantial evidence on the whole record shall be final and binding upon the parties and may be enforced at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected Employees reside.

In addition, Section 13 of the Act states:

“During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, but a party may so consent without prejudice to his rights or position under this Act.”

In addition to the provision hereinabove set forth, it should be noted that effective on July 20, 2011, Public Act 116 amended Act 312 in a number of ways. For purposes of this proceeding, those which are most significant are the amendments which require the arbitration panel to give the most significance to the public employer’s financial ability to pay, which is defined to include the financial impact on the community, the interest and welfare of the public, and all liabilities whether or not they appear on the balance sheet of the unit of government. In addition, Public Act 116 requires panel consideration of the wages, hours and other terms and conditions of “other Employees” of the Employer “outside of the bargaining unit in question”.

The requirements of Act 312 and Public Act 116 as hereinabove set forth where applicable have been given full consideration by the Panel and the Panel Chairperson.

One further Act must be noted with respect to the instant case: Public Act 54, which became effective on June 8, 2011, requires that upon the expiration of a Collective Bargaining Agreement, wage and benefit levels are to be frozen, including wage step increases. It further provides that extensions pending negotiations for a successor agreement do not extend the expiration date set forth in the Collective Bargaining Agreement. It also provides that neither the parties to a Collective Bargaining Agreement nor may an arbitration panel order any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration of the Collective Bargaining Agreement.

It should be noted that there was no dispute between the parties with respect to the comparable cities which were determined to be Alma, Coldwater, Lapeer, Milan, Monroe, Owosso, Tecumseh and Ypsilanti.

By way of background, the City noted in its Brief that it is located in Lenawee County, Michigan and employs 130 full-time Employees. In addition to 61 non-union Employees, each of the remaining Employees belong to one of four separate bargaining units. Thirty-one of those Employees in the waste water, water treatment, water maintenance, DPW, parks, forestry and cemeteries are represented by the TPOAM under a Collective Bargaining Agreement that expires July 1, 2012. Fifteen of the Employees are in the fire department represented by Local 1511 of the International Association of Firefighters and have a contract in place that runs through June 30, 2014. Twenty-two patrol officers are represented by the Police Officers Association of Michigan and are covered by a Collective Bargaining Agreement resulting from an Act 312 Award, which expired on June 30, 2011. As previously noted, the bargaining unit of the 3 Police Sergeants have a Collective Bargaining Agreement which expired on June 30, 2008.

The Union, by way of introduction, has cited various provisions of Act 312, including Sections 8, 9 and 10.

### III. ISSUES.

A. Duration of the New Collective Bargaining Agreement. The City's Last Best Offer of Settlement is for a contract that runs from the date of the Act 312 Award through June 30, 2013. Union's Last Best Offer of Settlement is for a Collective Bargaining Agreement that commences on the date of the Act 312 Award and expires on June 30, 2014.

B. Health Insurance. The City's Last Best Offer of Settlement is for a Blue Cross/Blue Shield ("BC/BS") Simply Blue 1500 Plan with deductibles of \$1,500 single/\$3,000 two-person and family, with the City reimbursing a portion of the cost through a health reimbursement arrangement - the last \$750 for single coverage and the last \$1,500 for two-person and family coverage. The Plan also includes an 80/20 co-insurance, with maximum co-insurance payments by Employees of \$2,500 for single coverage and \$5,000 for two-person and family coverage, a \$30 office visit co-pay, \$150 emergency room co-pay, a maximum of 12 covered chiropractic visits per year, and a \$7 generic / \$35 brand name preferred/\$70 brand name non-preferred prescription drug co-pay.

The City also notes that consistent with the Chairperson's Interim Award, the Employee contributions toward the cost of health care are alleged by the City to be governed by Public Act 152.

The City's proposal would also decrease the opt-out stipend from \$100 per month to \$50 per month.

The Union proposal seeks to adopt the identical health insurance of the patrol bargaining unit as set forth in Union Exhibit 8. The Union notes that the command officers seek only what their subordinates already have, which is the Blue Cross/Blue Shield Option 12,

reimbursed to Option 10. The Union notes that on top of the obvious savings on the premium, the City will also impose additional savings under the provisions of Public Act 152 of 2011.

It should be noted that the City indicates that the Union has proposed that in the event the Employer exercises its opt out of Public Act 152, certain contributions toward health care would be set at \$40 per month for single coverage, \$50 per month for two-person coverage and \$60 per month for family coverage. However, that is only in the event that the City determines it wishes to opt out of the proposal.

The Union has also proposed to maintain the \$100 per month stipend for opting out of the City's health insurance.

Both parties have also submitted proposals with regard to dental insurance. The City proposes an improvement on the dental insurance coverage to a level of 90%, 75% and 50%, with an annual dollar limit of \$800 per person. The main difference between the City proposal and the Union proposal is the City proposal calls for a contribution for 20% of the premium costs for dental insurance, while the Union's proposal would be \$2 for single coverage, \$4 for two-person coverage, and \$5 for family coverage. Both proposals provide for an annual dollar limit of \$800 per person.

C. Wages. Both parties are in agreement with respect to wages that there will be no retroactive wages prior to the effective date of the Award. Both parties are in agreement that with respect to the effective date of the Award, a 1% across-the-board wage increase is appropriate. The Employer, in addition, proposes a wage freeze through July 1, 2013, after the 1% wage increase effective with the date of the Award. The Union proposes a wage freeze through the effective date of the Award, but the Union proposes that the Collective Bargaining Agreement terminate on June 30, 2014, as opposed to June 30, 2013, as proposed by the Employer.

D. Vacation Accumulation and Buyout. The City proposes as its Last Best Offer what it terms to be a clarification of the Collective Bargaining Agreement so as to codify what the City believes to be the clear intent of the contract, which is: Employees leaving the employment of the City are to be reimbursed for earned and unused vacation time to a maximum of 320 hours. The Union would add to the 320 hour figure, any amount of vacation that the Employee had earned in the year in which he or she leaves City employment.

E. Limited Final Average Compensation. The City proposes that for purposes of calculating final average compensation for pension purposes, it may include no more than 240 hours of paid leave time and may not include overtime compensation. The Union proposes the status quo, which would not have the 240 cap on paid leave, nor would it prohibit overtime being calculated into final average compensation.

F. Cap on City's Pension Contribution for New Hires. The City proposes for those Employees hired after the effective date of the Act 312 Award to contribute no more than 16.2% of the Employee's base salary toward the cost of the Employee's pension, with any additional costs being the sole responsibility of the Employee. The Union proposes to maintain



the status quo, which would not contain a cap with respect to the Employer's pension and contributions.

G. Vacation Accrual. The City's Last Best Offer of settlement is to maintain the current contractual language with regard to vacation accrual. The Union's Last Best Offer of Settlement is to maintain the current vacation schedule for Employees with less than 10 years of service, but to effectuate modifications for Employees with 10 or more years of seniority as follows: Currently, Employees having eight years of seniority, but less than 15, receive 15 vacation days with pay, Employees having 15, but less than 20 years of seniority receive 18 days of vacation pay, and Employees having 20 or more years of seniority receive 20 days of vacation pay. Under the Union proposal, Employees with eight years, but less than 10 would receive 15 days of pay, Employees having 10, but less than 15 years, would receive 16 days of pay, Employees having 15 years of seniority, but less than 20 years would receive 20 days of pay, Employees having 20 years of seniority, but less than 25 years would receive 21 days of pay, and eligible Employees having 25 years of seniority or more would receive 22 days of pay.

H. City Contribution to 457 Plan. The City's Last Best Offer of Settlement is to maintain its contribution of 2.5% of base salary to each Employee's 457 Deferred Compensation Plan. The Union would have the amount of the Employer's contribution increased to 3.5% of base salary effective January 1, 2012.

I. Economic Background and Other Considerations. In support of its various positions, the Employer has noted the relevant portions of Section 9 of Act 312 and notes that pursuant to the Supreme Court's decision in the case of the *City of Detroit vs. DPOA 498 Mich 410*, Justice Williams stated:

"Any finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed Section 9 factors, as applicable. The Employer further notes that all Section 9 factors are not all necessarily accorded equal weight, but rather it is up to the panel to decide the relevant importance under the singular facts of the case."

The Employer further opines that the panel is required to consider the total cost or the overall impact of its award. It is not sufficient that the Employer may lag behind other comparable communities on particular issues if the realities of collective bargaining require the panel to consider other elements and costs in the total package. The mere fact that the City is capable of paying the cost of a particular proposal when added to the cost of other proposals awarded by a panel may be considered to be excessive. Thus, when combined with other benefits, an economic package may far exceed a consumer price index. As noted by Arbitrator Allen in the *County of Kalamazoo, 1997 MERC, FF/Act 312*:

"The neutral must be careful not to grant more than the parties would have been able to gain in the actual bargaining process."

Arbitrator St. Antoine opined in the case of the *City of Livonia, 1998 MERC, FF/Act 312*:

"The Chairperson of this panel is on record in a number of interest arbitrations that to best preserve healthy, voluntary collective bargaining, the soundest approach for an outsider in resolving Union and Employer disputes is to try to replicate the settlement of the parties, the parties themselves would have reached had their negotiations been successful."

It should be noted that while I clearly understand the pronouncements by Arbitrators Allen and St. Antoine, the simple fact of the matter is to ground an award solely on what the parties would have reached had they been successful in the negotiations seems to be based on a false premise. The simple fact of the matter is that when the parties come to an arbitrator pursuant to the provisions of Act 312, they have not been successful in the collective bargaining process in reaching an agreement. Thus, to try and determine what they would have reached had they been successful is pure speculation. In addition, none of the factors set forth in Section 9 nor the recent amendments to the Act in any way seem to indicate that the Panel is to divine what the parties would have reached by way of a settlement with respect to any particular issue.

With respect to the fiscal ability of the City, the Panel is aware that the City Manager testified with respect to the primary sources of revenue being property taxes and state revenue sharing that the taxable value within the City of Adrian has fallen from a high of \$461,039,000 to a current assessed taxable value of \$411,414,000. Moreover, the Panel notes that further losses are projected for the next four to five years with total taxable value being projected to be as low as \$375,327,000. This means that within a period of approximately six years, there will be a net loss in taxable value of some \$85,000,000. The Panel is further aware that the City is currently taxing at a maximum millage rate as permitted by its Charter. Tax revenues have declined from \$7,194,000 to \$6,008,000 in the current year and are projected to decrease by another \$500,000 within the next four years. Thus, the City stands to lose approximately \$1.7 Million in revenue over a period of six years. By way of comparison, the projected property tax revenue for the 2014-2015 fiscal year will be nearly identical to the revenue generated in the 2001-2002 fiscal year.

In addition, the City may lose an additional \$903,000 in personal property tax revenue based upon proposed State legislation. There are also ongoing appeals to the Tax Tribunal which may result in the loss of an additional \$315,000 in property taxes.

State shared revenues have also declined over the last decade. In the 2000-2001 fiscal year, the City received approximately \$3,010,000 in State shared revenue. That figure in the current fiscal year is approximately \$1,411,000 thus in a period of 11 years, the City has suffered a loss of approximately \$1.6 Million in State shared revenue.

On the other hand, in terms of expenditures, salaries and fringe benefits comprise 70% of the expenses of the City's general fund budget. Annual pension costs from 2002-2003 fiscal year to 2011-2012 fiscal year will have increased from \$171,000 to \$1,080,000. The pension costs are projected to increase by an additional \$56,000 for the 2012-2013 fiscal year. The City notes that the pension contribution for the members of the bargaining unit in the instant case are equivalent to 70% of their wages. This, of course, is due in part to the small number of Employees in the unit.

While the City's health insurance expenses have been decreasing, this is explained in part by the significant loss of Employees, and the fact that most City Employees exclusive of the Police Department have agreed to plan design changes and significant Employee contributions toward premium costs.

The City has attempted to cope with the loss of revenue and the increase in expenses by reducing its full-time payroll to 155 to 128 full-time employees. The decrease in the personnel heretofore eluded to is approximately 17%. However, the City notes that the Police Department full-time personnel has only decreased from 36 to 31 during the same time frame or approximately 14%.

The City has attempted to retain a balance in its general fund equivalent to 15% to 20% of its annual general fund expenditures. The unreserved fund balance, according to the City as of June 30, 2010, was \$1,712,000, a decrease of over \$4,000,000 from the unreserved fund balance as of June 30, 2009.

While the City contracted for a new city hall and a new police station, it believed that there was a critical need for those expenditures. Rather than engaging in \$4.5 Million of expenses to renovate the old city hall, the City was able to move its city hall and relocate the police station for less than the cost of the renovation of the old city hall alone.

The City also notes that it has been placed, by the Michigan Department of Treasury, on its "fiscal watch list". This is defined as being in a financial circumstance that may be cause for concern but is able to still be addressed by the local unit of government. Nevertheless, those governing bodies of local units on the watch list should exercise added care when making financial decisions and formulate a financial strategy to return the local unit to a fiscally neutral score. The City notes that while its score on the fiscal stress indicator is 6, on a scale of 10, with zero being the preferred score, the comparable communities used for purposes of this proceeding, all range from 3 to 5, and are therefore, in the opinion of the City, not in as much financial distress.

Finally, the City alleges that while the Union has presented a request for increases in wages and various benefits (which will be hereinafter discussed on an issue-by-issue basis) it has presented nothing by way of fiscal or financial evidence to justify those increased expenditures.

On the other hand, the Union has indicated its beliefs that its proposals are fair and reasonable based upon the criteria of Public Act 312. The Union believes that it has supported each of its positions, based upon the wealth of exhibits and testimony presented to the Panel. It alleges that the Collective Bargaining Agreement is actually a concessionary contract, and that the Command Officers are merely asking to be given what Patrol or other bargaining units throughout the City already have. The Union does not believe that there is any financial road block preventing the selection of the Union proposals based upon the Public Act 312 criteria, the exhibits, and the testimony.

The Union further alleges that the Command bargaining group has assisted greatly with the current financial situation of the City. It notes that two Command positions have been

eliminated, leaving three Sergeants to do the work previously performed by a Lieutenant, a Detective Sergeant and three Patrol Sergeants. It further notes that the Command group is well below average in pay compared to the external comparables. It alleges that the City receives the work of Sergeants for bargain rates and pay in benefits, and that the Union proposals are far more reasonable, and accordingly must be adopted by the Panel.

#### IV. DISCUSSION AND DECISION OF ISSUES IN DISPUTE

A. Duration of New Collective Bargaining Agreement. Both parties' Last Best Offers of Settlement agree that the new Collective Bargaining Agreement shall commence upon the issuance of the Act 312 Arbitration Award. The parties have not had a new Collective Bargaining Agreement since June 30, 2008. The only difference between the parties is that the City seeks a contract which would terminate on June 30, 2013, while the Union proposes a contract for a period terminating on June 30, 2014.

The City wishes a shorter term contract based upon the fact that it believes that the state-wide and local economic outlook is uncertain. It does not know what the property values will be in the future nor whether or not the state will eliminate the personal property tax. In addition, it is uncertain as to the future of statutory revenue sharing.

The Union notes that there has been over a three year delay since the last Collective Bargaining Agreement terminated. It does not suggest that there is any hostility between the parties but rather that the delay was mutual. It believes that the longer term contract would allow for essentially a three year Collective Bargaining Agreement since it is already December 2011 and the contract would terminate on June 30, 2014 per its proposal. It further suggests that a three year agreement is common among labor agreements. It would allow for a period of two years to determine what areas of concern may be addressed in a new Collective Bargaining Agreement. It would allow two years in which the parties would not be subject to negotiations.

The Union notes that the extended Collective Bargaining Agreement will in actuality save the employer money. It does not believe that its current proposal is a value rich one. It has made no demand for additional wages in the extra year.

With all due respect to the arguments offered by the City, I do not believe that a longer term contract would result in harm to the City. A longer term contract allows for stability with respect to the wages and benefits to be paid to the members of the bargaining unit. A longer term contract guarantees certainty with respect to the future years insofar as the costs of the wages and benefits are concerned. The additional year proposed by the Union does not carry with it any additional costs in term of wages and/or benefits. The parties have been without a Collective Bargaining Agreement for a period of approximately three and a half years. An award of the additional year proposed by the Union in reality only provides for a Collective Bargaining Agreement of two and a half years into the future.

Accordingly, the last best offer of the Union is found to be the more appropriate proposal and is hereby awarded in accordance with the provisions of Section 9 of Public Act 312. It should be noted that the City panel member dissents with regard to this issue.

B. Wages. Both the City and the Union have presented virtually identical last best offers with respect to wages. Both propose no wage increase for the prior years (which could not be awarded under the present state legislation in any event). Both propose a one percent increase upon the effective date of the award and both propose no other increases with respect to the remaining years of the Collective Bargaining Agreement. The only difference

between the proposals of the City and the Union were with respect to the additional year proposed by the Union for the duration of the Collective Bargaining Agreement in which the Union proposes no increase, but which was opposed by the City.

Accordingly, the last best offers of the City and the Union with respect to the one percent wage increase effective upon the date of the award is hereby awarded.

Both the City and the Union concur with respect to this award with the exception as herein above set forth that the City dissents with regard to the fourth year which does not involve a wage increase.

C. Health Insurance. The City's Last Best Offer with regard to health insurance relates to the Blue Cross/Blue Shield Simply Blue 1500 Plan with deductibles of \$1,500 for a single employee - \$3,000 for a two-person and family, with the City reimbursing deductibles through a health reimbursement arrangement the last \$750 for single coverage and the last \$1,500 for two-person and family coverage. The plan also includes an 80/20 co-insurance (with maximum co-insurance payments by employees of \$2,500 for single coverage and \$5,000 for two-person and family coverage), a \$30 office visit co-pay, \$150 emergency room co-pay, a maximum of 12 covered chiropractic visits per year, and a \$7 generic/ \$35 brand name preferred/\$70 brand name non-preferred prescription drug co-pay.

The City further notes that pursuant to my interim award of November 3, 2011 the City's proposal for employee contributions toward the cost of health care are governed by Public Act 152 of 2011.

In addition, the City proposal would also decrease the opt-out stipend from \$100 per month to \$50 per month.

The City notes that two significant developments occurred with respect to the issue of health insurance since the close of the hearing on September 20, 2011. First, the interim decision of the arbitrator was issued on November 3, 2011 which provided that Public Act 152 of 2011 does not constitute a mandatory subject of bargaining and that Public Act 152 applied to these proceedings. Second, the City notes that it has withdrawn from its Last Best Offer of Settlement a proposed "me too" clause.

The City further notes that Richard Donner, Senior Vice President of Kapnick Insurance Group testified with respect to City Exhibit 8 that it represented a summary of three separate and distinct health insurance plans. The three plans were the Blue Cross/Blue Shield PPO 10 Plan, the BC/BS PPO 12 Plan, and the BC/BS Simply Blue 1500 Plan. Currently the BC/BS PPO 10 Plan covers only the employees of the bargaining unit at issue in this case. The second plan (the BC/BS PPO 12 Plan) covers the City Police Officers. The third plan (the BC/BS Simply Blue 1500 Plan) covers all other City Employees who are eligible for health insurance benefits.

In contrast to the City proposal, the Union has proposed a BC/BS Community Blue Option 12 Plan with the City reimbursing through a health reimbursement arrangement all deductibles to the level of Community Blue 10, co-insurance levels at an 80/20 level with a \$30 office visit

(including chiropractic), MH of 80 percent, \$50 ER, 100 percent routine mammography. A stop loss for the policy shall be \$2,500/\$5,000 (after a \$250/\$500 deductible is satisfied). A drug plan with a \$10/\$40 co-pay, with oral contraceptives and a two times mail order prescription drugs. In addition, the Union proposes that should the City exercise its option to opt-out of Public Act 152, Employee contributions toward the cost of health care would be set at \$40 per month for single coverage, \$50 for two-person coverage, and \$60 per month for family coverage. Finally, the Union's offer leaves the opt-out stipend at \$100 per month.

A comparison of the two Plans results in the following:

A difference in deductibles of \$250/\$500 vs. \$750/\$1,500; an 80/20 co-insurance for both proposals; co-insurance maximums of \$2,500/\$5,000 are the same for both Plans; the \$30 office visit is the same for both Plans; the emergency room co-pay is \$100 higher in the City-proposed Plan; and the Employee cost for generic and name-brand preferred drugs is actually lower in the City's proposed Plan.

The City notes that despite relatively minor differences in the overall costs savings when compared to the current vs. the proposed City Plan, the savings to the City is double what would be associated with the Union proposal.

The City further notes that the cost to the Union membership, based upon the applicability of Public Act 152 to the membership, as compared to the value of any added benefit to the membership, is excessive.

The City further notes that based upon internal comparables, only the Employees of the Police Department are currently outside the provisions of the BC/BS Simply Blue \$1500 Plan.

In support of its position, the City has set forth a number of decisions by Arbitrators Roumell, Kruger, Brown, Rosenbaum and Knight, stressing the importance of internal comparables.

Finally, the City notes that the Union proposal would maintain the \$100 per month stipend for opting out of the City's health insurance, despite the fact that the City's proposal as to the opt out amount is consistent with the City's collective bargaining unit with another of its Act 312 eligible units.

The Union notes that its proposal adopts the identical health insurance of the Patrol bargaining unit. Thus, the Union notes that its proposal seeks only to provide the Command Officers with the same Plan that their subordinates in the Patrol unit already have.

It notes that the Employer will receive significant savings, even with only three bargaining unit members, while maintaining equal benefits between the Command and Patrol bargaining units. It notes that in addition to the obvious savings on the total premiums, the Employer will receive additional savings pursuant to its election under Public Act 152 of 2011 to adopt either the hard caps provided under Section 3 or the 80/20 co-payment of insurance premiums under Section 4 of the Act.

The Union further notes that its proposal is comparable to the community of Coldwater, but is a lesser plan than the comparable communities of Lapeer and Monroe since the members of the bargaining units in those respective cities pay nothing toward the cost of their insurance. It notes that none of the outside comparables has as poor an insurance coverage with as much as a 50% deductible paid by the Employee.

Insofar as the City's reliance upon internal comparables is concerned, the Union notes that the City non-union employees have no choice as to their insurance coverage, since it is dictated by the City. They are not covered by Act 312 and therefore do not have the right to arbitrate any of their wage or benefit issues. In addition, the non-union employees do not work the same schedules and do not have the dangers imposed by their duties as do the members of the Police Department. The non-union employees are not subject to the hazards of police work of a Police Command Officer. Thus, the Union concludes that the job differences constitute a favorable argument that Police Officers should be provided a better health insurance than office and DPW workers.

The Union notes that while the firefighters are currently under the same insurance plan as proposed by the City and are subject to dangers in their regular daily duties, and work longer hours, as well as on holidays, nevertheless, the Union concludes the firefighters' schedules are significantly different since they work a 24 hour shift. Many of those hours consist of sleeping and being engaged in non-fire-fighting duties which result in significant off-duty time. In addition, firefighters historically have additional jobs which allow them to earn outside income in order to supplement their pay. In contrast, the Union alleges that the Police Command work an eight hour day, do not sleep on duty, and are not available in terms of having large blocks of time for outside employment. Thus they have a much more difficult time in supplementing their income.

With respect to the Employer opt-out proposal, the Union notes that when the Employee opts out of health insurance, it results in savings of thousands of dollars for the Employer. The Employer is proposing a 50% reduction from \$100 to \$50 per month for opting out. The Union notes that Employees who opt out of the insurance coverage essentially save the Employer approximately \$11,000 per year, over and above the \$1,200 that they actually receive. However, a \$50 opt-out payment is insignificant according to the Union. The Union alleges that the Employer proposal will act as a dis-incentive to members of its bargaining unit to opt out of the coverage.

With respect to the health care issue, there are two independent issues to be determined. Taking the easier issue first, the opt-out proposal of the Union in the opinion of the Panel Chairperson, more nearly meets the standards of Section 9 of Public Act 312. The savings to the Employer with respect to this proposal at most would amount to \$600 per Employee per year. The Employees will, as a result of Public Act 152, be required to pick up a significant sum of money toward the costs of health care premiums. There does not seem to be a significant trend toward reducing the opt-out stipend in either internal or external comparables. Accordingly, the Union Last Best Offer with regard to the opt-out stipend is hereby awarded. The City Panel Member dissents from this finding.



With respect to which of the Blue Cross Plans as proposed by the City and Union should be adopted, it is clear that the City has moved in the direction of the Simply Blue 1500 Plan, with its internal bargaining units and non-union employees, with the exception of the Police Department. As hereinabove noted, the legislature of the State of Michigan, as a result of recent statutory amendments, has indicated that the Panels are to pay closer attention to internal comparables. While it has been my experience that all Panels have historically paid close attention to internal comparables, as evidenced by the citation set forth in the City's Brief, nevertheless, the legislature has clearly sought to place greater emphasis on internal comparables. The internal comparables clearly favor the Last Best Offer of the City. The City, in all probability, will effectuate greater savings with its proposal than that of the Union. Clearly, the Employees will be subjected to paying somewhat higher deductibles after reimbursement based upon the Union proposal of \$250/\$500 vs. \$750/\$1,500. However, the co-insurance is the same for both Plans, as is the co-insurance maximums and the charge for office visits. As noted by the City, the emergency room co-pay is higher in the City proposal, but the City's proposed drug plan, in terms of costs for generic and name-brand preferred drugs is actually lower.

The City believes that despite minor differences it can achieve a greater overall cost savings of nearly twice the savings associated with the Union's proposal. Given the nature of the City's finances, any savings which can be achieved with relatively minor cost to the Employees should be seriously considered. Accordingly, it is the decision of the Panel Chairperson that the City's Last Best Offer with regard to the health care insurance is hereby awarded. The Union Panel Member dissents.

D. Dental Insurance. Both the City and the Union agree that with respect to dental coverage, the proposals are identical. Each provides for benefit levels of 90%/75%/50% with an annual dollar limit of \$800 per person, as outlined in the agreement with the carrier. However, the parties disagree with respect to the amount of the Employee contribution for the premiums of the dental insurance coverage. The Employer has proposed a contribution of 20% of the premium and the Union has proposed a contribution of \$2 per month for single coverage, \$4 per month for two-person coverage, and \$5 per month for family coverage.

The Employer notes that the 20% contribution level proposal it has put forward is consistent with the current Collective Bargaining Agreement with the City and the Firefighters' Union. It further notes that at a 20% contribution rate, the premium paid by the Employee would be in line with one of the options provided in Public Act 152 (the 80/20 option). It alleges that state public policy now favors more than nominal contributions toward Employee benefit costs, such as dental insurance.

The Union notes that the Employer's proposal will severely diminish the \$800 cap on dental insurance that an Employee or member of the Employee's family can be reimbursed for pursuant to the current policy. In addition, the dental premium cost is factored into the health care plan. The actual dental costs are not separated out in the Exhibits nor was any testimony offered with regard to this issue. Thus, the Union alleges that no actual cost was presented by the Employer for the Plan. The Employer seeks a concession without revealing the actual cost, nor has it presented a need or reason for a severe concession on the part of the Employee. The Union further notes that external and internal comparables support the Union's position. Five

out of seven external comparables have better coverage. Six out of seven external comparables have the Employer paying 100% of the dental premium. Internally, only non-union and firefighters pay more in monthly premiums than the Union proposal. The Union notes that both the Police Patrol and the TPOAM pay the same amount as the Union has proposed for dental insurance. Thus, the Union concludes that comparables, as a whole, mandate the selection of the Union proposal.

According to the Exhibits offered by the Employer, four of the comparable external communities pay the entire cost of the dental coverage for the Employees. Three of the communities require Employee contributions, one of which (Owasso) requires a contribution above the premium cost of \$40 per month while Alma and Coldwater have fixed employee contribution rates ranging the case of Alma from \$15 per week for a single to \$30 for a two-person to \$36 to a family. And in the case of Coldwater, from approximately \$6 per week for a single to \$12.50 per week for a two-person and \$16 per week for a family.

It appears that neither the external nor internal comparables favor the proposal of the City. A majority of the external comparables do not require any contribution by an Employee and those that do would appear to be while somewhat higher than the Union proposal, fairly minimal as compared to the cost that would be imposed by the City upon the members of the Bargaining Unit. In addition, with respect to internal comparables only one Bargaining Unit at the City has a dental contribution equivalent to that proposed by the City with respect to this Bargaining Unit. If, dental care is included within the health care premiums but a separate premium is being charged for it that can be actually calculated, no testimony nor an Exhibit was offered which would indicate what the savings actually amount to with respect to the City proposal. As previously noted the members of this Bargaining Unit from and after January 1, 2012 will incur a considerable additional cost for health care based upon the City's adoption of either Section 3 or Section 4 of Act 152. Accordingly, based upon the costs to be incurred by the Employees plus the fact that the external and internal comparables favor the Union proposal, it is hereby awarded. The City panel member dissents.

E. Vacation Payout-Buyout (Article 20, Section H of the Collective Bargaining Agreement). The City's Last Best Offer of Settlement is characterized as a clarification of the Collective Bargaining Agreement in order to codify what the City believes is the clear intent of the contract. The City proposes that upon termination of employment an Employee will be reimbursed for earned and unused vacation time to a maximum of 320 hours. (The exception to this would be a voluntary termination on less than ten days notice or a discharge). The Union's Last Best Offer is that in addition to the 320 hours which are accrued in prior years, the Employees could also accrue additional vacation time in the last year of their employment up to 160 additional hours. The Union notes that every January 1<sup>st</sup>, an Employee with 20 or more years of service is credited with 160 hours of vacation and that it is the additional 160 hours which is in dispute. The Employer notes that the current Collective Bargaining Agreement provides "vacation may be accumulated up to twenty-five (25) working days or twice the annual allowance, whichever is greater for the Employee concerned". The Employer notes that using a vacation schedule contained in Section E of Article 20, twice the annual allowance would be 40 days or 320 hours. The Employer alleges that the Union is seeking to increase the 320 hour payment maximum by the number of vacation days that the Employee earned in the year in

which he or she leaves City employment. This would result in an increase to a maximum of 480 hours. The Employer further notes that in addition to the payout of accrued vacation time up to 320 hours, the City also pays out accumulated compensatory time up to 40 hours which is a benefit that is not enjoyed in seven of the eight comparable cities. The Employer further notes that one-half of the comparable cities permit no vacation accrual whatsoever. The City of Milan limits vacation approval to 240 hours. Thus, the Employer concludes that its proposal to limit the amount of hours to 320 cannot be characterized as anything but reasonable.

The Union believes that the position taken by the City forces an Employee to use or lose vacation credited to the Employee during their last year of employment and that such a proposal is unfair. The Union notes that vacation is earned in the prior year and thus, Employees are one year behind in vacation. Assuming a twenty-five year employee worked 12 months the previous year he or she would be credited with 160 new hours on January 1<sup>st</sup>. The Union notes that if an Employee plans to retire it may be difficult to use 20 days of vacation with the approval of the chief unless the Employee works the majority of the year. Each hour that would not be used would result in a forfeiture of those hours even though they were earned in the previous year and that such a forfeiture would be unfair and unreasonable.

The Union further alleges that the current Collective Bargaining Agreement does not require a forfeiture nor does it cap the payout at the amount carried over. It allows an Employee to be paid for all unused vacation which according to the Union, consists of the 320 hours carried over plus up to 160 hours which is added to the bank on January 1<sup>st</sup> in the last year of Employee's service. The Union believes that it is only asking to maintain the status quo of the currently Collective Bargaining Agreement.

Both the City and the Union allege that their Last Best Offers simply maintain the status quo. However, the City and the Union have very different ideas as to what the status quo is. An Employee clearly can accumulate pursuant to the current vacation schedule a maximum of 40 days at eight hours per day or 320 hours of vacation. The issue between the parties is whether or not an Employee can accumulate an additional 160 hours of pay in which the Employees leaves the service of the Employer. I do not believe that the current contract language would result in the interpretation set forth by the Union. Section H of Article 20 when reviewed on its own merits clearly provides for a limitation upon the amount of vacation pay an Employee may accrue. The Union has not set forth any examples wherein an Employee has received more than 320 hours of accumulated vacation pay upon the Employee's termination. Had the parties wished to have a ceiling of 320 hours plus the amount of vacation accumulated in the last year of their employment, they could have easily said so in the Collective Bargaining Agreement. Accordingly, I believe that the Employer's interpretation of Section H and its Last Best Offer with regard to that Section more nearly complies with a reasonable interpretation of the Collective Bargaining Agreement and therefore, the Employer's Last Best Offer with regard to the vacation buyout is hereby awarded. The Union panel member dissents.

F. Vacation Accrual. The Union proposed as its Last Best Offer a number of additional days with respect to the vacation schedule based upon the position that it is seeking no more than that which the Patrol Unit currently has. It believes that a review of the outside comparables clearly shows that the Adrian Command Officers are below average in vacation

days received. In addition, the Bargaining Unit is low on wages and low on vacation time. It further sets forth that even with the small increase requested by the Bargaining Unit they would still remain one day below the average of the external comparables.

The Union further notes that on an internal comparable basis, firefighters receive 11, 24-hour days off, which gives the firefighters 264 hours of vacation time, compared to the 160 hours Command Officers currently receive (both examples utilize the maximum number of vacation days available within each Bargaining Unit). The Union notes that the two extra days requested give Command 176 hours, which is still far below the firefighter department, and that additionally, the Patrol has more hours of vacation accrual than the Command. Thus, the Union concludes that both the external and internal comparables favor its Last Best Offer.

The City wishes to maintain the status quo based upon its current financial condition and its review of its internal comparables. It notes that the Command Officers' vacation days are identical to those of non-union Employees at grade nine and under. It further notes that the schedule applicable to members of the TPOAM is less generous than the existing vacation schedule applicable to the members of this Bargaining Unit. For example, Employees in the TPOAM with five, but less than eight years of service receive one less day of vacation than members of this Bargaining Unit, and those with eight, but less than 10 years of service receive two days less vacation. It further alleges that the firefighters receive considerably fewer vacation days in number as well (however, the City does not dispute that the firefighters receive more hours). The City further notes that it provides members of the Bargaining Unit with more paid holidays than any of the comparable communities. It also notes that the members of this Bargaining Unit receive two more paid holidays than are received by the Patrol Officers.

Essentially, the Union proposal seeks to add one additional days for Employees having 10, but less than 15 years of service; two additional days for Employees having 15, but less than 20 years of service; one additional day for Employees having 20, but less than 25 years of service; and a new category of Employees having more than 25 years of service, who would receive two additional days over and above Employees in that category in the current Collective Bargaining Agreement.

The Union, among its Exhibits, relies upon a recent Act 312 decision involving the Police Officers Association of Michigan, which was decided on December 27, 2010 (less than a year ago) in which the Arbitrator and the Police Officers Association of Michigan Panel Delegate determined that while the overall financial condition of the City was one that would present a real challenge for the immediate future, and while the Panel had taken that into consideration when deciding wage and insurance issues, the Panel had also given great weight to evidence concerning internal comparables over that of comparable communities. The Panel noted that it had awarded only a 1% wage increase and had also taken into consideration savings associated with insurance changes contained in the Award, which were anticipated for the balance of the contract term in going forward. Thus, the Panel concluded that the increase costs awarded by the Panel were modest for a three-year contract term, and a majority of the Panel opined that the impact of the Union's vacation proposal, when combined with overall changes contained in the Award did not result in costs beyond the City's ability to pay, thus granting the Union vacation leave proposal. In so doing, the Panel also noted that it did not feel that a comparison with the

firefighters' vacation schedule was appropriate given the differences in the work day and work week. It further noted that overall, the existing Police Officers' vacation provision compared favorably with that of the internal comparables, but that the data regarding external comparable communities indicated that the majority had vacation benefits that were significantly in excess of those enjoyed by Police Officers in the City of Adrian.

Presumably, that Panel knew or should have known that in awarding the vacation days to the Patrol Unit, there was already an imbalance in the number of holidays between the Patrol Unit and the Command Unit. There essentially is no difference in the factors presented in this case than in the Patrol case. Clearly, the external comparables favor the proposal of the Union. In addition, the savings referred to by the Panel in the Patrol case with regard to health care are even greater when taken into account in this case, based upon the new statutory provisions and the election of the City to comply with Act 152, rather than opting out of the Act. The cost to the Employees in terms of increased premiums will amount to at least several thousand dollars per year. The cost of an additional vacation day or two, when taken into account versus the savings, is minimal. Accordingly, the Last Best Offer of the Union with regard to vacation accrual is hereby awarded. The City Panel Member dissents.

G. Limitation on Final Average Compensation for Retirement Purposes to Include a Maximum of 240 Hours of Paid Leave and to Exclude Overtime Compensation. The City has proposed that for purposes of calculating final average compensation for pension purposes, no more than 240 hours of paid leave time may be included and that all overtime be excluded. The Union has proposed the status quo, which contains no such cap. In support of its position, the City sets forth that pursuant to Act 63 of 2011, the issue of statutory revenue sharing by creating the Economic Vitality Incentive Program has been addressed. Should the City qualify for that Program, it would receive approximately \$405,000 in additional revenue. However, in order to qualify for the Program, it must meet certain benchmarks, including a certification that by May 1, 2012, it has developed and publicized an Employee Compensation Plan, which it intends to implement with any new, modified or extended contract or employment agreements for Employees not covered under contract or employment agreement. It further provides an Employee Compensation Plan shall be made available to the public for viewing and shall include, at a minimum, "for defined benefit pension plans, final average compensation for all Employees is to be calculated using a minimum of three years of compensation and shall not include more than a total of 240 hours of paid leave", and further that overtime hours shall not be used in computing final average compensation of an Employee. Thus, the City states that it seeks to bring itself into compliance with the statutory mandate by way of the contract that is the subject of the current 312 proceeding. In addition, it notes that its proposal is reasonable, in light of the comparable communities, based upon the fact that half of the comparable communities permit no vacation accrual at all, and another of those comparable communities limits vacation accrual to 240 hours.

In support of its position to retain the status quo, the Union notes that there has been no collective bargaining history with regard to this proposal, nor does it believe that there is a need or necessity for the proposal. It notes that the legislative requirement does not refer to the year 2011 to adopt these proposals. It further notes that the Employer's proposals would have a devastating potential effect upon the Bargaining Unit. The Union does not believe that the

statutory language relied upon by the Employer requires or mandates the proposals set forth by the Employer. It notes that the proposals only need to be part of a published plan the Employer plans to try and negotiate in the future. The future plan doesn't even need to be in existence until May 1, 2012. It believes that the City has placed the cart before the horse. It is trying to obtain concessions before a plan has even been created. It does not believe that new or added issues should be determined in the Act 312 proceeding when they have never been mentioned or negotiated in prior years. It sets forth that the time to raise these issues would be in the next Collective Bargaining Agreement which expires after May 1, 2012. It is at that time that the Employer can create a Plan and attempt to negotiate the changes which would meet the legislative intent.

The Union further notes that while the Employer seeks concessions, it makes no reference to the fact that the statutory language also allows a 3.0 multiplier, which would be greater than that currently enjoyed by the members of the Bargaining Unit.

The Union notes that the legislation in question allows the Employer three options:

- (1) Category 1 requires accountability and transparency;
- (2) Category 2 encourages consolidation and cooperation of services; and
- (3) Category 3 deals with Employee compensation.

The Union does not believe that Category 3 is the City's only option, nor that it is mandated by the legislation. The Union further notes that the pension portion severely affects the Command Bargaining Unit. A cap on the vacation time of 240 hours is less than the Employer's proposal with respect to the vacation time accumulation maximum of 320 hours which has already been addressed in this Opinion. In addition, it eliminates overtime in final average compensation, which could severely impact the ultimate amount of pension that a Command Officer receives.

The Union further notes that no actuarial studies have been performed to show the cost to the members nor the saving to the City if its proposal were to be accepted.

Michigan Public Act 63 of 2011, Section 951(3) provides, "Cities, villages and townships eligible to receive a potential payment from the allocation under subsection (2), may qualify to receive economic vitality incentive program payments under one or more of the following three categories:" As set forth by the parties, Category 1 simply requires accountability and transparency by demanding that each eligible city, village or township certify that by October 1, 2011, it has produced and has made readily available to the public, a citizens guide and performance dash board of its local finances, including recognition of its unfunded liability. Neither the City nor the Union has indicated whether or not Category 1 has been complied with. However, Category 2, requiring each community to have a plan with one or more proposals to increase its existing level of cooperation, collaboration and consolidation either within the jurisdiction or with other jurisdictions is not mandated until January 1, 2012. It simply requires that the community submit a plan, including a listing of any previous services consolidated with the cost savings to be realized from each consolidation and an estimate of the potential savings for any new service consolidations which are being planned. The plan is to be made available to the public and to be submitted to the Department of Treasury. Finally, Category 3 refers to

Employee compensation. It need not be certified as indicated by the parties, until May 1, 2012. It calls for a development of a plan and the plan to be publicized regarding Employee compensation and to indicate an intent to implement any new, modified or extended contract or employment agreements for Employees who are not covered under a contract or employment agreement. The Employee compensation plan that the community wishes to achieve is to be made available to the public, or posted on a publicly accessible internet site, and must be submitted to the Department of Treasury by May 1, 2012. At a minimum, the Plan is to include (i) new hires who are eligible for the retirement plan are to be placed on a plan that caps the annual contributions at 10% of base salary for Employees who are eligible for social security benefits. For Employees who are not eligible for social security benefits, the annual Employer contribution is to be capped at 16.2% of base salary. In addition, for defined benefit pension plans, a maximum multiplier of 1.5% for all Employees who are eligible for social security benefits, except where post-employment health care is not provided, the maximum multiplier shall be 2.25%. For all Employees who are not eligible for social security benefits, a maximum multiplier of 2.25%, except where post-employment health care is not provided, the maximum multiplier shall be 3.0%. Finally, for defined benefit pension plans, a final average compensation for all Employees is to be calculated using a minimum of three years of compensation and shall not include more than 240 hours of paid leave and overtime hours shall not be used in computing final average compensation for an Employee.

It would appear that the City's Last Best Offer is all inclusive and applies to both new hires and current Employees for it states:

- "For purposes of calculating an Employee's final average compensation ("FAC")
- for pension purposes, that FAC may include no more than 240 of paid leave time,
- and may not include overtime compensation."

My reading of the relevant statutory provisions hereinabove set forth would indicate that in order to qualify for the statutory revenue sharing, it is not necessary for an Employer to comply with Category 3 at all, and certainly not before May 1, 2012. Further, if the Employer complies with Category 1 or Category 2, it would become eligible for the statutory payout without regard to Category 3. Employees who have earned the 320 hours of vacation accrual and who have worked overtime should be entitled to utilize those monies earned for purposes of their pensions and final average compensation. The Employer has already received significant cost reductions through this Panel's Award of its health care proposals, coupled with the statutory provisions of Act 152. There is no necessity for this Panel to further decrease either the wages or benefits currently enjoyed by the members of this Bargaining Unit based upon the statutory provisions relied upon by the Employer. The Employees will have received a total of 1% increase in wages over a period of some six years from the termination of the last Collective Bargaining Agreement. That certainly does not constitute any type of major or even modest financial impact on the City's findings. As the Union has noted, while the Employer seeks to reduce the number of hours of paid leave as well as overtime for purposes of pension calculation, it has not, on the other hand, offered to increase the multiplier in the absence of post-employment health care. The overall cost in terms of pension contributions has not been calculated by the Employer with respect to the additional 80 hours of paid leave which the Employees are currently entitled to, nor has the Employer provided an Exhibit with respect to average overtime calculated into final

average compensation by past retirees. The simple fact of the matter is that to a great extent, the Employer can control the amount of overtime in the Sergeant's Division. Presumably, should the Employer wish to do so, the amount of overtime worked by Sergeants may be minimal at best. The additional 80 hours of accumulated leave over and above the Employer's proposal, when divided by 3, only amounts to approximately 27 hours of additional pay to be calculated in the Employee's pension benefit.

Since the legislation is new, neither internal nor external comparables are helpful. However, based upon the additional costs to the Employees for health care premiums, as well as other awards given to the Employer, it is the determination of the majority of the Panel that the Union's Last Best Offer with regard to limiting final average compensation is hereby awarded. The Employer Panel Delegate dissents.

H. Cap on City's Pension Contribution for New Hires. The City has proposed a pension cap of 16.2% for Employees hired after the effective date of the Act 312 Award. In support of its position it sets forth, once again, the provisions of Public Act 63, which provides that in the case of new hires who are eligible for retirement plans, there may be a cap to the annual Employer's contribution of 10% of base salary for Employees who are eligible for social security benefits and 16.2% for Employees who are not eligible for social security benefits. The Employer notes that the City's proposal in this regard would have absolutely no effect on the Bargaining Unit that is the subject of these proceedings, since it has historically been staffed through promotions from the ranks of Patrol Officers Union, and as such the Unit would not contain any new hires. Accordingly, the Employer states:

"Given this fact, there is absolutely no reason for the Award to not include the City's proposal on this issue."

The Union sets forth that this proposal has never been negotiated during the collective bargaining history which has taken place since the Agreement expired in 2008, nor is there any need or necessity for the proposal. It notes that the legislation does not mandate the adoption of this proposal. The proposal only needs to be part of a published plan which the Employer may intend to try and negotiate in the future, and the plan itself does not have to be submitted until May 1, 2012. In addition, the Union has set forth the same arguments with regard to this proposal that it has set forth with regard to the limitation of the accrual of vacation time and/or utilization of overtime for final average compensation purposes.

It would serve no purpose to engage in a long review with regard to this proposal since the issue and the background information is essentially the same as was discussed with regard to the limitation of vacation accrual and overtime for final average compensation purposes. However, there is even less reason to grant the Employer's proposal with regard to this issue. As the Employer has noted, its proposal only refers to new hires, and historically, Police Officers have promoted into the rank of Sergeant. Neither side has offered the Patrol contract as an Exhibit, but presumably, it contains promotion language within it. This would account for the Employer's assertion that its proposal has no effect on this Bargaining Unit. The Employer further has alleged that the Unit will not contain any "new hires". While the Employer has concluded that there is absolutely no reason for the Award to not include the City's proposal, on



the other hand, there is absolutely no reason why the Award should include the City's proposal since it basically refers to individuals who are not members of this Bargaining Unit. Accordingly, the proposal of the Union is hereby granted, which would retain the status quo with regard to the relevant provisions of the Collective Bargaining Agreement. The City Panel Delegate Dissents.

I. City Contribution to 457 Plan. The Union has proposed an amendment to Article 22, Section B as follows:

"To address concerns regarding pensions and retiree health care, effective July 10, 2000, the City will contribute to the ICMA, for each pay period, \$1.00 for every \$2.00 deferred by the Employee, to a maximum City contribution of one percent (1%) of the Employee's regular pay for that period. Effective July 1, 2004, the City maximum contribution shall be increased from one percent (1%) to one and one-half percent (1-1/2%). Effective the first pay period in July 2006, the one and one-half percent (1-1/2%) match shall be changed to a flat two percent (2%) of each Employee's base wage to the ICMA Plan (computed on a per-payroll basis).

Effective the beginning payroll on or after July 1, 2007, the ICMA contribution shall be increased to two and one-half percent (2-1/2%) of base wage.

Effective January 1, 2012, the ICMA contribution shall be increased to three and one-half percent (3-1/2%) of base pay."

The City's Last Best Offer with regard to this issue is to maintain the status quo, which is a contribution of 2.5% of base salary to each Employee's 457 Deferred Compensation Plan.

In support of its position, the Union alleges that the Command Officers are behind Patrol with regard to pension benefits. The Patrol Officers' eligibility requires at least 50 years of age, with 25 years of service, while the Command Officers are required to be at least 55 years old, with 25 years of service. In addition, Command pay an additional 1% toward their lesser pension than Patrol. Thus, the Union concludes that subordinates in the Patrol Unit receive a superior pension for less employee contribution, which is an inequity, which needs to be remedied. The Union believes that the 1% increase would help offset the higher age requirement and higher Employee contribution. It states that the Command group pays the highest Employee contributions compared to internal comparables. It further states that the proposed remedy is much less cost to the Employer than altering years of service in the Defined Benefit Pension Program.

The Union alleges further that external comparables support the Union position where five out of six external comparables give retiree health care in some form, while the City of Adrian provides no retiree health care. The 457 account, according to the Union, was established to be used to purchase health care, and therefore, the Union proposal simply gives a small increase in the 457 Program, which represents a much smaller cost than providing retiree health care similar to external comparables, and accordingly, the Union proposal is reasonable and supported by external comparables.

On the other hand, the Employer states that there is no internal comparable within the City that has a benefit similar to that requested by the Union and further, that the same statement is true for every one of the comparable communities. The Employer states that while Patrol Officers contribute 1% less to the Pension Program than the Command Officers, and that Patrol Officers can retire five years earlier, the Patrol Officers receive a contribution of only 1.5% into a retiree health savings account, as compared to the City's 2.5% compensation contribution for the Command Unit. The Employer also notes that the Unit in this case receives two more paid holidays than are received by the Patrol Officers.

The Employer also states that based upon the ages of the three members of the Unit, one is already beyond the retirement age of 55, while the other two are far below the retirement age of 55, and therefore, the proposal of the Union would not impact the two younger members until well after the expiration of the Collective Bargaining Agreement at issue. Further, the City notes that its pension contributions for the members of this Bargaining Unit are already equivalent to 70% of base salary, and that as a result, the City should not be compelled to suffer retirement costs by way of an increase in its contribution to the 457 Deferred Compensation Plan. It believes that the Union's proposal, while seeking a 1% increase to the Deferred Compensation Plan is nothing more than a wage increase. The Employer notes that the City is not among the leaders in wages among comparable cities, but it has not been a leader for many years. For example, in 2004, the City of Adrian ranked sixth out of eight in terms of Police Sergeant wages at the top of the wage scale, and thus, given those historical facts, plus the City's current financial condition and the internal comparables, now is hardly the time for the City of Adrian to play catch up on wages. In addition, only three of the comparable communities have a taxable value per capita lower than the City of Adrian's and seven of the eight comparable communities have per capita income higher than Adrian's, while five of the eight comparable communities have medium family income higher than Adrian's.

It would appear that the only significant difference in terms of costs to the members of this Unit versus costs to the members of the Patrol Unit does not lie with the amount of contribution, since the 1% additional contribution of the Command to the pension costs is offset by the fact that the City pays 1% less into the deferred 457 Plan for the Patrol. Thus, the real difference is based upon the age that Patrolmen can retire (50) versus the age where Command can retire (55). However, this Bargaining Unit has not chosen to obtain comparability with regard to the age of retirement, but rather seeks to compensate for that differential through the addition of an extra 1% contribution by the Employer to the Employee's 457 Deferred Compensation Plan. It would seem that the argument is disingenuous. The City, with the exception of the age of retirement is currently treating both the Patrol and the Command in similar fashion based upon the overall costs of Employee contributions and Employer contributions. The Patrol pays 7% of their salary for their pension benefits and in turn, the City contributes 1-1/2% into the retiree health savings account, for a total of 8.5%. In combined contributions by the Employer to the retiree health savings account and the Employee to the pension account. Thus, for the two programs, the Patrol Officers have an effective cost of 5.5% (7% less 1.5%). If one were to make the same calculation for Command Officers, we would arrive at the same net figure since Command Officers pay 8% into the pension fund, but receive

from the City 2.5% as a benefit in the 457 Plan, thus for the two plans, a net cost of 5.5% can be arrived at for the Command as well.

The internal comparables certainly do not favor the proposal of the Command Unit, nor does the financial position of the City. Accordingly, it is the determination of the Panel that the Last Best Offer of the City is hereby awarded. The Union Panel member dissents.

V. CONCLUSION.


As previously noted, each of the factors set forth in Section 9 of Act 312 of the Public Acts of 1969, as well as the recent legislative amendments to said Act, have been considered and have been applied, whether or not specific reference has been made to them. The purpose of the Act 312 proceedings is to attempt to arrive at a fair, reasonable and equitable result, based upon the Last Best Offers of the parties. That result must and has taken into account not only the internal and external comparables offered by the parties, but the financial position of the City and the financial ability of the City to pay any increased costs which may have been awarded, as well as the benefits the City will derive from any of the proposals to reduce its costs which have been awarded by this Decision.

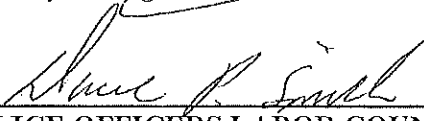
Total equality between comparable communities and/or internal comparables can never be achieved since the wages and benefits vary from city to city and group to group. Nevertheless, in light of the economic times, this Award hopefully will result in a fair, reasonable and equitable Collective Bargaining Agreement for the next three years.

The Awards hereinabove set forth are so ordered.

Dated this 8<sup>th</sup> day of December, 2011.

  
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ALLEN J. KOVINSKY,  
Arbitrator & Panel Chairperson

  
\_\_\_\_\_  
CITY OF ADRIAN  
By: Gary P. King

  
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POLICE OFFICERS LABOR COUNCIL  
By: Duane Smith