

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312, PUBLIC ACTS OF 1969 AS AMENDED  
BY ACT 116, PUBLIC ACTS OF 2011

*In the Matter of:*

CITY OF WYANDOTTE

-and-

MERC Case No. D12 C-0233

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN

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**PANEL'S FINDINGS, OPINION AND ORDERS**

**George T. Roumell, Jr., Chairman**  
**Steven H. Schwartz, Esq., Employer (City) Delegate**  
**John T. Barr, Union (POAM) Delegate**

**APPEARANCES:**

FOR THE CITY OF WYANDOTTE:

Steven H. Schwartz, Attorney  
Todd Drysdale, City Administrator  
Dan Grant, Police Chief

FOR POLICE OFFICERS ASSOCIATION  
OF MICHIGAN:

William Birdseye, Advocate  
John T. Barr, Research Analyst  
Gary Pusheé, Business Agent  
Jerome Yoscovitz, President, WPOA  
Rick Weise, Vice President, WPOA  
Steve Osborne, Secretary/Treasurer, WPOA

The City of Wyandotte had a Collective Bargaining Agreement with the Police Officers Association of Michigan, Police Patrol Officers Bargaining Unit, commencing February 1, 2009 through and including January 31, 2012. Prior to the expiration of this contract, the parties commenced bargaining and reached an impasse. As a result, the Police Officers Association of Michigan on January 9, 2012, by its Business Agent Gary Pusheé, filed a Petition for an Act 312

Arbitration Panel. The Petition alleged that there were 25 employees in the bargaining unit, namely, the Patrol Unit of the Wyandotte Police Department. The Petition further stated that, from the Union's standpoint, the issues in dispute were:

1. Wages
2. Pension
3. DROP Program
4. Public Safety
5. Health Care Opt Out Incentive
6. Residency Incentive
7. Professional Development Compensation

On January 25, 2013, the City, by its Attorney Steven H. Schwartz, filed an Answer to the Act 312 Petition acknowledging the issues listed by the Union and further stating:

B. City Issues. In addition to the issues raised in the Union's Petition, the following issues are in dispute between the parties:

1. Duration (non-economic)
2. Bonus Vacation Days (economic)
3. Holiday Pay (25.1) (economic)
4. Health Insurance (28.1) (economic)
5. Pension (Final Average Compensation) (economic)

C. The City requests clarification on whether the Union accepts the prior Tentative Agreements on the following issues. If not, these items should be listed as additional issues:

1. Probationary period for new hires (Sections 14.1-14.2) (non-economic)
2. Eliminate pay advances (Section 17.2)
3. Overtime calculation (Section 19.1) (economic)
4. Longevity (Section 24.1) (economic)
5. Eliminate Prescription Reimbursement (Section 28.2) (economic)
6. Medical Insurance for Retirees (Section 28.4) (economic)
7. Employee Evaluations (Section 32.9) (non-economic)
8. Promotions (Article XV, Section 15.5) (non-economic)
9. Interrogation and Disciplinary Procedure (Article XXXIV) – reference to trial board (non-economic)
10. Interrogation and Disciplinary Procedure (Article XXXIV)– time limits for the use of prior disciplinary action (non-economic)
11. Direct deposit (non-economic)

12. Emergency manager statutorily required language (non-economic)
13. Requirement for 80%/20% contribution to health care if approved by City Council
14. Modify 13<sup>th</sup> check provisions (economic)
15. Defined benefit pensions – FAC based on best consecutive thirty-six (36) months of service (economic)
16. Sick Time (Article XXI) (economic)

As a result of further negotiations between the parties, discussions at the pre-trial meeting with the Chairman (who was appointed pursuant to the Petition) held on March 20, 2013 and subsequent discussions on the day of the hearing in this matter on May 29, 2013, the parties reached agreement on all issues except the following pension issues:

1. Pensions – Union requests to move from defined contribution to defined benefit plan for all Officers.
2. Pensions – Basis of computing final average compensation, namely, proposal for 36 consecutive months.
3. Pensions – Inclusion or exclusion of overtime in final average compensation.
4. Pensions – Question of when and under what circumstances and how much sick and vacation time accumulation should be included in final average compensation.

It is these four issues upon which the Panel is to make findings, issue an Opinion and Orders concerning same.

### **The Criteria**

Act 312 of Public Acts of 1969, as amended, in Section 9 thereof sets forth the criteria to be followed by an arbitration panel. Section 9, as amended by Act 116 of Public Acts of 2011 provides as follows:

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and 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:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(I) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

© Stipulations of the parties.

(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 in both of the following:

(I) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) 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.



(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that 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.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

Act 312 as amended does require the Panel to afford financial ability the “most significance”. However, the Legislature recognized that the Panel could consider other factors, including comparison with other employees of the unit of government outside of the bargaining unit in question [9(1)(e)] and public and private employment in comparable communities [9(1)(d)].

In addition, in 9(1)(h)(i), the Legislature has provided that the Panel consider other factors that are considered in “collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties”.

Fact Finders frequently consider the parties’ bargaining history, both in the past and currently, and the art of the possible. In some cases where there has been a strike in the public sector in the area, this can also serve as a guide. The bargaining history becomes important in the dispute between the parties as to pensions because this dispute is against two previous Act 312 Opinions and Orders as well as one involving the Fire Fighters.

The art of the possible refers to the proposition that in negotiations, namely, collective bargaining, in order to reach agreement or in mediation the parties do compromise, resolving their disputes by the art of the possible.

It is these criteria that will guide the Panel in making their findings, setting forth their

Opinion and issuing the appropriate Orders.

**The City of Wyandotte and Its Financial Status**

The City of Wyandotte geographically is approximately five square miles in what is known as the Downriver Area of Wayne County, Michigan. According to SEMCOG, about 95% of the City's land is developed. Most of the undeveloped land is held by the City's largest taxpayer, BASF, a German conglomerate chemical company, and the decision to develop that land is solely up to BASF. The record indicates that there is no known plan at this time for the company to develop this land. (Tr. 64-65).<sup>1</sup> In 1970, Wyandotte had a population of 41,061. By 2013, the City's population had dropped to 25,592. (Ex. 41).

The major revenue sources of the City are 43% from real property and personal taxes, 12% from State shared revenue, 7% from fines and forfeitures, 1% from investment income, 10% from reimbursement from other funds for work performed using General Fund resources, 7% from the Federal government, 20% from other sources including sales of business licenses, construction permits, birth/death certificates and other miscellaneous items. The 7% of government funds relate to the NSP2 Housing Program. In terms of expenditures, employee services and fringe benefits account for 68% of the expenditures, utilities 6%, NSP2 Program 7%, and others 19% such as supplies, contracted services, operating expenses, etc.

A number of factors have impacted the City's ability to generate revenue. The City's real and personal property tax base, because of declining value, has fallen from \$905 million in 2006 to \$544 million in 2012, which is a 40% decrease.

Its State shared revenue declined from \$4.4 million in 2000 to \$2.6 million in 2012 (Ex.

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<sup>1</sup> "Tr" refers to the transcript of the arbitration hearing.

36, pg. 16; Ex. 30). This was due to two factors – a population drop plus changes in the statutory portion of shared revenue.

Investment earnings declined from \$800,000 in 2007 to \$100,000 in 2010. (Ex. 36, pg. 17). Building permits and licenses declined from approximately \$1 million in 2007 to approximately \$300,000 in 2010, which would be expected in a developed city as Wyandotte. (Ex. 36, pg. 17).

These factors in recent times have caused the City to take certain actions to adjust expenditures and to raise additional revenue. On the expenditure side, the City has continued to reduce its workforce from a high of 215 full-time employees in 1980 to 130 full-time employees in 2011. (Ex. 36, pg. 21). In the Police Department, full-time positions for law enforcement officers and dispatchers decreased from 60 to 44 from 1997 to 2012. (Ex. 40). The move to continue to reduce employment has continued. In the 2012-2013 fiscal year, the full-time employment went from 129 individuals to 120 full-time employees which included the elimination of a Detective Lieutenant, two Sergeants, a Patrol Officer, two Fire Fighters, three Department of Public Services Laborers, and Engineering Department employee and a Recreation Department employee. (Ex. 40; Ex. 37, pg.103).

Presently, there are 23 Patrol Officers and six Police Command. (Ex. 10).

With the 40% drop in the real and personal property tax base, representing 43% of the revenue sources, and an approximately \$2 million drop in State shared revenue representing 12% of the City's revenue, it becomes clear that the City is experiencing financial pressures.

The fiscal year of the City is October 1<sup>st</sup> to September 30<sup>th</sup>. City Manager Todd Drysdale testified: "Prior to preparing the 2012 fiscal year budget, our financial forecast indicated we were in some serious economic trouble". (Tr. 107). The result was that the City Council agreed to put

a three year millage vote to the people which passed, providing for an additional 1.75 mills to be used for operation purposes limited to three years, being effective for the 2012 fiscal year and ending the 2014 fiscal year. (Tr. 107, 108).

According to the City Manager Drysdale, for the 2013-2014 fiscal year the expenditures will exceed revenues by \$137,530, reducing the fund balance to \$3,839,900. In fiscal year 2014-2015, the expenditures are estimated to exceed revenue by \$804,556, further reducing the fund balance to \$2,858,311 or 13.9% of the budget. If the millage is not renewed, this explains the \$804,556 shortfall. By 2015-2016, the millage renewal shortfall would be \$1,066,686, reducing the fund balance to \$1,791,625 or 8.46%. As Mr. Drysdale testified, "The first with the millage were \$137,000 short which is manageable in a big picture. A million dollars short is not." (Tr. 129) (Ex. 39, pg. 12). Although the fund balance was 17.30% in fiscal 2013-2014, there is a constant drop in 2014-2015 and 2015-2016 without a renewal of the millage. Even with the millage in fiscal year 2013-2014, the City was essentially breaking even after reducing the workforce and otherwise curtailing expenses.

When discussing the fund balance, City Manager Drysdale did note that for fiscal year 2013-2014 the general fund balance "is being skewed by this large NSP grant", suggesting that part of the fund balance figure represented "housing stock held for resale". (Tr. 116).

There is other pressure on the expenses of the City. The City pays more for health and life insurance for its retirees (\$2,081,000 in 2010) than its active employees (\$1,821,000 in 2010). (Ex. 36, pg. 23). These costs for health insurance for active employees and retirees have substantially increased from 2000 to 2010. (Ex. 36, pg. 23).

Wyandotte has an unfunded OPEB liability of \$81 million in 2011. (Ex. 30, pg. 25). The annual required contribution for retiree health insurance for Police and Fire and other municipal

divisions has grown by approximately \$500,000 from 2009 to 2013. (Ex. 35). 22% of the general fund budget is now allocated to fund pensions and health insurance. (Ex. 30, pg. 40). There is little question that this unfunded liability and the obligation thereunder impacts on the City's financial ability.

It is based upon the above financial data that the City has urged the Panel to move with caution. The City's position on this point is well taken when one reviews the above financial information and notes that some of the economic factors were beyond the control of the City.

### **The Current Bargaining History**

There were numerous issues between the parties at the time of the Petition for Act 312 Arbitration. In good faith, the parties continued to bargain and reduced the issues to the current four. By any definition, the Union recognized the economic stress of the City and reached agreements designed to assist the City. The Union's post-hearing brief summarizes succinctly the result of the agreements when at page 4 the following statement is set forth:

These settlements and concessions came with the union's recognition that the economic stress of the city has not turned the corner as of yet. The Union willingly partnered with the city to bring economic relief to its city and help stabilize the fiscal health of Wyandotte's government. The Union also agreed to some work practice changes that would allow the City to carry out the law enforcement mission in a more efficient and economical way.

Based upon the settlements, the Chairman believes that this is a correct statement. After making this statement, the Union at page 4 of its brief notes:

In spite of the spirit of cooperation offered by the union, the City still held fast to its original demands for concessions on three pension issues, and those issues were argued before the arbitrator.

In addition, the Union is pursuing a conversion of the defined contribution plan to a defined benefit plan for those employees hired after February 1, 1999. It is this bargaining

posture that characterized the situation now before the Panel.

**Issue 1**

**Conversion from a defined contribution plan to a defined benefit plan. (Union Proposal)**

Current language:

Article XXXV of the expired contract in Section 35.1(6), exclusive of the provisions defining final average compensation, provides in part:

Effective February 1, 1999:

\* \* \*

Subject to section 2-229, police patrol members hired after 10/01/82, retroactive to date of hire, shall receive a straight life pension and shall have the right to elect a pension under an option provided in section 2-221 in lieu of a straight life pension. The straight life pension shall equal the sum of the number of years and months of credited service, or to exceed twenty-five (25) years, multiplied by 2.50%, times the final average compensation, plus the number of years and months of credited service in excess of twenty-five (25) years, if any, multiplied by 1.0%, times the final average compensation. Maximum benefit is 75% of final average compensation. Members will make pretax contributions of 5% from all income included in the final average compensation.

\* \* \*

In addition, Section 35.1(10) provides:

All new hires hired on or after February 1, 1999, shall not be covered by the City's Defined Benefit program. These employees shall be enrolled in a Defined Contribution plan which shall be mutually selected by the City and the Union. The city shall make an annual contribution of 10% of the employee's base salary which he or she actually received in the prior calendar year. The employee shall be required to contribute five percent (5%) base salary to the plan. Vesting in the plan shall occur after five years. Disability provisions under this plan will be provided utilizing the 401-Backstopping method. This method guarantees a disability benefit equal to the provisions outlined in the current Defined Benefit Plan.

Thus, there is a two-tier pension plan for Police Officers, namely, a defined benefit plan for Officers hired prior to February 1, 1999 and a defined contribution plan for Officers hired on or after February 1, 1999.

The Union has made the following proposal effective on the date of the “award”:

All current employees in the Defined Contribution Plan and future hires will be in a Defined Benefit Plan with an eligibility of twenty-five (25) years of service at the age of fifty-five (55). The benefits of the plan will be a straight life pension equal to 2.0% of a three (3) year final average compensation (FAC) times years of service (earned on or after the effective date of the award) up to a maximum of 75% of FAC. FAC excludes unused sick-leave and vacation time. The employees will contribute 5.0% of covered compensation.

The City has proposed to maintain the *status quo*, namely, a two-tier pension plan.

There are 23 Patrol Officers. Seven, having been employed prior to February 1, 1999, are in the defined benefit plan. Sixteen having been employed after February 1, 1999 are in the defined contribution plan.

As to the comparables, the parties have agreed to 16 external comparables, including Wyandotte. The type of pension plans for the external comparables are:

**Comparison of Type of Pension Plan for External Comparables**

<b>External Comparables</b>	<b>Type of Pension Plan</b>
Allen Park	Defined Benefit
Brownstown Township	Defined Benefit
Flat Rock	Defined Benefit
Gibraltar	Defined Benefit
Grosse Ile	Defined Benefit
Lincoln Park	
Hired before 1-1-09	Defined Benefit
Hired after 1-1-09	Defined Contribution
Melvindale	
Hired before 1-1-05	Defined Benefit
Hired after 1-1-05	Defined Contribution
River Rouge	
Hired before 1-1-99	Defined Benefit
Hired after 1-1-99	Defined Contribution
Riverview	Defined Benefit
Rockwood	Defined Benefit
Romulus	Defined Benefit
Southgate	Defined Benefit
Taylor	Defined Benefit
Trenton	

Hired before 1-1-96	Defined Benefit
Hired after 1-01-96	DC or DB
Hired after 10/1/12	Defined Benefit
Woodhaven	Defined Benefit
<b>Wyandotte</b>	
<b>Hired before 2-1-99</b>	<b>Defined Benefit</b>
<b>Hired after 2-1-99</b>	<b>Defined Contribution</b>

SOURCE: Collective Bargaining Agreements

Three comparables have two-tier plans as similar to that of Wyandotte, namely, Lincoln Park, Melvindale and River Rouge, with the defined contribution plans applying to employees hired at a later time. One, Trenton, did have a defined contribution plan for some employees, but now has returned to a defined benefit plan. The rest of the comparables have defined benefit plans. Nevertheless, two-tier plans are not unknown in the Downriver area of Southeastern Michigan.

Currently, namely, within Wyandotte, the Unions have the following plans:

**Comparison of Type of Pension Plan for Internal Unions**

<b>Internal Union</b>	<b>Type of Pension Plan</b>
Command Officers	
Hired before 2-1-99	Defined Benefit
Hired after 2-1-99	Defined Contribution
Fire Fighters	
Hired before 10-1-00	Defined Benefit
Hired after 10-1-00	Defined Contribution
AFSCME	
Hired before 3-31-00	Defined Benefit
Hired after 3-31-00	Defined Contribution
Dispatchers	
Hired before 7-1-01	Defined Benefit
Hired after 7-1-01	Defined Contribution
<b>Patrol Officers</b>	
<b>Hired before 2-1-99</b>	<b>Defined Benefit</b>
<b>Hired after 2-1-99</b>	<b>Defined Contribution</b>

SOURCE: Collective Bargaining Agreements



As noted, all of the units in Wyandotte have a two-tier system based upon date of hire.

### **Past Bargaining History**

The two-tier pension plan for Patrol Officers came about as a result of a decision and award of an Act 312 Panel chaired Barry C. Brown in *MERC Case No. D96 I-2777*, issued on December 20, 1998 between the City and the Union representing the Officers. In that opinion, a majority of the Panel adopted increased benefits in the defined benefit plan. After doing so, at page 23, Chairman Brown for a majority of the Panel wrote:

The pension improvement proposal of the Police Officers Labor Council would fairly align the Wyandotte patrol officers with similarly situated officers in comparable communities. Further, the panel has concluded that the increased costs for adopting these proposals would not present an undue burden upon the city. Adopting the city's 2% wage increase proposal in each of the three years of the labor agreement will help pay for these costs. In the long run, the adoption of the city's pension plan for new hires could also set a cap on the city's pension costs and provide a light at the end of the tunnel in this regard. (Emphasis by Chairman Roumell.)

In other words, Chairman Brown was attempting to set a cap on the City's pension costs. In discussing the specific defined contribution plan, Chairman Brown wrote at page 24:

The city's proposal would establish a two-tiered pension plan which would provide a defined contribution plan for all employees hired after January 31, 1999. The city would make an annual payment of 10% of each employee's prior year's base salary. Under this proposal, all existing members of the bargaining unit would continue under the existing pension system, and yet, the city could see a resolution for its current expensive program. This is a new approach for employee retirement programs, and only Trenton and Brownstown now use it for their police employees. While it is new, there is a trend in this direction. Further, the city plan provides a reasonable method to establish cost control in the future, while at the same time providing current employees with a retirement program in keeping with their peers in comparable communities. Further, under the city's plan, the newly hired employees need not make any pension contributions, and so they could use this 5% savings to start their own saving program. For all of these reasons, the panel adopts the city's proposal.

Chairman Brown was relying on the external comparables of Trenton and Brownstown. According to the evidence on this record, Brownstown is now a defined benefit plan and Trenton has moved to a defined benefit plan. On the other hand, as pointed out, Lincoln Park, Melvindale and River Rouge do have two-tier plans consistent with Wyandotte.

On September 16, 2005, in *MERC Case No. D02 J-2309*, in an Act 312 proceeding between the City of Wyandotte and the Wyandotte Fire Fighters IAFF Local 366, Chairman Maurice Kelman, writing for the majority, confirmed that the two-tier pension system previously adopted by the Fire Fighters, similar to the Patrol contract, be continued based on the fact that the Patrol had a two-tier pension plan and noting at the time that the issue of a defined contribution plan was again being presented by the Patrol in a pending Act 312 proceeding.

The referenced proceeding referred to a decision issued eight years after the Brown decision by an Act 312 Panel on June 9, 2006, chaired by Arbitrator Mario Chiesa in *Case No. D04 C-0543* between the City and the Police Officers Association of Michigan representing the Patrol unit, whereby the Panel rejected a proposal to have all employees in the defined benefit plan. In doing so, Chairman Chiesa wrote at pages 14-16:

What is apparent about the Union's Last Offer of Settlement is that it lays out some general and some specific terms. No plan has been presented. Other costs, such as actuarial expenses, etc., were not explained.

It must be remembered that this panel is not writing on a clean slate. The current Defined Contribution Plan was the result of an arbitration award by a panel chaired by Arbitrator Barry Brown. The award was issued on December 10, 1998. Just as significant is the evidence establishing that following the institution of a Defined Contribution Plan for new hires in both Police, Patrol and Command Units after February 1, 1999, other units, including the Firefighters, Dispatchers and AFSCME, also agreed to a Defined Contribution Plan. Thus, it could reasonably be concluded that if this arbitration panel were to abandon the award issued by the Brown panel, other units employed by the City would attempt to secure the same benefit change.

Given the nature of this benefit and the complexity and far-reaching ramifications of pension plans, this panel is reluctant to accept the Union's Last Offer of Settlement. There are a number of reasons why the status quo should continue.

First, it is understood that the parties have negotiated over this issue for some time and couldn't resolve it. Nonetheless, the Collective Bargaining Agreement, which would be impacted by the award of this panel, has already terminated. That isn't a significant consideration except that it does present the observation that the parties should and can engage in negotiations very quickly. This type of issue under these circumstances is best dealt with in negotiations.

Second, while certainly the Union's general outline of the Defined Benefit Plan it contemplates in its Last Offer of Settlement expresses some important specifics of the proposed plan, the plan hasn't been devised and there are important considerations to be dealt with. Thus, in essence, an award adopting the Union's Last Offer of Settlement would be an award that would lead to further negotiations rather than settling the issue.

Third, the evidence doesn't convincingly establish that given the number of individuals involved that there is certainty that adoption of the Union's Last Offer of Settlement would improve an officer's retirement benefit. Certainly the evidence suggests, along with experience and common sense, that the Defined Benefit Plan proposed by the Union would enhance retirement benefits beyond that provided by the Defined Contribution Plan. However, that's not a certainty and I am not even sure it would be fair to consider it a probability. It seems it is a stepping stone to further activity.

Fourth, the problems related by the Union's evidence regarding investment and the return individual investors receive when investing pursuant to their Defined Contribution Plan can be addressed if employees seek professional assistance.

Given the totality of the record, the panel finds that the evidence supports the finding that the Employer's Last Offer of Settlement, and hence the status quo, should be continued.

There are two points made by Chairman Chiesa. First, if all Patrol Officers were put on the defined benefit plan, then the City would be faced with a similar demand from its other bargaining units. The second point made by Chairman Chiesa is that he did not believe the record supported a defined contribution for all Officers. Here, in this case there was more of a

record made than apparently before Chairman Chiesa.

But, as Chairman Chiesa pointed out, he was not writing on a clean slate and the fact that there was the Brown decision. And, now, there is the Chiesa decision. Furthermore, there was at the time of the Chiesa Panel Award the adoption of a defined contribution by Lincoln Park, Melvindale and River Rouge.

As the Chairman of this Panel sees it, he is being asked to not follow the dictates of two previous 312 Arbitration Panels involving the Patrol Unit on the issue of defined benefit pension for all Officers. In addition, as noted, Chairman Maurice Kelman in *City of Wyandotte and Wyandotte Fire Fighters IAFF Local 366, MERC Case No. D02 J-2309*, an Act 312 proceeding whereby the opinion was issued on September 16, 2005, chose to continue the two-tier pension system for Fire Fighters, noting that the Chiesa opinion was pending. Absent a compelling reason, this Chairman concludes that the *status quo* should remain based upon the bargaining history and some trend in the comparables, although somewhat inconsistent, namely, that Officers employed prior to February 1, 1999 shall remain in the defined benefit pension plan and Officers hired after February 1, 1999 shall remain in the defined contribution pension plan.

The Chairman reaches this conclusion based upon the premise that was recognized during bargaining and confirmed in the evidence set forth in this record that the City is in a serious economic situation and must proceed economically with care to remain economically viable. The continued layoffs in fiscal 2012-2013 and the need to obtain a three year millage underscores this point plus the uncertainty of the level of State shared revenue.

James Anderson is the account representative for the Wyandotte Police Pension Plans, being employed by Gabriel Roeder Smith & Company, consultants and actuaries. As such, Gabriel Roeder prepares annual actuary reports for employees still in the defined benefit pension

plan. (Tr. 18-19). Exhibit 19 is a supplemental valuation for the City of Wyandotte Employees Retirement System prepared by Gabriel Roeder regarding the cost implications of reopening the defined benefit plan for the City of Wyandotte Police and Fire members, which is dated November 30, 2012. Applying the Union's proposal that those Officers now in the defined contribution pension plan be moved to a defined benefit pension plan, based upon a 2% multiplier, Mr. Anderson as to costs testified as follows:

A Yes, page four. And the blue line represents the current plan which is the current defined benefit cost for existing members, plus 10 percent of payroll for current defined contribution members. That line is juxtaposed against the three proposals. The big difference in the two is that we would change our method and be able to amortize unfunded liabilities over a longer period of time --

Q Why?

A -- under the proposals.

Q Why?

A Because the plan is now open again to members. So we would change our cost method from aggregate to entry age normal, lump percent of pay, lump percent of pay, financing of the unfunded liability, which smooths out contributions. As you can see under the proposals, the base case decreases all -- I should say all plans decrease at the end of 20 years to the long-term expected cost of each of the plans.

So the base plan is expected to be 10 percent of pay. That's the defined contribution. Proposal one is projected to be 9 percent of pay. That's the two percent benefit multiplier and so forth with the other designs.

Q Am I to understand that at some point in time, the aggregate cost to the Employer actually will be reduced?

A The -- maybe we go to the numbers. Assuming all assumptions are met on page five, they do show that in the first year and actually through the first, oh, nine to eleven years, as we project out expected contributions, there is a reduction under the proposals relative to the base.

Q Okay. And that's found on page five, the actual enumeration?

A Yeah.

Q All right.

A Over the long run, after that savings period, the proposal would cost more in the future covering more people.

(Tr. 26-28).

Hearing this testimony, the impression would be that at least between nine to eleven years out there would be a 1% savings for the City over the current costs of the defined contribution pension plan as the City, instead of contributing 10% of pay, would be contributing 9% of pay. Of course, this depends on various assumptions.

On cross-examination Mr. Anderson explained that the cost of the current two-tier plan for a 20 year period to the City is projected to be \$44.7 million, for he testified:

Q So your best projection for the base plan over a 20, 21-year period or 20-year period would cost 44.7 million dollars, correct?

A Correct.

Q If we left everything – the current – if we left the current two-tier system as it is, you're projecting that the City would have to fund 44.7 million dollars?

A If all the assumptions are met, correct.  
(Tr. 42-43).

Mr. Anderson then testified:

Q Okay. And your analysis on the same assumptions over the same time period over 21 years, if we kept the current DB members in their current plan and you moved all the current DC employees plus new hires and moved them into a defined benefit plan with a 2.0 multiplier, that would cost the City 56.3 million dollars, correct?

A With the note that we'd be changing our actual cost method as before, but we're assuming the –

Q Okay.

A – 7.5 percent interest on all the other assumptions –

Q Okay.

A – correct.

Q But – so if all your assumptions were met, the shift proposed by the Union would cost the City of Wyandotte 15.6 million dollars over a 20, 21-year period?

A I don't have my calculator. I think it's more like 11.6.

Q Eleven point six, yes.

A Yeah.  
(Tr. 43).

Thus, the change proposed by the Union would mean that the City would be assuming over a 20 year period an additional \$11.6 million over current pension costs.

Mr. Anderson then testified:

Q Okay. And again, the base is the current two-tier system and proposal one would be maintaining the current DB system for pre-1999 hires and moving all the post-1999 hires into the 2.0 multiplier. so your projection is that from 2011 through 2019, each year there would be less money paid by the City, correct?

A Correct.

Q If all the assumptions are met?

A Yep.

Q And is it fair – you did this report back in November of 2012, so that would just move – we would just move this chart down a year or so based on implementation. The relative numbers would stay the same?

A They should as long as they don't have a big change in the population.

Q Okay. So in year 2020, then the City would start spending – excuse me – in year 2019, the City would start spending more money than it would if it maintained the current system,

correct?

A Correct.

Q And each year after that, the City would spend an increasing amount of money each year compared to what it would if it maintained the current system, correct?

A Correct.

Q And that continues to 2030 or through 2031, correct?

A Correct.

Q And in year 2030, the City would be spending approximately four times more than it would be if it kept the current system, 4.3 million versus 1.1 or 1.2 million, correct?

A Correct.  
(Tr. 44-45).

Again, Mr. Anderson, based upon actuary assumptions, is maintaining that though there is a one percent cost reduction to the City with the adoption of a defined benefit pension plan for employees now in the defined contribution pension plan to 2019, this reduction would no longer exist beyond 2019. Beyond 2019, the City would be spending more for pensions than presently. These facts speak for themselves.

The Chairman appreciates that the Officers do not receive Social Security and understands the concern that the pension plans be solid. Nevertheless, with the existence of the liability for retiree health care insurance and the concerns over the City's financial health, when the bargaining history is considered, namely, two other Chairmen with the concurrence of a majority of their Panels plus the Kelman Order have opted for the two-tier system, there is no persuasive reason to deviate from the current two-tier system.

There was an argument from the City that, if the pension plans are converted to a defined benefit plan, this would eventually be a demand of the Fire Fighters. This could be true. The



supplemental actuary report included the cost for Fire Fighters. However, there are other units in the City, namely, Dispatchers, AFSCME employees and Police Command, who could very well request a similar pension package which could increase in the long run cost. As to the Police Command, all are in a defined benefit plan except one.

It is based upon the above analysis that the Chairman, along with the City Delegate, will vote to maintain the current two-tier system, with the Union Delegate dissenting.

## **Issue 2**

### **Period Used To Calculate Final Average Compensation (Defined Benefit Pension Plan)**

The expired February 1, 2009 - January 31, 2012 contract between the parties provided in Article 35, Section 6, as to the defined benefit, that “‘final average compensation’ means the average of the highest three out of the last ten consecutive years”. The City wishes to amend this language, whereas the Union proposes to keep the language as is. The City’s last best offer on this point reads: “Final average compensation means the average of the highest ... thirty-six (36) consecutive ... months.” Subsequent to presenting the City’s last best offer, the Chairman received an email from Counsel for the City that read in relevant part: “Contrary to the Union’s assertion, in Issue 2 which only deals whether consecutive months are to be used to calculate final average compensation ...”. This email clarified the City’s last best offer on this point. The internal comparables within the City on this point provide:

<b>Internal Union</b>	<b>Final Average Compensation</b>
Command Officers	Best 3 of last 10 years
Fire Fighters	Best 3 of last 10 years
AFSCME	Best 3 consecutive years
Dispatchers	Best 3 consecutive years
<b>Patrol Officers</b>	<b>Best 3 of last 10 years</b>

City Manager Todd Drysdale testified as to how the City has applied the various

provisions in the internal contracts on the period of calculation when he testified:

Q Are you involved in calculating – doing the workups for when an employee for the City plans on retiring?

A Yes.

Q Is there any difference in how you do the calculation based on whether it's command officer or fire fighter, AFSCME, dispatch, or patrol officer or non-Union?

A No.

Q Okay. How do – what do you do?

A We take the best 36 consecutive months within the last ten years for those who have a limit. For those who don't have a limit, we take the best 36 consecutive months of their entire employment.

Q And how long have you been using the best 36 consecutive months?

A Since 1996 for me. Obviously, the patrol, command, and fire used to have a 12 consecutive month FAC, so for them it would be after 1999 or 2000 when it was changed to three-year FAC.

(Tr. 101).

The external comparables are as follows:

<b>External Comparables</b>	<b>Final Average Compensation</b>
Allen Park	Best 3 consecutive years of last 10 years
Brownstown Township	Best 3 consecutive years
Flat Rock	Best 5 consecutive years
Gibraltar	Best 3 out of the last 4 years
Grosse Ile	Best 3 consecutive years
Lincoln Park	Last 5 years before retirement
Melvindale	Best 3 consecutive years
River Rouge	Best 3 consecutive of last 10 years
Riverview	Best 3 of last 10 years
Rockwood	Best 5 consecutive years
Romulus	Best 5 consecutive years
Southgate	Best 3 of 10 years
Taylor	Best 3 of last 10 years
Trenton	Best 3 of last 10 years
Woodhaven	Best 3 consecutive of last 5 years
<b>Wyandotte</b>	<b>Best 3 of last 10 consecutive years</b>

As the external comparables indicate, most make reference to consecutive years. Four, namely, River Rouge, Southgate, Taylor and Trenton, use the same language as the just expired Patrol contract. The practice is to use 36 consecutive months. There is no evidence on this record that there has been any challenge to the City's use of 36 consecutive months within the last 10 consecutive years. For this reason, the Chairman, joined by the City Delegate, with the Union Delegate dissenting, would adopt as part of Article 35.1.6 for Police members hired after October 1, 1982 "final average compensation' means the average of the highest 36 consecutive months out of the last 10 consecutive years." This represents the art of the possible because it is the past practice. There is no showing why there should be a change in the past practice. It is consistent with the internal comparables. It is consistent with a vast majority of the external comparables. And it is the way that the parties have interpreted the contract language. So why not, as a practical matter, clean up the language? This is the reason the Chairman has opted to adopt the City's last best offer on this point, joined by the City Delegate with the Union Delegate dissenting.

### Issue 3

#### Including Overtime in Final Average Compensation

The expired contract in 35.1.6 includes in final average compensation overtime subject to the limitations set forth in Article 35.1.7. The City proposes to eliminate overtime.

The Union objects to eliminating overtime. However, the Union has proposed:

... and includes all: base wages, shift differential, overtime (subject to 7 and 12 below), annual payments for accrues compensatory time, longevity pay, holiday pay and accrued sick and vacation time paid on retirement. The accrued sick and vacation amounts shall not increase a member's FAC by more than 25%. For police patrol members active on 10/01/82, the final average compensation is unchanged.  
(Emphasis in original.)

PROPOSED: (New subsection)

12. Overtime included in FAC as described in subsection 6 shall not include overtime funded through or by School Board and Church Festival Events. No employee or employer contribution will be made to the pension system for the non-credited service for the eliminated overtime events.

The Union's proposal does two things as to overtime. It has continued the Article 35.1, Section 7, cap on overtime involving certain details. In addition, the new paragraph 12 eliminates the consideration of overtime "funded through or by school board and church festival events".

The City's opposition to including overtime and the Union's proposals concerning same has several facets. The City's first concern centers on State shared revenue. The State shared revenue is based upon a combination of revenue guaranteed by the Michigan Constitution and the annual discretionary allocation by the Legislature which is referred to as statutory State shared revenue. (Ex. 39, pg. 8; Tr. 78-79). As to the statutory State shared revenue, the Legislature has replaced it with the Economic Vitality Incentive Program (EVIP) which grants the City certain statutory State shared revenue based upon meeting three elements. Included in the elements are "best practices" addressing limiting the elements of a defined benefit plan. As City Manager Drysdale testified:

- A If you look really the first row it explains – it summarizes what the law suggested local municipalities do. So there'll be certain criteria and that includes eliminating defined benefit plans, lowering or getting a limit on the factors for defined benefit plans, reducing the amount of compensation included in pension calculations and also pushing people toward sharing the cost of healthcare.
- A So this upper line, the very first line where it says employee group and read to the right, are those different EVIP categories?
- A Those were different best practices that in 2012 we were

notified that we had to achieve in order to get our money or at least have a plan to achieve those elements.  
(Tr. 80-81).

City Manager Drysdale's above testimony was referring to the charts set forth in Exhibit 18.

The implication of the testimony is that the failure to curtail overtime in the calculation of the final average compensation for the defined benefit plan could affect statutory State shared revenue. The difficulty with this argument is two-fold. By virtue of this Opinion and the Awards that follow, the City has maintained for the majority of the Patrol Officers a defined contribution plan. As City Manager Drysdale testified:

What the law now says is that we have to make changes that will reduce our unfunded liability in our pension system. That's what the new law – they've been changing it continually since the beginning of 2012, so it's really a moving target.  
(Tr. 82).

By virtue of maintaining a defined contribution for the majority of the Patrol Officers, plus adopting a further limitation on overtime as proposed by the Union, it would seem to the Chairman that the City is complying with best practices and that the Order adopting the Union's last best offer as to the overtime calculation and, as will be pointed out, the sick and vacation accrual provision, is consistent with the best practices under the circumstances.

On the point of the Union's proposal to eliminate school board and church festival overtime from the calculation, the City points out through the testimony of City Manager Drysdale: "Based on those two items, church festivals and school events represent less than 2 percent of all reimbursable overtime, so it's a small fraction of the overtime that should be included currently in FAC". (Tr. 98). Yet, there is a reduction in the overtime that will be included in the final average calculation that previously was included.

Of the 16 external comparables, including Wyandotte, nine include overtime in the final

average compensation. Four – Allen Park, Romulus, Southgate and Taylor – have a bifurcated system whereas employees hired before a given date have overtime included and employees hired after a given date do not. Only Lincoln Park and Woodhaven do not include overtime in final average compensation. So, the external comparables, if anything, arguably would support the Union's position. As to internal comparables, Fire Fighters do exclude overtime in final average compensation. AFSCME has a bifurcated system, namely, for the employee retired prior to June 30, 2013, the overtime is included. Retirement after June 30, 2013, the overtime is not included. The Dispatchers' contract will not expire until September 30, 2014, whereas the Command Officers' contract is in negotiations.

The Chairman appreciates that the Kelman Panel put emphasis on parity between Police and Fire. This might suggest that if the Police maintained for those in the defined benefit plan overtime in the final average compensation this would become a benefit to the Fire Fighters. The Fire Fighters will not be successful in negotiating the inclusion of overtime because the Fire fighters would not be able to present an exclusion of overtime as in the Patrol contract such as for traffic details or for church and school activities. To do so would be most difficult, the Kelmen Panel notwithstanding, for the Fire Fighters do not work as much overtime as Police and their overtime cannot be pinpointed so as to provide exceptions as in the case of the Patrol. Thus, any argument concerning parity does not have vitality in the overtime situation.

It was also pointed out that this Chairman in 2012 in a decision involving the City of Romulus and POAM, *Act 312 Case No. D10 J-1033*, ruled to eliminate overtime from pension calculations.

The problem in relying on the Chairman's previous decision in Romulus is that every community has a certain set of negotiation dynamics and economic dynamics and the criteria

must be considered as it applies to a particular community. Here, in terms of bargaining, in terms of the art of the possible and the bargaining history, the City as a result of this Act 312 proceedings is keeping a two-tier pension plan.

In bargaining there are compromises. In return for keeping the two-tier pension plan because of cost considerations, the City, absent a compelling reason to do so, particularly when the keeping of the two-tier plan and particularly the defined contribution plan for the majority of the Officers in the Patrol Division is a major accomplishment, cannot expect a “clean sweep” by eliminating some of the benefits that the City over the years has negotiated in the defined benefit plan.

When the matter is analyzed as above, this Chairman concludes, applying the history of bargaining, applying the art of the possible, there is no reason not to adopt the Union’s last best offer on the issue of including overtime in the final average compensation with the new Paragraph 12 which is a minor modification, but nevertheless a modification.

Therefore, the Chairman, joined by the Union Delegate, with the City Delegate dissenting, will opt for the Union’s last best offer as to the inclusion of overtime in the “final average compensation” for the defined benefit pension plan.

#### **Issue 4**

#### **The 25% Vacation and Sick Leave Accrual in FAC**

The expired contract in Article 35.1.6 provided that the defined benefit final average compensation would include “accrued sick and vacation time paid on retirement. The accrued sick and vacation amount shall not increase a member’s FAC by more than 25%. For Police Patrol members active on 10/01/82 the final average compensation is unchanged.”

The Union proposes the *status quo*. The City, as this Chairman has indicated, has made

an alternative proposal. The City has proposed to add:

In the event a grievance arbitrator, the Michigan Employment Relations Commission or a court issues a final decision that overtime must be included in the computation of final average compensation for service prior to the effective date of the Act 312 arbitrator's decision in MERC Case No. D12 C-0233, the employee's final average compensation shall not include more than two hundred forty (240) hours of accrued sick and vacation time paid at retirement.

The Chairman will join with the Union Delegate in adopting the Union's last best offer as to including accrued vacation and sick leave and maintain the *status quo* and reject the City's last best offer on this point, which the Chairman recognized is in the alternative. The reason is straightforward, namely, the very reasons that this Chairman set forth in adopting the Union's overtime provision on Issue 3. It is the art of the possible. The City has received a continuation of a defined contribution plan for a majority of the Officers for the reasons stated by this Chairman. The art of the possible would suggest that, if there was a right to strike, this would further suggest that there could not be a settlement without continuing some of the long-standing benefits that the defined benefit Officers have had.

In the end, as the Union has pointed out, the Union has cooperated with the City in negotiating provisions in recognition of the City's serious economic situation. But, there is a limit. There was no doubt pressure from Officers to receive a defined benefit. They have not received same as a result of this Act 312 proceeding for the reasons already stated. The City must recognize that there is a limit to its expectations and the limit has been reached as to the two proposals concerning overtime and the accrued sick and vacation time. Furthermore, if the sick and vacation time provision was modified, it could end up costing the City more money. The reason is simple. The force has been reduced to 23 Patrol Officers. If Officers decide to burn time because this benefit has been eliminated, then in order to keep Officers on the street the City



reason is simple. The force has been reduced to 23 Patrol Officers. If Officers decide to burn time because this benefit has been eliminated, then in order to keep Officers on the street the City could very well might be required to utilize overtime. But the primary reason is the art of the possible and the strike criteria.

Based upon the analysis made above both as to Issues 3 and 4, the Chairman, joined by the Union Delegate, with the City Delegate dissenting, will vote to continue the *status quo* to including accrued sick and vacation time paid on retirement in the final average compensation as set forth in the expired contract in Article 35.1.6.

### ORDERS

The Order and vote of the Chairman and Delegates are set forth below. The views expressed in this Opinion are the views of the Chairman and do not necessarily represent the views of the Delegate voting with the Chairman. For convenience, these Orders have been signed by the Delegates on separate pages, but have the same effect as if signed on the same pages as the Chairman.

#### Issue 1

It is ordered that the *status quo* set forth in Article 35, Section 6, except as modified by the Orders that follow, Article 35.1(6)(7) and (10) shall continue in the contract that the parties have agreed to be the successor to the contract expiring January 31, 2012.

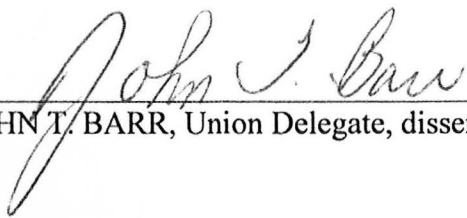
September 17, 2013

  
\_\_\_\_\_  
GEORGE F. ROUMELL, JR., Chairman

September 12, 2013

  
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STEPHEN H. SCHWARTZ, City Delegate,  
concurring

September 12, 2013

  
JOHN T. BARR, Union Delegate, dissenting

**Issue 2**

Effective February 1, 2013, the language of Article 35.1(6), after the statement "effective February 1, 1999", shall be amended to read: "for Police Patrol members hired after 10/01/82 final average compensation means the average of the highest thirty-six (36) consecutive months out of the last ten (10) consecutive years."

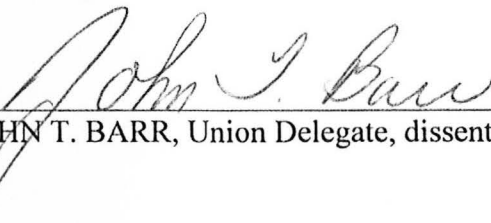
September 12 2013

  
GEORGE T. ROUMELL, JR., Chairman

September 12, 2013

  
STEPHEN H. SCHWARTZ, City Delegate,  
concurring

September 12, 2013

  
JOHN T. BARR, Union Delegate, dissenting

**Issue 3**

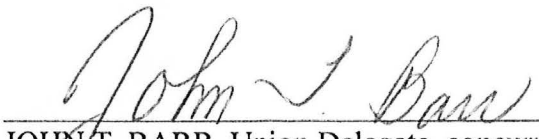
Article 35.1(6), the paragraph after "effective February 1, 1999", shall continue to include in final average compensation "overtime subject to 7 and 12 below". In addition, there shall be a new Paragraph 12 which shall read:

12. Overtime included in FAC as described in subsection 6 shall not include overtime funded through or by School Board and Church Festival Events. No employee or employer contribution will be made to the pension system for the non-credited service for the eliminated overtime events.

September 12 2013

  
GEORGE T. ROUMELL, JR., Chairman

September 12, 2013

  
JOHN T. BARR, Union Delegate, concurring

September 12, 2013

  
STEPHEN H. SCHWARTZ, City Delegate,  
dissenting

**Issue 4**

Article 35.1.6 shall remain unchanged and shall continue to read as to including accrued vacation and sick leave in final average compensation:

The City amends the definition of final average compensation as follows:

For Police Members "Final Average Compensation" means the best twelve (12) consecutive months of compensation, as defined by ordinance, and shall also include holiday pay for the three hundred sixty-five (365) day period preceding the effective date of retirement effective October 5, 1981. Notwithstanding, anything herein to the contrary, effective February 1, 1990, for Police Members, final average compensation (except in the case of deferred retirement, a member's resignation of a member's discharge) shall also include a member's accrued vacation and sick leave paid on retirement, provided however, that said accrued vacation and sick leave amounts shall in no event increase member's final average compensation more than twenty-five (25) percent.

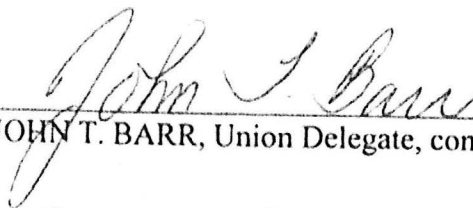
Effective February 1, 1999:

For police patrol members hired after 10/01/82, "Final Average Compensation" means the average of the highest three (3), out of the last ten (10) consecutive years, and includes all: base wages, shift differential, overtime (subject to 7 below), annual payments for accrued compensatory time, longevity pay, holiday pay and accrued sick and vacation time paid on retirement. The accrued sick and vacation amounts shall not increase a member's FAC by more than 25%. For police patrol members active on 10/01/82, the final average compensation is unchanged.

September 12 2013

  
GEORGE T. ROUMELL, JR., Chairman

September 12, 2013

  
JOHN T. BARR, Union Delegate, concurring

September 12, 2013

  
STEPHEN H. SCHWARTZ, City Delegate,  
dissenting

The dissenting opinion of City Delegate Stephen H. Schwartz as to Issues 3 and 4 is set forth below:

Issue 3

Dissenting Opinion: The majority's opinion fails to adequately take into account how inclusion of overtime into final average compensation, plus the increase of final average compensation up to 25%, inappropriately skews the employee's pension. The undisputed record establishes that the majority of the officers retire with approximately 30% to 40% increase to their final average compensation based on these two elements. The majority's decision not to give any meaningful relief to the City is contradictory to its requirements both under the EVIP program and the Governor's best practices to address these elements of its pension plan.

Issue 4

Dissenting Opinion: The City dissents for the reasons described in its dissent in Issue 3.

September 12, 2013