MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Case No. D12 C-0189

Findings of Fact and Opinion and Award of the Panel in the matter of the Public Act 312 Arbitration between

County of Wayne

-and-

Police Officers Association of Michigan

DATE OF PETITION:	December 13, 2012
DATE OF CHAIRPERSON APPOINTMENT:	January 4, 2013
DATES OF HEARING:	January 16, 2013 January 22, 2013 February 25, 2013 April 1, 2013 April 2, 2013 April 15, 2013 May 14, 2013 June 11, 2013
DATE CASE REMANDED FOR BARGAINING:	July 1, 2013
DATE OF HEARING ON REOPEINING:	August 7, 2013
DATE RECORD CLOSED:	August 7, 2013
DATE OF EXTENSION FOR FIRST 30 DAYS:	August 27, 2013
DATE OF EXTENSION FOR SECOND 30 DAYS:	September 27, 2013

ACT 312 ARBITRATION PANEL:

Mr. Kenneth Grabowski, Union Delegate
Mr. June Lee, County Delegate
Dr. Richard N. Block, Chairperson

APPEARANCES:

For County of Wayne

Mr. Kenneth S. Wilson, Deputy Director of Human Resources

For Police Officers Association of Michigan

Mr. Bill Birdseye, Treasurer

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PROCEDURAL MATTER

The parties waived their respective rights to file post-hearing briefs. The parties were of the view that the arguments for each issue were fully addressed in the testimonial and documentary record.

STATUTORY FACTORS

Overview

Pursuant to Public Act 312, as amended, the arbitration panel must consider the following statutory factors in rendering its award:

> (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.
>
> (c) 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.[1]

The panel is of the view that the "other factors" includes consideration of the fairness and equity of each LBO on an issue. In addition, in considering these statutory factors, Act 312, as amended, requires that "(t)he 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."[2]

Each of the parties' last, best, offers will be evaluated in accordance with the statutory factors listed above. The record establishes, however, that factors b, c, f, and h, above, are not relevant to this case. Accordingly, these three factors will not be considered in rendering this award. It is also true that every factor may not be relevant to every issue. Thus, for any issue, the award will only consider the remaining factors that the record establishes are relevant to that issue.

<u>Statutory Factor: Ability to Pay</u>

The record establishes the County's general fund, general purpose revenue, the revenue over which it has discretion, declined from $473.9M in 2008 to $363.6M in 2012, a reduction of 23% (Cty. Ex. 7; Tr. II, 14-16). The record establishes this decline in revenues was directly

[1] See Michigan Legislative Website,"Compulsory Arbitration of Labor Disputes in Police and Fire Departments," Section 423.239, Section, 9, at http://www.legislature.mi.gov/(S(5mi0cu55mz1ebuqh4fuls0rz))/mileg.aspx?page=getObject&objectName=mcl-423-239, accessed August 15, 2013.
[2] Id.

related to a decline in property tax revenues, from which the County derives 53.1% of its total revenues (Cty. Ex. 6, pp. 2-4; Tr. II, 12-13). Due to the recession and the resulting decline in property values, property tax collections for the County declined from approximately $370M in 2007-08 to $278M in 2011-12 (Cty. Ex. 8; Tr. II, 19-20). The property tax collection projection for 2012-13 is $264M (Cty. Ex. 8). The County expects property tax collections to bottom out in 2013-14 at $261.2M (Cty. Ex. 8; Tr. II, 22)

Due to Headlee and Proposal A, annual property tax increases for nonsold properties are limited to the lower of the rate of inflation or 5% (Tr. II, 25-26). Over the last several years the rate of inflation has been under 2% (Tr. II, 17). The County projects that property tax revenues will gradually increase to $261.9 M to $266M in 2015-16,[3] with the uncertainty resulting from changes in the personal property tax enacted by the Legislature in December, 2012 (Tr. III, 17-18). Regardless of the effect of the legislation, the projection for 2015-16 is well below the level of 2007-08, which was approximately $370 million (Cty. Ex. 8; Tr. II, 18-22, 138-41). Given the low rate of inflation and the stability of the housing stock in the County, there is no reason to believe that the County will experience a substantial increase in property tax revenues over the next three to five years (Cty. Ex. 7; Tr. II, 28-29, 44-45).

The County also expects no increase in revenue sharing funds from the State of Michigan. State revenue sharing was $37.9 million in FY 2012. The County budgeted for that amount in FY2013, and expects revenue sharing to remain at that level in FY 2014. (Cty. Ex. 10; Tr. II, 31-37)

The record also establishes that revenues from court equity (e.g. filing fees) have declined. County Budget director Kevin Haney testified that, in 2003, the County received

[3] Under this award, the contract expires on September 30, 2016 (see pp., below).

approximately $22 million in court equity. Mr. Haney expects revenues from court equity to be approximately $14.2 million in the current fiscal year. (Tr. II, 43-44)

Federal grants have also declined. Between FY 2006 and FY 2011, federal grants to county ranged from $6.8 million to $9.9 million. By FY 2013, grant funding had dropped to $4.82 million. The County projects a further reduction to $2.3 million in FY 2014. (Cty. Ex. 6, p. 4-8; Tr. II, 30-31)

Concurrently with the decline in revenues, the County is experiencing an increase in expenses. In Fiscal 2007, its pension expenditures, monies spent by the County to fund its obligations under its defined benefit plans, were $38.9 million. In Fiscal 2012, pension expenditures were $56.4 million and, based on the first quarter estimate, they will be approximately $69.8 million in Fiscal 2013. The County projects pension expenditures of $73.3 million in 2014, with annual increases to $84.9 million in 2017. For Fiscal 2012, pension expenditures constituted 48.74 % of payroll. Pension expenditures for the Sheriff are expected to more than double from 2008 through 2013; Sheriff pension expenses were $11.15 million in Fiscal 2008 and are projected to be $22.57 million in Fiscal 2013, (Cty. Exs. 13-14, 18, Tr. II, 61-65)

The record establishes that poor financial performance by the Wayne County Employees Retirement System (WCERS), the entity that manages the defined benefit pension plans for County employees, has contributed to this increased financial obligation. Although WCERS is actively managed, according to a study performed for WCERS by Northern Trust, during the five-year period ending on September 30, 2012, the financial performance of WCERS, as measured by returns, was far worse that the return would have resulted had WCERS been passively managed, investing in index funds linked to the Standard & Poor's 500, MSCI EAFE (a global equity fund), NCREIF (a real estate fund), and fixed income. Over the five year period ending on September 30, 2012, the return on WCERS investments was .31% while the passive strategy would have returned 2.58%. For the three year period ending on September 30, 2012, WCERS earned 7.03%, while the passive strategy would have earned 9.87%. For the previous two years, the returns were 7.28% for WCERS and 10.83% for the passive strategy. For the previous year, the returns were 16.75% for WCERS and 20.26% for the passive strategy. This weak financial performance has required the County to make greater pension contributions than it otherwise would have in order to compensate for the shortfall and maintain funding in the pension plan. (Cty. Ex. 27; Tr. III, 77-84, 89-90, 102; Tr. VI, 30-31)

A second reason for increased financial obligations on the County associated with the pension fund has been the establishment within WCERS of a separate Inflation Equity Fund (IEF) in 1985 from which 13th checks were distributed to retirees between 1986 and 2009. The establishment of this plan and the distribution of the 13th checks were within the discretion of the WCERS Retirement Commission. The record establishes that, in years in which the investment earnings of the pension plan exceeded the assumed long run return of 8%, the excess due to investment overperformance was transferred to the IEF to be distributed to plan members in the form of a 13th check.[4] Because the theory of a pension plan is that earnings from years of investment overperformance, relative to the assumed long run rate of return, will be offset by the years of investment underperformance, proceeds in the overperforming years must be kept in the plan. Because WCERS distributed these proceeds to members in the form of 13th checks, the plans did not receive the financial benefit of overperforming years and the County has been required to incur the cost associated with underperforming years. (Tr. V, 6-15, 36, 57-58, 67)

[4] Between 20 and 50% of the IEF would be distributed in the form of 13th checks to individuals who had been retired for at least one year (Tr. V, 38-39).

The WCERS actuary, Gabriel Roeder Smith (GRS), determined that as of September 30, 2009, the Actuarial Value of the Assets in the fund (AVA) was approximately $950 million. GRS estimated that had there been no IEF and no 13th check distributions, the AVA for September 30, 2009 would have $1.285 billion, a difference of approximately $335 million, or roughly 35% higher than the actual AVA on that date. GRS also stated that on September 30, 2009, the plan was 67% funded. Had there been no 13th check distributions, that plan would have been 90% funded. Like the poor investment record, this reduced level of funding in the plan due to the 13th check has placed an additional financial obligation on the County. (Cty. Exs. 28, 39: Tr. III, 95-99; Tr. V, 16-22, 33)

The record also establishes that, since 2009, the County has run deficits. Between Fiscal 2009 and Fiscal 2012, the County's accumulated deficit (the deficits from all County funds for which the General Fund is responsible) ranged from a high of approximately $273 million to a low of about $167.6 million. (Ct. Ex. 22; Tr. II, 103-05, 109-11)

With respect to revenues over and above property taxes, the record establishes that the State of Michigan County Incentive Program requires counties to reach certain benchmarks in order to receive 100% of constitutional revenue sharing.[5] These benchmarks place caps on employer contributions and minima on certain employee contributions for pensions and health care. For the County, this means that $7 million of the $38 million in revenue sharing that that County would otherwise be due is at risk. Mr. Haney testified that the County may be unable to comply with all of the required benchmarks. (Cty. Ex. 11; Tr. II, 32-45, 137-38)

The record establishes that, in 2013, the Sheriff's department accounted for approximately 22% of general fund budget of the County, $119.9 million out of a total budget of

[5] The record establishes that there is a reasonable argument that these State-imposed restrictions on constitutional revenue sharing are unlawful (Tr. II, 41-42; Tr. III, 20-21).

$537.3 million (Cty. Ex. 6, p. 4-5; Tr. II, 147-50). This is the highest percentage of any department in the County. Thus controlling expenditures in the Sheriff's department is essential to the financial health of the County.

The record also indicates that property values in Wayne County will continue to decline due to declining populations and the large number of properties in the City of Detroit that require demolition. The record also establishes that the City of Detroit sells to the County delinquent property taxes. In principle, the County collects those taxes plus a fee. The record indicates, however, that a percentage of these taxes will not be collected, placing additional pressure on the County's revenue stream. (Cty. Ex. 32; Tr. III, 15-17; Tr. IV, 17-18)

The record establishes that the County's population, both absolutely and relative to the remainder of the State of Michigan is declining. Between 1950 and 2010, the population of Wayne County declined from 2.4 million to 1.8 million, a period when the population of Michigan increased from 6.4 million to 9.9 million. The declining population means that there is little potential to raise revenue. The declining share of Michigan population means that Wayne County has declining influence in the legislature, with little potential for increases in state funding. The percentage of undeveloped land in the County is small relative to the rest of Southeast Michigan. In 2000, 18% of the land in Wayne County was available for development as compared to 51% of the land in Southeast Michigan. Thus, there is little opportunity to develop additional tax base. In addition, the County does not levy an income tax. Overall, the long term outlook for revenue generation in the County is poor. (Tr. IV, 17-21, 36-45, 59, 61; Cty. Ex. 32)

Overall, the record establishes that the County has no vehicle that would result in increased revenues with 100% certainty. The County's financial situation can be addressed only through expenditure reductions (Tr. 107).

Finally, it must be noted that the petition for Act 312 arbitration in this case was not filed until December, 2012, almost 14 months after the September 30, 2011 expiration of the current agreement. The time lags that are inherent in an Act 312 proceeding means that this award is issued more than two year after the expiration of the current agreement. This two-year period has coincided with a continuing deterioration in the County's financial situation. This deterioration has made the task of the panel more difficult than it might otherwise have been.

Statutory Factor: Comparability

Neither party has contended that any particular jurisdiction in the state is relevant should be considered as an external comparable. Additionally, neither side has contended that any other bargaining unit in the County should be considered as an internal comparable. Nevertheless, to the extent that a party offered on the record evidence regarding other jurisdictions, that evidence will be considered.

Statutory Factor: Other Factors

Fairness and equity to both parties is a factor that is generally taken into account in collective bargaining. Accordingly, this is a factor that will be taken into consideration by the panel, where appropriate.

EFFECTIVE DATE

Unless otherwise stated in the accepted last, best, offer (LBO), all changes from the 2008-11 collective bargaining agreement shall be effective on the date of this Opinion and Award.

ISSUE 1[6]: ARTICLE 16, WORK WEEK SCHEDULE (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

The standard payroll work week, within the discretion of the Sheriff, for bargaining units assigned to Jail Division I, Jail Division II, and Jail Division III, shall consist of twelve (12) hour work periods. The Sheriff, in his discretion, will determine which bargaining unit members assigned to these facilities will work these twelve (12) hour shifts. The Sheriff shall meet and negotiate with the Union over details of implementation, and the Panel Chairperson shall retain jurisdiction to conduct interest arbitration of any implementation issues, if necessary.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

In support of its proposal to move to 12-hour shifts, the County has submitted into evidence a table showing overtime hours paid to the bargaining unit from October 1, 2012-March 31, 2013 (Cty. Ex. 44). The County has also submitted documents from the Act 312 Case No. D12-D0354, City of Detroit and Detroit Police Officers Association (DPOA). The Detroit-DPOA documents submitted are: an excerpt from the arbitration award (Co. Ex. 60, pp. 4-9); an excerpt from the transcript from the proceedings of December 18, 2012 in that case (Co. Ex. 60, pp. 11-27); the text of the City of Detroit's 12-hour shift proposal (Co. Ex. 60, pp. 29-32); and tables showing the reduction in overtime in various districts and precincts in Detroit (Co. Ex. 60, pp. 33-50).

The record establishes that, since Fiscal 2008, in a period of declining County revenues, Sheriff Department expenditures have decreased and then started to increase. Sheriff expenditures dropped from $166 million in Fiscal 2008 to $141.6 million in Fiscal 2011. These

[6] For purposes of ease of presentation, the issues will be numbered. The numbering is unrelated to the relative importance of any issue vis-à-vis other issues.

expenditures increased, however, to $157 million in Fiscal 2012 and are projected to increase to $169.6 million in Fiscal 2013. Budget Director Kevin Haney testified that overtime costs, pension, and health care are significant contributors to the Sheriff's Department expenditures. Although overtime expenditures have been somewhat volatile over the decade, the trend has been increasing since Fiscal 2008.In that year, overtime expenditures were $6.64 million; in Fiscal 2012 they were $15.9 million. Overtime expenditures are expected to drop slightly in Fiscal 2013, to $13 million, but are more than twice as high as the overtime expenditures in 2008. For the period October 1, 2012 through March 31, 2013, the County spent almost $7.9 million on overtime for the bargaining unit, accounting for approximately 91.6 % of the overtime in the Sheriff's Department. This would suggest overtime expenditures of $15 million to $16 million dollars for the bargaining unit in Fiscal 2013. Indeed, the County estimates that the average bargaining unit member receives $19,980 in overtime. Given the County's serious financial circumstances, this is an expenditure that is reasonable for the County to address. (Cty. Exs. 19, 21; 44; Tr. II, 77, 81-82, 86-91, 95, 133; Tr. V, 95)

The record establishes that moving to 12-hour shifts for the police officers in Detroit effective September 17, 2012 resulted in a substantial reduction in overtime costs to the City. The record establishes that in 2012-13, the change from 8-hour shifts to 12-hour shifts resulted in an annual estimated department-wide overtime savings of almost $3.1 million (Cty. Ex. 60, File pp. 19-20, 24, 36-50). Although the record does not estimate the extent of the savings the County would realize by going to 12-hour shifts, given the weak financial condition of the County and statutory primacy of the statutory factor of ability to pay, these potential cost savings must be given great weight.

The record also indicates that the Sheriff's department may be understaffed, requiring management to assign more overtime than might be desired by some members of the bargaining unit. Corporal Albert Hunter, a steward in the William Dickerson facility, testified that the department is understaffed by 40-50 deputies. As a result, involuntary overtime is a regular occurrence; deputies do not have the right to refuse overtime. The record discussed above establishes that the adoption of 12-hour shifts is reasonably likely to ameliorate some of the effects of the staffing shortages by improving shift coverage, with the result that mandatory overtime will be decreased. (Tr. II, 126-27, 164-80; Cty. Ex. 60)

The record also establishes that, in Detroit, there was a difference of opinion among bargaining unit members on the benefits of 12-hour shifts. Some believed that it would result in increased fatigue on the job, while others preferred 12-hour shifts for the increased number of days off it provided and the increased ability to plan due to the reduction of unscheduled overtime. Thus, it is reasonable to believe that some officers may see 12-hour shifts as improvement in working conditions, while others may see it as a detriment. The bargaining unit as a whole, however, is likely to perceive itself as no worse off with 12-hour shifts than with 8-hour shifts. (Cty. Ex. 60, File p. 6).

Finally, a majority of the panel notes that the City of Detroit proposal on 12-hour shifts was far more detailed than the County's proposal. The City of Detroit's proposal addressed such matters as straight-time hours, meal periods, sick leave credit, training days, furloughs, holiday pay, shift trading, and days off (CX 60, pp. 29-32). The County's proposals does not reference these details except to state that they must be negotiated by the parties, with a decision by this Panel Chair if the parties are unable to agree. A majority of the panel believes that this negotiation procedure is an improvement over the proposal offered by the City of Detroit, because it permits flexibility and permits the parties to develop an implementation plan that is agreeable to them.

Based on the foregoing, a majority of the panel finds that the County's proposal is clearly supported by statutory factor a, ability-to-pay. Although the parties have identified no comparables, a majority of the panel notes that the Act 312 panel in the Detroit-DPOA proceedings awarded a proposal similar to the County's proposal in these proceedings (Cty. Ex. 60, File pp. 4-7). Finally, although the bargaining unit members may experience some reduction in compensation (factor g) associated with the loss of overtime, overtime was not part of their base compensation. In any event, the savings associated with this proposal must be given the greatest weight, given the County's financial condition.

Finally, a majority of the panel notes that the matter of 12-hour shifts is not novel to these parties; the most recent collective bargaining agreement includes a provision for a Labor-Management Committee to consider 12-hour shifts. In that sense, implementation of 12-hour shifts is an issue that the bargaining unit is aware has been considered since at least 2008, when the most recent collective bargaining agreement began. Thus, the bargaining unit members have had the opportunity to consider how such shifts would affect them. Thus, the County's proposal is not inconsistent with the principle of fairness and equity, as the establishment of 12-hours shifts will not be a surprise to the bargaining unit.

CONCLUSION ON ISSUE 1: ARTICLE 16 – WORK WEEK SCHEDULE

A majority of the panel finds that the County's LBO on Article 16 - Work Week Schedule, is more consistent with the statutory factors than the Union's LBO.

AWARD ON ISSUE 1: ARTICLE 16 – WORK WEEK SCHEDULE

The County's LBO on Article 16 Work Week Schedule, is accepted. The Union's LBO on Article 16, Work Week Schedule, is not accepted.

ISSUE 2: ARTICLE 17, OVERTIME (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

1. Overtime Pay. Members shall only be paid overtime (time and one-half) (150) of the regular hourly rate for hours of work performed in excess of eighty (80) hours in an employee's pay period or in excess of eighty-four (84) in an employee's pay period if the employee is on 12-hour shifts. Vacation, sick, holiday, personal business leave, and bereavement days shall not be included as hours worked for purposes of entitlement to overtime.
2. Double-Time. Double-time as provided in Section 7.02 shall be eliminated from the collective bargaining agreement.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

The purpose of Item 1 of the County's proposal on overtime is to modify the overtime provision in the 2008-11 collective bargaining agreement to conform to its proposal on the work week schedule (12-hour shifts). As a majority of the panel has awarded the County's proposal on the work schedule, a majority of the panel will also award this conforming change on overtime.

The purpose of Item 2 of the County's proposal on overtime is to eliminate double time from the overtime provision. First, a majority of the panel finds that this provision may also be a conforming modification resulting from the majority's adoption of the work week proposal. Although the County's proposal requires the parties to negotiate the implementation of 12-hour shifts, the record establishes that, in Detroit, the work schedule adopted resulted in a schedule such that officers in Detroit received three days off every other week. The current double-time provision, which provides for double time on the second leave day of the employee's work week, is incompatible with such a schedule.

Second, the County's proposal states that "(d)ouble-time *as provided* in Section 17.02 shall be eliminated from the collective bargaining agreement" (emphasis added). In the current Section 17.02, double time is paid for work performed on the second leave day of the work week, subject to the conditions in the in the provision. As the parties may negotiate some workweeks with three days of leave, the current provision is impractical. Because the LBO refers only to double-time "as provided" in Section 17.02, however, granting the County's proposal does not eliminate the possibility of double-time from the collective bargaining agreement. The parties retain the option, as part of their negotiated implementation of the 12-hour shifts, of establishing circumstances under which bargaining unit employees may receive double-time.

CONCLUSION ON ISSUE 2: ARTICLE 17 – OVERTIME

A majority of the panel finds that the County's LBO on Article 17 – Overtime, is more consistent with the statutory factors than the Union's LBO.

AWARD ON ISSUE 2: ARTICLE 17 – OVERTIME

The County's LBO on Article 17 – Overtime, is accepted. The Union's LBO on Article 17, Overtime, is not accepted.

ISSUE 3: ARTICLE 19 – MAJOR HOLIDAYS (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

The designation of Major Holiday will be eliminated and bargaining unit members working on these days shall be paid as provided in present Section 19.02(8) for Minor Holidays.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

The purpose of this proposal is to eliminate County payments of two-and-one-half time or three times base pay on certain holidays, designated as major holidays. Given the weak financial condition of the County, elimination of the payment of this extra overtime for certain holidays is reasonable. Currently, the County pays an average of $5,617 per employee year on in holiday pay; a reduction in holiday pay of even a modest percentage will help the county. Employees who work on holidays will continue to receive double time (200%) per Section 19.02 B of the collective bargaining agreement. (Tr. I, 9; Tr. V, 122; Cty. Ex. 42)

CONCLUSION ISSUE 3: ISSUE 3: ARTICLE 19 – MAJOR HOLIDAYS

A majority of the panel finds that the County's LBO on Article 19, Major Holidays, is more consistent with the statutory factors than the Union's LBO.

AWARD ON ISSUE 3: ARTICLE 19 – MAJOR HOLIDAYS

The County's LBO on Article 19 – Major Holidays is accepted. The Union's LBO on Article 19, Major Holidays, is not accepted.

ISSUE 4: ARTICLE 19 – BIRTHDAYS (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Elimination of birthday holiday.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

A majority of the panel rules that Union's LBO on his issue shall be awarded. Although the County is in serious financial circumstances and the County's LBO would result in some savings, the employees in the bargaining unit will not receive a wage increase during the term of this agreement. Indeed, an increase in pension contributions will result in a decline in take-home earnings. Fairness and equity requires that this small benefit for employees be retained.

CONCLUSION ON ISSUE 4: ARTICLE 19 – BIRTHDAYS

A majority of the panel finds that the Union's LBO on Article 19 – Birthdays, is more consistent with the statutory factors than the County's LBO.

AWARD ON ISSUE 4: ARTICLE 19 – BIRTHDAYS

The Union's LBO on Article 19 – Birthdays, is accepted. The County's LBO on Article 19, Birthdays, is not accepted.

ISSUE 5: ARTICLE 21 -- SICK LEAVE (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Effective October 1, 2012, all annual sick leave accumulation in excess of forty (40) days shall be paid at the rate of 50%.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

The record does not contain any evidence on the relationship between the County's LBO and the statutory factors. Accordingly, the record does not support modifying the current language.

CONCLUSION ON ISSUE 5: ARTICLE 21 – SICK LEAVE

A majority of the panel finds that the Union's LBO on Article 21 – Sick Leaves, is more consistent with the statutory factors than the County's LBO.

AWARD ON ISSUE 5: ARTICLE 21 – SICK LEAVE

The Union's LBO on Article 21 – Sick Leave, is accepted. The County's LBO on Article 21, Sick Leave, is not accepted.

ISSUE 6: ARTICLE 30 – UNIFORM, CLOTHING, AND EQUIPMENT ALLOWANCE (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Reduce and restructure annual uniform allowances (current employees):

- Uniformed/Sworn - to $900/year;

- Uniformed/Non-Sworn - to $1 OO/year;
- Plain Clothes/Sworn - to $400 year.

Reduce and restructure annual uniform allowances (new hires on a permanent basis going forward):

- Uniformed/Sworn - to $900/year;
- Uniformed/Non-Sworn - to $1 OO/year;
- Plain Clothes/Sworn - to $400 year

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

Presumably, the County LBO on uniform, clothing, and equipment allowance is put forth to generate cost savings for the County. The County, however, has presented no evidence on the amount of savings that would be realized from its LBO. In view of the fact that the wear and tear on uniforms, clothing, and equipment is associated with the performance by employees of their duties for the County, the County bears a burden of demonstrating the necessity for restructuring and reducing these allowances. A majority of the panel finds, based on the record in this case, that the County has not met that burden.

CONCLUSION ISSUE 6: ARTICLE 30 – UNIFORM, EQUIPMENT, AND CLOTHING ALLOWANCE

A majority of the panel finds that the Union's LBO on Article 30 – Uniform, Equipment, and Clothing Allowance, is more consistent with the statutory factors than the County's LBO.

AWARD ON ARTICLE 30 – UNIFORM, EQUIPMENT, AND CLOTHING ALLOWANCE

The Union's LBO on Article 30 – Uniform, Equipment, and Clothing Allowance, is accepted. The County's LBO on Article 30 – Uniform, Equipment, and Clothing Allowance, is not accepted.

ISSUE 7: ARTICLE 37, RETIREMENT/CONTRIBUTIONS (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Contributions. All employees for the term of the contract effective upon the date the new collective bargaining agreement is signed by the Wayne County Executive will take a 5.1% wage concession by making an additional 5.1% employee contribution to the Retirement System and, in the case of employees in Plan 4, receive a 5.1% reduction in the County's contribution as follows:

Plan 6 = 4% to 9.1%
Plan 5 = 1% to 6.1% (employees hired prior to October 1, 2008)
Plan 5 = 5% to10.1% (employees hired on or after October 1, 2008)
Plan 4 = Reduction in County match (subject to any applicable IRS regulations) by 5.1%
Plan 3 = increase to 5.1%
Plan 2 = increase to 5.1%
Plan 1 = increase to 5.1%

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

Threshold Question

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until

October 1, 2020. This County LBO addresses an issue concerning retirement. By letter to the County dated August 26, 2013 (copy to the panel chair), the Union waived the prohibition in Section 37.01 N solely for the purpose of this LBO. As the County has made this proposal, the Panel presumes that the County has waived its right to remove this issue from Act 312 arbitration. Hence, the Panel finds that it has the authority to issue an award on this LBO.

Substantive Discussion

The rationale for the County's LBO is to generate savings by requiring employees (except those in Plan 4) to take a 5.1% wage concession and to allocate this wage concession to the retirement system, thereby reducing the County's contribution by that amount. Given the County's weak financial situation, a majority of the panel finds that this proposal is consistent with the statutory factor of ability to pay . The County's LBO clearly results in savings to the County by shifting an increased portion of the burden of funding retirement to the employees.

The County LBO is also consistent with the statutory factor of fairness and equity. While the County's LBO clearly constitutes a concession by the Union, this concession continues to benefit the employees as a unit, as it goes to fund their retirement. It was clear to the Panel Chair during the proceedings that the financial condition of the County would require Union concessions on monetary compensation. Because the benefits of increased pension contributions would go to the employees, the Panel Chair was of the view that an increase in the pension contributions of bargaining unit members was preferable to a direct wage concession (see Issue 16). Hence, the Panel Chair suggested to the Union that it consider waiving its rights under Article 37.01 N with respect to pension contributions.

It is noted that the 5.1% wage concession/pension contribution in the County's LBO does not apply to Plan 4, the Defined Contribution (DC) Plan (Jt. Ex. 2). For Plan 4, the County's LBO mandates a 5.1% reduction in the County's contribution. Although this means a lower accumulation than would otherwise have occurred for employees enrolled in Plan 4, these employees may restore all or part of this County contribution by making a contribution of up to 5.1% to their account.

CONCLUSION ON ISSUE 7: ARTICLE 17 – RETIREMENT CONTRIBUTION

A majority of the panel finds that the County's LBO on Article 37, Retirement Contributions, is more consistent with the statutory factors than the Union's LBO.

AWARD ON ISSUE 7: ARTICLE 17 – RETIREMENT CONTRIBUTION

The County's LBO on Article 37, Retirement Contributions, is accepted. The Union LBO on Article 37, Retirement Contributions, is not accepted.

ISSUE 8: ARTICLE 37, RETIREMENT/REDUCTION IN MULTIPLIER FOR ALL DEFINED BENEFIT PLANS (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Reduction in Multiplier for all Defined Benefit Plans. The multiplier, for determining retirement compensation in defined benefit plans 1, 2, 3, 5, and 6 shall be reduced to 1.5 of average compensation for all years of credited service accrued after the date this agreement is executed by the Wayne County Executive or awarded by the Act 312 *panel ("implementation* date"). The multiplier remains the same for all years of credited service accrued prior to the implementation date. *For example,* a *bargaining unit member in Plan 5 having accrued twenty (20) years of credited service prior to the implementation date, at the 2.0 multiplier, shall receive 40 of average final compensation (20 x* 2) *in addition to* 1.5 of *average final compensation for all years* of *credited service accrued after the implementation date* as *his or her retirement allowance. (See,* State's

B*est practices* for optimal revenue sharing, 2012 P.A. 200).

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020." This County LBO addresses an issue concerning retirement. As the County has made this proposal, the Panel presumes that the County has waived its right to remove this issue from Act 312 arbitration. There has, however, been no Union waiver of its right under Section 37.01 N to exclude this issue from Act 312 arbitration. Therefore the Panel finds that there has been no mutual waiver of the provisions of Section 37.01 N with respect to this issue. Accordingly, the panel is without authority to decide this issue and the status quo shall continue. The panel expresses no view on the merits of the LBOs.

ISSUE 9: ARTICLE 37, RETIREMENT/FINAL AVERAGE COMPENSATION (ECONOMIC)

LAST, BEST OFFE**RS**

Last, Best Offer of the County

Average Final Compensation. Effective upon the implementation date, compensation used to determine accrued financial benefits shall be calculated as the average of the last consecutive five (5) years of compensation and shall not include more than a total of 240 hours of paid leave. Overtime hours shall not be used in computing the average final compensation ("AFC") for a bargaining unit member.

Compensation for years prior to the implementation date shall be determined pursuant to the present provisions of Article 37 establishing AFC. Hence, a bargaining unit member retiring two (2) years after the implementation date would average five (5) years of compensation, three (3) of which would be computed pursuant to the present provisions in the CBA, two (2) of which would be computed pursuant to this modification.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020." This County LBO addresses an issue concerning retirement. As the County has made this proposal, the Panel presumes that the County has waived its right to remove this issue from Act 312 arbitration. There has, however, been no Union waiver of its right under Section 37.01 N to exclude this issue from Act 312 arbitration. Therefore the Panel finds that there has been no mutual waiver of the provisions of Section 37.01 N with respect to this issue. Accordingly, the panel is without authority to decide this issue and the status quo shall continue. The panel expresses no view on the merits of the LBOs.

ISSUE 10: ARTICLE 31, FUTURE RETIREE HEALTH INSURANCE (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Retiree Health Care Limited to Retiree Only. Bargaining unit members who hired into the County service on or after January 1,2002, who are not participants in the Employee Health Care Benefit Trust ("Trust") established by Wayne County who are eligible for post-retirement health care benefits shall participate in the same health care options, coverages, co-pays, deductibles, etcetera, as active employees covered by this or any subsequent bargaining agreement for themselves only and shall be responsible for any and all premium obligations due for coverage for spouses and/or dependents.

The County shall negotiate with the bargaining unit over a version of its present Employee Health Care Benefit Trust to fund, on a pre-tax basis, health care benefits for spouses and/or dependents (supplemental funding mechanism) of bargaining unit members affected by this modification. However, there will be no County contribution, and the entire amount will be contributed by bargaining unit members. Implementation of the provisions in the prior paragraph is not, in any way, conditional on the parties reaching an agreement as to a supplemental funding mechanism, and pre-tax treatment of contributions shall be subject to approval by the Internal Revenue Service.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

Threshold Question

A majority of the panel finds that Article 37.01 N is not applicable to this issue. Article 37.01 N affects retirement-related issues, which are addressed in Article 37. Article 37, in Article 37.12, also provides for the Employee Health Care Benefit Trust. The County's LBO specifically exempts employees in the Trust. Other retiree health care issues are addressed in Article 31. If the parties had intended the provisions in 37.01 N to apply to retiree health care matters not included in Article 37, they could have done so. They did not. Accordingly, a majority of the panel finds that it has jurisdiction over this issue.

Substantive Discussion

The County's LBO admittedly will result in a loss of benefits for future retirees, which is a consideration supporting the Union's LBO in opposition to this proposal. There are, however, several considerations based on the statutory factors that support the County's offer on this issue. First, the proposal will considerably reduce the County's long-term liability for health insurance for employees for the period of time between an employee' retirement and the retiree's Medicare eligibility; single employee coverage generally costs far less than family coverage. Given the primacy of the factor of ability-to-pay and the County's serious financial condition, this must be given substantial weight.

The vast majority of employees will retire with 25 or 30 years of service (Jt. Ex. 2, pp. 92, 93, 94, 96, 98, 102). As the proposal only applies to employees who were hired on or after January 1, 2002, it will be almost 14 years until this proposal takes effect for most employees. Thus, almost all affected employees will have a substantial amount of time to make the appropriate financial adjustments.

This time may also be used by the parties to develop systems for funding family coverage for retirees. Although the proposal does not contain a pre-tax funding mechanism through the County (Tr. Vol. I, 96), the 14-year time lag provides the parties the time and opportunity to develop such mechanisms.

In addition, not all retirees will necessarily need family coverage. It is reasonably likely that the family members of some percentage of future retirees will have medical coverage. For these future retirees, requiring the County to fund family coverage may be an unnecessary expense.

Finally, a majority of the panel notes that requiring retirees to pay for dependent health insurance is becoming an increasingly common benefit change among local employers (Cty. Ex. 5, p. 9; Tr. I, 63). Although the parties have identified no specific comparables pursuant to Act 312, it is traditional to consider industry trends. In 2011, 21% of local governments in a survey conducted by the Employee Benefit Research Institute required pre-Medicare retirees to pay for family coverage, while 32% of local governments required Medicare-eligible employees to pay for family coverage (Cty. Ex. 4, p. 9).

A majority of the panel is cognizant of the legitimate concerns of future retirees as regards family coverage. As noted, however, the effects of this proposal will start to go into effect in 2027. This period of time gives the parties sufficient time through collective bargaining (and if necessary, Act 312 arbitration) to make the necessary adjustments to balance the interests of the County and the Union.

CONCLUSION ON ISSUE 10: ARTICLE 37 – FUTURE RETIREE HEALTH INSURANCE

A majority of the panel finds that the County's LBO on Article 37 – Future Retiree Health Insurance, is more consistent with the statutory factors than the Union's LBO.

AWARD ON ISSUE 10: ARTICLE 37 – FUTURE RETIREE HEALTH INSURANCE

The County's LBO on Article 37 – Future Retiree Health Insurance, is accepted. The Union's LBO on Article 37 – Future Retiree Health Insurance, is not accepted.

ISSUE 11: NEW PROVISION, RETIREMENT/TRANSFER OF ADMINISTRATION OF DEFINED BENEFIT PLAN

LAST, BEST OFFERS

Last, Best Offer of the County

Effective upon the date of this award, for the period of October 1, 2015 through September 30, 2016, the Chief Executive Officer ("CEO") may, in its discretion, move all administration of bargaining unit members' participation in County defined benefit plans to MERS. Bargaining unit members' benefits, pursuant to the terms and conditions contained in their CBA and as otherwise established by their CBA, shall not be reduced by this change in in the administration of the DB plans. A *pro rata* share of system assets, as well as liabilities, associated with benefits accrued by bargaining unit members shall be transferred to MERS.

Last, Best Offer of the Union

Effective upon the date of the award, the County shall move all administration of bargaining unit members' participation in County Defined Benefit Plans to the Municipal Employees Retirement System (MERS) by September 16, 2016. Bargaining unit members' benefits pursuant to their terms and conditions of employment contained in their CBA, and otherwise as established by their CBA, shall not be reduced or impaired by this change in the administration of their DB plans.

DISCUSSION

Threshold Question

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020" (Jt. Ex. 2) This County LBO addresses an issue concerning retirement. Because both parties have provided on LBO on this issue, the panel finds that the both parties have waived their right to remove this issue from this Act 312 arbitration. Hence, the Panel finds that it has the authority to issue an award on this LBO.

Substantive Discussion

The last, best offers of both parties on this issue demonstrate that the parties have a mutual interest in removing WCERS from the administration of the defined benefit pension plans. The record establishes substantial justification for this view. As noted in the discussion on the statutory factor of ability to pay, WCERS has performed poorly in administering the pension funds. The funding ratio in WCERS for County employees declined by 40% between 2007 and 2011, dropping from 82% to 49% (Cty. Ex. 15; p. A-4). The investment performance of WCERS has been historically weak; WCERS would have earned a higher rate of return had it simply invested in in index funds. The establishment of the Inflation Equity Fund and the distribution of 13th checks to retirees, essentially distributing earnings from overperformance to retirees rather than reinvesting them in the fund, has damaged the County and active employees. It has increased the financial burden on the County and has created greater uncertainty than was necessary as regards the future pensions for active employees.

The record also establishes that MERS has been, since it was established in 1945-46, a reliable administrator of pension plans for municipalities. Approximately 800 Michigan municipalities participate in MERS. MERS has 100,000 members. (Tr. VI, 7-8).

The MERS governing Board oversees investment performance. Of the nine members on the MERS board, two are public members who are investment professionals.[7] Thus the MERS board has investment expertise structured into its governance, a characteristic that WCERS currently lacks. MERS also has eight full-time employees who are responsible for investment performance. (Cty. Ex. 53; Tr. VI; 13-14, 83-86)

The record establishes that MERS has outperformed WCERS with respect to investment performance. For the five-year period ending March, 31, 2013, MERS earned an annual rate of return of 4.59%, while, for that same period, the WCERS rate of return on its investments was 3.2%, a difference of approximately 43%. Although the MERS return was below the WCERS passive (index funds) of 5.42%, MERS was still closer to the WCERS passive than was WCERS. This difference between MERS and WCERS passive could also have resulted from the MERS investment strategy of maximizing

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[7] There are also three employer board members, three employee board members, and one retiree board member (Tr. VI, 13).

downside protection to minimize the loss of the value of the funds when the market declines, an investment strategy that has been successful. (Tr. VI, 15, 24; Cty. Exs. 45-46)

Thus, the panel finds that administration of the County DB plans by MERS is likely, over the long run, to result in lower costs to the County than administration of the DB plans by WCERS. Administration by MERS, as compared to WCERS, is also likely to result in improved financial performance of the plans, thereby increasing the likelihood that members will receive their expected benefits.

The parties, however, diverge on the procedure for transferring the assets of the bargaining unit's DB plans to MERS. The County would leave transfer to the discretion of the CEO during the final year of the collective bargaining agreement. The Union's LBO would require a transfer by September 30, 2016.

Given the weak investment performance of WCERS, both objectively and vis-à-vis MERS, the panel understands the reason the Union prefers that the panel direct a transfer to MERS. Nevertheless, the record does not support a mandatory transfer. Although the record establishes that MERS accepts administration of poorly funded plans, and that MERS would likely accept the County's DB plans, the record does not establish with certainty that MERS will accept a transfer of the WCERS DB plans in which the bargaining unit members participate, or, if MERS will accept the transfer, the conditions that will be imposed on the County. Thus, it would be impractical for this panel to impose on the parties a requirement that they may be unable to meet due to factors outside their control. (Tr. VI, 59-60)

Given this, in the view of the panel, the factor of fairness and equity supports the County's LBO. The County's LBO leaves the decision to transfer the bargaining unit's DB plans to MERS with the CEO, with that decision to be made within a specified time frame. Given the size of a potential transfer,[8] this time period will give the parties and the CEO two years to determine if a transfer is feasible.

Although the Chairperson would generally be averse to leaving a decision to the discretion of one person associated with one of the parties with no right of review, the record in this case, in the context of these LBO's, warrants such a decision. In addition, as noted, administration of the County DB plans by MERS is likely to result in lower long run costs to the County, due to superior investment performance, than administration by WCERS. Thus, the CEO, presumably acting in the best interest of the County, would have an incentive to transfer administration of the DB plans to MERS if such a transfer is financially feasible.

CONCLUSION ON ISSUE 11: NEW PROVISION, RETIREMENT/TRANSFER OF ADMINISTRATION OF DEFINED BENEFIT PLAN

The panel finds that the LBO of the County on this issue is more consistent with the statutory factors than the LBO of the Union.

AWARD ON ISSUE 11: NEW PROVISION, RETIREMENT/TRANSFER OF ADMINISTRATION OF DEFINED BENEFIT PLAN

The LBO of the County on Retirement/Transfer of Administration of Defined Benefit Plan is accepted. The LBO of the Union on Retirement/Transfer of Administration of Defined Benefit Plan is not accepted.

[8] As of September, 2011, the non-airport DB plans in the County had assets of $734 million and accrued liabilities of almost $1.5 billion (Cty. Ex. 15). The record does not establish the percentage of the assets and liabilities that are associated with the bargaining unit.

ISSUE 12: RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS)

LAST, BEST OFFERS

<u>Last, Best Offer of the County</u>

At the employer's discretion, and upon one-hundred-twenty (120) days' notice to both the bargaining unit and the Wayne County Employees' Retirement System ("WCERS"), prior to the first day of any plan year, employees joining the bargaining unit on or after the first day of that plan year shall exclusively accrue benefits pursuant to a defined contribution plan wherein the County shall annually contribute 10% of base salary and the bargaining unit member shall annually contribute 5.0% of their gross salary. Contributions shall be made on a pre-tax basis as permitted by the IRS. Bargaining unit members are not permitted to borrow funds on deposit in their defined contribution account.

<u>Last, Best Offer of the Union</u>

The Union proposes that there be no change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

<u>Threshold Question</u>

As this issue addresses terms and conditions for employment for new hires only, it is not covered by Article 37.01 N. That provision covers only individuals who were members of the bargaining unit. Thus, a majority of the panel finds that it has the authority to rule on this issue.

<u>Substantive Discussion</u>

The record supports awarding a DC plan for new hires. The record overwhelmingly establishes that adding new hires to the existing DB plan will be extremely costly for the County. As discussed in the section on "ability-to-pay" the poor investment performance of WCERS in combination with the distribution of 13th checks to retirees has resulted in a 2011 funding ratio of 49% in the County DB plan. In view of the current financial stress that the County is undergoing, the factor of ability-to-pay strongly supports the establishment of a DC plan for new hires in order to limit the County's future DB liability.

With respect to fairness and equity, although a DC plan places the investment risk on the employee, the record does not establish that a DB plan is always more advantageous to employees than a DC plan. A DB plan often costs more per member to administer than a DC plan because of the necessity of sending payments and the requirements that the plan have an annual actuarial valuation. In addition, the solvency of a DB plan depends on the financial health of the employer and the continued ability of the employer to make payments into the plan; employees in a DB plan do not have individual accounts; all members of the plan are adversely affected if the plan is in financial difficulty because the employer cannot make its payments, investment return are lower than expected, or for some other reason. On the other hand, each employee has an individual account in a DC plan that goes with the employee; the investments are controlled by the employee/future retiree rather than a plan board. (Tr. III, 29-32; VI, 64)

The panel also understands that the County's LBO does not identify an administrator of the DC plan for new hires. It simply proposes the establishment of a DC plan.

Based on the foregoing, the panel finds that the two relevant factors for this LBO are ability to pay and fairness and equity. The factor of ability to pay supports the County's LBO, while the factor of fairness and equity does not support either LBO.

Accordingly, the panel finds that new hires into the bargaining unit shall be placed into the DC plan pursuant to the terms of the County's LBO.

CONCLUSION ON ISSUE 12: NEW PROVISION, RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS).

The panel finds that the LBO of the County on Issue 12, New Provision, Retirement/Defined Contribution Plan (for New Bargaining Unit Members) is accepted as more consistent with the statutory factors than the LBO of the Union.

AWARD ON ISSUE 12: NEW PROVISION, RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS).

The LBO of the County, on Issue 12, New Provision, Retirement/Defined Contribution Plan (for New Bargaining Unit Members), is accepted. The LBO of the Union on Issue 12, New Provision, Retirement/Defined Contribution Plan (for New Bargaining Unit Members), is not accepted

ISSUE 12A: RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS)

LAST, BEST, OFFER

Last, Best Offer of the Union

If the panel awards a DC plan for new hires, the Union proposes that this DC plan be administered by MERS.

DISCUSSION

The panel finds that the record supports administration of the DC plan by MERS. The rationale is based partially on the rationale for the panel's finding on the LBO on transfer of the County's DB plans to MERS[9] and will not be repeated here.

[9] See pp. 34-37, above.

The record also establishes that MERS is well equipped to administer a DC plan for new hires. The record establishes that MERS provides DC plan investors four investment options: target date funds which are automatically rebalanced between bonds and equities as employees age closer to retirement for members who desire simplified investing; a professionally managed portfolio; an option for active management for members who wish to design a personalized portfolio; and a brokerage window. MERS also provides a range of funds in which employees may invest. Thus, administration of the DC plan by MERS is consistent with the statutory factor of fairness and equity. (Cty. Exs. 47-50; Tr. VI, 31-58)

CONCLUSION ON ISSUE 12A: RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS)

The Union's LBO on Issue 12A: Retirement/Defined Contribution Plan (For New Bargaining Unit Members) is consistent with the statutory factor of fairness is equity.

AWARD ON ISSUE 12A: RETIREMENT/DEFINED CONTRIBUTION PLAN (FOR NEW BARGAINING UNIT MEMBERS)

The LBO of the Union on Issue 12A: Retirement/Defined Contribution Plan (for New Bargaining Unit Members) is accepted.

ISSUE 13: ARTICLE 37, RETIREMENT/DEFINED CONTRIBUTION (CURRENT EMPLOYEES)

LAST, BEST OFFERS

<u>Last, Best Offer of the County</u>

Defined Contribution Plan (Present Employees). Upon the implementation date, the County shall contribute annually 10 of gross wages for bargaining unit members with less than twenty (20) years of credited service and contribute annually 12.5 of gross wages for present bargaining unit members who have, or who obtain, twenty (20) years of credited service.

Present members, in all instances, shall contribute 2.5 of their gross salary. Contributions shall be made on a pre-tax basis as permitted by the IRS. *This modification shall not, in any way, affect, change, or impair any and all employee and employer contributions made prior to the implementation date.*

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020." This County LBO addresses an issue concerning retirement. As the County has made this proposal, the Panel presumes that the County has waived its right to remove this issue from Act 312 arbitration. There has, however, been no Union waiver of its rights under Section 37.01 N to exclude this issue from Act 312 arbitration. Therefore the Panel finds that there has been no mutual waiver of the provisions of Section 37.01 N with respect to this issue. Accordingly, the panel is without authority to decide this issue and the status quo shall continue. The panel expresses no view on the merits of the LBOs.

ISSUE 14: ARTICLE 37, RETIREMENT/OPTION TO GO TO PLAN 4

LAST, BEST OFFERS

Last, Best Offer of the County

Option to go to Plan 4. Following the implementation date, present bargaining unit members shall have three hundred and sixty-five (365) days, to enter Plan 4 and only accrue benefits pursuant to the provisions contained therein. Benefits under their old defined benefit plan shall be frozen based on years of service accrued prior to their enrollment in Plan 4. If a bargaining unit member is not vested in their defined benefit plan, future service will be counted toward the vesting of his or her benefit under their old defined benefit plan.

All years of service in one or more defined benefit plans prior to transferring to Plan 4 will be considered when computing eligibility for the higher annual County contribution for bargaining unit members with twenty (20) years of credited service. *For example,* a *bargaining unit member enters Plan* 4 *with ten (10) years of credited service. Because these ten (10) years of credited service count towards entitlement to the higher County contribution, the member need only accumulate ten (10) years more service to satisfy the twenty (20) year requirement in order to receive the higher contribution.*

Similarly, all years of service in one or more defined benefit plans prior to transferring to Plan 4 will be credited towards eligibility for retiree health care under Plan 4 for those who are not members of the Post-Retirement Health Care Trust. Stated differently, all service time at the County prior to transferring to the defined contribution plan, Plan 4, shall count as credited service towards retirement. *For example,* a *bargaining unit member enters Plan* 4 *with ten (10) years* of *credited service. Because these ten (10) years of credited service count towards eligibility for retiree health care, the employee need only accumulate fifteen* (15) *years more service to satisfy the requirement* of *twenty-five* (25) *or more years* of *service for health insurance and health care benefits upon retirement at age fifty-five (55).*

<u>Last, Best Offer of the Union</u>

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020." This County LBO addresses an issue concerning retirement. As the County has made this proposal, the Panel presumes that the County has waived its right to remove this issue from Act 312 arbitration. There has, however, been no Union waiver of its rights under Section 37.01 N to exclude this issue from Act 312 arbitration. Therefore the Panel finds that there has been no mutual waiver of the provisions of Section 37.01 N with respect to this issue. Accordingly, the panel is without authority to decide this issue and the status quo shall continue. The panel expresses no view on the merits of the LBOs.

ISSUE 15: NEW ARTICLE, RETIREMENT BOARD COMPOSITION

LAST, BEST OFFERS

Last, Best Offer of the County

The Wayne County Retirement Commission trustees shall consist of the following nine (9) individual trustees:

a. The Chairperson of the County Commission or his or her designee

b. A trustee appointed by a majority of the County Commission who is neither a participant in the plan or an employee of the County and is a licensed or certified professional in investment or finance;

c. The County Executive or his or her designee;

d. A trustee appointed by the County Executive who is neither a participant in the plan or an employee of the County and is a licensed or certified professional in investment or finance;

e. Three members of the Retirement System who are residents of the County to be elected by the members of the Retirement System. Each member trustee shall be from a different County department, as provided in the County Charter of January 1, 1987. The elections shall be conducted in accordance with procedures adopted by the Retirement Commission.

f. One retired member who is a resident of the County to be elected by the retired members and beneficiaries. The election shall be conducted in accordance of procedures adopted by the Retirement Commission.

g. **9th Trustee.** An additional trustee who shall not be a participant in the plan or employed by the County in any capacity shall be selected by the County Executive's Office, subject to approval by a majority vote of the Retirement Commission Board of Trustees, and is a licensed or certified professional in investment or finance. Such trustee shall serve as a full member of the Retirement Commission Board of Trustees and vote on any and all matters considered by the Commission. The term for this trustee shall be three (3) years.

h. These provisions shall not be effective unless and until they are contained

> in all collective bargaining agreements that the County has with unions representing employees who are members of the Retirement System.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

Threshold Question

In Section 37.01 N of the collective bargaining agreement, the parties agreed that "all issues concerning retirement, including but not limited to, any and all provisions outlined in Article 37 of this Agreement shall not be subject to Act 312 arbitration until October 1, 2020" (Jt. Ex. 2). The County's proposal, however, does not directly address anything related to the retirement of bargaining unit members. Rather, it is directed at the composition of the WCERS Commission. Hence, a majority of the panel finds that the Panel has the authority to rule on this LBO.

Substantive Discussion

The current WCERS Commission is composed of eight members, the CEO (County Executive) or the CEO's designee, the Chairperson of the County Commission, four active employees who are residents of Wayne County, and two retirees. The structure clearly disadvantages the County, as only one-fourth of the members represent the County, which has the responsibility for financing the pension plans. Three fourths of the members of the Commission represent either future or current retirees and represent the interests of those who elected them. (Cty. Ex. 53; Tr. V, 73-74)

In principle, all Commission members have a legal obligation to protect the interest of the pension plans. Nevertheless, it is likely that that the members of the Commission will have differing perspectives on what is meant by the interest of the plan. In circumstances in which these differing perspectives are reconciled and balanced, a pension plan can function. The record in this case, however, establishes that the Commission, structured as it is, has tilted toward the interests of retirees at the expense of the County and, at the same time, has been a poor administrator of the assets of the pension plans. As noted, the decision to issue 13^{th} checks to retirees has done severe damage to the long-term sustainability of the fund. Indeed, an actuarial report in 2010 stated that the plan would have been 90% funded had the fund not issued 13^{th} checks for 24 years (Cty. Ex. 28). The decline in the funding ratio of the plans between 2007 and 2011 from 82% to 49% has been noted, as has the poor financial performance of the fund (Cty. Ex. 15).

Significantly, there is no financial expertise structured into the Commission as it currently exists. The record also establishes that the Commission has not used professional investment advice to select vendors to provide investment services. Rather, the Commission has made decisions directly. It is reasonable to believe that this eschewing of professional investment advice has also contributed to the poor investment performance of the Board. The active investment strategy the Commission has used has also likely resulted in the payment by the pension plan of relatively high fees. (Tr. V, 78-82)

Overall, it is clear that the current Commission structure has not well served the County or current employees (future retirees). The large Unfunded Actuarial Accrued Liability (UAAL) of the fund has imposed substantial cost on the County. At the same the time, the low funding ratio has placed the future retirement benefits of current employees at risk. The panel finds that this proposal, if adopted by all bargaining units, will likely result in substantial savings for the County and is supported the statutory factor of ability to pay. Any improvement in investment performance will also increase the funding ratio of the plan, reducing the risk to future retirees. This is consistent with the statutory factor of fairness and equity.

Given the foregoing, a majority of the panel finds that the County's proposal has merit. If the County's proposal is included in all relevant collective bargaining agreements, the governing board of the pension plan will have eight members divided equally between County-appointed and retiree-appointed members. This structure holds promise to bring balance to the administration of the plan. The 9th trustee will need the support of at least one trustee from other party in order to receive an appointment. Thus, this 9th trustee is likely to be "neutral." It is significant that this 9th "neutral" trustee must be a licensed professional in investment or finance. This 9th trustee, along with the licensed professional to be appointed by the County Executive, will result in two of the members of the pension plans in possession of financial expertise. These additions are highly likely to improve the financial performance of the pension plans and reduce the long-run pension costs incurred by the County. Thus, it is supported by the statutory factor of ability to pay.

CONCLUSION ON ISSUE 15: NEW PROVISION, RETIREMENT BOARD COMPOSITION

The panel finds that the LBO of the County on this issue is more consistent with the statutory factors than the LBO of the Union.

AWARD ON ISSUE 15: NEW PROVISION, RETIREMENT BOARD COMPOSITION

The LBO of the County on Retirement Board Composition is accepted. The LBO of the Union on Retirement/Defined Contribution Plan (for new bargaining unit members) is not accepted.[10]

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[10] Although this Award may result in administration of the DB plans by MERS by September 30, 2016, the composition of the WCERS Commission is relevant to this unit. Per this award, transfer of the DB plans to

ISSUE 16: ARTICLE 38, ECONOMIC IMPROVEMENTS/WAGE RATES

LAST, BEST OFFERS

Last, Best Offer of the County

All employees, for the term of the contract, effective upon the date the new collective bargaining agreement is signed by the County Executive, or pursuant to an Act 312 award, shall incur a 10% reduction in his or her base wage rate for the duration of the contract.

Last, Best Offer of the Union

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

The County's proposal would impose a 10% wage reduction on all employees in the bargaining unit. The Union's proposal would impose a wage freeze on the bargaining unit for the length of the agreement.

Although a majority of the panel acknowledges the County's serious financial situation, the majority of the panel is also of the view that the factor of fairness and equity should be given the greatest weight on this issue. County data show that employees in the bargaining unit are not overpaid compared to police officers in the jurisdictions offered. Moreover, any wage disadvantage of the bargaining unit will increase during the life of the agreement, if any of the other jurisdictions cited by County receive wage increases. While it is acknowledged that employees who are below the maximum will receive step increases, this is not likely to be a large number of employees, as 81% of the bargaining unit is currently at the maximum. (Tr. V, 91-100; Cty. Ex. 40)

MERS will be at the discretion of the CEO. If the CEO declines to transfer the DB plans to MERS, the bargaining unit members will continue to participate in DB plans administered by WCERS. Even if the CEO decides to transfer the DB plans to MERS, WCERS will continue to administer the DC plan for current bargaining unit employees.

In making this decision, the majority of the panel also notes that employees in the bargaining unit will experience reductions in take-home pay. Bargaining unit members will experience an increase in their pension contributions (a 5.1% reduction in take-home pay), a reduction in holiday pay, and a reduction in overtime. It would be unfair and inequitable to impose an additional decrease in the base wage on the bargaining unit.

A majority of the panel also takes arbitral notice of the award of the arbitration panel in the recent Act 312 case involving the City of Detroit and the Detroit Police Officers Association (DPOA). In that case, for the year 2013, the panel maintained a10% wage cut that the DPOA had taken in 2012. The panel, however, restored half of the 10% wage cut as of January 1, 2014. Thus, on January 1, 2014, the police officers in Detroit will be working under a 5% pay reduction from their base wage. Although the members of this bargaining unit will not receive a 5% wage reduction, the 5.1% increase in the pension contribution is equivalent to a 5.1% reduction in take-home pay and is similar to the take-home pay reduction that will be effective on January 1, 2014 in Detroit. [11]

A motivated workforce that is fairly compensated is important for the citizens of Wayne County. Avoidance of a base wage reduction will help to keep the workforce as committed as possible, even considering the financial constraints on the County. In the context of the 5.1% increase in the pension contribution, avoidance of wage reduction is consistent with the statutory factor of fairness and equity and not inconsistent with the statutory factor of ability to pay.

[11] See Panel's Findings, Opinion and Orders In the Matter of City of Detroit and Detroit Police Officers Association, MERC Case no. D12 D-0354, March 25, 2013, pp. 102-06.

CONCLUSION ON ISSUE 16: ARTICLE 38, ECONOMIC IMPROVEMENTS/WAGE RATES

The panel finds that the LBO of the Union on this issue is more consistent with the statutory factors than the LBO of the County. .

AWARD ON ISSUE 16: ARTICLE 38, ECONOMIC IMPROVEMENTS/WAGE RATES

The LBO of the Union on Wage Rates is accepted. The LBO of the County on Wage Rates is not accepted.

ISSUE 17: NEW ARTICLE -- CLASSIFICATION OF BAILIFF (ECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the County

Implementation of this modification shall be entirely within the discretion of the Sheriff, and this discretion may be exercised at any time during the duration of this agreement.

Newly-hired employees in the Court Services Division, Third Circuit Court Civil Division, Probate Court Family Division, and Family Division Juvenile Section, Juvenile Court shall occupy the classification of bailiff.

Bargaining unit members, in the classification of bailiff, will start at 10 below the Step 2 level of the wage rate grid in 38.02B, and newly-hired employees in the classification of bailiff will not be eligible for a step increase until they both (1) successfully pass the probationary period and (2) become a certified police officer following successful completion and passage of a state-certified policy academy.

Bailiffs shall receive the following wage rates for regular employment:

STEP	10-01-11	10-01-12	10-01-13	10-01-14
(Entry)	$28,284	$28,284	$28,284	$28,284
2	$31,427	$31,427	$31,427	$31,427
3	$33,434	$33,434	$33,434	$33,434
4	$36,241	$36,241	$36,241	$36,241
5	$40,120	$40,120	$40,120	$40,120

This modification shall not apply to any bargaining unit members employed in these positions as of the date the Sheriff exercises his discretion to implement this modification.

Bargaining unit members advanced from this position, having seniority in excess of five (5) years, shall receive the wages of a Step 6 bargaining unit member regardless, and thereafter be subject to the wage rates as contained in the collective bargaining agreement. *For example,* a *bargaining unit member is in the bailiff classification for seven years before advancement from the bailiff classification. When advanced, he or she will receive the wage rate of* a *bargaining unit member at Step* 6, *which, at this time, is* $44,131. All members in the classification of bailiff shall be sworn Wayne County Deputy Sheriffs.

<u>Last, Best Offer of the Union</u>

No change in the language in the 2008-11 collective bargaining agreement.

DISCUSSION

The County's evidence on the record supporting this proposal consisted only of a transcript of testimony in the matter of Act 312, Case Number D09 G-078, given on Monday, November 15, 2010, as to a City proposal seeking to civilianize security at the 36th District Court (Cty. Ex. 58; Tr. VI, 120-21). No evidence was submitted as to the duties and responsibilities of bargaining unit members at the Third Judicial Circuit Court, and as a result, there is insufficient evidence on the record regarding the relationship between the County's LBO and statutory factors to justify awarding this proposal. Thus, the record does not support adding a provision on bailiff to the collective bargaining agreement.

CONCLUSION ISSUE 17: NEW ARTICLE – BAILIFF

A majority of the panel finds that the Union's LBO on Article 21 – New Article - Bailiff, is more consistent with the statutory factors than the County's LBO.

AWARD ON ISSUE 17: NEW ARTICLE – BAILIFF

The Union's LBO on New Article – Bailiff, is accepted. The County's LBO on New Article, Bailiff , is not accepted.

ISSUE 18: ARTICLE 45, DURATION

LAST, BEST OFFERS

Last, Best Offer of the County

The new collective bargaining agreement shall remain in full force and effect through September 30, 2016, other than ARTICLE 37 - RETIREMENT and ARTICLE 38 - ECONOMIC IMPROVEMENTS, as follows:

> Article 37 -- Retirement. This Article shall continue in effect until September 30, 2016, unless notice is given, in writing, by either the Union or the Employer to the other party at least sixty (60) days prior to September 30, 2014 of its desire to modify, amend, or terminate this Article. If such notice is given, this Article shall be open to modification, amendment, or termination, as such notice may indicate.
>
> If, on September 30, 2014, the County is party to a consent agreement pursuant to Section 8 of Public Act 436 of 20'12 upon such timely notification each and every provision in Article 37 shall expire effective September 30, 2014, and each and every provision thereby, including, but not limited to, Article 37N, shall be subject to Section 8(11) of P.A. 436 of 2012, suspending Section 15(1) of 1947, P.A. 336, MCL 423.215, during the term of a consent agreement.
>
> Article 38 - Economic Improvements. This Article shall continue in effect until September 30, 2016, unless notice is given, in writing, by either the Union or the Employer to the other party at least sixty (60) days prior to September 30, 2014 of its desire to modify, amend, or terminate this Article. Upon such timely notification, each and every provision in Article 38 shall expire effective September 30, 2014, and, if on September 30, 2014 the County is party to a consent agreement pursuant to Section 8 of Public Act 436 of 2012, each and every provision thereby shall be subject to Section 8(11) of P.A. 436 of 2012, suspending Section 15(1) of 1947, P.A. 336, MCL 423.215, during the term of a consent agreement.

Last, Best Offer of the Union

The agreement shall expire on September 30, 2016.

DISCUSSION

Both parties agree that the agreement shall expire on September 30, 2016. The County's proposal, however, takes into account contingencies that may occur due to the County's difficult financial situation. Therefore, a majority of the panel finds that the County's LBO is more consistent with the factor of ability to pay than the Union's LBO.

CONCLUSION ON ISSUE 18: ARTICLE 45 – DURATION

The LBO of the County on Issue 18: Article 45-Duration, is more consistent with the statutory factors than the LBO on the Union.

AWARD ON ISSUE 18: ARTICLE 45 – DURATION

The County's LBO on Issue 18: Article 45 – Duration, is accepted. The Union's LBO on duration is not accepted.

SIGNATURES

October 16, 2013
Date

Richard N. Block
Panel Chair

October 16, 2013
Date

Kenneth Grabowski*
POAM Delegate

October 16, 2013
Date

June Lee**
Wayne County Delegate

*Concurs on Issues 4, 5, 6, 8, 9, 11, 12A, 13, 14, 16, 17; dissents on Issues 1, 2, 3, 7, 10, 12, 15, 18.

**Concurs on Issues 1, 2, 3, 7, 10, 11, 12, 12A, 15, 18; dissents on Issues 4, 5, 6, 8, 9, 13, 14, 16, 17.

APPENDIX
AGREEMENTS

Seniority Positions

1. CBA, page 31, the desk lobby units in Jail I, II, and II are seniority units. … All officers assigned to equal balance units and Desk Lobby Units may be removed at the discretion of the Sheriff . . .
   CBA, page 29, (I) . . . prior to exercising his discretion to remove an employee from one of the designated discretionary removal assignments . . .

Disciplinary Issues

2. CBA page 16 . . . an employee suspended without pay may forfeit in lieu of a suspension an equal number of accumulated Annual Leave, Holiday, Personal Business Leave, or Birthday Holiday days.

   CBA page 16 . . . not be used adversely in a disciplinary hearing. If the member has no current record of discipline prior to the discipline hearing and the result of the hearing is a Written Reprimand or less, the discipline will be removed from the employee's record after 12 months of satisfactory service.

3. County Issue/Pool Employees

4. County Issue/Transfer Sick Time

Reserve Officers

5. Resolved with union, Departmental Policy to Follow . . .

Sick Time

6. Resolved with Union, Policy Adjustment regarding 6 in 6 . . .

Courts Chief Stewards

7. CBA page 8 . . . Court Services Division (1) Chief Steward for the entire 3rd Circuit Court and one Alternate Chief Steward. The Alternate Chief Steward shall not be simultaneously relieved from duty with the Chief Steward or an Alternate Stewards assigned to the court system. The Sheriff reserves the right to cancel and withdraw the position of Alternate Chief Steward.

Displacement

8. Resolved with Union, will agree to train Division I officers in Interpersonal Skills and necessary Division III training through the DEP system. To be coordinated by the Training Unit and jails.

Temporary Job Bid

9. CBA Page 37 . . . employees . . . shall remain in these positions for the duration of the assignment, unless they are the successful bidder on a permanent seniority position and they choose to accept it, the temporary position will be reposted.

Shift Start Time
10. Agree to remain the same.

Personal Business Leave
11. Agree to remain the same.

Copy of Leave Request
12. CBA page 52, Add letter (1) Once a request for any type leave is granted or denied the supervisor shall provide a copy of the request form to the officer.

Step 4 Hearings
13. County Issue

Working Overtime
14. Revisit at later time.

Annual Leave
15. Withdrawn per Union.

60-Day Transfer
16. No Change

Departmental Emergency
17. No going to consider this a contract issue. Agree to work on a policy.

Specialty Pay
18. County Issue

Membership
19. Not Management Issue

Dive Team
20. No Change.

21. Pursuant to stipulation, the County's proposed modifications to Article 31, Insurance Programs are being implemented. (Cty. Ex. 1; Jt. Ex. 2; Tr. I, 21-26)

Wayne County Deputy Sheriff's Association

Article I, Section 1.04 shall read:

> It is hereby agreed between the parties that all of the employees in the bargaining unit are subject to the hazards of police work and perform the duties of a critical service nature. It is further agreed that the uninterrupted performance of duties is

necessary for the preservation of and promotion of the public safety, order and welfare, all employees of this bargaining unit are recognized by the parties to be eligible for Public Act 312 of 1969.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Case No. D12 C-0189

Corrected Supplemental Findings of Fact and Opinion and Award of the Panel in the matter of the Public Act 312 arbitration between

County of Wayne

-and-

Police Officers Association of Michigan

DATE OF PETITION:	December 13, 2012
DATE OF CHAIRPERSON APPOINTMENT:	January 4, 2013
DATE OF AWARD:	October 16, 2013
DATE OF REQUEST FOR CLARIFICATION:	July 11, 2014

ACT 312 ARBITRATION PANEL:

Mr. Kenneth Grabowski, Union Delegate
Mr. June Lee, County Delegate
Dr. Richard N. Block, Chairperson

APPEARANCES:

For County of Wayne

Mr. Kenneth Wilson, Deputy Director of Human Resources

For Police Officers Association of Michigan

Mr. Bill Birdseye, Treasurer

BACKGROUND

The panel's Findings of Fact and Opinion and Award in this case was issued on October 16, 2013. Issue 7, Article 37, addressed retirement contributions by the County. The County LBO regarding employees in the Defined Contribution (DC) plan was as follows: "Plan 4 =

Reduction in County match (subject to any applicable IRS regulations) by 5.1%" (Award, p. 26).

The panel awarded the County's LBO on Issue 7.

On July 11, 2014, the Panel Chairperson received a letter from the County on behalf of the County and Union. The letter stated as follows:

> The parties seek your clarification only as to whether the awarded 5.1% decrease in the employer contribution to the DC plan (Plan 4) is 5.1% of wages received by the bargaining unit member in any pay period or some other amount. (July 11, 2014 letter from Kenneth S. Wilson)

The panel consulted regarding this request for clarification. The results of those consultations are provided below.

DISCUSSION AND SUPPLEMENTAL AWARD

The last offer of settlement clearly stated that the increase to the bargaining unit members' defined benefit plan contribution and decrease to the employer's contribution to the DC Plan 4 was in lieu of a 5.1% wage reduction. As a result, the reduction in the County's match to the DC Plan 4 is just that, a 5.1% wage reduction in the employer match unless the employer match is less than 5.1% in which case the employer match will be reduced to zero. Under no circumstances does any reduction in the employer match exceed 5.1% of wages received by bargaining unit members. The County shall promptly refund to any bargaining unit member's Plan 4 account any reduction in County match exceeding 5.1% of the amount of wages received by the bargaining unit member in any pay period.

August 1, 2014
Date

Richard N. Block, Panel Chair*

*County Delegate June Lee and Union Delegate Kenneth Grabowski concur in this Supplemental Opinion and Award.