

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312
Arbitration Between:

MERC Case No. L11 L-2089

CITY OF BURTON

Employer

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

Union

ACT 312 OPINION AND AWARD

Micheal J. Falvo, Chairperson
Richard W. Fanning, Jr., Employer Delegate
James DeVries, Union Delegate

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2013 JUN -4 AM 9:31
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

APPEARANCES:

FOR THE CITY OF BURTON

Richard W. Fanning, Jr.
KELLER THOMA

Debra Hooper, Legal Assistant
KELLER THOMA

Ginger Burke-Miller, Controller
Sue Warren, Director of Human
Resources & Labor Relations
Chief of Police Thomas Osterholz

**FOR THE POLICE OFFICERS
ASSOCIATION OF MICHIGAN**

James DeVries, Business Agent

Kevin Loftis, Business Agent
Officer Anthony Brooks, Burton POA
Officer Mark Mahon, Burton POA
Officer Brian Warden, Burton POA

BACKGROUND

The Police Officers Association of Michigan (POAM) is the collective bargaining representative for members of the Burton Police Department holding the rank of Police Officer. The bargaining unit consists of 22 sworn officers and the total sworn department strength is 32. With the exception of the Chief of Police, supervisory personnel are represented by the Command Officers Association of Michigan (COAM). The City has 81 full-time employees. The City does not employ full-time Fire Fighters below the rank of Fire Chief.

The expired collective bargaining agreement covered the period July 1, 2008 to June 30, 2012.

Burton is located in Genesee County. It covers approximately 23.5 square miles and the 2010 census counted 29,999. The City employs a "strong Mayor" form of government under which the Mayor is responsible for the day-to-day operations of the City. The City Council is comprised of seven members. The Charter specifies five executive positions: Clerk, Assessor, Treasurer, Chief of Police, and Fire Chief. None of these individuals are unionized and their salary and fringe benefits are established by ordinance. In addition to the two unions representing police employees, all other non-elected city employees, except for the Human Relations Director, are represented in five bargaining units. AFSCME Local 1918 is the largest with 33 employees primarily comprised of employees in the Public Works Department, Building Inspectors, and clerical personnel. The Michigan Association of Fire Fighters (MAFF) represents paid part-time on-call Fire Fighters and Teamsters Local 214 represents Deputy Fire Chiefs who are also paid part-time on-call employees. Teamsters Local 214 also represents administrative personnel, including the Controller. The Service Workers International Union, Local 517M (SEIU) represents two supervisors. The COAM and MAFF are also currently involved in Act 312 proceedings. AFSCME and the Teamsters Local 214 units have negotiated and ratified successor agreements.

STATUTORY STANDARDS

Act 312 of 1969, MCL 423.321, as amended by Act 116 of 2011, is intended to implement the public policy of the state to provide an alternate, expeditious, effective and binding procedure for the resolution of labor disputes involving public safety employees. The legislature deemed interest arbitration a requisite to the high morale of public safety employees as well as the efficient delivery of public safety services. Section 9 provides that the Panel's findings, opinion and order shall be based on the following criteria.

- (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 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 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 employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

Public Act 116, which became effective on July 20, 2011, added a significant provision.

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

While Public Act 116 makes financial ability to pay the preeminent factor, this must be understood along side the Michigan Supreme Court's explanation that the Legislature did not intend each Section 9 factor to be afforded equal weight.

The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in § 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word shall in §§ 8 and 9. In effect then, the § 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. Since the §9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with answers. It is the panel which must make the difficult decision of determining which factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered.¹

The reader should not conclude that the failure to discuss every factor on each issue means it has not been considered since that is not the case. All pertinent factors have been painstakingly considered. It should be understood that the word "Panel" is used to signify a majority of the Panel. The concurrence of a Panel member in the disposition of a particular issue does not necessarily signify that he agrees with the Chairperson's reasoning or statements.

By agreement the term of the collective bargaining agreement shall be in effect for two years, July 1, 2012 to June 30, 2014. Under Public Act 54 of 2011, none of the Panel's awards will have retroactive effect. The parties have stipulated that all issues are economic issues. Consequently, Section 8 requires the Panel to adopt the last offer of settlement that more nearly complies with the applicable Section 9 factors. The record contains a stipulation that issues other than those considered in this hearing have been settled or waived and that all uncontested provisions of the prior agreement and any tentative agreements reached during negotiations are incorporated into the new agreement.

The parties stipulated to the following comparable communities:

1. Davison Township
2. Fenton
3. Flint Township
4. Genesee Township
5. Grand Blanc Township

¹ *City of Detroit v. Detroit Police Officers Association*, 408 Mich. 410, 484 (1980).

6. Mt. Morris Township
7. Mundy Township

CONTESTED ISSUES AND LAST BEST OFFERS

The parties initially submitted last best offers on 15 issues. Agreement has been reached on three of those issues: Duration, Wages, and Current Employee Health Care. In addition, the City withdrew its demands concerning longevity pay and a health savings account for currently active employees. The last best offers pertaining to these issues are shown below.

Joint Issue 1 – Duration (Settled)

The duration of the agreement will be July 1, 2012 to June 30, 2014.

City Issue 2: Employee Health Care—Current Active Employees (Settled)

The Union agreed to the City's Last Best Offer regarding this issue. Accordingly, the successor agreement will be amended as indicated.

24.1: The employer agrees to provide hospitalization coverage which will be a Blue Cross/Blue Shield Flexible Blue 2 Plan (or equivalent) with \$1,250/\$2,500 annual deductible and a health reimbursement arrangement. The plan will include the noted applicable riders (\$500 annual limit on preventative prescriptions; unlimited annual preventative medical care.) Member to be responsible for 20% co-pay on amounts over the deductible, but less than the annual maximum out of pocket expense.

24.2: The above coverage shall apply to full-time employees and their families and shall be effective on the first day of the month following the completion of ninety (90) calendar days of employment with the City of Burton. Employees who are not covered by the City's hospitalization program shall be paid the sum of two thousand dollars (\$2,000), per calendar year or one hundred sixty six dollars and sixty-seven cents (\$166.67) per full month in a partial year. Payment for non-coverage shall be made in the December following the period of non-coverage. To be eligible for payment for non-coverage, the employee must be off the City's health plan for twelve (12) consecutive months. This paragraph applies to both active and retirees who qualify and will receive the City's medical coverage. All payments will be on a pro-rata basis.

24.3: The employer agrees to maintain the above coverage when an employee is laid off, for one (1) month for each year of seniority with a maximum of six (6) months.

24.4: For bargaining unit members killed in the line of duty, the employer shall provide health insurance coverage to a surviving spouse until the spouse remarries or dies and for dependent children until age nineteen (19).

24.5: Employees receiving City paid health care benefits will pay a member contribution based on the provisions of PA 152 of 2011, which could include:

- Hard cap limitation as set by law and are subject to change, or
- 80/20 percent payment option

The City Council will vote annually to determine what this contribution will be at which time the Mayor or his/her designee will discuss the outcome of this decision with the Union.

For the 2012-13 fiscal year the City Council has voted to go with the "hard cap limitation."

Under the provisions of PA 152, management has the right to determine how these contributions will be allocated.

City Issue 3: Employee Health Care – New Employees

The City proposes to limit health care coverage for new hires to single coverage. The Union's position is to maintain the status quo.

24.6 All new employees hired on or after the effective date of the Award in Act 312 Arbitration case L11 L-2098, and wishing to take the City's health care benefits will only be provided single coverage. Said new employees may pay the difference in the premium if they wish to obtain coverage for their spouse and/or full family.

City Issue 4: Retiree Health Care – Active Employees

The City's last best offer on this issue is the following. The Union's position is to maintain the status quo.

Modify section 24.5 and renumber as 24.7 as follows:

The Employer shall provide to a bargaining unit member who retires, fulfilling either the age and service requirements or having a duty disability under the terms of the MERS pension plan, the following health coverages:

- 100% of the premium for the current single coverage.
- 80% ~~70%~~ of the premium for 2 person or couple (if the insurer provider provides a couple or 2 person plan).
- 60% of the premium for family coverage.

The retiree shall be required to apply and pay for Medicare Parts A & B at its first availability. At ~~that the point of Medicare eligibility~~ the Employer's exposure to retiree health care premium shall be terminated. ~~limited to the cost of the Medicare supplement. All of the Employer's exposure comes from the retiree health care fund.~~

~~In the event the retiree becomes deceased prior to being eligible for Medicare, the surviving spouse shall receive single coverage as provided above, until either of the following occurs:~~

- ~~the surviving spouse remarries, or~~
- ~~the surviving spouse becomes eligible for Medicare, or~~
- ~~the surviving spouse is covered by health care from another source~~

Retirees who are not eligible for Medicare and who elect not to be covered by the City's hospitalization program shall be paid the sum of two thousand (\$2,000) dollars per calendar year. Payments will be on a pro-rata basis.

City Issue 5: Retiree Health Saving Account – Active Employees (Withdrawn)

The City has withdrawn this demand.

City Issue 6: Retiree Health Care – New Employees

The City's last best offer is the following. The Union's position is status quo.

Add the following section to Article XXIV, Hospitalization as follows:

24.9: The City will not provide retiree health care benefits to any employee who was hired on or after the effective date of the Award in Act 312 Arbitration case L11 L-2098. In place of retiree health care, the City will provide a retiree health care savings arrangement. The City will contribute the equivalent of one and one-half percent (1.5%) of an employee's wages each pay period during which the employee receives wages (through either time worked or the use of accumulated time) equal to at least eighty percent (80%) of his or her base pay. Employees shall vest in the City's contributions upon accumulating ten (10) years of service with the City of Burton, or upon reaching the age of fifty-five (55) with twenty-five (25) years of service. Employees may contribute up to the legal limits.

City Issue 7: Clothing allowance

The City's last best offer is the following. The Union's position is status quo.

Revise Article XXXV, Rotating and Temporary Detective compensation as follows:

~~A. Rotating or Temporary Detectives shall be entitled to \$350.00 annually as a clothing allowance.~~

~~B. Clothing can be obtained from any store, with copies of the receipts for the clothing obtained to be submitted to the Lieutenant's office.~~

C. The following types of clothing are acceptable for Detectives eligible under the terms of this agreement.

1. Suits
2. Sports coats/dress slacks
3. Ties/dress shirts

~~If a member chooses to buy sport coats/slacks rather than suits, he must purchase at least two sports coats prior to purchasing more than two pairs of slacks.~~

City Issue 8: Weapons Proficiency Allowance

The City's last best offer is the following. The Union's position is status quo.

Amend Article XXXVI, Weapons Proficiency, as follows:

36.1: Both parties recognize the need for officers to acquire and maintain their skills in the use of firearms. Both parties also recognize that the more training that occurs, the more skilled a person becomes. The Chief of Police will determine the location and type of targets that will be utilized in teaching and maintaining officers' skills.

~~36.2: In order to qualify for the gun proficiency allowance, all officers must report to the range at the appointed time. Gun proficiency allowances shall be paid on an attendance basis as outlined in section 36.3 of this Article. Officers can only qualify for this allowance for active periods of employment and not for any retroactive periods when the employee may have been absent from work for any reason.~~

36.3: Effective July 1, 1987, the schedule of allowance which will be paid to Officers based on attendance is as follows:

SHOOTS ATTENDED	YEARLY COMPENSATION
0-8	None
9	\$450.00
10	\$750.00

~~(a) The employer shall schedule shoots each month, one of which shall be mandatory and held while the member is on duty. Make-up shoots will be allowed with the pre-approval of the Chief of Police. Make-up shoots must be made up in the following month.~~

~~(b) Each member shall be allowed to qualify twice each shoot.~~

~~(c) All members must qualify with the department issued weapons, scoring a minimum of seventy percent (70%) for uniformed officers and sixty percent (60%) for investigators.~~

36.4: A lump sum payment shall be made to all Officers earning gun proficiency allowance during the month of December, beginning in 1984.

City Issue 9: Physical Fitness Allowance

The City's last best offer is the following. The Union's position is status quo.

Delete Article XXXVII, Physical Fitness as follows:

~~37.1: A total annual allowance of \$800.00 shall be available to all officers who qualify on the basis of strength, agility and endurance by age groups. For purposes of the physical fitness incentive program, a year will begin July 1st and end the following June 30th. Employees will be eligible for each physical fitness evaluation in which they participate.~~

~~37.2: The qualifying facts, course location and course shall be established by the City and approved by the Union. In the event that agreement is not reached by both Parties, the qualifications and course shall be submitted to an arbitrator, acceptable to both Parties, who shall be experienced in physical fitness. The arbitrator's decision shall be binding.~~

~~37.3: Qualification and payment of the allowance will be made on a semi-annual basis.~~

City Issue 10: Educational Incentive

The City's last best offer is the following. The Union's position is status quo.

Add the following to Article XXXIX, Educational Incentives:

39.5: The provisions of Sections 39.1 through 39.4 shall be suspended from the effective date of the Award in Act 312 arbitration case L11 L-2098 until such time as the parties reach agreement on a successor collective bargaining agreement or until an award is issued in a subsequent Act 312 case involving this bargaining unit.

City Issue 11: Longevity (Withdrawn)

The City has withdrawn this demand.

City Issue 12/Union Issue 2: Pensions

The City's last best offer is the following.

Modify Article XLIII, City of Burton Employee's Pension Plan, as follows;

Section 43.6(D): The employer shall pool all patrol and command officers covered in the defined benefit pension plan together for purposes of costing. Any increase in the cost which exists on January 1, 1997 (29.24%) will be paid by the employee. The amount paid by the employer shall be thirty-five percent (35%), with all other amounts to be paid by the employees, as soon as the same increase becomes applicable to the COAM bargaining unit or as soon as may be permitted by MERS.

The Union's last best offer is the following:

Modify Article XLIII, City of Burton Employee's Pension Plan, as follows:

Section 43.6(D): Bargaining unit members who hired after July 1, 1994 and are members of the MERS Division #20 ("Junior Sgts") shall contribute up to a maximum of ten (10%) percent of the first dollar cost actuarially attributable to that division through payroll deduction. Any additional cost necessary to actuarially fund Division #20 shall be made by the employer.

Bargaining unit members who hired prior to July 1, 1994 and are members of the MERS Division #02 ("Patrolman/Detectives") shall contribute up to a maximum of twenty (20%) percent of the first dollar cost actuarially attributable to that division through payroll deduction. Any additional cost necessary to actuarially fund Division 02 shall be made by the employer.

City Issue 13/Union Issue 1: Wages (Settled)

The Union has agreed to the City's last best offer on wages. Consequently the Panel will award a zero percent wage increase for 2012 and a zero percent wage increase for 2013.

City Issue 14: Bi-Weekly Pay

The City last best offer is the following. The Union's position is status quo.

Modify Article XLVII, Wages, to add the following provision:

Employees shall be paid on a bi-weekly basis with other City employees.

THE CITY'S FINANCIAL CONDITION

A number of Act 312 arbitrators have noted that the phrase used in Section 9(a) – "the financial ability of the unit of government to pay" – is not self-defining. In one sense it might be said that a unit of government necessarily has the financial ability to pay as long as there exists sufficient cash flow to meet payroll. That is not the intended meaning. Subsections (i) – (iii) require that the Panel take account of additional factors: (1) the financial impact on the community; (2) the interests and welfare of the public; and (3) all other financial liabilities.

Exacting consideration of these criteria is imperative since Public Act 116 requires, if supported by substantial evidence, that the financial ability of the local unit of government to pay be accorded the most significance.

As observed by Mayor Paula K. Zelenko's budget message to City Council dated March 26, 2013, financial information must be evaluated in light of the environment within which the City operates. This report provides insights into the local economy.

Many of Burton's residents work in the Flint metropolitan area and as a result are greatly impacted by the broader economic conditions of Genesee County. The Flint metropolitan area unemployment rate decreased from 11.5% in June 2011 to 9.6% in June 2012. The unemployment rate for the entire state of Michigan was 8.6% in June 2012. Of the metropolitan areas reported by the Bureau of Labor Statistics, Flint's unemployment was lower than the Detroit Metro Area.

In the past, vehicle related production made up a large portion of the manufacturing employment in our county. The ongoing downturn in the national economy has greatly impacted the automotive industry, as well as most other industries across the country. It will be the job of leaders from both the public and private sectors to continue to work closely with employers to explore new opportunities and new product lines to jump-start the national economy, as well as the local economy.

In spite of these factors, the City of Burton and Genesee County provide a strong economic base for development through an outstanding infrastructure of educational, health care and recreational facilities. Also, the availability of an excellent transportation network and all necessary public utilities add to the economic base of this area. Economic growth in Burton has slowed in these unfavorable conditions.

As clearly shown by the record – and acknowledged by the Union – Burton is facing substantial financial challenges from declining revenues and rising expenses. That statement is one that applies to every municipality in Michigan. The record reveals a drastic diminishment in revenue that has been and will continue to be beyond the City's capacity to sidestep. Unquestionably the City is faced with the mission to provide its citizens an acceptable level of service – including adequate public safety – with less money coming in at the same time the cost of providing those services is rising significantly.

Controller Ginger Burke-Miller is a well-credentialed and experienced expert in municipal finance. She explained that the Uniform Budgeting and Accounting Act (MCL 141.421 et seq.) requires local units of government to follow the accounting procedures established by the Governmental Accounting Standards Board (GASB). These guidelines require the City to maintain several fund types, including internal service funds, proprietary funds, special revenue

funds, and fiduciary funds. Funds are either restricted or unrestricted. Restricted funds, such as fiduciary and special revenue funds, cannot be used to pay general expenses. However, the restricted funds may be supplemented by a "transfer-in" of funds from the General Fund to cover expenses. For example, the Police Fund is supported by an extra millage authorized by the voters. Until 2006 the police department millage was 0.99 mills. In 2007 voters approved an additional one mill for a total of 1.99 mills. In addition, the voters approved a one mill Fire Department millage that became effective in 2011. Notwithstanding the increased police department millage, substantial funds from the General Fund have been required to finance police operations. In the latest budget 44.9% of General Fund revenues were transferred to the Police Fund.

The most significant cause of the City's diminishing revenues is the decline in real and personal property valuations. **TABLE 1** shows the taxable value of real property, personal property, combined real and personal property, and total revenue from real and personal property for tax years 2001-2012. The City's glum summation of the data is incontrovertible: "The City had less real taxable value in 2012 than it did in 2002, less personal property value in 2012 than it did in 2001, and less total taxable value in 2012 than it did in 2001. . . . The City's ad valorem revenues in 2012 were less than in 2001. The City has lost a decade of revenues and is spending 2001 level revenues in 2013." To make the picture even less pretty, the City points out that the State of Michigan has enacted legislation to phase out the personal property tax assessed on businesses for equipment and certain other belongings as a means of making the state more attractive to business interests. Ms. Burke-Miller explained another unhappy aspect of Michigan tax law for struggling cities. The so-called Headlee Amendment to the Michigan Constitution restricts the millage rate that a City can levy and the current millage of 4.707 is the maximum allowed without voters assenting to an increase. Proposal A restricts the rate that property taxes can rise to the rate of inflation as measured by the Consumer Price Index (CPI) or five percent, whichever is lower. She testified that the CPI has not approached five percent in recent years.

TABLE 1 – TAXABLE VALUE OF REAL AND PERSONAL PROPERTY AND TAX REVENUES

<u>TAX YEAR</u>	<u>REAL PROPERTY TAXABLE VALUE</u>	<u>PERSONAL PROPERTY TAXABLE VALUE</u>	<u>TOTAL TAXABLE VALUE</u>	<u>TOTAL TAX REVENUE</u>
2001	505,928,390	64,688,700	570,617,090	2,730,517
2002	537,243,120	64,459,700	601,702,820	2,867,716
2003	564,025,510	62,288,800	626,314,310	2,971,861
2004	596,147,430	63,901,400	660,048,830	3,130,018
2005	639,231,970	56,974,800	696,206,770	3,282,963
2006	689,108,410	53,827,630	742,935,770	3,496,999
2007	722,594,866	53,888,188	776,483,054	3,654,906
2008	731,807,118	56,709,400	788,516,518	3,711,547
2009	710,740,165	60,337,700	771,077,865	3,629,464
2010	609,408,722	59,790,100	669,198,872	3,148,919
2011	562,871,414	57,883,400	620,754,814	2,921,893
2012	506,585,000	53,235,000	559,820,000	2,635,073

As shown in second column of **TABLE 2**, the 2012 taxable value for real and personal property in Burton compares favorably to the other communities. However, that statistic alone is of limited value without taking into consideration population. Obviously a higher population creates a greater need for services. The comparison is less advantageous when considered on a per capita basis. The ranking in each category is indicated in brackets.

TABLE 2 – COMPARISON OF TOTAL TAXABLE VALUE

<u>CITY</u>	<u>POPULATION</u>	<u>2012 TAXABLE VALUE</u>	<u>PER CAPITA TAXABLE VALUE</u>
Davison Township	19,573 [6]	\$473,254,369 [4]	\$24,179 [5]
Fenton	11,746 [8]	\$369,138,958 [6]	\$31,427 [1]
Flint Township	31,929 [2]	\$847,867,210 [2]	\$26,555 [4]
Genesee Township	21,581 [4]	\$293,922,446 [8]	\$13,620 [8]
Grand Blanc Township	37,508 [1]	\$1,112,080,087 [1]	\$29,649 [2]
Mt. Morris Township	21,501 [5]	\$305,732,982 [7]	\$14,219 [7]
Mundy Township	15,082 [7]	\$439,027,359 [5]	\$29,109 [3]
Burton	29,999 [3]	\$559,820,000 [3]	\$18,661 [6]

State revenue sharing is a significant source of the City's operating funds. Revenue sharing funds are in two categories: constitutional and statutory. The first category consists of a proportionate share of state sales and use taxes and is calculated on population. Burton's population as determined by the 2000 and 2010 census was essentially unchanged (30,308 and 29,999, respectively). The amount of statutory revenue sharing is determined year-to-year by the Legislature and it can reduce non-constitutional revenue sharing if the state needs the money for

its own budget. The amount of non-constitutional revenue sharing is now determined by the achievement of specified benchmarks in the Economic Vitality Incentive Program (EVIP). Burton qualified for the EVIP revenue sharing for 2012. However, as the City points out, EVIP funding levels are not guaranteed and could be eliminated by the Legislature. For 2012-2013 the City is projected to receive a constitutional revenue sharing payment of \$2,156,216 and an EVIP payment of \$170,194 for a total revenue sharing payment of \$2,335,410.² The City points out that the same trend as seen in diminished tax revenues is seen in revenue provided by state funds. TABLE 3 depicts the amount of shared revenues and grants from 2001 to 2011. The amounts received in 2011 are less than the amount received a decade earlier and \$700,000 less than the highest amount.

TABLE 3 – STATE REVENUE SHARING AND GRANTS

2001 – 4,857,818	2002 – 5,012,184	2003 – 4,977,381
2004 – 5,458,387	2005 – 5,354,614	2006 – 5,288,281
2007 – 5,196,663	2008 – 5,147,563	2009 – 4,930,629
2010 – 4,622,222	2011 – 4,758,341	

Although only the Police Fund and General Fund can be used to pay wages and benefits for members of this bargaining unit, the employer provided revenue amounts from the 2011 Comprehensive Annual Financial Report (CAFR) for all Governmental Funds. These include the General Fund, Major Street Fund, Local Street Fund, Police Fund, Rubbish Collection & Disposal Fund, Special Assessment Debt Fund, Fire 2011 Capital Improvement Fund, and the Non-Major Funds. On a positive note the 2012 CAFR shows a one-year improvement of \$932,000. However, the 2012 revenue still has not returned to the level of 2001 revenue.

TABLE 4 – OVERALL REVENUE IN GOVERNMENTAL FUNDS

2001 - 14,383,493	2002 - 14,555,023	2003 - 14,180,755
2004 - 14,390,043	2005 - 15,217,562	2006 - 15,533,481
2007 - 14,570,913	2008 - 14,842,861	2009 - 15,161,639
2010 - 14,241,007	2011 - 12,441,875	2012 - 13,374,519

² The record does not reflect the amount of state grants expected in 2012-2013.

TABLE 5 shows the total expenditures as reported in the 2011 and 2012 CAFR. Ms. Burke-Miller explained that two of the largest increases have been in the area of active and retiree health insurance premiums and required pension contributions.

TABLE 5 – TOTAL EXPENDITURES

2001 – 13,486,199	2002 – 14,667,231	2003 – 15,414,226
2004 – 16,623,592	2005 – 16,908,934	2006 – 15,165,495
2007 – 16,102,493	2008 – 15,631,412	2009 – 14,725,155
2010 – 14,256,746	2011 – 13,688,391	2012 – 15,422,446

TABLE 6 shows the excess or deficit (shown in parenthesis) of revenue and expenditures.

TABLE 6 – EXCESS (OR DEFICIT) OF REVENUE OVER EXPENDITURES

2001 – 897,294	2002 – (112,208)	2003 – (1,233,471)
2004 – (2,233,549)	2005 – (1,691,372)	2006 – 367,986
2007 – (1,531,580)	2008 – (778,551)	2009 – 436,484
2010 – (15,739)	2011 – (1,246,516)	2012 – (2,047,927)

The general fund balance is a chief financial indicator. Ms. Burke-Miller testified that in lay terms a fund balance is comparable to an individual's checking account. It is the rollover amount available after expenditures are made added to the fund balance from the previous year that may yield a positive or negative number. She testified that during a period of declining revenues the choice is to increase or stabilize revenues or cut expenditures. In her opinion a "safe amount" in the fund balance should cover around 67% to 100% of annual expenditures, significantly more than the approximately 33% of expenditures in the general fund for the fiscal year ending June 30, 2010. **TABLE 7** shows the general fund balance for the last three fiscal years.

TABLE 7 – GENERAL FUND BALANCE FISCAL YEARS 2010 - 2012

Fiscal year ending June 30, 2010	\$2,284,495
Fiscal year ending June 30, 2011	\$2,748,383
Fiscal year ending June 30, 2012	\$2,680,584

Based on a careful evaluation of this information the Panel concludes that the City has the ability to pay the financial obligations imposed by this Award. The current contract will cover the remainder of 2013 and the first six months of 2014. The Union withdrew a modest wage

demand. The single improvement the Union sought will be denied because the cost to the City was more than could be afforded. All of the other demands involve the City seeking significant concessions and the Union understandably attempting to hold onto hard-fought for benefits. The City has not achieved all of the concessions it sought. Only so much can be accomplished in one collective bargaining agreement. A few of the denied demands involve at most a few thousand dollars and there is time for the parties to mutually tackle the challenging issues related to retiree health care before the affected officers become eligible to retire.

COMPARATIVE SALARY AND BENEFITS

Act 312, as amended, requires the Panel to give the financial ability of the local unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence. Clearly the legislative intent underlying the Public Act 116 amendment was not to consider financial ability to pay in isolation. The purpose of considering the wages, hours, and conditions of employment in comparable communities is to help fill in the entire picture. While wages are the easiest basis of comparison, one must be cautious to assess differences in benefits as well as the amount of deductions for health care and pension contributions. A comparison of base wage is complicated because the other cities receive wage increases at different times and several cities also have expired contracts. To take these factors into account **TABLE 8** shows police officer wages at the top step on July 1, 2012 and July 1, 2013. Where indicated an expired contract is denoted with an asterisk. Although significant, for purposes of this table (but not for purposes of evaluating the record) mid-year raises, educational bonuses and adjustments based on different annual hours worked are not included.³ The number in brackets is the ranking.

³ **TABLE 8** does not take into account shift premium and longevity pay. If included, the total cash compensation is: Davison Township - \$60,269 [2]; Fenton - \$56,898 [5]; Flint Township - \$55,788 [7]; Genesee County - \$61,596 [1]; Grand Blanc Township - \$56,772 [6]; Mt. Morris Township - \$57,482 [4]; Mundy Township - \$58,913 [3]; and **Burton - \$54,694 [8]**.

TABLE 8- WAGE COMPARISON ON 7/1/12 & 7/1/13

	<u>7/1/12</u>	<u>7/1/13</u>
Davison Township	\$61,022 [1]	\$61,785 [1]
Fenton	\$55,786 [3]	\$56,618 [4]
Flint Township	\$54,647 [6]	\$56,647 [3]
Genesee Township	\$58,666 [2]	\$58,666 [2]
Grand Blanc Township	\$54,687 [5]	\$56,340 [5]
Mt. Morris Township	\$53,934 [7]	\$55,286 [7]
Mundy Township	\$55,432 [4]	\$55,432 [6]
AVERAGE	\$56,311	\$57,253
BURTON	\$51,790 [8]	\$51,790 [8]

Unsurprisingly, the City urges the Panel to look at compensation differently. Section 9(g) requires the Panel to consider in addition to direct wage compensation, among other things, vacations, holidays, and other excused time. Rather than being in last place members of this bargaining unit rank highest in paid time off. Two of the cities are within \$200 of Burton.

TABLE 9 – ANNUAL PAID TIME OFF (DOLLAR AMOUNTS)

	<u>SICK TIME</u>	<u>PERSONAL TIME</u>	<u>VACATION</u>	<u>TOTAL</u>
Davison Township	\$0	\$695	\$4,636	\$5,331 [8]
Fenton	\$2,524	\$0	\$3,155	\$5,679 [6]
Flint Township	\$2,607	\$0	\$3,008	\$6,615 [7]
Genesee Township	\$2,763	\$0	\$3,454	\$6,216 [4]
Grand Blanc Township	\$3,155	\$0	\$3,155	\$6,310 [3]
Mt. Morris Township	\$3,643	\$0	\$3,066	\$6,679 [2]
Mundy Township	\$2,457	\$0	\$3,350	\$5,807 [5]
AVERAGE				\$5,948
BURTON	\$3,187	\$0	\$3,585	\$6,773 [1]

The City is also correct that Section 9(g) specifies that "overall compensation" is to include "all other benefits received." Only one other city receives a weapon proficiency bonus. None of the other cities receive a physical fitness bonus. Three other cities have monetary educational incentives.

TABLE 10 – SUPPLEMENTARY ALLOWANCES

	<u>WEAPONS PROFICIENCY</u>	<u>PHYSICAL FITNESS</u>	<u>EDUCATIONAL INCENTIVES</u>	<u>TOTAL</u>	
Davison Township	\$0	\$0	\$3,013	\$3,013	[2]
Fenton	\$0	\$0	\$0	\$0	[0]
Flint Township	\$0	\$0	\$0	\$0	[0]
Genesee Township	\$0	\$0	\$0	\$0	[0]
Grand Blanc Township	\$548	\$0	\$2,000	\$2,548	[3]
Mt. Morris Township	\$0	\$0	\$506	\$506	[4]
Mundy Township	\$0	\$0	\$0	\$0	[0]
<i>AVERAGE</i>	<i>\$78</i>	<i>\$0</i>	<i>\$788</i>	<i>\$867</i>	
BURTON	\$750	\$800	\$1,500	\$3,050	[1]

TABLE 11 combines the total cash cost, total time off, and total supplementary allowances.

TABLE 11 – TOTAL OVERALL COST TO CITY

Davison Township	\$77,956 [4]
Fenton	\$74,339 [5]
Flint Township	\$62,747 [8]
Genesee Township	\$86,873 [1]
Grand Blanc Township	\$73,286 [1]
Mt. Morris Township	\$80,575 [2]
Mundy Township	\$73,105 [7]
<i>AVERAGE</i>	<i>\$75,554</i>
BURTON	\$79,660 [3]

ISSUES

Pension Contributions (City Issue 12/Union Issue 2)

BACKGROUND

As this issue is the most complex matter facing the Panel it will be discussed first. The City of Burton is a participant in the Municipal Employees Retirement System of Michigan (MERS). Michael Strader was called by the Union and testified under subpoena. He is a Regional Manager and works with a number of municipalities in his region, including Burton, on pension-related matters. The City of Burton has a defined benefit plan comprised of a number of divisions. A division is typically composed of persons in the same department or bargaining unit. There are three non-police divisions. The following background information is contained in the

Annual Actuarial Valuation Report dated December 31, 2010. The descriptions are intended to provide a general overview of the plans as of that date and are not exhaustive.

Division 10 is comprised of administrative staff. There are 9 active, 2 vested former members, and 13 retirees and beneficiaries. Employees are eligible for retirement at age 50 with 25 years of service, at age 55 with 15 years of service, or at age 60 with 10 years of service. Members are vested after 6 years. Final Average Compensation (FAC) is calculated on the last three years of service and the pension amount is calculated on 2.5% per year of service with a maximum of 80% of FAC. The plan has a 2.5% annual post-retirement escalator. There is no member contribution. However, effective July 1, 2013 the member contribution will be 5% of salary. The current employer contribution is 55.15% of payroll.

Division 11 is comprised of members of the AFSCME Local 1918.09. There are 38 active, 10 vested former members, and 18 retirees and beneficiaries. Employees are eligible for retirement at age 55 with 25 years of service or age 60 with 10 years of service. Members are vested after 6 years. FAC is calculated on the last 3 years of service and the pension amount is calculated on 2.5% per year of service to a maximum of 80% of FAC. The plan has a 2.5% annual post-retirement escalator. The member contribution is currently 9.09% of salary. The current employer contribution rate is capped at 12.5% of payroll.

Division 12 is comprised of members of SEIU Local 517M and is comprised of administrative and supervisory personnel. There are 3 active and 12 retirees and beneficiaries. Employees are eligible for retirement age 60 with 10 years of service or age 55 with 25 years of service. Members are vested after 10 years. FAC is calculated on the last 3 years of service and the pension amount is calculated on 2.5% per year of service to a maximum of 80% of FAC. The plan has a 2.5% post-retirement escalator. There is no member contribution. The current employer contribution is 205.92% of payroll.

Division 02 covers sworn police personnel hired before July 1, 1994. Division 20 covers sworn police personnel hired on or after July 1, 1994. The Division 20 plan is less advantageous than the Division 02 plan (as well as the non-police divisions) in several respects.

TABLE 12 - DIVISION 02 AND DIVISION 20 PLAN PROVISIONS

	<u>DIVISION 02</u>	<u>DIVISION 20</u>
ELIGIBILITY	25 years (no age limit) Age 60 (10 years service)	25 years (age 55) Age 60 (10 years)
VESTING	10 years	10 years
FAC YEARS	3 years	5 years
FAC FACTOR	2.5% per year	2.5% per year
MAXIMUM BENEFIT	80% of FAC	80% of FAC
POST-RETIREMENT ESCALATOR	2.5% annually	None
STATUS	Closed	Open
MEMBERSHIP	7 active 0 vested former members 29 retirees and beneficiaries	27 active 0 vested former members 0 retirees and beneficiaries
CURRENT MEMBER CONTRIBUTION	18.72% of salary	18.72% of salary
CURRENT EMPLOYER CONTRIBUTION	29.24% of MERS compensation	29.24% of MERS compensation ⁴

The reason that members of the police department are in two divisions is a previous negotiated agreement that individuals employed as of July 1, 1994 would retain then-existing pension benefits in exchange for a cost-savings pension plan for employees hired after that date. Because MERS rules do not allow individuals in the same division to have different benefits, Division 02 was closed and Division 20 was created. In order to avoid the problem created by Division 02 eventually having few or no active employees, the two divisions were linked for contribution purposes. By linking the divisions the overall costs are pooled together and there is an influx of cash. The POAM and COAM contracts provide that the City's contribution level is capped at 29.24%.

Although the pension issue is admittedly more complex than simply looking at the required employee contribution, the astounding fact is that the contribution for members of this bargaining unit is six times the average employee contribution and four times the highest

⁴ The MERS definition of "compensation" includes regular pay, longevity pay, overtime pay, shift differential, pay for absences by reason of vacation, holiday, or sickness, deferred compensation amounts, and performance bonuses.

employee contribution of the comparable cities. The stark diminishment in wages is shown in **TABLE 13.** Based on the wage rate in effect on July 1, 2013, the last column lists the wage rate after the employee pension contribution.⁵

TABLE 13 -- JULY 1, 2013 WAGE RATE REDUCED BY PENSION CONTRIBUTION

	<u>7/1/13 WAGE</u>	<u>CONTRIBUTION RATE</u>	<u>CONTRIBUTION AMOUNT</u>	<u>NET WAGE</u>
Davison Township	\$61,785	6.90%	\$4,263	\$57,522
Fenton	\$56,618	1.00%	\$ 566	\$56,052
Flint Township	\$56,647	10.0%	\$5,665	\$50,982
Genesee Township	\$58,666	3.50%	\$2,053	\$56,613
Grand Blanc Township	\$56,340	6.81%	\$3,837	\$52,503
MI. Morris Township	\$55,286	6.28%	\$3,472	\$51,814
Mundy Township	\$55,432	6.00%	\$3,326	\$52,106
AVERAGE	\$57,253	4.50%	\$2,576	\$54,677
BURTON	\$51,790	27.31%	\$14,144	\$37,646

By any measure the after pension contribution wages of members of this bargaining unit are grossly out of line with comparable communities. Regardless which pension demand the Panel adopts the figure in the last column would increase. Based upon the estimate provided by Mr. Strader, and not taking into consideration any other factors, if the employer's demand is adopted the employee contribution would be lowered to \$10,358 and the net wage after the contribution would increase to \$41,332. If the Union's demand is adopted, the employee contribution would be lowered to \$5,719 and the net wage after contribution would increase to \$46,701. While both proposals would increase a member's effective wage there would still be a significant disparity with other communities.

The MERS valuation report indicates that as of December 31, 2011 Division 02 was 29.3% funded and Division 20 was 108.5% funded. The unfunded liability in Division 02 was \$13,732,858 and Division 20 was over funded by \$143,955 making the combined unfunded liability in both divisions \$13,588,903.

Mr. Strader testified that employee contribution rates in both divisions are anticipated to increase to 27.31% on July 1, 2013. The employer's 29.24% contribution in both divisions would continue in effect. He also calculated the effect of both the Union's and the City's proposal.

⁵ Because of the variations in paid time off and supplementary allowances, these factors are not included in the table.

Under the City's proposal that Division 02 and Division 20 remain linked and the City's contribution cap is raised to 35%, employees in both divisions would have their contribution raised from the present rate of 18.72% to approximately 20% of compensation. Increasing the City's contribution from 29.24% to 35% would result in the City's contribution to Division 02 increasing from \$81,622 to \$97,700 and the payment to the Division 20 increasing from \$442,031 to \$529,107. The total for both divisions would increase from \$523,653 to \$626,807 representing an increased City expenditure of \$103,154.

Under the Union's proposal that Division 02 and Division 20 be unlinked and that the employee contribution rate be capped at 20% for Division 02 division and 10% for Division 20 the uncapped responsibility of the City would be 273% of Division 02 payroll and 4.33% of payroll for Division 20. This would increase the City's required contribution to Division 02 to \$762,063 and to Division 20 to \$65,488 for a total contribution of \$827,521. Stated differently, the increased cost under the City's proposal is \$103,154 and under the Union's proposal is \$300,868.

UNION'S POSITION ON PENSION ISSUE

This is the central and most important issue in this proceeding. The current funding system is inequitable for a number of reasons. First, the POAM members in Division 20 have an inferior pension in comparison to all other MERS divisions. All of those divisions have a post-retirement cost of living escalator of 2.5%. This is the only bargaining unit whose members will receive no increase after retirement. All of the other divisions calculate the AFC on three rather than five years. POAM members in Division 20 must have 25 years of service and attain the age of 55 before retiring. Division 02 members can retire after 25 years. The administrative employees in Division 10 can retire after 25 years at age 50 or after 15 years at age 55. The lack of post-retirement COLA, the longer AFC period, and 25/55 rule for pension eligibility combine to make the Division 20 pension less valuable.

The Union maintains that because Division 20 is over funded, the City's contractually required 29.24% is allocated toward Division 02 even though no POAM members receive the more generous pension terms in that plan. The result is that POAM members are saddled with an excessively high contribution to cover more lucrative pensions of others. The employer's

proposal requires employees in an over funded division having the least generous benefit level to continue to pay more than other groups. This would continue the inequity and would increase an already heavy financial burden on members of the bargaining unit.

Division 20 pension benefits are also less valuable than pension benefits in the comparable cities. Division 20 retirees receive no post-retirement escalator. Six out of the seven comparable cities have a 2.5% COLA escalator. A shorter FAC period is beneficial to employees and five of the comparable cities have a 3-year period rather than the 5-year period in Division 20. The age/years of service requirements are more favorable in the other cities. The Division 20 requirement is that the employee must have 25 years of service and attained the age of 55 or 10 years of service at age 60. Flint Township and Mt. Morris Township allow retirement after 25 years with no age restriction. Davison Township, Fenton, Genesee Township, Grand Blanc Township, and Mt. Morris Township have 25 years of service requirement but set the age requirement as 50 rather than 55. In contrast to the 25-years/age 55 requirements for this bargaining unit, an officer who has attained the age of 55 can retire with 15 years of service in Fenton, Flint Township, Genesee Township, Grand Blanc Township, and Mt. Morris Township. Arguably, Burton officers in the POAM bargaining unit have the lowest benefit level of all the external comparables.

The Union contends that Burton is no less well off than the other external comparables in Genesee County. Almost all cities, townships, and counties are still recovering from the financial collapse that started in 2008. The "Financial Highlights" of the CAFR shows that the City has revenues for primary government's governmental fund of \$16,905,842 and expenditures of \$13,688,392, an increase of \$3,217,451. General Fund expenditures were under revenue by \$441,584 creating a General Fund increase to \$2,748,383.

EMPLOYER'S POSITION ON PENSION ISSUE

Under Section 9(1)(a) of the revised statute, the Panel must consider, and give the most significance to, the financial ability of the City and the impact the award will have on the community and the interests of the public. It must consider "all liabilities," such as the City's massive under funded pension and health care liabilities.

The most recent valuation of the City's defined benefit pension system shows the unfunded liability of each division. The total unfunded liability is \$25,094,471. This is an increase of \$2,333,453 -- or 10.25% -- from the valuation for the previous year. The bulk of this liability is in the two divisions of police department employees.

The linking of Divisions 02 and 20 goes back many years. Both the POAM and COAM agreed to do this so that members hired before July 1, 1994 could retain the benefits of the then-existing pension program. The continued linkage remains vital to the City and as Human Relations Director Warren testified adoption of the Union's demand would be "very devastating."

Several of the comparable cities also cap employer contributions. Grand Blanc Township's pension contribution is capped at 14.00%. Davison Township has a cap on its contribution of 15.50% with a minimum employee contribution of 6.50%. Mt. Morris Township has a stated employee contribution, but provides that any increases are to be shared equally between the employer and employees.

The City asserts that the Union has made several erroneous claims. The Union offered testimony that by having Division 20 members contribute 10% to the pension system the City would be absolved of any liability for this unit. This is in direct conflict with Mr. Strader's testimony. He stated that the City would be required to contribute 4.33% of payroll for Division 20. The Union's argument that the members of Division 20 should not be required to compensate the pension of non-bargaining unit members in Division 02 is flawed. The Chief of Police and three active COAM members were at one time POAM members. Retirees that were formerly represented by the POAM are in Division 02. The Union now seeks to turn its back on these former members to benefit existing members. It also wants to turn its back on the decades old agreement that the two divisions would remain linked for funding. Both police unions understood that active members would fund benefits for the predominantly retired members in Division 02 when it closed. Division 02 participants have accrued those benefits and Article 9, Section 24 of the Michigan Constitution does not allow those benefits to be impaired through further negotiations. Now that it is, for all practical purposes, too late to adjust the benefits in Division 02, the Union is trying to back out of its part of the bargain and drop the liability into the lap of the

City. Accepting this approach would punish the City's good faith agreement to preserve Division 02 benefit levels.

The Union's proposal should not be adopted for another reason. Under MERS rules, all participants in a division must have the same funding levels. There are a number of COAM members in Division 20. The Union's proposal would adjust the funding for the POAM, but not the COAM. It would violate MERS rules to have COAM members in Division 20 have a different contribution level than POAM members. On the other hand, the City's proposal is expressly conditioned on the same proposal being applicable to the COAM bargaining unit and as soon as may be permitted by MERS.

This is a two-year contract. The City's goal is to reach a resolution on the pension issue that both parties can live until the City can get a better understanding of its future finances. The City's proposal would slightly increase the employee's contributions in the short-term while the Union's proposal would cripple the City in the short-term and could be devastating in the long-term. The City might be in a position in two years to reduce the burden on POAM employees. However, it must be able to afford its liabilities in the present.

DISCUSSION ON PENSION ISSUE

In the expectation that it would cause parties to refrain from making unsound last best offers, the Legislature has disallowed the Panel from crafting its own award on economic issues. It is therefore irrelevant that the Chairperson would, if not statutorily constrained, adopt neither party's last best offer.

Act 116 requires the Panel to give the most significance of the Section 9 factors to the financial ability of the local unit of government to pay and this assessment requires consideration of all liabilities. This does not mean that the ability of employees to pay for things such as health care or pensions is of no significance. Momentarily setting aside the City's ability to pay, the Panel finds that the Union has clearly shown that the current pension contribution level for POAM members is out of line with comparable communities as well as Burton's other bargaining groups.

TABLE 8 indicates that the wages of this bargaining unit lag behind the comparable communities. The top pay is \$9,000 less than the highest paid city, \$2,100 less than the lowest

paid city, and \$4,500 less than the average wage of the seven other cities. This group has withdrawn its demand for a pay raise for the term of this agreement. By far, however, the most startling information is revealed in **TABLE 13**. None of the other contribution rates are in the same ballpark as the 18.72% contribution rate for POAM members much less the 27.31% rate scheduled to go into effect on July 1, 2013. The effect of \$14,000 being taken off the top must be unsettling. It is the corollary to the City's appropriate question to the Panel: with a dwindling fund balance and an evaporating tax base, where can the City get the money to pay for the Union's proposed pension improvement? To its credit the City has acknowledged that it needs to pay something beyond the current 29.24% cap to ameliorate the hardship on employees.

The significance of the City's proposal to raise its contribution to 35% cannot be undervalued in the Panel's assessment of the proposals. **TABLE 14** shows the employer contribution rate in the comparable cities. Acceptance of the City's position would mean its ranking would change from the second highest contribution rate to the highest.

TABLE 14 – EMPLOYER PENSION CONTRIBUTION RATE

Davison Township	15.50% [5]
Fenton	21.51% [4]
Flint Township	2.46% [8]
Genesee Township	31.84% [2]
Grand Blanc Township	14.00% [7]
Mt. Morris Township	28.79% [3]
Mundy Township	14.44% [6]
<i>AVERAGE</i>	18.36%
BURTON (proposed)	35.00% [1]

The opposing proposals raise a fundamental issue: is it more appropriate that the employer's contribution, or the employee's contribution, be capped? Although there are several comparable communities that have employer caps the majority do not. Likewise, two of the three non-police divisions in Burton do not cap the employer's contribution. A strong case can be made that the taxpayers are more capable of absorbing raising costs and an equally strong case can be made for the opposite view. It is doubtful that there is one correct answer for all pension plans in all cities. Perhaps Mt. Morris is on the right track where increases are distributed equally to the

employer and employee. The Panel need not wrestle with that hard question and it is left where the Panel found it.

The perspective of POAM members is understandable. The pension that Division 20 members will receive is substantially less lucrative. It is obvious that retirees who receive a 2.5% annual post-retirement escalator will over the course of a hopefully long retirement earn substantially more than Division 20 retirees. It is less advantageous in other respects as well. One can also understand the logic behind the Union's contention that the City pays zero toward the Division 20 pension because it is over funded, even though for the reasons explained in the City's post-hearing the contention does not stand up under scrutiny. However, the Panel cannot base an award on equitable principles. Rather, it is required to assess the merits and demerits of each proposal through the lens of specific standards.

There are many causes for the immense under funding in the City's pension program and from what can be discerned from the record the reasons have nothing to do with mismanagement by the City or greediness by the police unions. The more significant point is that neither the City alone nor employees alone can solve it. Although it is likely that the POAM and COAM might not have appreciated the full ramifications of closing Division 02, they did so with their eyes wide open. The Union's priority was to retain an enhanced benefit for incumbent members. That required a quid pro quo: (1) diminished benefits for new hires and (2) linking of the existing and newly created divisions for funding purposes. It must be concluded that the linkage was an integral part of the deal and that knowledgeable bargainers realized that as members retired new funding into Division 02 would gradually decrease and eventually end. They would have also recognized that no one hired after 1994 would be eligible for a service retirement until 2019 and that the purpose of the linkage was to cover the normal cost⁶ of Division 20 participants as well as

⁶ MERS defines "normal cost" as the cost of benefits rights accruing on the basis of current service. It is the level percentage-of-pay contribution required each year with respect to each member to accumulate over his or her projected working lifetime the reserves needed to meet the cost of earned benefits.

any actuarial accrued liability.⁷ Stated differently, while the parties may not have foreseen that the system's investments would plummet in an economic downturn, the bargain they struck is the situation that exists today. While nothing in Act 312 precludes the City or Union from seeking to change prior deals, modifications to a pension system are not the same as changing overtime or holiday provisions. The nature of a retirement system requires planning over the long term.

The Union has not advanced a sufficiently persuasive case for unlinking Divisions 02 and 20. The evidence arguably supports some upward adjustment in the City's contribution rate and a corresponding downward adjustment in the employee's contribution rate. Whether it should be the upward adjustment offered by the employer or the upward adjustment demanded by the Union – or likely something between those two adjustments – is a close question and one that the Panel cannot address. But the Union's proposal does not seek only to cut the employee contribution in half but it fundamentally changes the funding methodology. In that regard its demand goes a step too far. The Panel agrees with the employer's argument that it would be unreasonable to grant a demand setting a cap on the employee contribution that is coupled with a funding change that would exacerbate the serious under funding that currently exists.

In light of this disposition, it is unnecessary to address the City's argument that granting the Union's pension demand would violate MERS rules because COAM members in Division 20 would have a different employee contribution rate than POAM members.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on pensions more closely corresponds to the applicable Section 9 factors.

Employee Health Care - Current Active Employees (City Issue 2)

This issue has been settled.

⁷ MERS defines "actuarial accrued liability" as the amount that would have been accumulated on December 31st of each year if contributions sufficient to meet the normal costs of the retirement system had been made each year in the past, benefit provisions had always conformed to current benefit provisions, and actual past experience had always conformed to actuarial assumptions.

Employee Health Care – New Employees (City Issue 3)

Predominant in the City's financial difficulties is the escalating cost of health care. Recognizing the necessity for reform, the legislature enacted the Publicly Funded Health Insurance Contribution Act, Public Act 152 of 2011. Public Act 152 gives two options: a fixed dollar amount based on single, two-person, or family coverage, or a cost sharing option requiring a 20% employee contribution. Burton has adopted the hard cap option with the consequence that the legislature rather than insurers determine the amount it pays for employee health care. Maximum rates for 2013 are \$5,692.50 for single coverage, \$11,385.00 for two-person coverage, and \$15,525.00 for family coverage. If granted, the effect of the City's proposal would limit health coverage for new employees to single coverage. Based on the present allocation of health care costs in effect,⁸ if a newly hired officer is married the annual reduction in the City's premium would be \$5,692.50 and if the officer needs family coverage the savings would be \$9,832.50.

EMPLOYER'S POSITION ON NEW HIRE HEALTH CARE

Based on projected 2012/2013 spending, the cost of fringe benefits out of the Police Fund increased approximately \$522,000 since 2010/2011. Health care, along with pension contributions, account for the largest parts of this extreme spike. During the same time frame Police Department strength has been substantially reduced (5 Police Officers, 2 Sergeants, and 1 Detective). Stated differently, more is being paid in fringe benefits for fewer employees at a time when its tax base and revenues are decreasing. The public interest is clearly supported because these savings could put more officers on the street.

AFSCME and Teamsters Local 214 accepted this proposal. MAFF and Local 214 Deputy Fire Chiefs do not receive health care benefits. The only other unions that have not adopted this cost-savings measure are the COAM and the SEIU bargaining unit that has only two members. Negotiations in the SEIU unit have not yet occurred because of a representation issue but the same demand will be presented. While this is concededly a significant concession for

⁸ Public Act 152 provides that a public employer may allocate its payments under the hard cap provision among employees and elected officials as it sees fit and this provision is contained in the agreed-upon contractual language for current active members.

newly hired employees, there is a widespread trend to provide them with a lower tier of benefits. It can be assumed that an applicant would rather have a job with single coverage (and the option to buy-up to additional coverage) than no job at all.

UNION'S POSITION ON NEW HIRE HEALTH CARE

Approval of the City's proposal would create a tremendous financial burden on new police officers in Burton who are married and have children – specifically, an annual burden of \$9,832. This would also create a huge disparity between newly hired and current members and place the salary completely out of line with the external comparables. Only two of the other Burton unions – AFSCME and Teamsters Local 214 Administrative/Supervisory – have accepted this proposal. None of the comparable departments exclude two-person or family coverage for new employees.

DISCUSSION ON NEW HIRE HEALTH CARE

It is beyond reasonable dispute that the alarmingly rising health care costs facing public employers must be confronted. No one can foresee whether the provisions of the Affordable Care Act that will be fully implemented in 2014 will accomplish the hoped for cost savings in health insurance. Public Act 152 has already imposed a substantial change in the health care model because the legislature rather than insurance companies determine the City's cost. For a newly-hired officer with a family the City's proposal would take it \$10,000 further.

When considering the merits and demerits of individual demands it is important that an Act 312 Panel not lose sight that it is the *overall* effect of the Award that must be considered. This is certainly true when the Union is seeking improvements because granting a series of modest demands can add up quickly to an unreasonable amount that exceeds the City's ability to pay. It is no less true – as here – when the City is seeking concessions.

None of the comparable communities limit new employees to single health care coverage. The strongest evidence supporting the City's proposal is internal comparability. The goal of avoiding substantial disparities in health care coverage among city employees is a valid one. Employee morale can be adversely affected if there is a perception of unequal sacrifice. However, comparisons among bargaining units must be done cautiously. Ildiko Knott explained

the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners. (MERC Case No., L92 F-0095, July 5, 1993), p. 8.

Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends upon the particular circumstances of the negotiations, their bargaining history and their job market. These circumstances cannot be automatically transferred to another group. Each group must be judged on objective standards appropriate to that group.

The Panel understands that a comparison of base wages between a newly hired AFSCME employee and a police officer gives an incomplete picture because more is involved. However, that comparison will suffice for purposes of discussion. The recently ratified AFSCME agreement lists 24 job classifications with substantially different starting salaries. The starting wage of a "Laborer/Water" is \$13.19 per hour or an annual salary (computed on 2,080 hours) of \$27,435. The starting wage for a police officer is \$14.90 per hour or \$31,002 annually. Setting aside everything except pension contribution the laborer's effective wage after a 5% pension contribution is \$26,064. Disregarding everything except pension contribution the police officer's effective wage after a 20% pension contribution is \$24,802. If both employees are married and have a child, the \$9,832 that family coverage would cost leaves \$16,232 for the laborer and \$14,970 for the police officer. Both employees are required to pay FICA/Medicare tax of 7.65% reducing the pre-income tax figure for the laborer to \$14,990 and the police officer \$13,825. This illustrates the point that each bargaining unit has its own rationale for what it does.

The chairperson is less confident than the City that qualified applicants will be attracted to the Burton Police Department if this demand is granted. Although the financial ability of the unit of government to pay is to be given most significance, the legislature left undisturbed the requirement that the assessment also take into account "the interests and welfare of the public." Burton citizens are not well served if police officers move to other departments as soon as they get some experience under their belt here. Paying \$10,000 for health care could have that unintended consequence. Nor would it be in the public interest for the Panel not to recognize

the nature of law enforcement. In another Act 312 case Arbitrator Theodore J. St. Antoine noted:

Finally, as a matter of equity, there is merit in the Association's position that law enforcement officers engage in a uniquely hazardous occupation, where assaults and even deaths in the line of duty are the subject of routinely maintained statistics. The high stress levels caused by such exposure put police personnel in a different category than other public employees. (*Macomb County Professional Deputies Organization and County of Macomb*, MERC Case No. D91 I-1674, December 10, 1992) p. 21.

There is no question that the City is facing serious financial issues that require it to find ways to shrink expenditures. There is no question that wage and benefit changes need to be made. However, there are varied paths to the City's goals.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on new hire health care more closely corresponds to the applicable Section 9 factors.

Retiree Health Care – Active Employees (City Issue 4)

TABLE 15 shows the City's liabilities and assets for retiree health care as determined by the most recent actuarial report from Gabriel Roeder Smith & Company.

TABLE 15 -- ACTUARIAL REPORT ON RETIREE HEALTH CARE PLAN

Present Value of Future Benefit Payments	\$25,012,667
Actuarial Accrued Liability	\$16,400,805
Plan Assets	\$ 1,256,203
Unfunded Actuarial Accrued Liability	\$ 15,144,602
Funded Ratio	7.7%

Employees currently contribute .5% of salary for retiree health care. The City currently pays 100% of the premium for single coverage for any retiree. This remains unchanged under the City's proposal. If granted the City's demand would make four changes to retiree health coverage. First, the amount the City contributes to two-person coverage would decrease from 80% to 70% (if the insurance carrier provides a couple or two-person plan). Second, family coverage would be eliminated. Currently the City pays 60% of family coverage. A retiree could obtain family coverage by paying the difference between 70% of two-person coverage and family coverage. Third, the City's obligations with regard to retiree health care would cease upon a

retiree becoming Medicare eligible. Retirees currently are covered by a Medicare Supplement plan. Fourth, the survivor of a deceased retiree would have health care coverage cut off. Currently the surviving spouse is eligible for continued coverage until the spouse remarries, becomes eligible for Medicare, or is covered by health care from another source.

One of the choices for retiree health care is the Community Blues plan. Under both the current and proposed plans the City would pay \$494 for single coverage and the retiree would pay nothing. Under the City's proposal a retiree's premium for a two-person plan would increase \$119 per month. The premium for family coverage would increase \$297 per month.

There is substantial variation in retiree health care among the comparable communities and the variations make it difficult to draw firm conclusions. Davison Township provides 100% coverage for the retiree, spouse, and dependents. Fenton provides 100% coverage for the retiree, spouse, and qualified dependents and a supplement for Medicare eligible employees. Flint Township provides 100% coverage for the retiree, spouse, a child under 25, and a dependent as defined by the IRS. Genesee Township calculates eligibility according to a formula that counts age, years of employment, and active military service. An employee who retires at age 55 with 25 years of service receives 100% paid medical and dental insurance for the retiree and spouse. Grand Blanc Township has a pre-1997 and post 1997 plan. The first plan provides 100% coverage for the retiree, spouse, and children under 19. The second plan provides 100% coverage for the retiree and spouse. Mt. Morris Township provides 100% coverage for the retiree only to age 65. Mundy Township provides 100% coverage for the retiree and spouse if they are not eligible for health care coverage under any other plan.

Burton proposes to continue to pay 100% of single coverage for the retiree. All of the comparable communities pay 100% single coverage for the retiree. Mt. Morris provides no coverage once the retiree reaches 65. Fenton requires the retiree if eligible to enroll in Medicare and provides a limited Medicare supplement policy.

Burton proposes to limit two-person coverage to 70% of the premium. Except for Fenton, which provides no two-person coverage, all of the remaining cities provide 100% coverage for spouses. None of the comparables cut off spousal coverage when the retiree dies.

Burton proposes to eliminate family coverage with the option of the retiree paying the difference between the City's 70% two-person coverage. Davison Township, Fenton, and Grand Blanc Township provide some form of family coverage.

All of the cities except Davison Township and Grand Blanc Township require enrollment in Medicare.

With regard to the internal comparables, neither fire fighter unit receives retiree health care. AFSCME and Teamsters Local 214 Administrative/Supervisory Unit have agreed to the proposed changes and they will be presented to the SEIU-Supervisors Unit when negotiations commence. The Act 312 Panel involving the COAM has the proposed changes under consideration. At the present time the Clerk, Assessor, Treasurer, Chief of Police, and Fire Chief are not covered by these changes.

EMPLOYER'S POSITION ON RETIREE HEALTH CARE – ACTIVE EMPLOYEES

The City's proposal is squarely aimed at reducing the \$15,144,602 unfunded liability that the City faces due to its obligations to provide retiree health care. Although the plan is only 7.7% funded, the City is attempting to address this liability without completely eliminating retiree health care. The reality is that the City needs additional help from retirees. The elimination of health care benefits for Medicare-eligible employees would place them on par with many of the comparable communities. The rationale for eliminating health care for spouses after the retiree dies is that City employees who put their time in rely on health care in retirement. The City has to be responsible and focus on those individuals. Therefore, the proposal to terminate the City's exposure with the death of the retiree who actually worked for the City is necessary in light of the reality of the City's unstable retiree health care system.

UNION'S POSITION ON RETIREE HEALTH CARE – ACTIVE EMPLOYEES

The City's own exhibit demonstrates that it is already way out of line with comparable cities. Fenton is the only city that does not provide two-person coverage and all of the other cities provide 100% coverage for spouses. The current contract limits the City's responsibility to 80% of the premium for two-person coverage and 60% for family coverage. Only two of the internal comparables have the level of health care being proposed by the employer. The adoption of the

employer's LBO would be one more burden on a bargaining unit already near the bottom of the external comparables.

DISCUSSION ON RETIREE HEALTH CARE – ACTIVE EMPLOYEES

Providing health care for governmental employees during a hopefully long retirement presents a sobering challenge. Retiree coverage is sometimes described as a "time bomb" to present and future financial solvency. Demands for its elimination are increasingly frequent and the City is to be commended on its effort to preserve retiree health care. The \$15,000,000 unfunded liability is there and this unhealthy situation will not be resolved in the near future.

If the Panel were to base its evaluation solely on the external comparables, endorsing the additional burden that the City's proposal imposes would be unwarranted. There is nothing in the record allowing the Panel to discern whether those municipalities are in a different position to fund retiree health care. But that information could not change the plain facts about Burton's situation. The Union has not proposed an alternative that would lower retiree health care costs. The Panel agrees that relief is needed.

This proposal must be considered in light of the ability of future retirees to pay a higher share of health care premium. For most retirees the principal source of income is a monthly pension check. As described earlier, all of the divisions participating in MERS have a non-compounded 2.5% post-retirement escalator except the POAM and COAM employees in Division 20. Similarly, six of the seven comparables have a non-compounded 2.5% post-retirement escalator. Only Mundy Township retirees will be in the same situation as Division 20 members: the amount of their pension check will not increase during retirement. Therefore, to require the same contribution from Division 20 employees raises concerns of equity.

The elimination of the post-retirement escalator for the majority of POAM members in Division 20 is problematic. So is the enormity of the under funding. The balancing of the two might or might not justify this extra hardship. The City seems to be on firm ground in its position that a retiree who opts out of the City's hospitalization plan should not receive \$2,000 if enrolled in Medicare. It is hard to see how the City can continue to afford such subsidies. While the elimination of family coverage could affect some retirees one would presume that would be the

exception rather than the rule. Ending the City's responsibility for health care when a retiree becomes eligible for Medicare is unwelcome but not unprecedented. However, the statute does not allow the Panel to accept the justified parts of an economic demand and sever the rest. Particularly when the absence of a post-retirement escalator is considered, the Panel concludes that the denial of spousal coverage after the death of the retiree justifies rejection of its retiree health care proposal.

The current collective bargaining agreement provides: "In the event the retiree becomes deceased prior to being eligible for Medicare, the surviving spouse shall receive single coverage as provided above, until either of the following occurs: the surviving spouse remarries, or the surviving spouse becomes eligible for Medicare, or the surviving spouse is covered by health care from another source." The stated justification for this proposed change is that the City wishes to retain consistency among bargaining units and the Union has provided no explanation why their members are entitled to a greater benefit than other City employees.

The Panel is unaware of the frequency of City of Burton employees predeceasing their spouses after they retire and before they become eligible for Medicare. Nor is the Panel aware of any data that would disclose if mortality during this period is different for retired police officers than other public employees. Although early elimination of liability would have some favorable effect on the unfunded liability, no estimated dollar amount has been attached to the anticipated savings. Happily average life expectancy statistics indicate that most retirees will not predecease their spouse before age 65. The City has not demonstrated that this would make an appreciable difference in its cost. On the other hand, the prospect of a widow or widower suddenly being left without health care at a time when many people need it most is alarming.⁹ The likelihood that the surviving spouse could not afford insurance is not remote. The City's proposal does not include a provision allowing the surviving spouse to participate in the City's plan at his or her own expense and it is not apparent why that accommodation would retard the goal of improving the under

⁹ It is of course true that the surviving spouse could be years younger than the retiree when the retiree dies and therefore entitled to a continuation of health care benefits for a long time. In the absence of supporting data the Panel is not persuaded that this is sufficiently common to be a concern of overriding significance.

funding. If a married retiree has the good luck to live to the age of Medicare eligibility the City is willing to provide the retiree and spouse insurance on a 70/30 basis. But if the retiree dies before reaching that milestone the City's contribution is reduced from \$885 to \$478 (at the current 80/20 cost-sharing formula) and from \$774 to \$478 (at the proposed 70/30 cost-sharing formula). The further reduction to zero has not been shown to be warranted or necessary. An employee who puts the time in to qualify for retirement relies on the City's system to provide health care in retirement for the employee and his or her spouse. A basic precept in interest arbitration is that a contractual provision should not be changed unless the proponent can justify the necessity for doing so. The Panel's reasoning for not approving this demand shares a similarity with the reasoning for its adverse decision on the Union's pension demand. There the Panel concluded that it had not been clearly shown that the objective the Union sought (a reduction in employee contributions) necessitated the detrimental impact on the City that unlinking would cause. In this demand the City has not clearly established that its objective of substantially curtailing the rising care of retiree health care necessitates the hardship its demand would impose on surviving spouses.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on new hire health care more closely corresponds to the applicable Section 9 factors.

Retiree Health Savings Account – Active Employees (City Issue 5)

The City has withdrawn its demand on this issue.

Retiree Health Care – New Employees (City Issue 6)

The City proposes to eliminate retiree health care benefits to any employee who was hired on or after the effective date of the Award. In its place the City proposes to contribute 1.5% of the employee's wages to a retiree health care savings plan. An employee could contribute up to the limit allowed by law. Employees would vest in the City's contributions after ten years of service or attaining 25 years of service at age 55.

EMPLOYER'S POSITION ON RETIREE HEALTH CARE – NEW EMPLOYEES

This proposal would eliminate traditional retiree health care for future hires in order to offset some of the expenses related to retiree health care and pension contributions. This is hardly a shocking or unreasonable proposal. The idea originated with the POAM. In many ways it is advantageous to the City and the employee. The City gains an advantage by defining its costs for retiree health care for all new hires. Employees gain because funding is prepaid meaning they are not confronted with the uncertainty of an under funded health benefit. New employees who would have their entire careers to build up their health care accounts. The individuals would then leave with an accumulation of 1.5% of their pay over their career – including investment returns – to purchase health care. Moreover, after ten years the employee would be able to take the funds in their account with them if they leave City employment. The vesting requirement is more advantageous than the status quo pressed by the Union that, barring a duty disability retirement, requires a newly hired employee to work for the City for 25 years and attain age 55 before receiving any entitlement to retiree health care.

The City points out that retiree health care savings plans are increasingly common in private and public sector employment. Indeed, in their recent agreement Genesee Township adopted such a plan but agreed to fund it at 1% of salary. The Union will point out that no other City bargaining unit has agreed to this proposal. However, the idea came from the POAM. No other employee group faces anywhere the size of the unfunded pension liability as members of the POAM and COAM. The City's proposal is a reasonable approach.

UNION'S POSITION ON RETIREE HEALTH CARE – NEW EMPLOYEES

The problem with the employer's proposal is that it allows a newly hired employee to contribute to the proposed retiree health savings plan. But the accumulated deductions from base salary coupled with the wage freeze would leave anything to contribute. None of the internal or external comparables have a retiree health savings plan. The employer's demand does not meet the statutory requirements.

DISCUSSION ON RETIREE HEALTH CARE – NEW EMPLOYEES

The Panel is aware that health care savings plans are becoming increasingly popular in private and public sector employment. The City is correct that such plans can have advantages for the employer and employee. Yet no other bargaining unit has adopted a health savings plan and as far as the record indicates the City has not proposed it to any other group except the COAM. Human Resources Director Warren testified that the idea came from the Union and the City liked it. While it is undoubtedly correct that the Union did bring it up, her recollection about the details surrounding the discussion is sketchy.

During bargaining one side or the other can float trial balloons and it would not be in anyone's interest to say that the party doing so is thereafter wedded to the idea. The statute makes clear that the Panel is to evaluate last best offers. The Panel cannot impose a concept that it does not thoroughly understand. At a minimum a meaningful evaluation would require an estimate of the amount the retiree would have in the account based on contributions and returns on investments at retirement. When all of the due diligence has been done the POAM could be convinced that this would be a beneficial change. The Panel cannot direct but will urge the Union in negotiations for a successor agreement to seriously consider the advantages of a health savings plan for new employees.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on retiree health care for new employees more closely corresponds to the applicable Section 9 factors.

Temporary Detective Clothing Allowance (City Issue 7)

Detectives are represented by the COAM. However, a POAM member is sometimes designated a "Temporary Detective." Management determines the need for this assignment and also the duration of the assignment. When so designated the current contract entitles the member to an annual clothing allowance of \$350.00. The COAM agreement specifies that Detectives receive a \$500 clothing allowance. Six of the seven external comparables provide clothing allowances to Detectives ranging from \$400 to \$800 and the average allowance is \$625. The agreements do not contain provisions concerning Temporary Detectives.

EMPLOYER'S POSITION ON TEMPORARY DETECTIVE CLOTHING ALLOWANCE

Temporary Detectives wear typical business attire that the City can no longer afford to subsidize. It can be assumed that officers already have basic dress attire. Paying for basic business attire that an officer can use after the assignment ends is an unjustifiable expense.

UNION'S POSITION ON TEMPORARY DETECTIVE CLOTHING ALLOWANCE

A Temporary Detective cannot wear a police uniform to perform investigative duties and the Department restricts the type of civilian attire that can be worn. The City's witness said that there is no way of telling how long a temporary assignment will last and stated that it could be as short as one month. The status quo should be maintained.

DISCUSSION ON TEMPORARY DETECTIVE CLOTHING ALLOWANCE

Management decides whether there is a need to create this temporary assignment as well as the length of the assignment. The assumption that an officer already owns suitable business attire may or may not be correct but even if correct the nature of a Detective's duties might make it imprudent to wear one's best clothing. The total outlay of this item in the last year was \$350.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on Temporary Detective clothing allowance more closely corresponds to the applicable Section 9 factors.

Weapons Proficiency Allowance (City Issue 8)

In order to qualify for the firearms proficiency allowance officers must report to the range at the appointed time. At a minimum an officer must attend one qualification session each year. An officer is entitled to a gun proficiency allowance of \$450 for attending 9 sessions and \$750 for attending 10 sessions. The City spent \$15,000 in 2012 on these allowances.

EMPLOYER'S POSITION ON WEAPONS PROFICIENCY ALLOWANCE

It is expected that all officers will be proficient in firearms when they are hired and the City should not incur an expense for a skill that the officer possessed as a condition of being hired. There are no other city workers who get any kind of allowance for being proficient in the

use of tools for their jobs. The City employs a Code Enforcement Officer who does not receive this allowance. Officers should be self-motivated to keep up shooting skills just as clerical employees should be self-motivated to keep typing skills up-to-date.

UNION'S POSITION ON WEAPONS PROFICIENCY ALLOWANCE

No sufficient reason has been shown to change the status quo. The City's witness believed that an officer could be ordered to attend firearms qualification off-duty and would not be entitled to compensation but on reflection stated that it would be something that would need to be taken under consideration.

DISCUSSION ON WEAPONS PROFICIENCY ALLOWANCE

The Panel finds the City's above-stated rationale wholly unconvincing. The rationale is at odds with contract language that apparently has been in the collective bargaining agreement for 30 years: "Both parties recognize the need for officers to acquire *and maintain* their skills in the use of firearms. Both parties also recognize that the more training that occurs, the more skilled a person becomes." This means that firearm proficiency is not a skill that once acquired is permanently retained. This is the reason that the Michigan Commission on Law Enforcement Standards (MCOLES) mandates that as a condition of maintaining certification every police officer in this state must continue to meet that agency's Active Duty Firearm Standard throughout his or her career.

The notion that all employees should be presumed to be proficient at their jobs is misguided when the issue deals with deadly force. There could be a misconception that confuses law enforcement firearms training with recreational target practice. The former involves more than shooting at a paper target. The notion that a police officer's firearm has an equivalency to the tools used by other City workers is simplistic. The comparison of a sworn police officer to a Code Enforcement Officer City overlooks that the two jobs are in no sense comparable. Although this employee may carry a gun, he or she is not sent out to handle situations involving hostile and armed criminals. One needs no more substantiation that lives hang in the balance than the very recent (May 18, 2013) tragedy involving the death of a 21-year old Hofstra University student. She was unintentionally fatally wounded by a police officer who was left with no choice but to

make a split second decision in an attempt to prevent her murder at the hands of a desperate criminal who was holding a gun to her head. One can be assured that the frequency and adequacy of the officer's firearm training will be scrutinized in microscopic detail. In the Panel's view this issue should be considered to be more about competence than compensation.

Neither party explained the history of this provision or the reasons it was inserted in the collective bargaining agreement in the first place. The Panel is aware that the Burton Police Department does not have its own firing range. The record does not enlighten the Panel on the distance officers must travel for firearms qualification or the length of each session. Although the Human Resources Director explained that she "would very much encourage the chief to schedule these on duty time" she conceded she had not conferred with the Chief of Police and did not know whether that would be feasible. Under the current provision an officer receives no compensation for eight monthly qualification sessions unless the ninth session is attended. Compensation of \$44 per session does not seem out of line and could be equivalent to the amount required by the Fair Labor Standards Act. It has not been overlooked that there is an additional \$300 allowance for attending the tenth session that could be more difficult to justify.

The City has a second and more convincing point. Training issues typically are considered to fall within the prerogatives retained under the management rights clause. An Act 312 Panel transgresses its proper role if it usurps that authority. It may be that the Chief of Police would -- if the demand proposed by the City were granted -- make the determination that substantially fewer qualification sessions would be sufficient. But that is pure speculation. Nothing concrete has been presented to demonstrate that the City has given an alternative to the existing procedure adequate consideration. The Panel declines to make a decision on a matter of this significance on the basis of an unexplained alternative. Assuring that an officer is able to use a deadly weapon proficiently is too important to do otherwise.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on the weapons proficiency allowance more closely corresponds to the applicable Section 9 factors.

PHYSICAL FITNESS ALLOWANCE (City Issue 9)

The current agreement provides an \$800 allowance if an officer demonstrates his or her fitness on the basis of strength, agility, and endurance. Standards of fitness are established by mutual agreement.

EMPLOYER'S POSITION ON PHYSICAL FITNESS ALLOWANCE

In 2012 the City paid \$16,400 in these allowances. Other city workers, including fire fighters, do not participate in this program. None of the comparable cities have this allowance. If granted this change would place POAM members on par with police officers from other jurisdictions as well as other City employees performing physically demanding work.

UNION'S POSITION ON PHYSICAL FITNESS ALLOWANCE

No evidence has been advanced to support the City's position.

DISCUSSION ON PHYSICAL FITNESS ALLOWANCE

It is indisputable that strength, agility and endurance are important in police work. The City and Union recognized the mutual benefit of physical fitness in previous negotiations. The City can no longer pay for all of the meritorious things it could afford in better times. Neither the internal nor external comparables support the Union's position. Regrettably this program is among the things that are beyond the City's current financial capacity.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on physical fitness allowance more closely corresponds to the applicable Section 9 factors.

Educational Incentive (City Issue 10)

The City currently provides a one-time bonus to employees upon completion of credit hours or degrees earned during their employment. The compensation is as follows: \$100 for 30 credit hours; \$170 for an associate's degree; \$210 for an associate's degree plus 30-credit hours; and \$250 for a four-year degree. In addition to compensation earned for credit hours and degrees, the City reimburses full-time employees up to \$1,500 per fiscal year for tuition

reasonably related to their existing job. The City does not seek to eliminate these educational incentives. Rather it proposes to suspend the incentives until June 30, 2014.

EMPLOYER'S POSITION ON EDUCATIONAL INCENTIVE

The City spent \$1,075 in 2012 on tuition reimbursement for POAM members. An additional request is pending approval. The City's position would afford it some financial relief without permanently impacting the employees.

UNION'S POSITION ON EDUCATIONAL INCENTIVE

The record does not disclose the number of officers who have received an educational incentive payment. The top wage of a Burton police officer is \$5,838 less than the average of the seven comparable cities. The Panel needs to recognize that even if an officer received the highest allowed payment from the weapons proficiency allowance, the physical fitness allowance, and the educational incentive it would amount to \$3,050.

DISCUSSION ON EDUCATIONAL INCENTIVE

In law enforcement educational achievement is a hallmark of professionalism. The stipend benefits the police officer but the real benefit is to citizens who are policed by better educated officers. However, hard realities must be faced. The City is attempting to find a middle ground and the approach is sensible. The Panel emphasizes that the acceptance of the City's position is based on the stated intention to make the suspension temporary.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on educational incentives more closely corresponds to the applicable Section 9 factors.

Longevity (City Issue 11)

The City has withdrawn this demand.

Pensions (City Issue 12/Union Issue 2)

This issue was discussed previously.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on pensions more closely corresponds to the applicable Section 9 factors.

Wages (City Issue 13/Union Issue 1) (Settled)

This issue has been settled. There is no wage increase for the term of this agreement.

Bi-Weekly Pay Period (City Issue 14)

Currently the City pays employees on a weekly basis. In an effort to improve efficiency it is seeking to transition to biweekly pay periods. Currently the City's Payroll Accountant does payroll and accounts payable weekly which limits efficiency. The City's proposal would allow this individual to dedicate two weeks per month to payroll and two weeks to accounts payable. The City cannot implement this plan unless all employees are on the same period.

EMPLOYER'S POSITION ON BI-WEEKLY PAY PERIOD

The City needs this modification to free up the Payroll Accountant's time to pursue moneys owed the City. The only suggestion of an objection came in the form of a question from the Union's advocate pertaining to an imagined impact on POAM members who would have to wait one extra week for a biweekly paycheck. The City can accommodate this concern.

UNION'S POSITION ON BI-WEEKLY PAY PERIOD

Although the issue may seem innocuous, the Union believes this would cause a hardship for employees as they transition from a one-week pay period to a two-week pay period.

DISCUSSION ON BI-WEEKLY PAY PERIOD

The Panel is convinced that adoption of this proposal will enhance the efficiency of the payroll and accounts receivable functions without disadvantaging employees. Biweekly payrolls are common in the public and private sectors. The Panel is confident that the parties can work together to ensure that any transition issues are satisfactorily resolved.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand concerning bi-weekly payroll more closely corresponds to the applicable Section 9 factors.

As a final matter, the Chairperson would like to express his appreciation for the professionalism shown by the advocates and all of the participants in this proceeding. The quality of the presentations and the thoroughness of the briefs were of great benefit. It has been apparent to the Chairperson throughout these proceedings that those representing the City and the POAM are doing their best to look out for the interests of the citizens as well as the membership during extremely challenging but hopefully improving times.

ORDER OF THE PANEL


A majority of the Panel votes to adopt the last best offer on each issue as set forth at the conclusion of the discussion of each issue.

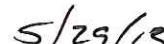


Micheal J. Falvo, Chairperson




Dated


James DeVries, Union Delegate
I concur in all awards in favor of the Union
I dissent in all awards in favor of the City



Dated


Richard W. Fanning, Jr., City Delegate
I concur in all awards in favor of the City
I dissent in all awards in favor of the Union



Dated