

**STATE OF MICHIGAN
COMPULSORY ARBITRATION
ARISING PURSUANT TO ACT 312, P.A. OF 1969,
AS AMENDED BY ACT 116, P.A. OF 2011**

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STATE OF MICHIGAN
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In the Matter of:

CITY OF ST. CLAIR SHORES,

Public Employer,

-And-

MICHIGAN ASSOCIATION OF POLICE,

Labor Organization.

MERC Case No.: D14 F-0531
Benjamin W. Wolkinson, Panel Chair
Michael Smith, Employer Delegate
Fred Timpner, Union Delegate

KIRK, HUTH, LANGE & BADALAMENTI, PLC
CRAIG W. LANGE (P27200)
KATHRYN E. JONES (P75431)

MICHIGAN ASSOCIATION OF POLICE
FRED TIMPNER

I. STATEMENT OF PROCEEDING

The City and the St. Clair Shores Police Officers Association are signatories to a collective bargaining agreement covering all non-supervisory police officers, including any sergeants holding non-supervisory positions. (C. Ex. 1, pp. 1-2) There are 86 persons employed by the City within the St. Clair Shores Police Department. (Tr. Vol. 2, pp. 137-138)¹ Sixty-three of them are police officers who are represented by the Union. (Ibid). The remainder of the employees in the Police Department consists of the Chief of Police, the Deputy Chief, 16 command officers, and 5 non-sworn civilian employees.

The most recent collective bargaining agreement between the City and the Union expired June 30, 2014. (C. Ex. 1) Following the expiration of the 2010-2014 agreement, extensive negotiations were conducted, some with the assistance of State Mediator Micki Czerniak. (C. Ex. 2, p. 1) Nevertheless, an impasse ensued. On or about October 3, 2014, the Union filed a Petition for Act 312 Arbitration pursuant to Act 312 of Public Acts of 1969, as amended by Public Act 116 of 2011, MLC 423.231 *et seq.* (C. Ex. 2)

Subsequent to the filing of the Act 312 Petition, Dr. Benjamin W. Wolkinson was appointed as the impartial arbitrator and chairperson of the Arbitration Panel to be assembled for the proceedings in this case. (C. Ex. 3) Delegates designated by the parties included Michael Smith, City Manager, on behalf of the City, and Fred Timpner, Executive Director of the Michigan Association of Police, on behalf of the Union.

On or around October 27, 2014, a pre-hearing scheduling conference was held between the parties. (C. Ex. 4) On November 17, 2014, the parties submitted their positions and supporting documents regarding the issues of comparable communities and duration of the contract. On

¹ References to the Transcript will be notated with "Tr." followed by volume number (1, 2, or 3), then the page number.

November 20, 2014, Dr. Wolkinson issued an Interim Panel Award in regard to the issues on duration and comparables. In it, Dr. Wolkinson determined that the comparables for the purpose of this proceeding would be the following communities: City of Dearborn Heights, City of Farmington Hills, City of Livonia, City of Roseville, City of Royal Oak, City of Southfield, City of Sterling Heights, City of Warren and City of Westland. In addition, Dr. Wolkinson determined that the duration of the proposed contract at issue in this proceeding would be three (3) contract years, extending from July 1, 2014 through June 30, 2017.

Last best offers of settlement on all of the economic issues were submitted by the parties to the Panel Chairperson on December 5, 2014 pursuant to MCL 423.238. The parties exchanged exhibits and rebuttal exhibits.

Prior to the start of the hearings, on February 9, 2015, the City filed a Motion to Exclude Union Issue 7 on Insurance. The Union filed a Response to City's Motion to Exclude Union Issue 7 on Insurance on February 17, 2015. Act 312 Arbitration Panel Chair Wolkinson issued his ruling on February 20, 2015, granting the City's Motion in its entirety. (C. Ex. 8-A). The Panel Chair explained the following:

The Arbitrator finds that since the Union never raised the issue of Insurance in its petition or in the pre-arbitration conference, and indeed previously recognized this issue as settled, it can not properly identify it as a LBO and thereby seek to have it subject to Act 312 adjudication. Doing so would detrimentally affect the collective bargaining process. Thus for the parties to be able to breach commitments previously agreed to at the bargaining table and recognized as such in the Act 312 Petition and pre-arbitration agreements, the Act 312 process would become an instrument for promoting and not resolving disputes. (C. Ex. 8-A, pp. 1-2)

Hearings were held on February 24, 25, and 26, 2015. Before and during the hearing various issues originally identified as the subject of this Panel's deliberations were either withdrawn or resolved and will not be further discussed. These include the Union issues of

Detective Wages, Weapons Purchase, Bureau Transfers, and Wages for Year 2 and 3 of the parties' contract. As a result, the issues originally before the Panel for adjudication were Wages Year 1, Show Up Briefing Time, Pension New Hires, Employee Pension Contributions, Annuity Withdrawals, and Employee Purchase of Prior Service Time.

Pursuant to Section 7a of Act 312, MCL 423.237a, the Panel Chair remanded the proceedings for three weeks on March 30, 2015 and directed the parties to continue their negotiating efforts. Unfortunately, the parties' efforts were unsuccessful. As a result of the remand, the Post-Hearing Briefs were due by May 18, 2015 and were submitted electronically on that date. Dr. Wolkinson reopened the record in this proceeding on July 14, 2015 upon his receipt from the parties of the arbitration award issued by Mr. Dennis Grenkowicz on July 10, 2015 in an Act 312 proceeding involving the City and the firefighters.

On July 29, 2015, Dr. Wolkinson issued a draft award which he discussed with the Panel Members. These discussions culminated in a resolution of the issues on Pension New Hires, Wages Year One of the contract, and Pension Annuity Withdrawal.

On Pension New Hires, the parties agreed to the following addition to Article XVI of the parties' contract.

16.16 Effective for any member hired after the issuance date of the 2015 Act 312 Arbitration Opinion and Award, the pension multiplier to be applied for each year of service shall be 2.25% for the first 25 years of service. The pension multiplier shall be 1.00% for years of service 26 through 30 thereafter. The final average compensation for any member hired after the issuance date of the 2015 Act 312 Arbitration Opinion and Award shall include base wages only.

On Wages Year One the parties agreed to a wage increase of two percent (2%), effective July 1, 2014. On Pension Annuity Withdrawal the parties agreed to retain the status quo for

employee pension contributions made prior to the issuance of the Act 312 Arbitration Opinion and Award. The Panel's acceptance of these post-hearing settlements is consistent with Section 9 (c) of Act 312 which identifies as a criterion of resolution the stipulations of the parties.

As a result, this Act 312 Award addresses the issues of Pension- Employee Contributions, Pension – Purchase of Prior Service, and Show-Up Briefing Time.

The decisions of this Panel are premised upon the criteria set forth in Section 9 of Act 312, MCL 423.239. This section, in its entirety, reads as follows:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

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

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

(ii) The interests and welfare of the public.

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

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

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

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

- (f) The average consumer prices for goods and services, commonly known as the cost of living.
 - (g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 - (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
 - (i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.
- (2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence. MCL 423.239.

The Panel must consider each of these criteria, and must adopt the last offer which “more nearly complies with the applicable factors prescribed in section 9.” MCL 423.238. The findings, opinions and order as to all other non-economic issues shall be based upon the above-mentioned applicable factors prescribed in Section 9. (Ibid.)

1. Pension – Employee Contribution

Employer’s Last Best Offer: Effective on the issuance date of the 2015 Act 312 Arbitration Opinion and Award, the employee contribution for all members of the bargaining unit shall be a four and one-half percent (4.50%) non-refundable contribution which shall not be deposited in or become part of the member’s annuity savings plan as set forth in Article XVI, Section 7.

Union’s Last Best Offer: Keep status quo.

The City seeks to change the employee pension contribution rate. Currently an employee’s pension contribution is 4.00% for members hired prior to January 1, 2011. (C. Ex. 1, p. 16) Bargaining unit members hired after January 1, 2011 have a 5.00% pension contribution. (C. Ex. 1, p. 19)

The City is proposing to eliminate the two tiered employee pension contribution rate based upon members' hiring date. Rather, all members will make a non-refundable 4.50% contribution to the City's Police and Fire Retirement System after the effective date of this Award. The future contributions will be "non-refundable", meaning that they would not be available for annuity withdrawal as currently permitted in Article XVI, Sections 7 and 14. The Union has proposed to keep the status quo.

The City's proposed 4.5% contribution rate is generally supported by data from the external comparables. Employees in five of the nine comparables pay a higher contribution rate. One community, Livonia, with a very low contribution rate of 2.33% is of limited probative value, as it has moved employees hired in after 1998 to a defined contribution plan. Only three communities with defined benefit plans for all their police officers have a smaller contribution rate (average of 4%) than the 4.50% contribution rate proposed by the City.

**Employee Pension Contribution for External Comparables'
Defined Benefit Pension Plans (C. Ex. 51)**

Community	Employee Contribution to Pension Plan
Dearborn Heights	5.00%
Farmington Hills	4.50%
Livonia	2.33%
Roseville	9.00% (10.00% for new hires after 7/1/2012)
Royal Oak	6.00%
Southfield	3.00% (5.00% for new hires after 2/19/2013)
Sterling Heights	8.00%
Warren	3.00% (5.00% for new hires after 7/1/2000)
Westland	3.00% (5.00% for new hires on/after 7/1/2014)
AVERAGE	5.09% (first tier) 5.72% (second tier)
St. Clair Shores (City's Proposal)	4.50%

The City's proposal of a 4.50% employee pension contribution is also less than the average of the contributions made by patrol officers in the comparable communities.

Data from the City's other units who participate in the City's Police and Fire Retirement System further supports the Employer's proposal. The arbitrator in the recently completed Act 312 Arbitration proceeding involving the City and the fire fighters adopted the City's Last Best Offer that also called for a 4.50% non-refundable employee contribution. Additionally, the Command Officers contribute 6.00% to their defined benefit pension plan if hired prior to or on April 22, 2011 and 5.00% if hired after April 22, 2011. (Revised C. Ex. 50)

The City's proposal is also viewed by the Panel as an appropriate measure to provide greater financial integrity and stability to City's and Union's pension plan. Between 2004 and June 30, 2014, the annual pension amount paid to all retirees who participate in the City's Police and Fire Retirement System increased from \$5,865,803 to \$9,670,123. (C. Ex. 79, pp.B-4- B-5) The annual pension amount in 2014 equates to 96.1% of the payroll expended for the active employees annually. (Ibid).

The significant amount of annual pensions received by retirees of the Patrol Officers unit has placed an increasingly heavy burden on St. Clair Shores taxpayers. The City's Police and Fire Retirement System was funded at 108.2% as of June 30, 2003. (C. Ex. 79, p. A-6) Just eleven years later, as of June 30, 2014, the Pension Plan was 60.8% funded, or alternatively stated, underfunded by \$59,874,308. (Ibid) City Exhibit 79 also discloses that the City's 2004 contribution rate, its cost to provide this pension plan, was 20.45% of payroll. (Ibid). As of June 30, 2014 the City's annual contribution to the pension plan has increased to 47.76% of payroll. (Ibid)

The Union has maintained that the projected immediate savings to the Employer as a result of its proposal are insignificant, amounting to just .47% of payroll. Yet increasing the contribution rate would decrease the amortized unfunded accrued liability as a per cent of payroll by 1.10 per cent. (C. Ex. 45, p. A-4) According to the Actuary this will result in savings to the Employer of 1.57% of payroll for every year for 25 years. (Tr. 3, p.111) Such reductions will help reduce accrued liabilities that has forced the City to raise the Act 345 millage that funds police and fire pensions from less than one mill in 2003 (City Ex. 30, CAFR, p.125) to almost 6 mills (5.9761) in 2015. (C. Ex. 37, p. 5)

The Union has noted that 70 per cent of the bargaining unit will be adversely affected by a one-half per cent increase in payroll contributions. Yet this increase is offset to some degree by the corresponding decrease by one-half per cent in the payroll contributions of 19 employees who were hired after January 1, 2011 and who currently contribute 5.00% of gross wages into the pension program. (C. Ex. 1, p. 19) The reduction of 0.50% in their pension contribution will actually increase these employees' take-home pay and level the playing field. Additionally, it is reasonable that those receiving significantly higher pension benefits contribute at least as much as those receiving reduced pension levels. Additionally, as noted earlier, the 4.5% contribution level is consistent with that paid by employees in the majority of the comparable communities.

The Union has objected to this proposal because it would reduce the amount of benefits received by employees when they retire. The Panel can appreciate this objection. Yet the flip side of the continued receipt of these refunds is accumulated unfunded liabilities which are unsustainable. Between 2008 and 2015 accrued pension and health liabilities grew from \$117,284,024 to \$152, 788,010. (C. Ex. 79, p. A6) The corresponding increase in the City's contribution rate as a per cent of payroll has more than doubled. Furthermore, the notion that such

continued increased costs can be offset by higher Act 345 millage rates is suspect. As noted earlier, the current Act 345 millage almost equals the millage assessed by the City for all its operations. It is reasonable to presume that any further increases in the Act 345 millage might well inhibit any future increases in millages that City Manager Smith indicated would be needed to fund the City's other functions. It may also jeopardize chances that voters will continue to support the 2% operating millage that is used to fund police and fire operations. (Tr. Vol. 2, pp.116-117)

The Union has also objected to this proposal, because it would prevent employees from taking out their accrued contributions upon their retirement, when police officers in every other comparable community can do so. The Panel finds this argument insufficiently persuasive, because in one critical element the refund option that the Union seeks to maintain is unlike the refund option available in all other communities. In all the comparable communities, when employees withdraw their accumulated contributions upon retirement, there is a corresponding reduction in the future level of pension benefits available to them. (C. Exs. 84-B through 84-K)

The Union has also contended that the status quo is supported, because as the economy grows the assets in the system will increase and the need for increases in pension contributions will thereby decrease. It is true that the economy has shown improvement over the years. Yet such recent improvements have not slowed the substantial increase in the Employer's pension contribution from 25.88% in 2005 to 47.76% in 2014 and which have triggered continued Act 345 millage increases that have detracted from the City's capacity to consider millage increases to sustain other City services.

Given the above considerations, the Panels adopts the Employer's final offer on this issue.

2. Pension – Purchase of Prior Service

Employer's Last Best Offer: Eliminate employees' ability to purchase up to three (3) years of previous governmental service for new hires after the issuance date of the Act 312 Arbitration Opinion and Award.

Union's Last Best Offer: Keep status quo.

The City's final pension proposal concerns the ability of new patrol officers to purchase prior service time. Pursuant to Article XVI, Section 12 of the expired collective bargaining agreement, bargaining unit members may purchase up to a combined total of three (3) years of military time or previous full-time law enforcement service for five percent (5%) of their rate of pay for the fiscal year in which payment is made, multiplied by the years/months that the member elects to purchase. (C. Ex. 1, p. 19). In consideration of this payment, the patrol officer receives a maximum credit of up to three years of additional time that is credited towards retirement. (Tr. Vol. 3, p. 68 (Buis). Under this contractual provision, a patrol officer may qualify for retirement after 22 years of service with the City by purchasing three years of prior service time. (Ibid). An average year of service costs approximately 17.99%. (City Ex. 79, p.A-2) Tr. Vol. 3, p. 69 (Buis) If an employee purchases a year of service and contributes 5.00%, the City therefore, pays the remaining 12.99% to cover the cost of the one year of service. (Ibid) This contractual provision also permits a retiring officer who would not otherwise be eligible to receive retiree health care benefits to have three additional years of retiree health care. The City proposes that the ability to purchase up to three years of service time be eliminated for employees hired after the issuance date of the Act 312 Arbitration Opinion and Award. The Union is proposing to maintain the status quo.

This proposal is at variance with the right of employees in most other comparable communities to buy years of service. Thus of nine comparables, six (Dearborn Heights, Roseville, Royal Oak, Sterling Heights, Warren, and Westland) offer this option (City Ex. 60). Three of these cities, Roseville, Royal Oak, Sterling Heights and Warren, however, require their patrol officers

to pay the total cost for the purchase of prior service time. (Ibid) Yet, at most, this latter consideration argues for a higher contribution rate to buyback service time by St. Clare Shores' employees and not for the complete elimination of this option.

The status quo is also supported by some internal comparisons. The contract in the command bargaining unit permits employees to purchase three years of military service. (Joint Ex.2. p.2)

The parties' actuary has indicated that the continuation of the status quo would have no immediate effect on current costs or unfunded liabilities (Transcript Vol. 3, p.115) Thus the effect of allowing new hires to purchase service time would only be felt 25 to 30 years after employees are ready to retire. Over time as new employees would retire, the Employer's proposal would reduce costs by only .6%. This small saving is insufficient to justify a proposal that is not supported by external comparisons and the continued receipt of this benefit by command officers. Given these considerations, The Panel adopts the Union's position on this issue.

Union Proposals

1. Show Up/Briefing Time

Employer's Last Best Offer: Maintain the status quo.

Union's Last Best Offer: Effective thirty (30) calendar days after issuance of the Act 312 award, all members of the bargaining unit shall arrive fifteen (15) minutes prior to the start of their assigned shift for briefings/work assignments, which time shall be compensated at time and one half (1-1/2) the employee's normal rate of pay.

Patrol officers work eight hour shifts. (Tr. Vol. 2, p. 195 (Opper) Depending upon whether a patrol officer is assigned to the day shift, afternoon shift, or midnight shift, he or she must report to the briefing room ready for duty at 8:00 a.m., 4:00 p.m., or 12:00 a.m., respectively. (Ibid) At the briefing meeting, patrol officers receive their equipment, are assigned an area to patrol, and are

informed of any important updates. (Tr. Vol. 2, pp. 196, 210) The Union has proposed that bargaining unit members who are assigned to the patrol division report to work fifteen (15) minutes prior to the start of their assigned shift to attend the briefing meeting and be compensated for such time at time and one half (1-1/2) their normal rate of pay. The Township's last best offer is to maintain the status quo.

The City's external comparables support the status quo. Union Exhibit 5 shows the availability of show up/briefing time for the patrol officers in the external comparables. Four provide no show up/briefing time for their patrol officers. Additionally, in two communities, Westland and Sterling Heights, patrol officers receive compensation for show up/briefing time, only when they are assigned outside their normal shift. As a result, in six of the nine comparables, employees do not receive show up time when reporting to their daily shift. Additionally, the compensation level of 15 minutes overtime that the Union currently seeks significantly exceeds that (10 minutes) received by patrol officers in the three communities where show up time is provided.

Command officers assigned to the patrol division are required to report to work 15 minutes prior to the start of their shift to brief employees of the upcoming shift. (Tr. Vol. 2, p. 208) To ensure that the briefing meeting commences immediately at the start of the patrol officers' shift, Chief of Police Todd Woodcox explained that a command officer uses those fifteen minutes prior to the start of the shift to establish assignments, to ensure all radios have fresh batteries, and to review the briefing board. According to Chief Woodcox, these duties can take at least 15 minutes to perform. (Tr. Vol. 2, p. 209)

The Union has maintained that its proposal serves the City's interests. The Union notes that its proposal provides for an orderly transition from one shift to the other. The Union maintains

that if an emergency were to occur as a shift is nearing completion, there would be no gap in time as oncoming patrol officers would be able to respond. Currently, the Union maintains that as one shift is leaving for the day, there may be no one on the road thereby leaving the community unprotected.

While the need for command officers to have show-up briefing time prior to their shift is apparent, there does not seem to be a compelling reason to impose this requirement on the City for the patrol unit. If the Department receives an emergency run or call five (5) minutes prior to the start of the shift, Chief Woodcox explained that the patrol officers who are just about to complete their shift are available for the run. (Tr. Vol. 2, p. 213) Additionally, if the Department receives an emergency run or call during the briefing meeting, from 8:00 a.m. to 8:15 a.m., an officer at the briefing meeting would respond to the call. (Tr. Vol. 2, p. 212) Once the run was completed, the command officer can send the patrol officer “a message on a computer or they can come in for an update” on any important information the officer may have missed. (Ibid) Chief Woodcox further noted that Officers who are assigned to the traffic bureau are also available for an emergency run during this time period. (Tr. Vol. 2, p. 213) Given these considerations, from an operational standpoint, the change in current practice does not seem warranted.

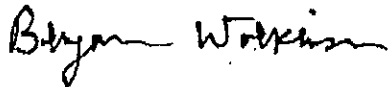
Cost considerations also favor the status quo. Revised City Exhibit 74 demonstrates the costs associated if the Union’s proposal on show up/briefing time is awarded. The estimated additional annual cost from the Union’s proposal for the second contract year and third contract year is \$279,527 and \$285,027, respectively. (Revised C. Ex. 74) During the term of the collective bargaining agreement, the total additional costs from the Union’s proposal on show up time is \$564,554. (Ibid). Given the high cost of this proposal, the lack of significant operational need for

this modification, and the absence of any such benefit in most other comparable communities, the Panel adopts the status quo on this issue.

Award of the Panel

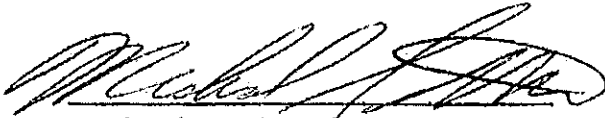
On the Issues of Purchase of Prior Service the Panel Chair and Union Delegate, with the City Delegate Dissenting, adopt the Union's Last offer.

On the issues of Pension Employee Contribution and Show-Up Briefing Time, the Panel Chair and the City Delegate, with the Union Delegate dissenting, adopt the City's last offer.

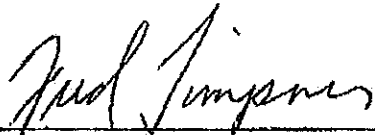


Benjamin Wolkinson, Chairperson

August 11, 2015



Michael Smith, City Delegate



Fred Timpner, Union Delegate