

**MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

**BUREAU OF EMPLOYMENT RELATIONS**

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**PETITIONING PARTY:**

**City of Wayne**

And

**RESPONDING PARTY:**

**Command Officers Association of Michigan**

**MERC CASE NO.: D16 K-0916**

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMM.  
DETROIT OFFICE

**COMPULSORY ARBITRATION**

Pursuant to Public Act 312 of 1969, as amended  
[MCL 423.231, *et seq*]

**Arbitration Panel**

Chair: William E. Long  
Employer Delegate: Gary King  
Union Delegate: John Barr

**Advocates**

Employer Advocate: Gary King, Attorney  
Union Advocate: Kevin Loftis

PETITION (S) FILED: March 6, 2017

PANEL CHAIR APPOINTED: March 30, 2017

SCHEDULING CONFERENCE HELD: April 12, 2017

HEARING DATE HELD: August 29, 2017

CLOSING BRIEFS EXCHANGED, HEARING CLOSED: October 9, 2017

AWARD ISSUED: November 7, 2017

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## **WITNESS LIST**

1. Brian Camiller – Accountant, Plante and Moran
2. Lisa Nocerini – City Manager, City of Wayne
3. Alan Maciag – Chief of Police, City of Wayne
4. Finley Carter III – Police Lieutenant, City of Wayne
5. John Barr – Research Analyst – Police Officers Association of Michigan

## **1. INTRODUCTION AND BACKGROUND**

The Command Officers Association of Michigan (COAM) (referred to as the Union in this Opinion and Award) is recognized as the exclusive representative for collective bargaining for all full-time police lieutenants and sergeants employed by the city of Wayne. (Referred to as the Employer or City in this Opinion and Award). The Union and the Employer entered into a Collective Bargaining Agreement (CBA) for the period July 1, 2013 through June 30, 2016 (C-1)<sup>\*1</sup>. The parties engaged in negotiations for a successor CBA and held three mediation meetings between November 18, 2016 and February 14, 2017 but were unable to reach agreement. The Employer petitioned for Act 312 Arbitration March 6, 2017. (C-2). This impartial Arbitrator was appointed by the Michigan Employment Relations Commission (MERC) March 30, 2017.

A pre-hearing phone conference was held April 12, 2017. The Union chose John Barr as its Panel Member Delegate and to be represented by Kevin Loftis. The Employer chose Attorney

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<sup>\*1</sup> Throughout this Opinion references will be made to Exhibits as (Exhibit C-#, -#, U-#, J-#) and Transcripts as (Tr., pg.#).

Gary King as its Panel Member Delegate and to be represented by Gary King. During the pre-hearing conference, the parties agreed to attempt to stipulate to the external comparables prior to the first hearing date. Prior to the hearing the parties were able to stipulate to the following external comparable communities: the cities of Flat Rock, Westland, Wyandotte, Ypsilanti and Woodhaven (J-39 through J-44).

The parties also stipulated at the hearing that a tentative agreement entered into by the parties April 13, 2017 pertaining to Article 24.7 (C-3) will be incorporated into the final agreement (Tr. Pg., 6.). Communications between the parties and the Independent Arbitrator following the pre-hearing conference established a schedule for exchange of exhibits, witness lists, last offers of settlement and a hearing date. The parties exchanged last offers of settlement August 24, 2017. A hearing was held August 29, 2017 at the COAM offices in Redford, MI.

The hearing record consists of one volume containing 170 pages. Forty-five (45) exhibits were accepted into the record; 34 Employer Exhibits, 5 Union exhibits and 6 Joint exhibits. Following the hearing the parties stipulated to the 6 joint exhibits entry into the record, which consisted of the CBA's for the comparable communities and also stipulated to the entry of (C-34) which is the Court of Appeals order denying the City's application for leave to appeal the preliminary injunction order restraining the City from discontinuing retiree health care coverage.

Post-hearing briefs were submitted to and exchanged through the Independent Arbitrator October 9, 2017. The Panel delegates have placed their signatures in support of or in opposition to the finding and award on each issue and have also placed their signatures at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on each issue presented.

## **2. STATUTORY CRITERIA**

When considering the economic issues in this proceeding, Section 8 of Act 312 guided the Panel. The section provides that "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9." Section 9(1) and (2) states "(1) 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) *In public employment in comparable communities.*
  - (ii) *In 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 during the pendency of the arbitration proceedings.*
  - (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."*

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

### **3. STIPULATIONS AND PRELIMINARY RULINGS [e.g., Duration]**

The parties stipulated to:

- 1) The external comparable communities;
- 2) That the April 13, 2017 tentative agreement the parties entered into pertaining to Article 24.7 (C-3) will be incorporated into the final agreement;

- 3) That the second sentence of the second paragraph of Article 18.2 will be revised as follows:  
“In the event comp time is not taken within the year, it will be paid off on the last pay ~~period~~ **date** of the fiscal year.”
- 4) That the changes to Article 21.1.A, 21.1.C, and 21.1D as set forth in the Employer’s July 12, 2017 Issue and Positions Statements included as exhibit (C-5) be incorporated into the final agreement;
- 5) Duration of CBA - which is the CBA that is the subject of this proceeding will go through June 30, 2019 (Tr. Pg. 162)
- 6) The entry of (C-45) which is the Court of Appeals order denying the City’s application for leave to appeal the preliminary injunction order restraining the City from discontinuing retiree health care coverage.
- 7) That all issues before the panel are economic issues.

#### **4. COMPARABLES**

In addition to section 9(e) internal comparables, which may be referred to in the discussion of wages, section 9(d) of Act 312 directs the Panel to consider a comparison of 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 public and private employment in comparable communities. As noted in the introduction, prior to the hearing, the parties stipulated to the following external comparable communities: the cities of Flat Rock, Woodhaven, Wyandotte, Ypsilanti and Westland (Exhibits J-39 through J-44).

Additional Exhibits describing the wages, hours and conditions of employment of the employees in this bargaining unit with those of employees in comparable communities performing similar services, and comparative economic and demographic data impacting the financial ability to pay, were exhibits C-22 through C-33 and U-34, U-35 and U-37. This information is helpful when considering the Section 9 factors.

**Therefore, as a result of the parties’ stipulation, the Panel chooses the following cities as comparable communities to the city of Wayne: the cities of Flat Rock, Woodhaven, Wyandotte, Ypsilanti and Westland.**

## 5. ISSUES BEFORE THE PANEL

**Issue: (Economic) The financial ability of the unit of government to pay.**

### **Last Best Offers on Issue**

a. **Employer's Last Best Offer** - The Employer's position is that the Employer's financial condition requires the Panel to adopt the Employers proposed contract revisions in order to maintain its ability to remain fiscally sound and provide services to its citizens.

b. **Union's Last Best Offer** - The Union's position is that the Employer's financial condition permits the Panel to adopt the Union's proposed contract revisions and in so doing it will not prevent the Employer from remaining fiscally sound and able to provide adequate services to its citizens.

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Ability to Pay**

### **ABILITY TO PAY**

#### **Employer Position**

Wayne City manager Lisa Nocerini and Brian Camiller, a partner with Plante and Moran accounting firm, testified and presented exhibits related to the city's financial situation. Mr. Camiller referred to exhibit (C-18) that is a series of graphs describing the city's recent financial situation and current revenues and expenditures. He noted that from 2007 to 2017 the City's taxable value fell a little over 50%, from 729 million dollars to 361 million dollars (Tr. Pg. 9). He stated the City's millage is at its capacity per the city charter. He testified that over approximately the past five years the city presented three separate special purpose millage increase requests to its voters and each was voted down by an approximate two-to-one basis. Two were proposed through Public Act 345 to be used for public safety legacy costs and the third was to permit the City to join with two other cities in an authority that would be able to levy an additional millage to pay for public safety (Tr. Pg.10).

Much of Mr. Camiller's presentation was consistent with and supported by the Independent Auditor's Report for the fiscal year ended June 30, 2016 (C-19). Following are excerpts from that exhibit:

“Several years ago, the City created the Other Employee Benefits Trust Fund in order to “pre-fund” the retiree healthcare liability. Over the last few years, the City has slowed contributions to this fund and allowed the accumulated balance to

decline as retiree benefits paid out of the fund have exceeded contributions from the City being paid into the fund. For several years, the expenses paid out of this fund have exceeded the contributions into the fund and the investment income earned on the accumulated balance. Effectively, the City is using the OPEB money to balance the General Fund budget. This year the OPEB Trust paid \$1.2 million of the City's premiums, leaving a balance of \$1.1 million in the trust. That remaining balance is expected to be completely extinguished by June 30, 2017. The actuarial accrued liability related to OPEB, an estimate of the future liability based on the current benefits offered, grew from \$48.1 million in the 2012 valuation to \$87.8 million in the 2014 valuation. The 2016 valuation has not yet been prepared. (pg.3)

The City's pension plan with the Municipal Employers Retirement System (MERS) has not seen the investment returns that were expected. As a result, the funding status of the plan fell from 64 to 55 percent funded from January 1, 2015 to December 31, 2015. The net pension liability during the same timeframe grew from \$37.2 million to \$50.2 million. (pg.3)

Under full accrual accounting, the Primary Government of the City of Wayne (excluding Downtown Development Authority)'s net position declined by approximately \$6.9 million, primarily due to the increases to the OPEB and pension liabilities. (Pg.3).

Net position of the City's governmental activities decreased by 57%, decreasing by nearly \$8.3 million. Of that change, \$4.2 million related to the increase in the net other postemployment benefits (retiree healthcare), or OPEB liability. The City's actuarially calculated Annual Required Contribution for OPEB, plus interest on the accumulated shortfall of previous unpaid contributions, was \$6.6 million, but the City only contributed \$1.2 million toward that by paying the insurance premiums. In addition, the City's retiree benefits paid out of the accumulated balance in the OPEB trust was another \$1.1 million. (Pg.4).

With state-level changes to the personal property tax, the City's tax revenue has started decreasing again. Property tax revenue decreased from \$8.7 million in fiscal year 2015 to 8.4 million this year, a decrease of 3 percent. The City is preparing for further declines as the revenue from property taxes on personal property will continue to be phased out from 2016 to 2023 as a result of recent changes to state law. (Pg.5)

On the expense side, the City continues to reduce costs where possible by limiting capital outlay and leaving vacant positions unfilled. The City has dramatically reduced its employee headcount over the years which has reduced the costs of wages; however, the required contributions for pension and retiree healthcare continue to rise at a rate in excess of inflation (Pg.5).

Revenue projections are budgeted at \$15.7 million; resulting in a planned deficit of \$744,000; however, that includes a \$765,000 subsidy from the OPEB Trust, so

really General Fund operations are in a deficit of \$1.5 million. An additional \$400,000 from the OPEB Trust will be available in 2016-17 as it was budgeted but unspent in 2015-16. Mentioned previously, the OPEB Trust will be fully depleted in 2016-17, leaving 2018 with a tremendous deficit to overcome or else deplete the General Fund's fund balance. (pg.7).

The City is proactively making changes to prevent a deficit. In fiscal year 2016, the City:

- Changed healthcare insurance carrier from Blue Cross to Priority Health. This change saved the City approximately \$600,000 in the first year premiums.
- Entered into an operating agreement with Hype Athletics to have Hype manage the City recreation center. In exchange for a management fee, Hype has assumed the majority of the operating costs associated with running a facility. This arrangement will save several hundred thousand dollars per year for the City.
- Did not fill several open positions that had been included in the budget. This saved the City several hundred thousand dollars this year.

To be clear, the City's General Fund is in a severe state of decline. The General Fund must find a new revenue source or dramatically reduce its expenditures in order to avoid running into a deficit of fund balance in the next 2 to 3 years. (Pg.6).

Activity subsequent to June 30, 2016 that is not included in the budget and could potentially have a positive effect on the City's General Fund include:

- The City is looking to sell the recreation center and other city owned property. This will generate short-term revenue, but also take away long-term operating costs the City can no longer afford to pay.
- All of the City's labor contracts expired at June 30, 2016. As of the date of this report, a few of the new contracts have been settled with bargaining groups accepting concessions. The remaining contracts will continue to be negotiated into 2017.
- The City was recently awarded a Staffing for Adequate Fire & Emergency Response (SAFER) Grant equivalent to 6 additional firefighters. Hiring 6 new firefighters should help the City reduce its overtime costs for the fire department.
- In December 2016, the City Council approved a resolution to stop paying healthcare premiums for retirees and begin a monthly stipend. This is expected to be implemented in early 2017." (Pg. 7).

Wayne City manager Lisa Nocerini testified on behalf of the Employer. She described the general content of recent settlement agreements for wages and benefits with other city employee groups. She referred to exhibits (C-6) through (C-13). Her testimony relating to those exhibits will be referred to as specific wage and benefit issues are addressed later in this Opinion and Award.



With respect to ability to pay, Ms. Nocerini testified that in an effort to reduce retiree health care costs the City council voted in April 2017 to discontinue providing health coverage for retirees effective July 1, 2017 and replace it with a stipend plan through individual Health Reimbursement Accounts (C-20). The City anticipated saving \$1.5 million as a result of that change. (C-18, pg.6.) Ms. Nocerini testified that a lawsuit was filed in Wayne County Circuit Court on behalf of the approximately 156 current City retirees seeking to enjoin the City from discontinuing retiree health care coverage. The Court granted a preliminary injunction June 30, 2017. (C-21). The City appealed that preliminary injunction order and the Court of Appeals denied the application for leave to appeal on September 21, 2017 (C-45).

As noted in the seventh paragraph of the excerpts from the Independent Auditor's Report for the fiscal year ended June 30, 2016, (C-19), the General Fund operations are actually in deficit as a result of the OPEB funds being fully depleted in 2016-17. As a result, Ms. Nocerini presented an Affidavit in the case pending before the Wayne Circuit Court involving the retiree's health care, which stated in part:

“Because of this deficit, the City has been, and continues to be in talks with the State of Michigan Department of Treasury, relative to options including a financial review under MCL 141.154, the Local Financial Stability and Choice Act, to determine whether a consent agreement and or the appointment of an emergency manager is necessary” (C-20).

Ms. Nocerini testified that no action has been taken by the State as yet but she does meet with the State treasury staff monthly and stay in communication by email and phone. She said the State is working with the City to consider how they can address the City's financial situation without entering into a full-blown emergency manager or consent agreement (Tr. Pg.99).

The City's post-hearing brief highlights the testimony of City witness Camiller as he described the current and future economic picture for the City as described in (C-18). He noted that for fiscal year July 2015 – June 2016 the City's General Fund had a loss of \$207,000.00 and withdrew an additional \$1.1 million in OPEB funds (Tr. Pg. 13). For the fiscal year July 2016 – June 2017 the City budget estimated \$1.6 million decrease in fund balance and additional withdrawal of \$1.1 million of OPEB funds (C-18, pg.5, Tr. Pg. 14). The City notes that for fiscal year July 2017 – June 2018 there are no more OPEB reserve funds available to draw from. That would mean another \$1.1 million reduction in its general fund budget. Also, the July 2017 - June 2018 budget reflects an anticipated savings of approximately \$1.5 million by the City giving a

stipend to retirees for retiree health care instead of continuing the health care plan for retirees. But that savings is now questionable because the City has been enjoined from implementing it. Mr. Camiller testified:

“So really instead of being \$1.2 million in the hole for the year, it would be approximately \$2.7 million in the hole for the year. The City doesn’t have that much fund balance left to use up. And so based on the budget general fund, overall fund balance will be in a deficit of approximately \$500,000.00 come June 30, 2018 (Tr. Pg. 16).”

### **Union Position**

The Union did not present a witness for direct testimony on ability to pay. It did provide Union exhibit (U-34) which is the Michigan Employees’ Retirement System (MERS) Annual Actuarial Valuation Report ending December 31, 2016. In its post-hearing brief, the Union points out that page 28 of City Exhibit 18 (C-18) lists the City of Wayne MERS actuarial accrued liabilities and valuation assets and lists its 2016 assets at 55%. The Union notes that page 6 of (U-34) lists the funded ratio of 60% as of December 31, 2016. The Union submits that the difference between the 60% and 55% funded ratio equates to about \$5.5 million increase in asset valuation and corresponding decrease in liabilities. The Union asserts that the \$5.5 million newly discovered assets far exceed the amount of concessions sought by the City from the Command Officers.

Other items the Union notes in its post-hearing brief in support of its position that the City does have the ability to pay the wages and benefits proposed by the Union include a) the 2016 CAFR (C-19) shows a General Fund balance of \$2,371,684 which equates to 13.92% of total expenditures; b) the loss of State revenue sharing and reduction in property values in recent years is no different than that experienced by other local governments. The Union also notes that City witness Camiller admitted during cross-examination that the majority of governmental units have no money set aside to make their OPEB payments like the City of Wayne does and therefore when the City of Wayne’s OPEB funds are depleted the City’s financial position is in no worse than the majority of local governmental units in the State.

The Union argues that the current injunction imposed by the Wayne County Circuit Court stopping the City from implementing its proposed stipend for partial payment of retiree health care on the basis that the retirees will suffer irreparable harm (C- 21) is evidence that the Court did not find the City unable to continue to maintain its current payments for retiree health care. The Union also notes that Employer witness Camiller testified that most cities spend less annually than they

have budgeted. And the Union points out that the City is charging the Downtown Development Authority (DDA) less for services rendered than it has in the past even though it has incurred expenses greater than the DDA payments. The Union's position is that it believes the City is portraying its economic condition as worse than it really is and notes that the Command Officers have recognized the City's financial condition by not receiving a wage increase since 2010 and are not seeking any wage or benefit improvements in this proceeding.

## **Discussion and Findings**

### **Discussion**

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to the ability to pay issue include subsections (1)(a) and subsection (2). The Panel believes it has given these sections appropriate significance based upon the evidence presented at this hearing.

The following exhibits were helpful in considering the ability to pay: 1) Exhibits (C-22) through (C-28) provided demographic data which compared the City of Wayne with the five comparable communities. These exhibits reveal that the City of Wayne ranks 4<sup>th</sup> among the six cities in population and taxable value. It ranks 5<sup>th</sup> among the six cities in taxable value per capita, median household income, and median family income, and lowest among all six cities in per capita income of with a per capita income of \$20,030 with Ypsilanti being the second lowest city for per capita income with \$22, 356.

The evidence presented on this issue demonstrates that the City is in a serious financial situation. And this situation is not likely to improve significantly in the foreseeable future. One example of note is the statement in the June 30, 2016 financial report: "The actuarial accrued liability related to OPEB, an estimate of the future liability based on the current benefits offered, grew from \$48.1 million in the 2012 valuation to \$87.8 million in 2014 valuation (C-19, pg.3)." And the Employer's prospects for increased revenues are not good. As that same exhibit stated: "With state-level changes to the personal property tax, the City's tax revenue has started decreasing again. Property tax revenue decreased from \$8.7 million in fiscal year 2015 to \$8.4 million this year, a decrease of 3 %" (C-19, pg. 5)."

The Employer's post-hearing brief argued that the Panel must consider the total cost or overall impact of its Award and must also keep in mind what the parties would have voluntarily negotiated given the financial circumstances and other realities of collective bargaining. It quoted Arbitrator Theodore J. St. Antoine in *City of Livonia*, 1998 MERC FF/At 312 409, 411:

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

This panel chairperson subscribes to, and has generally followed, that same philosophy when considering the Employer's ability to meet its financial responsibilities as well as the overall positions of the parties on the issues presented.

**Based on the evidence presented, and giving the financial ability of the unit of government to pay most significance, the Panel finds that the Employer is able to pay the necessary costs ordered in the Opinion and Award without a significant financial impact on the Employer and in the best interests and welfare of the public. The Panel believes the financial impact, when considered in the context of the Panel's Award on the issues presented to the Panel for decision in this proceeding, coupled with the agreements made between the parties, will not significantly impact the Employer's ability to serve the community.**

Employer: Agree _____	Disagree <u>AY</u>
Union: Agree <u>John J. Bar</u>	Disagree _____

**Issue #1 (Economic) Duration - Effective date of the CBA. (Article XXVI)**

**Last Best Offers on Issue #1**

a. Employer's Last Best Offer

Duration of Contract (Economic) – The City's position is that the Agreement should run from the date of the Act 312 Award to June 30, 2019.

**ARTICLE XXVI – DURATION OF AGREEMENT**

SECTION 1. The provisions of this Agreement shall be effective as of ~~July 1, 2013~~ **the date of Act 312 Award** and shall continue to remain in full force and effect to and including June 30, ~~2016~~, **2019**, and thereafter for successive periods of one (1) year, unless either party shall at least ninety (90) days prior to July 1, ~~2016~~, **2019**, serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this Agreement.

b. Union's Last Best Offer

Duration of the Contract (Economic) - The Union's position is that the Agreement should run retroactively from the expiration date of the preceding CBA.

SECTION 1. The provisions of this Agreement shall be effective as of **July 1, 2016**, and shall continue to remain in full force and effect to and including **June 30, 2019**, and thereafter for successive periods of one (1) year, unless either party shall at least ninety (90) days prior to July 1, **2019**, serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this Agreement.

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #1.**

**Employer Position**

The Employer, in its post hearing brief, points out that having the CBA take effect upon the issuance of the Act 312 Award should be adopted because 1) having it take effect retroactively to July 1, 2016 while a number of issues before the panel would not take effect retroactively makes little sense; 2) having it take effect upon issuance of the Award is consistent with recent agreements entered into between the City and POAM, TPOAM and the City's General Employees; and 3), having it take effect upon issuance of the Award provides a more accurate document depicting the parties' bargaining history. Employer witness City Manager Lisa Nocerini testified that none of the CBA changes the City was proposing were proposed to take effect retroactively (Tr. Pg. 103).

**Union Position**

The Union did not address the issue in its post-hearing brief. A review of the Union issues reveals that they too, perhaps with the exception of the Union's proposal pertaining to the Sick Leave cap, would not be applied retroactively.

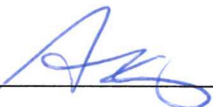
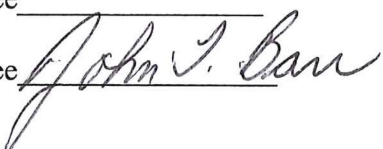
**Discussion**

The record evidence supports the Employer's last offer of settlement for the reasons stated in the Employer's position.

**Findings**

Therefore, on the issue of the effective date of the contract (CBA) between the Employer and the collective bargaining unit (Article XXVI) the Panel finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The Employer's LOS language for Article XXVI will be incorporated into the CBA.

**Effective Date: Date of the Award.**

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree \_\_\_\_\_ Disagree 

**Issue #2 (Economic) Wages. (Article XVIII – Appendix A)**

**Last Best Offers on Issue #2**

a. Employer's Last Best Offer

**Wages (Economic)** – It is the position of the City that the wages set forth in Appendix A of the parties' contract be reduced by 2.50%, effective upon the issuance of the Act 312 Award, and that thereafter, wages remain at the level set forth below:

**APPENDIX "A" – WAGES**

Section 1. Salary schedules shall be as follows:

**July 1, 2013**

***Effective upon issuance of Act 312 Award***

	Sergeant	Lieutenant
Start	<del>\$72,854.112</del> <b>\$71,032.759</b>	<del>\$78,137.460</del> <b>\$76,184.024</b>
6 Months	<del>\$74,601.838</del> <b>\$72,736.792</b>	<del>\$80,515.089</del> <b>\$78,502.212</b>

b. Union's Last Best Offer

Status Quo

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #2.**

**Employer Position**

The Employer acknowledges that no other bargaining unit within the City has agreed to wage reductions but views its LOS for a 2.5% base wage reduction as justified for several reasons. First, the other units accepted the City's pension and health insurance changes some time ago [ranging from 15 to 6 months ago (C-7), (C-9), (C-11), (C-13)]. Second, since negotiations began with this bargaining group the City was enjoined from implementing its changes for retiree health care cost reductions, putting the City in a more precarious financial situation. Third, exhibits (C-29) and (C-30) indicate that even if the wages of the members of this bargaining unit are reduced 2.5% their wages would still rank second highest among the external comparable communities. The Employer points out that present level wages for members of this bargaining unit, considering and comparing the majority of the comparable communities' financial and demographic indicators ranking higher than the City of Wayne, supports the Employer's proposal to reduce the wages by 2.5%.

**Union Position**

The Union points out that none of the other internal bargaining units or non-bargaining unit employee groups have received a wage reduction. Yet the Employer is seeking the same concessions from this bargaining unit that it received from others, plus a 2.5% wage reduction. The Union also notes that exhibit (C-15) estimates a annual "target savings" of \$161,213 from members of this bargaining unit as a result of the changes it seeks. That equates to \$17,913 annual reduction of benefits for each of the 9 members of the bargaining unit. The Union also notes that (U-35) reveals that none of the external bargaining units from the comparable communities have received wage reductions.

The Union also refers to (U-36) which reveals that members of this bargaining unit have received no wage increases since 2013 yet the rate of inflation for that period has been increased 4.4%. The Union notes the testimony of Chief of Police Alan Maciag in support of its position. Chief Maciag testified that he has been an employee of the Wayne City Police Department for 19 years and Chief for nearly three years. He testified that the number of employees budgeted for the police department currently is 22 and that number is compared to a department of 40 plus members

ten years ago. Chief Maciag acknowledged that the members of this bargaining unit are being asked to do more with fewer resources (Tr. Pgs. 125-138).

The Union notes that members of this bargaining unit assume a high level responsibility and have longevity with the Department, which is a benefit to the Department and the City. The Union says its LOS is more consistent with the internal and external comparables and should be adopted by the panel.

### **Discussion**

Both parties have made valid arguments for accepting their LOS. It is clear that the City does need to take aggressive action to reduce costs wherever possible. The fact that the parties were unable to reach agreement on some of the proposals delayed the implementation of any cost savings for the City relative to this bargaining unit. And the Court imposed injunction on the City's effort to reduce the Employer's costs for retiree health care further exacerbates the City's financial condition.

At the same time, however, it is also apparent that the Lieutenants and Sergeants in this bargaining unit are being required to protect and provide a safe community with much fewer personnel than in previous years. And it is also a fact that they have not had raises for several years and are not seeking a wage increase at least for the next approximate 20 months of the CBA and cost of living continues to rise.

The record evidence also reveals that no other City employees and no other employees in the comparable communities performing similar services have had wage reductions. But record evidence also reveals, as the Employer pointed out, that for the past several years, the wages for both the Lieutenants and the Sergeants have ranked second highest when compared with their counterparts in comparable communities (C-29), (C-30). A review of exhibits (C-29) and (C-30) and the collective bargaining agreements of the comparable communities entered into the record (J-39 through J-44) reveals the following. The 2016 mean average annual wage for Lieutenants in comparable communities is \$78,095. (C-29). With a 2.5% wage reduction, Wayne City Lieutenants would receive an annual wage of \$78,502. The 2016 mean average annual wage for Sergeants in comparable communities is \$71,373. With a 2.5% wage reduction, Wayne City Sergeants would receive an annual wage of \$72,736 (C-30).



A review of the CBA's of the comparable communities reveals that the CBA's for Flat Rock and Ypsilanti expired June 30, 2017 so we can't determine what their wages may be going forward. The City of Westland's wages are frozen for the next two plus years. The City of Wyandotte's Command unit will received a 3.5% increase January 2017 and will receive a 1% increase January 2018 and a 0% increase January 2019. The City of Woodhaven Command unit received a 2 % increase July 1, 2017 and will receive another 2% increase July 1, 2018. Of course we don't know what increases, if any, Flat Rock and Ypsilanti Officers may receive, but even with the increases we do know will occur for Woodhaven and Wyandotte Officers, the mean average among the five comparable communities rises to \$78,095 for Lieutenants and \$72,129 for Sergeants during the period of the CBA for members of this bargaining unit. The wages for members of this bargaining unit, even with a 2.5% wage reduction, would be very close to the average wage of the comparable communities. The Sergeants annual wage would be \$607 above the mean average wage and the Lieutenants annual wage would be \$458 below the mean average wage of the comparable external communities. Using these same calculations, it appears the impact of the 2.5% wage reduction on the City would be an approximate savings, over the remaining approximate 20 months of the CBA, of a little over \$28,000.


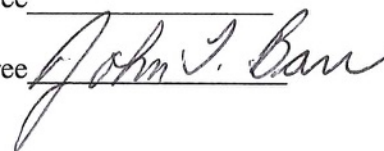
As noted in the discussion on ability to pay, the Panel Chair agrees with the proposition that the panel does well to consider the total cost or overall impact of its Award and must also keep in mind what the parties would have voluntarily negotiated given the financial circumstances and other realities of collective bargaining and that the soundest approach for an outsider in resolving union and employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful. Considering the issues in this case, particularly with this issue and the Retirement issue, I have been conscious of and have attempted to follow these guidelines.

With those parameters as a guide, and considering the financial circumstances currently facing the City, I believe the Employer's LOS better complies with the applicable factors prescribed in Section 9 of Act 312. It is hoped that the loyalty and dedication of the Command Officers in this bargaining unit, which was spoken of so highly by Chief Maciag in his testimony, will not be affected by this finding. The potential for the parties to further bargain on this issue and the Pension issue will be discussed later when dealing with the Pension issue.

**Findings**

**Therefore, on the issue of wages, the Panel finds the Employer’s last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. Wages. (Article XVIII – Appendix A)**

**Effective Date: Date of the Award.**

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree \_\_\_\_\_ Disagree 

**Issue #3 (Economic) Health Insurance: Employee contribution (Article 21.1)**

**Last Best Offers on Issue #3**

a. Employer’s Last Best Offer

21.1: For the duration of this Agreement, all regular, full-time employees not otherwise covered by another medical hospitalization plan by the City or another employer as outlined below shall be eligible for health care insurance provided by the City. In order to avoid duplicate coverage, employees will sign a disclaimer on the form provided before any premiums are paid by the City. The Employer may take any action in compliance with Michigan Public Act 152 of 2011, and payroll deductions are authorized for this purpose. In the event that PA 152 is repealed or declared unconstitutional or legally not effective by a court or administrative agency of competent jurisdiction, the Agreement will be immediately reopened for the sole purpose of negotiating the issue of employee contributions toward the cost of health insurance. ***Effective with the 2017-2019 collective bargaining agreement, the employee contribution toward the cost of health insurance shall be 30% of the cost of such insurance, which shall include 30% of the City’s contribution to the HSA.***

b. Union’s Last Best Offer

21.1: For the duration of this Agreement, all regular, full-time employees not otherwise covered by another medical hospitalization plan by the City or another employer as outlined below shall be eligible for health care insurance provided by the City. In order to avoid duplicate coverage, employees will sign a disclaimer on the form provided before any premiums are paid by the City. The Employer may take any action in compliance with Michigan Public Act 152 of 2011, and payroll deductions are authorized for this purpose. In the event that PA 152 is repealed or declared unconstitutional or legally not effective by a court or administrative agency of competent jurisdiction, the Agreement will be immediately reopened for the sole purpose of negotiating the issue of employee contributions toward the cost of health insurance. **EFFECTIVE WITH THE ISSUANCE OF A 312 ARBITRATION AWARD OR A NEGOTIATED SETTLEMENT THE 2017-2019**

**COLLECTIVE BARGAINING AGREEMENT, THE EMPLOYEE CONTRIBUTION TOWARD THE COST OF HEALTH INSURANCE SHALL BE 25% OF THE COST OF SUCH INSURANCE, WHICH SHALL INCLUDE 25% OF THE CITY'S CONTRIBUTION TO THE HSA.**

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #3.**

**Employer Position**

Evidence and testimony presented by the Employer in support of its proposal to increase the percentage of the cost of health insurance premiums paid by the employees from 20% to 30% included evidence that it has already been agreed to by the POAM, TPOAM, and Firefighters. And the non-union employees are also contributing at the 30% rate (Tr. Pgs. 94-95). The Employer argues in its post-hearing brief that agreements reached with other employees of the same Employer should be strongly considered by Arbitration panels. The Employer notes that where, as here, a pattern settlement is in place, that pattern controls. The Employer says there is an undeniable symmetry in the settlements with the City's other units and this uniform pattern of contract settlements is the key consideration for the panel. It sites excerpts from several previous Act 312 Awards by other Arbitrators that support its view that Arbitration panels should give special consideration to internal patterns of agreements between the Employer and other employees of the unit of government outside the bargaining unit.

**Union Position**

The Union acknowledges that other internal comparables have agreed to pay 30% but says the evidence also shows that the Employer has agreed to other financial benefits to other bargaining units that are not being offered to the Command Officers. The Union also indicates in its post-hearing brief that all of the external comparables, except for Ypsilanti, do not have a premium share for their health insurance. The Union notes that its proposal for a 25% premium share would be more consistent with the comparables and still would result in an annual cost of \$4,434.00 to each member with a family insurance plan.

**Discussion**

There is no dispute that nearly all other employees of the City of Wayne are currently paying 30% toward the cost of health insurance. The Union acknowledges this but says other City employees also got some other benefits that are not being offered to members of this bargaining

unit. A review of the agreements reached between the Employer and those bargaining units reveals that the parties generally negotiated some benefits to the employees in the context of revisions to the pension plan. The increase in the contribution by the employee to the cost of health insurance was not related to any benefit in return to the employee, at least not directly in the language in the agreements (C-7), (C-9), (C-11), (C-13).


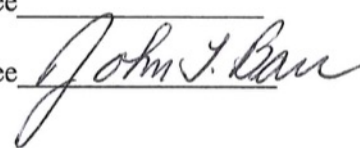
A review of the cost implications of this issue reveals the following. Exhibit (C-15, pg. 2) indicates an estimated annual health cost to the Employer per employee of \$17,738. An employee currently paying 20% of that cost would annually pay = \$3,547. Payment of 25% of that cost = \$4,434. (\$887 increase) Payment of 30% of that cost = \$5,321 (\$1,774 increase). For the Employer, the annual cost savings would be: \$7,983 for a 25% increase [9 employees x \$887 = \$7,983] and \$15,966 savings from a 30% increase [9 employees x \$1,774 = \$15,966].

The Union points out that its proposal is at least closer to what the external comparable community employees are contributing. But evidence in this case reveals that the City of Wayne is confronting a more severe financial deficit situation than most of the comparable communities. In light of the financial situation confronting the City and the fact that other City of Wayne employees are paying 30% the Employer's proposal is more consistent with the applicable factors in the Section 9 of Act 312.

**Findings**

**Therefore, on the issue of the Employee contribution to health insurance payments (Article 21.1), the Panel finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The Employer's LOS language for Article 21.1 will be incorporated into the CBA.**

**Effective Date: Date of the Award.**

Employer: Agree 	Disagree _____
Union: Agree _____	Disagree 

## Issue #4 (Economic) Retirement. (Article 23.1 and 23.3)

### Last Best Offers on Issue #4

#### a. Employer's Last Best Offer

23.1: For the life of this Agreement, retirement benefits shall be provided in accordance with the provisions of the *applicable MERS Plan* ~~“Retirement System for the Employees of the City of Wayne” as contained in the City Charter, or as subsequently amended from time to time,~~ provided, however, no matter involving pensions or this Section shall be subject to the Grievance Procedure and/or Arbitration. *Effective as soon as practicable after the issuance of the Act 312 Award for the 2017-2019 collective bargaining agreement, the pension multiplier shall be bridged to 2.25%, with Final Average Compensation being calculated on the basis of the Frozen FAC method. Effective upon the institution of the bridged pension plan, the employees' contribution toward the cost of pension shall be 10% of all wages.*

23.3: ~~The multiplier for the first 25 years of service is 2.7 per year. Effective June 30, 2010, the multiplier will increase from 2.7 to 2.8 for the first 25 years of service. The multiplier will remain at 2.5 for 25-30 years of service and 1.0 for all years after 30.~~

~~The pension multiplier, while a member of the Command Officers Association, for any officer that is promoted into the bargaining group who is hired by the City on or after October 2, 2007 and who subsequently retires from the City of Wayne in any capacity will be based on the MERS B-4 benefits program (i.e., 2.5%, not to exceed 80% of the employee's average final pay).~~

#### b. Union's Last Best Offer

Status Quo

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #4.**

### Employer Position

The Employer refers to exhibits (C-15) and (C-17) in support of its proposed changes in the pension multiplier and the employee contribution toward the cost of the pension. Exhibit (C-17) is a document displaying calculations from a Municipal Employees' Retirement System of Michigan (MERS) actuarial study that estimates the cost savings to the City if this proposal is implemented. The estimated annual savings would be \$136,515. The contribution rate for the City would drop from 92.81% to 75.02%. The Employer says given the City's current financial picture, it is unable to pay \$0.93 in pension costs on every dollar in salary.

The Employer says the internal comparables support its proposal noting that evidence was provided showing that other City employees, both bargaining unit and non-bargaining unit employees, have agreed to these changes. The Employer acknowledges that the agreements with several of the City's other bargaining units included a City contribution to the employees' 457 accounts but it points out that, as described in exhibit (C-15), each employee group had a "target savings" to be achieved by the contract settlement and the end result for most of them was that those "target savings" were met or exceeding as a result of the settlements. It notes that the projected net savings for this bargaining unit, even with the proposed pension savings, is approximately \$10,000 less than the "target savings." The Employer says the fact that the internal comparables received contributions to their 457 plans is of no consequence. The employer also says its proposal for moving to a 2.25% multiplier is supported by a comparison with the external comparable communities which have new hires receiving pension multipliers at or less than 2.25%. The city urges that its LBO should be accepted.

### **Union Position**

The Union acknowledges that other internal bargaining units have accepted the proposal from the City but notes that a review of the agreements shows that the City provided benefits to the other internal comparables that were not offered to the members of this bargaining unit. For example, the Union notes the POAM agreement in which the POAM agreed to the proposal from the City also includes the following language: "Effective upon the institution of this bridged pension plan, the City will make a contribution to the employee's 457 account equal to 4.00% of the employee's base wages paid to the employee (C-7)." The agreement between the City and the Firefighters Union contains the same language only the City agreed to make a contribution to the Firefighter employees 457 account equal to 5.00% of the employee's base wages (C-9). In addition, the Union points out that during cross examination City witness Nocerini acknowledged that as part of the negotiations with the Firefighter Union it was agreed that the current members of the fire department at the time of settlement would have their overtime rolled into their final average compensation (Tr. Pg. 105). And (C-11) shows that in the agreement between the City and the Technical, Professional and Office workers Association the City agreed to contribute an amount equal to 6% of the employee's base wages to the employee's 457 account. City exhibit (C-13) shows the City agreed to contribute an amount equal to 3% of the General Employees base wages to the employee's 457 account.

The Union notes in its post-hearing brief that it objected to the admission of City exhibits (C-15) and (C-17) because the City failed to provide any witness who prepared the exhibits who could explain the method used to reach the calculations within the exhibits. The Union notes the second page of exhibit (C-17) is a May 24, 2016 memo from MERS that uses dated information.

The Union says MERS will not approve data that is more than one year old and therefore the panel should give no weight to these exhibits. The Union says it is the City's responsibility to provide evidence to support its proposed change and it failed to provide supplemental actuarial data to allow the panel to determine the long-term costs and true impact on the pension system, as required by law.

The Union also argues, in its post-hearing brief, that the Employer's LOS should be rejected because it is not supported by competent, material, and substantial evidence on the whole record as required by Act 312. The Union says the City exhibits and testimony on this issue do not meet the requirement of "competent, material and substantial evidence" and therefore the panel does not have sufficient evidence to support it.

Additionally, the Union argues that while the Public Employment Relations Act (PERA) and Act 312 may allow the panel to issue an award involving a change in pension plans, a separate act, Act 55, section 2 of 1982, (MCL 38.1140h(5)), contains language that requires MERS to provide a supplemental actuarial analysis, which includes an analysis of the long-term costs associated with any proposed benefit change, to the body making that change prior to the body making that change. The Union says since the panel is the body being asked to make that change, it cannot do so because it has not been provided a supplemental actuarial analysis. The Union acknowledges that requirement does not prevent the parties from negotiating an adjustment or and arbitration panel acting so long as a supplemental actuarial analysis has been provided before they act. The Union says the panel should reject the Employer's proposal and maintain the status quo.

### **Discussion**

The Panel Chair does not feel it is useful to dwell on the legal arguments put forth by the Union challenging the Panel's authority to act on this issue. There may or may not be valid legal procedural arguments that can challenge the Panel's authority to act, but I don't believe there is enough record evidence presented to the Panel upon which it can make a decision on that question. Clearly, the Employer has not had an adequate opportunity to challenge the position put

forward by the Union at this late stage of the proceeding. A panel action to adopt the City's position can be challenged in another forum.

The City points out that the internal comparables clearly support its position for adoption of the change which has been accepted by the other City employee union and non-union members. But as noted by the Union and supported by the evidence, most of the agreements between the City and Union employees on this change in pension benefits included additional benefits provided by the City as a part of the agreement. The City implies those additional benefits were not offered to the members of this bargaining unit because of the inability to reach agreement during negotiations and the delay incurred by the necessity to proceed to arbitration. The delay in reaching agreement is apparently also a contributing factor for the City seeking a wage reduction for members of this bargaining unit.

The Union argues exhibit (C-17) contains dated and unsubstantiated information and the Employer's LOS should be rejected because it is not supported by competent, material, and substantial evidence on the whole record as required by Act 312. I disagree. I accepted exhibits (C-17) and (C-15) into the record because they contained *estimated* savings the City might achieve if several of its proposals were accepted. Page 2 of (C-17) also contained credible evidence from a third party (MERS) related to the estimated savings that would occur as a result of the reduction of the City's pension contribution from 92.81% to 75.02% and page 1 of (C-17) used those figures to calculate the *estimated* savings for this group of \$136,515. City witness Nocerini testified that those figures, along with others, were used by the City finance office to create Exhibit (C-15) that provided target estimates of savings the City sought to achieve from negotiations with each employee group. (Tr. Pgs. – 83-86). I believe this evidence, coupled with the fact that the City and other employee groups have apparently relied upon it in reaching agreements, is sufficient to meet the standard of competent, material, and substantial evidence on the whole record required by Act 312.

But the evidence also reveals that the agreements reached between the City and the other employee groups on this issue are not the same as the City proposes for this group. Clearly there was more of a quid-pro-quo agreement between the City and other bargaining groups on this issue. The testimony of City witness Lisa Nocerini relative to the settlement agreement between the



Wayne Professional Firefighters and the City (C-9) is indicative of this. Following is an excerpt from the transcript during the questioning of Ms. Nocerini on (C-9):

Q – And once again in paragraph four we did – I’m sorry, in – okay, paragraph four appears to contain a two percent reduction in wages. Okay. Was that ever implemented?

A – No.

Q – Why not?

A- Because I believe if I can look back, we had – I believe that has to do with the MERS payment. We were basically going to – after we settled, it was going to be on all wages, and then MERS told us it had to be – or on base wages and MERS told us it had to be on all wages.

Q – All right. So if we’re looking at the last sentence of paragraph six where it says effective upon the institution of this bridged pension plan the employee contribution toward the cost of pension shall increase by three percent to a total of 10 on base wages, are we now making -- I’m sorry. Are the firefighters now making that contribution on all wages?

A – On all wages, correct.

Q – And in return did they do not have to take the two percent reduction in wages?

A – That is correct. (Tr. Pgs. 89-90).

Record evidence also reveals that there is an estimated annual savings of \$136,515 if the City’s proposal on this issue is adopted whereas the estimated annual savings to the City resulting from the 2.5% wage reduction is \$17,229. Considering the applicable factors in Section 9 of Act 312 one might conclude that the City’s LOS should be adopted. But no other internal bargaining unit has had a wage reduction in addition to the acceptance of the Pension proposal. Keeping in mind the principal noted in the Employer’s post hearing brief that *“the soundest approach for an outsider in resolving union and employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful”* [Arbitrator Theodore J. St. Antoine in *City of Livonia*, 1998 MERC FF/At 312 409, 411] and *“The neutral must be careful not to grant more than the parties would have been able to gain in the actual bargaining process.”* [County of Kalamazoo, 1997 MERC FF/Act 312, 431, 440 (Richard E. Allen)] record evidence indicates that it is unlikely the parties would agree to both of these reductions.

Given the evidence in this case, and even giving the financial ability of the unit of government to pay the most significance, I believe the Union’s last offer of settlement, in the

context of the entire issues before the panel, is the more favored LOS. But there is nothing to prevent the parties, following the issuance of this Opinion and Order, to resume negotiations for revisions in the CBA or develop a letter of understanding that adopts changes that are more acceptable to both parties.

**Findings**

**Therefore, on the issue of Retirement. (Article 23.1 and 23.3), the Panel finds the Union’s last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. There will be no change in Article 23.1 and 23.3.**

**Effective Date: Date of the Award.**

Employer: Agree _____	Disagree _____
Union: Agree <u>John J. Baur</u>	Disagree <u>Ag</u>

**Issue #5 (Economic) Leaves of Absence – Bereavement Leave. (Article 13.5)**

**Last Best Offers on Issue #5**

a. Employer’s Last Best Offer

13.5: Upon the death of a member of a regular, full-time permanent employee’s immediate family, said employee shall, upon request, be granted a leave of absence with pay for any the work days occurring between the date of death and the day following the funeral, not to exceed a total of three (3) work days to attend the funeral, provided he would otherwise have worked but for the funeral. For purposes of this Section, immediate family shall be defined as spouse, employee’s or spouse’s parents, step-parents, brothers, step-brother, sisters, step-sisters, child, step-children, grandparents, grandchildren. *Upon the death of an employee’s brother-in-law, sister-in-law, spouse’s grandparent, aunt, uncle, niece, or nephew, the employee shall, upon request, be granted on (1) work day to attend the funeral, provided he/she would otherwise have worked but for the funeral.*

b. Union’s Last Best Offer

13.5: Upon the death of a member of a regular, full-time permanent employee’s immediate family, said employee shall, upon request, be granted a leave of absence with pay for any the work days occurring between the date of death and the day following the funeral, not to exceed a total of **five (5) work** days to attend the funeral, provided he would otherwise have worked but for the funeral for the **death of a spouse, children and step-children. Funeral leave for immediate family shall be three (3) days.** For purposes of this Section, immediate family

shall be defined as employee's or spouse's parents, step-parents, brothers, step-brother, sisters, step-sisters, grandparents, grandchildren.

**Upon the death of an employee's brother-in-law, sister-in-law, aunt, uncle, niece, or nephew, the employee shall, upon request, be granted one (1) work day to attend the funeral, provided he/she would otherwise have worked but for the funeral.**

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue # 5.**

**Employer Position**

The Employer acknowledges that both parties have suggested revisions to Article 13.5 that they generally agree upon but the Employer does not support the Union's proposal to revise the language that would extend from three (3) day to five (5) days as the number of days permitted for the death of a spouse, children and stepchildren. The Employer notes that of the internal bargaining groups, three of the four CBA's provide no more than three (3) days of funeral leave in the event of a death in an employee's immediate family. The Employer also points out that its proposed language is identical to paragraph 7 of the most recent POAM settlement agreement (C-7). The Employer argues that given the City's current financial situation, this is no time to increase the funeral leave from three (3) to five (5) days.

**Union Position**

The Union also notes that the two proposals for changes in Article 13.5 are similar in some respects and that the main difference is the proposed amount of funeral leave for the death of a spouse, children or step-children, which the Union proposes be extended from three (3) days to five (5) days. The Union says the only other real difference in the two FOS is the Union did not include the spouse's grandparents in its FOS because they were already include in the Article. The Union says the City's FOS would cause confusion if a spouses grandparent dies because they are in the same Article twice.

**Discussion**

A review of the internal comparables was helpful in addressing this issue. As the Employer has pointed out, a review of exhibits (C-6), (C-7), (C-8) and (C-10) reveals that the CBA's of these internal comparables require that funeral leave time not exceed three (3) workdays. The CBA for the General Employees, (C-12), is the only internal comparable that grants up to five (5) working

days of bereavement for the death of a an employees spouse, children or stepchildren and the employee's or spouses parent or step parent. This evidence favors the Employer's position.


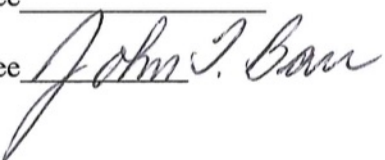
The Union also argues the Employer's proposed language including "spouse's grandparent in two separate sentences would cause confusion should a spouse's grandparent die. But upon closer review of the parties' FOS, it appears the Union omitted the word *spouse* in the current CBA language in the sentence: "For purposes of this section, immediate family shall be defined as *spouse*, employee's or spouse's parents, step-parents, brothers, step-brother, sisters, step-sisters, children, step-children, grandparents, grandchildren." (C-1). Additionally, the Union's proposal includes the following language: *Funeral leave for immediate family shall be three (3) days*. That is not consistent with the language in the current CBA and the majority of the internal comparable CBA's of "not to exceed a total of" etc.

For the above reasons, the Employer's FOS is found to be more consistent with the applicable factors prescribed in Section 9 of Act 312.

**Findings**

**Therefore, on the issue of Leaves of Absence – Bereavement Leave. (Article 13.5), the Panel finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The Employer's LOS language for Article 13.5 will be incorporated into the CBA.**

**Effective Date: Date of the Award.**

Employer: Agree		Disagree	_____
Union: Agree	_____	Disagree	

**Issue #6 (Economic) Hours of work and premium pay - Off Duty Training Sessions. (Article 18.7)**

**Last Best Offers on Issue #6**

- a. Employer's Last Best Offer

Article 18.7 be revised as follows:

~~18.7: When an employee is off duty and required to attend training sessions sponsored by or under the control of City or Department personnel, he/she shall receive compensatory time at the rate of one and one half (1 ½) for actual hours worked. Training compensatory time shall be kept separate from regular compensatory time, however, said leave shall be requested and approved in the same manner as regular compensatory time. Training compensatory time shall not exceed 40 hours. If at any time the training compensatory time exceeds 40 hours, it is understood, that the Police Chief and/or his designee shall have the right to designate the day and time the excess time is to be used within 30 days in the best interest of the department. An employee cannot request pay in lieu of “training” compensatory time. The employee may be required to adjust his/her days off or hours to attend training in accordance with the current practices. Training and Meetings. When an employee is off duty and required to attend training sessions or meetings he shall receive compensatory time or time and one-half (1 ½) the employee’s hourly rate as set forth in Article XIV, section 18.2, for the hours or days spent in actual training provided that actual time spent in qualifying twice a calendar year for the weapons proficiency shall continue to be paid at normal straight time rates. The City shall determine whether the employee receives comp time or pay. The employee may be required to adjust his days off or hours for such attendance in accordance with the current practice (maximum 80 hours comp time). In the event an officer is required to arrange for trade day(s) due to training, the officer must request the trade day(s) within ten days of the training notice. Trade days must be used within 60 days after attending the training.~~

*Employees who are sent to a school, training and/or other mandatory appearances outside of Wayne County by the City shall be paid straight time for applicable daily travel time from the police station to the destination and back to the police station, provided they return to the station at the end of the day, to the extent the length of said travel time plus the required attendance for the day exceeds the normally scheduled work day.*

b. Union’s Last Best Offer

**Proposed Language**

18.7: Training and Meetings. When an employee is off duty and required to attend training sessions or meetings he/she shall receive compensatory time or time and one half (1 ½) the employee’s hourly rates as set forth in Section 18.2, for the days or hours spent in actual training.

Actual time spent in qualifying twice a calendar year for weapons proficiency shall continue to be paid at normal straight time rates.

The employee shall determine whether he/she receives comp time or pay. The employee shall be compensated for the scheduled amount of training time, regardless of the actual amount of time spent in the training class. There shall be no requirement to return to regular duty.

The employee may be requested to adjust his/her day off or hours for such attendance in accordance with the current practice (maximum eighty (80) hours comp time). In the event an officer is requested and agrees to arrange for trade day(s) due to training, the officer must

request the trade day(s) within ten (10) days of the training notice. Trade days must be used within sixty (60) days after the attending the training.

Employees who are sent to a school, training and/or other mandatory appearances outside of Wayne County shall be paid straight time for applicable daily travel time from the police station to the destination and back to the police station, provided they return to the station at the end of the day, to the extent the length of said travel time plus the required attendance for the day exceeds the scheduled training day.

## **Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #6.**

### **Employer Position**

The Employer indicates in its post-hearing brief that its proposal is the same at that contained in the recent agreement between the City and POAM (C-6 pg. 32) and more consistent with the current language than is the Union's proposed changes. The Employer points out several differences between the two proposals. *One* is that under the City's proposal, the City decides whether the employee engaged in training receives overtime wages or comp time. Under the Union proposal the employee makes that decision. *Second*, The City's proposal provides comp time or pay for hours or days spent in actual training whereas the Union's proposal would provide comp time or pay for the scheduled amount of training time, regardless of the actual amount of time spent in training class, and that there shall be no requirement to return to actual duty. *Third*, the City's proposal continues the provision that the employee may be required to adjust his/her days off of hours to attend training. The Union's proposal states that the Employer may request that the employee adjust his/her days or hours off but that won't happen unless the employee agrees.

The Employer argues the Union's proposal could result in more costs to the City and given the current financial situation faced by the City this is no time for changes that are very similar to the current practices.

### **Union Position**

The Union witness Lieutenant Finley Carter testified in support of this issue. He stated that the Union was okay with the current CBA language and the reason the Union submitted its proposal was because the City sought changes (Tr. Pgs. 146-147). He testified that the practice has been that an employee who has participated in training will get paid for that training time and when an employee trains on a day he/she would have had off they can be compensated with an adjusted

day or trade day off provided the choice of that day is made within 60 days from the date of training. He indicated he was not aware of any employee losing time or compensation under this procedure.

**Discussion**

The evidence and testimony supports the Employer’s proposal on this issue. The proposal is exactly the same as recently adopted in the City’s agreement with the POAM bargaining unit. It also is more consistent with the language in the current CBA and other provisions in the CBA that vest management decisions with management, not the employees. Management needs to assure adequate staffing to protect the safety of its citizens. And given the City’s current financial situation, with the police department staffing close to minimum, the Employer needs all the tools necessary to manage staffing as cost effectively as possible.

**Findings**

**Therefore, on the issue of Hours of work and premium pay - Off Duty Training, (Article 18.7) the Panel finds the Employer’s last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The Employer’s LOS language for Article 18.7 will be incorporated into the CBA.**

**Effective Date: Date of the Award.**

Employer: Agree	<u>Agree</u>	Disagree	_____
Union: Agree	_____	Disagree	<u>John J. Ban</u>

**Issue #7 (Economic). Wages, hours of work and premium pay – add new article (Article 18.9) Assign Command Officers overtime separately from Police Officers overtime.**

**Last Best Offers on Issue #7**

a. Employer’s Last Best Offer

Status Quo

b. Union’s Last Best Offer

Add new language

## **ARTICLE XVIII – WAGES, HOURS OF WORK AND PREMIUM PAY**

18.9: Overtime for the Command Officers Unit shall be assigned separately from the Police Officers Unit. Additionally, the overtime will be granted only on the Command Officers bargaining unit.

### **Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #7.**

#### **Employer Position**

The Employer does not support including the language proposed by the Union in the CBA. Employer witness Police Chief Maciag testified addressing both this Union proposal and the similar union proposal related to leave time. He stated that given the limited staff (22 allocated) in the Department due to limited finances, if the Union's proposal was adopted it would limit who would be available to fill a position if a member of either unit, Patrol or Command, called in sick or was on leave. In his direct testimony he stated: "There's a lot of times when if a patrolman calls in sick, we can't staff prior, which sometimes the patrolman won't answer the phone, and we have to get a command officer to cover that patrolman's shift" (Tr. Pg.129). In response to the question of what would happen if he couldn't get the Command Officer to cover the shift, he responded: "Well, I would think that if I was stuck only being able to call a command officer when a command officer calls in or vice-versa with a patrolman, if I can't get a hold of a patrolman then could I not call anybody and go down one for the road I guess" Tr. Pg. (130). And in response to a question about what effect he thought that would have on public safety Chief Maciag said, "Well, obviously we'd have one car less. I mean the dramatic effects would be substantial" (Tr. Pg. 130).

The Employer also points out in its post-hearing brief that Union witness Finley Carter III testified that to his knowledge, none of the comparable communities had a similar provision in their CBA's. The Employer urges the panel to reject this proposal.

#### **Union Position**

The Union, in its post-hearing brief, acknowledges that the overtime proposal and leave time proposal are essentially the same in that the members of this bargaining unit and the Patrol Officers unit are considered as one when determining overtime and leave time and the Command Officers would like them to be separated. The Union notes that its witness, Finley Carter III, clearly stated the Union's position that the command officers will accept the overtime if it's



convenient or desirable for them, but they don't want to be ordered to fill patrol overtime (Tr. Pg. 142).

### **Discussion**

Among the factors in Section 9 that the panel is required to consider is Section 9(1)(a)(i); the financial impact on the community, and Section 9(1)(a)(ii), the interests and welfare of the public. The testimony and evidence on this issue, particularly when considering these two factors, supports the Employer's position over the Union's position. If the Union's proposal were adopted it could result in more cost to the Employer but more importantly, it could result in reducing the Employer's ability to provide service and protection to its residences. The record already indicates that service level is constrained by reduced staffing due to fiscal constraints. Police Chief Maciag described further evidence of that in response to questions from the panel chair involving current staffing levels. Chief Maciag testified that the Department is budgeted for 22 positions but at the time of the hearing had 20 positions filled. Upon further questioning by the Union he stated that he didn't believe that there has been a time when the department was fully staffed (Tr. Pg. 138) since he has been police chief (Close to three years, Tr. Pg. 126).

While it is understandable that calling in command officers for overtime service to fill in for patrol officers can be frustrating and stressful on the officer being called in, given the staffing levels and financial constraints faced by the Employer, in this case, it is necessary to maintain a reasonable level of public safety. For these reasons the panel finds the Employer's LOS to be the more reasonable.

**Findings**

Therefore, on the issue of Wages, hours of work and premium pay – add new article (Article 18.9) Assign Command Officers overtime, the Panel finds the Employer’s last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. There will be no change in Article 18.

**Effective Date: Date of the Award.**

Employer: Agree Ag Disagree \_\_\_\_\_  
Union: Agree \_\_\_\_\_ Disagree John J. Bar

**Issue #8 (Economic). Leave Time (Article 19.7)**

**Last Best Offers on Issue #8**

a. Employer’s Last Best Offer

Maintain current language

b. Union’s Last Best Offer

**Proposed Language**

**ARTICLE XIX – LEAVE TIME**

19.7: Leave time schedule preferences must be turned into the department office by April 1<sup>st</sup> of each year. For those who turn in their request by April 1, preference for leave time will be allocated on the basis of first rank and then seniority. Those who apply after April 1, will be assigned leave time on the basis of first come, first serve. All leave time must be arranged and approved by supervision, and are subject to change in order to maintain the highest standard of protection of the City welfare. Leave requests shall be granted **if** no one else on the shift **is** on approved leave (i.e., vacation and compensatory **time**.) **Additionally, leave time preferences will be separated from members of the lower unit and will be granted on the basis of the Command Officers Unit.**

**Discussion of the parties’ positions, facts, proofs, relevant statutory criteria and findings applied to Issue #8.]**

### **Employer Position**

Just as with the previous proposal, the Employer opposes the addition of the Union's proposed language to Article 19.7. The Employer argues, just as it did with the previous proposal, that the City's financial condition cannot absorb additional overtime costs. It points to testimony by Chief Maciag that under the current language, the command unit has an opportunity to bid their vacation first, which is bid by first rank and seniority, and then patrol has the opportunity to bid their vacation picks after that. His understanding was that the Union's proposal would separate the two units vacation bidding process which could result in having a command officer and patrol officer have the same vacation picks which could result in the need for two spots of overtime (Tr. Pg. 129).

The Employer points out that the Union's own witness testified that under the current CBA provisions for selecting vacations, at least over the past twelve months, he or other members of the command unit have not been denied a second vacation pick because a patrol officer took that time as their first pick (Tr. Pg. 145). The Employer also notes that the current language in the POAM CBA is nearly identical to the current language in the COAM CBA and adopting the change proposed by the Union would impact the POAM contract over which the panel has no jurisdiction.

### **Union Position**

Union witness Finley Carter III testified on behalf of the Union on this issue. He testified that what the Union was seeking is more than just a guarantee that a member of the Command unit would get his/her first leave pick for vacation. What this proposal would do is to protect against a member of the patrol unit being able to override a command member's second, third or subsequent choice of vacation picks (Tr. Pg. 144). The Union says what members are simply trying to do is pick annual leave among their peers and not with another collective bargaining unit.

### **Discussion**

The panel views this issue similar to the previous issue. If the panel adopted the Union's proposal it could result in more cost to the Employer. But it also would have the effect of impacting the current practice for selecting vacation time for members of the patrol unit. And, testimony from the Union's own witness indicated that at least from the record evidence, there did not appear to have been occasions when member of this unit's selection of second or subsequent requests for

vacation time were impacted by selection by patrol officers vacation times. For these reasons, the panel finds the Employer's LOS the more reasonable proposal.

**Findings**

**Therefore, on the issue of Leave Time (Article 19.7), the Panel finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. There will be no change in Article 19.7.**

**Effective Date: Date of the Award.**

Employer: Agree	<u>Ag</u>	Disagree	_____
Union: Agree	_____	Disagree	<u>John J. Bar</u>

**Issue #9 (Economic) Sick Leave (Article 22.3)**

**Last Best Offers on Issue #9**

- a. Employer's Last Best Offer

Maintain current language

**Current language**

**ARTICLE XXII – SICK LEAVE**

22.3: Sick Leave Cap: Accumulated sick leave, for employees promoted into the bargaining unit on or after April 18, 2007, shall not exceed maximum of 1,200 hours. Sick Leave in excess of 1,200 will be paid at the rate of 50% of an annual basis in January.

- b. Union's Last Best Offer

**Proposed Language**

**ARTICLE XXII – SICK LEAVE**

22.3: Sick Leave Cap: Accumulated sick leave, for employees promoted into the bargaining unit on or after April 18, 2007, shall not exceed maximum of 1,200 hours. Sick Leave in excess of 1,200 will be paid at the rate of 75% on an annual basis in January.

**Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #9.**

**Employer Position**

The Employer's position is that the CBA should remain unchanged and continue the current provision that any accumulation of sick leave hours in excess of 1200 hours is paid at the rate of 50% on an annual basis. The Employer argues that retaining payment at 50% of the hourly rate is consistent with the internal comparables and a review of (U-37) indicates a majority of the external comparables receive no payments at all. The Employer says this evidence supports retaining the current language.

**Union Position**

The Union urges the adoption of its proposal pointing out that members of this bargaining unit are the leaders and experienced members of the City Police Department and raising the percentage payout is one way for the City to recognize the dedicated members of the command unit. The Union notes that given the reduction in staffing in recent years, usage of a sick day by a member of the unit most likely requires the position be filled with another command officer which results in paying overtime and therefore more cost to the City. The Union says its proposal would result in its members having a greater incentive to avoid taking a sick day even though they may not be feeling well, which would then save the City from paying overtime to a replacement. The Union urges the panel to adopt this proposal.

**Discussion**

The preponderance of evidence presented on this issue supports the Employer's proposal rather than the Union's proposal. Both the internal and external comparables favor the status quo. Neither party submitted evidence addressing what the estimated cost would be but a review of documents in the record suggests the change from 50% to 75% would result in an approximate \$9.68 per hour increase for each hour of sick leave that was paid to an employee who would qualify for this provision. A review of exhibit (C-16) reveals that eight of the nine current members of the bargaining unit have 12 or more years of seniority. These members are more likely to have accumulated 1200 hours of sick leave over the years and therefore may be better positioned to take advantage of this change. While the cost to the Employer might be considered minimal, given the current financial condition of the Employer, it is nevertheless a cost the Employer can ill afford.

Additionally, the Union's point that with this change the unit member may be more inclined to not take a sick day even when he/she is not feeling well, and therefore save the employer from paying overtime, also has a downside. Having public safety employees on the job who are not feeling well results in a diminished level of public safety. Given the current level of reduced staffing it is imperative that members of the unit be fully capable of performing their duties when they are on the job and highly possible that due to longer work hours filling in for absences, etc. they may find it necessary to take their allotted sick days throughout the year. A financial incentive that may encourage them not to take a sick day when needed does not appear to be in the best interests and welfare of the public [Art 9(1)(a)(ii) of Act 312]. Also, particularly because the other internal bargaining units do not have this provision in their CBA's, this is an issue that would be better dealt with during collective bargaining between the parties than imposed by an Act 312 panel.

For all of the above reasons, the panel finds the Employer's LOS the more reasonable proposal.

**Findings**

**Therefore, on the issue of) Sick Leave (Article 22.3), the Panel finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. There will be no change in Article 22.3.**

**Effective Date: Date of the Award.**

Employer: Agree Agg  
Union: Agree \_\_\_\_\_

Disagree \_\_\_\_\_  
Disagree John J. Lane

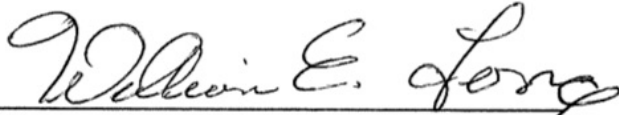
**6. SUMMARY OF AWARD**

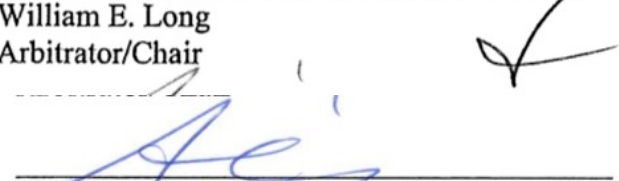
<b>ISSUE</b>	<b>AWARD</b>
<b>Effective date of the CBA</b>	<b>The Employer’s LOS language for Article XXVI will be incorporated into the CBA.</b>
<b>Wages. (Article XVIII – Appendix A)</b>	<b>The Employer’s LOS language for XVIII – Appendix A) will be incorporated into the CBA. Wages.</b>
<b>Health Insurance: Employee contribution (Article 21.1)</b>	<b>The Employer’s LOS language for Article 21.1 will be incorporated into the CBA.</b>
<b>Retirement. (Article 23.1 and 23.3)</b>	<b>The Union’s LOS is adopted by the panel. There will be no change in Article 23.1 and 23.3.</b>
<b>Leaves of Absence Bereavement Leave. (Article 13.5)</b>	<b>The Employer’s LOS language for Article 13.5 will be incorporated into the CBA.</b>
<b>Hours of work and premium pay - Off Duty Training Sessions. (Article 18.7)</b>	<b>The Employer’s LOS language for Article 18.7 will be incorporated into the CBA.</b>
<b>Wages, hours of work and premium pay – add new article (Article 18.9) Assign Command Officers overtime separately from Police Officers overtime.</b>	<b>The panel adopts the Employer’s last offer of settlement. There will be no change in Article 18.</b>
<b>Leave Time (Article 19.7)</b>	<b>The panel adopts the Employer’s last offer of settlement. There will be no change in Article 19.7.</b>
<b>Sick Leave (Article 22.3)</b>	<b>The panel adopts the Employer’s last offer of settlement. There will be no change in Article 22.3.</b>

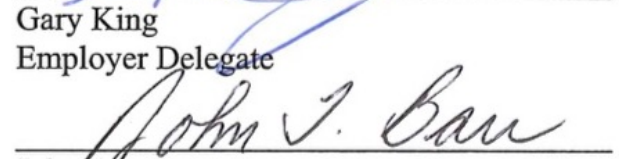
**SUMMARY**

This concludes the award of the Panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award.

Re: City of Wayne & Command Officers Association of Michigan  
MERC Case No. D 16 K-0916 (Act 312)

Date: 11-6-17   
William E. Long  
Arbitrator/Chair

Date: 11-6-17   
Gary King  
Employer Delegate

Date: 11-6-17   
John Barr  
Union Delegate

November 7, 2017