

MICHIGAN DEPARTMENT OF LICENSING AND REGULATION

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

CITY OF PORTAGE:

Employer

CASE NO. L16 I-0867

and

PORTAGE POLICE OFFICERS ASSOCIATION

Union

RECEIVED
STATE OF MICHIGAN

APR 02 2018

EMPLOYMENT RELATIONS
COMMISSION
DETROIT OFFICE

COMPULSORY ARBITRATION

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

Arbitration Panel

Chair: Micheal J. Falvo

Employer Delegate: Robert A. Dubault

Union Delegate: Brett M. Naumcheff

Advocates

Employer Advocate: Robert A. Dubault

Union Advocate: Brett M. Naumcheff

PETITION FILED: July 12, 2017

PANEL CHAIR APPOINTED: July 27, 2017

SCHEDULING CONFERENCE HELD: July 29 & September 13, 2017

HEARING DATE HELD: December 7, 2017

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WITNESS LIST

1. Nick Arnold, Public Safety Director – City of Portage (Employer)
2. Sandy Baker, Benefits Specialist – City of Portage (Employer)
3. Rob Boulis, Deputy Mayor – City of Portage (Employer)
4. Randy L. Dylhoff, Portage Police Officers Association President (Union)
5. William K. Furry, Finance Director – City of Portage (Employer)
6. Marie Gleesing, Secretary – Portage Police Officers Association (Union)
7. Dr. Alan Reinstein, CPA (Union)

1. INTRODUCTION AND BACKGROUND

The Portage Police Officers Association (PPOA) is the exclusive bargaining representative for Police Officers, Detectives, Radio Operators and Police Service Technicians in the Portage Police Department. Sergeants and Lieutenants are members of the Portage Police Command Officers Association (PPCOA). The police department has been accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and is currently in the process of receiving state accreditation. Accredited agencies have been certified as following nationally recognized best practices. This PPOA presently includes 55 members but that number will be reduced to 43 later this year because civilian employees in the Radio Operator classification will be employed by Kalamazoo County Consolidated Dispatch Authority that will

provide 911 coverage for Portage, the City of Kalamazoo, Kalamazoo County, and Western Michigan University. In addition to the PPOA and the PPCOA, there are two other bargaining units. The International Association of Firefighters (IAFF) represents Firefighters, Battalion Chiefs, and Captains employed by the City. Hourly employees in the Streets and Parks Departments are members of a bargaining unit represented by the United Auto Workers (UAW). Other supervisory, office, and managerial employees are non-union employees.

2. STATUTORY CRITERIA

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

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the unit of government to pay:
 - (i) The financial impact on the community of any award made by the arbitration panel.
 - (ii) The interests and welfare of the public.
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
 - (iv) Any law of this state or any directive issued under the local government accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees in both of the following:
 - (i) Public employment in comparable communities.
 - (ii) Private employment in comparable communities.
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

- (i) Other factors that are normally or traditionally taken into consideration in the determination of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

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

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

Public Act 332, which became effective on October 15, 2014, rescinded legislation passed in 2011 that prohibited an Act 312 arbitration panel from making wage and benefit awards retroactive if greater than those in effect on the last day of the expired collective bargaining agreement.

While the panel understands that Public Act 116 makes financial ability to pay the factor that is to be accorded the greatest weight, it has also been guided by the Michigan Supreme Court's explanation that the Legislature did not intend each of the other factors to be afforded equal weight.

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

There is no "ability to pay" controversy in this case and the parties have stipulated to that fact. The City, however, insists that the panel should rule in its favor on each issue because the failure to do so would impair its ability to allocate funds prudently in the overall best interests of all of its employees and its citizens. The panel believes that discussion of the parties' contentions as to the specific financial ramifications of granting or denying demands is more appropriately discussed as it relates to each issue.

The reader should not conclude that the failure to discuss every factor on each issue means it has not been considered since that is not the case. All pertinent factors have been

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

painstakingly considered. It should be understood that the concurrence of a panel member in the disposition of a particular issue does not necessarily mean that he agrees with the chairperson's reasoning or statements.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties have stipulated that the collective bargaining agreement will cover the period July 1, 2016 to June 30, 2019. The parties have stipulated that all issues before the panel are economic issues. The parties have also stipulated that all issues not before the panel have been settled or waived and that this proceeding is limited to the identified issues. The parties have also stipulated that tentative agreements and uncontested provisions in the expired agreement are to be carried forward in the successor collective bargaining agreement. The parties have also stipulated that wages are no longer a disputed issue before this panel because each party submitted the same last offer of settlement with regard to that issue.

4. COMPARABLES

As is customary in interest arbitration proceedings the panel has been provided with and has carefully reviewed voluminous materials provided by the parties on comparables. The comparable cities considered by the panel are:

1. Battle Creek
2. Bay City
3. East Lansing
4. Holland
5. Kalamazoo
6. Kentwood
7. Wyoming

5. ISSUES BEFORE THE PANEL

Issue 1: Retiree Health Care

VEBA is an acronym for Voluntary Employees' Beneficiary Association. The Internal Revenue Service defines a VEBA as a mutual association of employees providing specified benefits to its members or their designated beneficiaries. Although VEBAs have existed in federal tax law since 1928 they are not frequently found in collective bargaining agreements

involving public safety employees. The Portage Police Officers Association Retiree Health Plan ("the Plan") is one of a small handful of such associations covering Act 312 eligible employees in Michigan. The Plan was established on July 1, 1989 to help defray the cost of providing retiree health care to PPOA. Active members do not financially contribute to the Plan. As of August 1, 2017, the Plan pays the cost of health care benefits to 22 retirees and spouses at an annual cost of \$93,699.96. One current retiree pays 20% of the premium and 21 recipients are not responsible for any payment. Retirees currently participate in the same health insurance plans that are offered to active employees and, if eligible for Medicare, in a Blue Care Network Advantage plan.² Article IX, Section 9.5 of the July 1, 2013 to June 30, 2016 collective bargaining agreement delineates the parties' responsibilities concerning retiree health care.

It shall be the Association's exclusive responsibility to administer this fund, to determine the amount of benefit payments each retiree receives is eligible for and the rules of said eligibility and in all manner to regulate and control this fund. This fund shall be administered in accordance with all applicable laws and regulations. The Employer shall have no responsibility for the administration of this fund or to pay health insurance premiums for employees. The Association shall promptly notify the Department of Benefit Services of any change to where the contributions and payroll reductions described in this section are to be mailed.

TABLE 1 indicates the annual payment by the City to the Plan.

TABLE 1 – CITY CONTRIBUTION TO RETIREE HEALTH CARE

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1989	\$15,000	1999	\$110,000	2008	\$170,000
1990	\$30,000	2000	\$110,000	2009	\$170,000
1991	\$31,000	2001	\$112,000	2010	\$196,000
1992	\$55,912	2002	\$125,000	2011	\$196,000
1993	\$55,912	2003	\$135,000	2012	\$196,000
1994	\$55,912	2004	\$145,000	2013	\$196,000
1995	\$55,912	2005	\$160,000	2014	\$196,000
1996	\$55,912	2006	\$170,000	2015	\$196,000
1997	\$90,000	2007	\$170,000	2016	\$196,000
1998	\$100,000	2008	\$170,000		

Importantly, the \$26,000 increase beginning in 2010 resulted from the Association's agreement to a reduction in longevity pay. Association President Dylhoff explained that the Association agreed in 2011 to change the longevity formula that was calculated at 7½% of annual salary to a fixed

² In a Medicare Advantage plan Medicare pays an insurance company to offer the insured hospital and medical coverage.

amount depending on length of service. Consequently, as the Association sees it, the City's cost has not increased in ten years and the savings realized from the concession on longevity pay continue to accrue to the City's advantage because 7½% of the 2016 wage rate is greater than in 2011. The parties are in agreement that the City's annual contribution will be raised as the result of this proceeding. The disagreement concerns the amount of the increase.

The 1989 Plan established a point system to determine eligibility for retiree health care and the percentage of the premium (if any) the retiree is required to pay. Eligibility and levels of coverage were based on estimates that took into account future contributions, return on investment, the predicted cost of insurance, life expectancy, and other factors customarily used in actuarial calculations. As **TABLE 2** demonstrates, points were computed by adding the employee's age at retirement and years of service at retirement.

TABLE 2 – ELIGIBILITY POINTS FOR RETIREMENT (1987-2012)

<u>POINTS</u>										
80	79	78	77	76	75	74	73	72	71	70
<u>PERCENT OF HEALTH CARE COVERED</u>										
100%	95%	90%	85%	80%	75%	70%	65%	60%	55%	50%
<u>AGE AT RETIREMENT/YEARS OF SERVICE</u>										
60/20	59/20	58/20	57/20	56/20	55/20	54/20	53/20	52/20	51/20	50/20
59/21	58/21	57/21	56/21	55/21	54/21	53/21	52/21	51/21	50/21	
58/22	57/22	56/22	55/22	54/22	53/22	52/22	51/22	50/22		
57/33	56/23	55/23	54/23	53/23	52/23	51/23	50/24			
56/24	55/24	54/24	53/24	52/24	51/24	50/24				
55/25	54/25	53/25	52/25	51/25	50/25					
54/26	53/26	52/26	51/26	50/26						
53/27	52/27	51/27	50/27							
52/28	51/28	50/28								
51/29	50/29									
50/30										

As originally structured the point system allowed members to receive fully paid retiree health care upon attainment of 80 points and partially funded retiree health care with at least 70 points. As an example, if an officer joined the department at age 26 and worked 22 years he would have 70 total points (age at retirement 48 + 22 years of service) and would receive 50%

paid retiree health care. If the same officer worked 27 years he would attain 80 total points (age at retirement 53 + 27 years of service) and would receive 100% paid health care. However, as it turned out, the earlier actuarial assumptions for setting benefits levels proved to be overly optimistic and the Association's consultants determined that at the then current level of funding, expected rate of investment return and life expectancy, as well as escalating cost of health insurance, the assets of the Plan would be depleted by 2026. In order to avoid future insolvency the Plan was modified on January 1, 2012. Benefits for current retirees were not changed but the point system for future retirees was substantially changed. As explained by the Association's president, "the ones that are working are the ones that took the hit." Under the revised Plan, an employee must be at least age 55 and have at least 30 years of service to receive any level of retiree insurance. In comparison to the old system, an officer who joined the department at age 26 would no longer eligible for any retiree health care after either 22 years (70 points) or 27 years (80) points. The new point system is shown in **TABLE 3**.

TABLE 3 – ELIGIBILITY POINTS FOR RETIREMENT (2012-2018)

<u>POINTS</u>										
95	94	93	92	91	90	89	88	87	86	85
<u>PERCENT OF HEALTH CARE COVERED</u>										
100%	95%	90%	85%	80%	75%	70%	65%	60%	55%	50%
<u>AGE AT RETIREMENT/YEARS OF SERVICE</u>										
65/30	64/30	63/30	62/30	61/30	60/30	59/30	58/30	57/30	56/30	55/30
64/31	63/31	62/31	61/31	60/31	59/31	58/31	57/31	56/31	55/31	
63/32	62/32	61/32	60/32	59/32	58/32	57/32	56/32	55/32		
62/33	61/33	60/33	59/33	58/33	57/33	56/33	55/33			
61/34	60/34	59/34	58/34	57/34	56/34	55/34				
60/35	59/35	58/35	57/35	56/35	55/35					

An actuarial valuation report by Gabriel Roeder Smith & Company in 2016 substantiated that the changes in the point system substantially improved the present and future solvency of the fund. Taking into consideration normal actuarial variables, the report concludes that if the Plan can achieve an anticipated rate of return on investments of 7% it has sufficient funds to cover

promised benefits through 2055. On the other hand, if returns on investment were to drop to 5% it would be depleted five years earlier.

There are two significant changes since the report was prepared. First, the projections were based on an annual contribution of \$196,000 and this award will increase that amount. Second, because of the newly formed Kalamazoo County Consolidated Dispatch Authority that will become operational later this year, 11 Radio Operators (one position is unfilled) will be removed from the bargaining unit and will become ineligible for benefits.

Thirty-two members of the Portage Fire Department are represented by the IAFF, Local 1467 and covered by a collective bargaining agreement that expires on June 30, 2020. The employees also participate in a VEBA, the Portage Firefighter Retiree Health Insurance Fund. The City makes an annual contribution of \$186,000. There is no actuarial information or eligibility criteria concerning the Fund in the record and the chairperson has been informed that the information is not available to the parties.

The PPCOA represents 10 Lieutenants and Sergeants. Retiree health care benefits are different for pre-65 and post-65 recipients. Prior to age 65 retirees continue on the City's insurance and pay between 5% and 20% premium sharing, depending on when they retired. After 65, health insurance is obtained through the Association's supplemental retiree health insurance fund. The City makes a \$31,500 annual payment to the Association.

Because only one of the comparable cities has a VEBA for retiree health care an apple-to-apple comparison is not feasible. The Association's view is that there are no comparables because Portage is the only city that has "washed its hands" of the responsibility to provide retiree health care. In Battle Creek, retirees hired before April 29, 2007 receive \$8,000 annually from a VEBA administered by the Union. Active employees in that category pay 4% of compensation (up to 5% if needed) and retirees pay 2% of their pension. If hired after that date retirees with 25 years of service receive \$200 per month and an eligible spouse receives \$80. In Bay City, retirees hired before January 1, 2011 pay the same premium as active employees until age 65 and after age 65 pay 10% of the premium with 25 years of service, and 25% of premium with 20 years of service. Employees hired after that date are not eligible for retiree health care.

Instead, the city contributes 6% to a retirement health savings (RHS) plan for those employees. In East Lansing, employees hired before July 1, 2011 who are age 55 with 25 years of service receive the same coverage as active employees. Their premium contribution remains the same during retirement. Employees hired after that date do not receive retirement benefits after age 65. In Holland, retirees between 50 and 65 pay \$300 monthly for single coverage and \$550 for double coverage. Employees lose coverage at 65. In Kalamazoo, employees who retire prior to January 1, 2007 have the same coverage as active employees and pay 20% of the premium. Employees hired after September 7, 2011 are enrolled in a RHS plan and the city pays \$2,600 per year. In Kentwood, retirees with more than 20 years of service receive \$13.50 for every year of service up to the actual cost of insurance until eligible for Medicare and that amount is reduced by 25% upon the death of the retiree or spouse. Retirees covered by another employer's group medical coverage are not eligible. In Wyoming, retirees hired before September 5, 2007 receive \$20 per month for each year of service up to 30 years. The retiree pays 30% with 10-14 years of service, 20% with 15-18 years of service, and 0% with 19 or more years of service. Employees hired after that date participate in a Post Employment Health Plan (PHEP) to which the city contributes 4% of compensation.

Although the information has been carefully considered, the variations in the comparable cities makes a meaningful comparison of retiree health care benefits problematic because of the combination of defined benefit, defined contribution, hybrid defined contribution/defined benefit, retirement health savings plans, post-employment health plans, and two-tiered benefit levels. Some plans require contributions by retirees and some do not. However, evaluation of these collective bargaining agreements is nevertheless instructive on a closely related issue: retirement eligibility.

Retiree health care benefits are linked to eligibility for retirement. Unlike defined benefit plans, defined contribution plans typically do not have minimum age or years of service requirements. The City funds the defined contribution plan for this bargaining unit. For employees hired before December 11, 2011 the contribution is 18% of base salary. For employees hired after December 11, 2011 the contribution is 10% of base salary. Bargaining unit

members can also participate in a 457 deferred compensation plan available to all City employees.

In each of the comparable cities police officers are eligible to receive retirement health care benefits (sometimes through a RHS or PEBP) prior to attaining 30 years of service and age 55. In Battle Creek, officers can retire with 25 years of service or at age 60 regardless of years of service. In Bay City, officers are eligible to retire at age 55 with 10 years of service. In East Lansing and Holland, officers are eligible to retire at age 55 with 25 years of service. In Kalamazoo, officers are eligible for early retirement after 20 years and for normal retirement with 25 years of service or 10 years of service and age 50. In Kentwood's hybrid plan, the defined contribution component vests after 7 years and officers are eligible for retirement under the defined benefit component at age 55 with 10 years of service or age 50 with 15 years of service. In Wyoming, officers hired before 2007 are in a defined benefit plan and no age or years of service requirement is specified in the agreement. Officers hired after that date participate in a defined contribution plan that does not specify any age or years of service requirement. The point is this: effectively requiring Portage Police Officers to work for at least 30 years and be at least 55 in order to retire – with some level of health care in retirement -- is out-of-line with the comparable cities. Obviously, there is nothing that prevents officers from retiring at an earlier point if they elect to forego retiree health care benefits for themselves and their spouses.

Having carefully considered the evidence in its entirety as it applies to the criteria specified in Section 9, a majority of the panel is convinced that an annual contribution greater than proposed by the City is justified in two of the three years of the successor agreement. More specifically, a majority of the panel bases its conclusion primarily on the following Section 9 factors: 1(a)(i) – (iii); 1(d)(i-ii); 1(e); 1(g); 1(i) and 2.

The panel is aware of and has adhered to the statutory directive that the City's financial ability to pay be given the most significance. The City has not claimed that it lacks the ability to pay for the increases proposed by the Association. Rather, it has persuasively argued that being able to afford increasing remuneration to employees is not a good reason to require it to do so. The panel agrees with that position. The City has also emphasized that the contract at issue will

contain wage increases and other benefits improvements. The City's generally strong financial condition is attributable to many factors. It is clear to the panel, however, that making prudent financial decisions is likely the most significant reason that a recent Standards & Poors's report concluded that Portage has a strong management team with good financial policies and practices.

Notwithstanding that favorable assessment, the rating agency concluded that the City is in a "weak" position as it relates to debt and contingent liabilities. The Association's financial expert, Dr. Alan Reinstein, acknowledged that the City has been "very responsible" in managing its fiscal affairs. The City, like all municipalities, must budget prudently. The City has pointed out that property tax revenues since 2008 have fallen by approximately \$1.3 million and revenue sharing has not offset most of that decline. The City's ability to raise money through taxation of real and personal property is limited by the City Charter, which contains a cap of 7.5 mills as to the General Fund and 2.0 mills for the Capital Improvement Fund. Since 1995 overall staffing has declined from 215 to 195. Budget surpluses, when they have occurred, have been directed at reducing debt and increasing the general fund balance to cover future contingencies, including the possibility of another economic downturn that could substantially reduce revenue.

Speaking for himself, the chairperson has carefully considered, but somewhat discounted, the viewpoint of the Association's expert that the cost of granting the Association's demands is an inconsequential "rounding error," as well as the City's contention that doing so on top of wage and benefit improvements already agreed to would "almost certainly negatively impact the City's ability to keep its fiscal house in order." The award that follows does not totally but in large part adopts the City's last offer of settlement. To reiterate, the decisions have been made after according the City's financial ability to pay the most significance among the applicable Section 9 criteria.

Before further explaining the rationale for the panel's award an area of disagreement among the panel members should be noted. The dispute is whether the panel has the authority to make the award year by year, or, on the other hand, whether the panel is required to make a single decision in which either the City, or the Association, would prevail for all three years – what

might be termed an "all or nothing" resolution. The City contends that the panel is required to make one "all or nothing" award and the Association contends that the panel is empowered to consider each year separately. The chairperson agrees with the Association's position. In pertinent part, the City's last offer of settlement states:

1. Retiree Health Insurance (Section 9.5). Modify/Increase Employer contributions as follows:

<i>July 1, 2016</i>	<i>\$4000 additional (\$196,000 paid on July 1, 2016)</i>
<i>July 1, 2017</i>	<i>\$200,000</i>
<i>July 1, 2018</i>	<i>\$200,000 + a one-time additional \$5000 contribution</i>

In pertinent part, the Association's last offer of settlement states:

The Employer shall make payment to the Association's retiree health fund as follows:

<i>July 1, 2016</i>	<i>\$212,000.00 (\$16,000 more than was paid on July 1, 2016)</i>
<i>July 1, 2017</i>	<i>\$231,000.00</i>
<i>July 1, 2018</i>	<i>\$250,000.00</i>

The City relies on MERC Rule R 423.507(c)(ii) that provides that once submitted a party may withdraw, but not otherwise modify, any economic issue submitted in its last offer of settlement except by stipulation, and Section 8 of Act 312 that requires that last offers of settlement be submitted before the beginning of the hearing. In its view in order for the panel to consider retiree health care on a year-by-year basis the last best offers should have been listed as three distinct issues, one for each year. The chairperson concludes, with the concurrence of the Association's panel member, that the City's contention is incorrect. Both last best offers delineate proposals on a year-by-year basis and the stylistic choice of placing them under one heading does not have the consequence of requiring the panel to rule on an "all-or-nothing" basis. The panel would also note that its interpretation is not novel. The chairperson has reviewed Act 312 awards issued in the past five years where multi-year proposals were at issue and every panel, except one, considered the last offers of settlement on a year-to-year basis. In the one award that made an "all-or-nothing" the chairperson noted that the parties stipulated to do it that way. Contrary to the conclusion reached by the City, neither last offer of settlement has been modified.

Turning to the merits, one of the City's principal arguments to reject the Association's proposals is that currently retirees (with one exception) do not contribute to the cost of health care. That circumstance has become the exception rather than the rule for most public and private employees. It is correct that the revised points schedule does contemplate full coverage without cost to some future retirees. An apple-to-apple comparison with the retiree health savings plan for UAW (2% City contribution) and non-union employees (3% City contribution) is not feasible because no one knows what health insurance will cost in the future and whether the accrued savings at retirement will or will not cover the entire cost. In the view of a majority of the panel, the dissimilarity between a VEBA plan and a retirement health savings plan undercuts the contention that increasing the contribution by the amount required in this award will trigger demands by other groups to substantially increase the contribution to those plans.

With regard to external comparables, except for Kentwood and Holland active employees and/or retirees contribute to the cost of retiree health care insurance. Beyond that it is difficult to generalize the relative worth of the plans, four of which have a dual-tiered system based on date of hire. A majority of the panel concludes that the possibility of receiving retiree health care at no cost is not a convincing reason to deny the Association's proposed increases in all three years because (as presently structured) an officer cannot obtain 100% paid coverage until attaining 95 points and that requires deferring retirement until at least age 60 and with between 30 and 35 years of service. Although the future Portage Police Department will undoubtedly look different than it does today, it is very noteworthy that there are only 2 active members who would meet the 95 points criterion.

The City has pointed out that the most recent actuarial report states that the Plan does not need greater funding in order to remain solvent. The Association has not contended that its proposals are justified by the need to keep the fund in the black. It says that its proposals are justified in order to make retiree health insurance, whether full or partial, available to officers at "a normal retirement age." As the President Dylhoff put it, "The only way to obtain a reasonable benefit where a member does not have to work until an advanced age is to increase the fund amount." A majority of the panel concludes that the Association's assessment is a valid -- indeed

compelling -- reason to increase funding beyond the amount proposed by the City but less than the amount urged by the Association. Failing to take into consideration the likely future ramifications of what we decide in 2018 would not be fulfilling the panel's statutory responsibilities well.

In the last five years, the Portage Police Department has hired 12 new Police Officers. By no means is there is anything magical about 25 years being the length of a "normal" career of a law enforcement officer, it is a reasonable indicator with the understanding that some retire earlier and later. Retirement eligibility in the comparable cities confirms that conclusion. There are currently 6 sworn PPOA members -- or about 14% -- who were hired more than 25 years ago. This likewise suggests that 25 years is in the ballpark. Currently 4 sworn members -- or about 9% -- are age 55 or older. **TABLE 4** shows the age of individuals hired in the last 5 years after 25 years of service, the accumulated points at age 55, and the amount of paid retiree health insurance that would be received based on the current formula. **TABLE 5** shows the same information after 30 years of service.

TABLE 4 – RETIREE HEALTH CARE FOR NEW HIRES AT 25 YEARS OF SERVICE

	<u>AGE AFTER 25 YEARS</u>	<u>POINTS ON SCHEDULE</u>	<u>RETIREE HEALTH INSURANCE</u>
1.	60	85	50%
2.	50	75	0%
3.	54	79	0%
4.	53	78	0%
5.	48	73	0%
6.	50	75	0%
7.	56	81	0%
8.	51	76	0%
9.	48	73	0%
10.	48	73	0%
11.	51	76	0%
12.	50	75	0%

TABLE 5 – RETIREE HEALTH CARE FOR NEW HIRES AT 30 YEARS OF SERVICE

	<u>AGE AFTER 25 YEARS</u>	<u>POINTS ON SCHEDULE</u>	<u>RETIREE HEALTH INSURANCE</u>
1.	65	95	100%
2.	55	85	55%
3.	59	89	70%
4.	58	88	65%
5.	55	84	0%
6.	55	85	0%
7.	61	91	80%
8.	56	86	55%
9.	54	84	0%
10.	52	82	0%
11.	56	86	0%
12.	50	75	55%

The majority of the panel on this issue does not wish to be misunderstood as implying something that should not be inferred. Undoubtedly there are many 60 year-old police officers that are more physically fit and stronger than many 25 year olds. Stereotypes about age have all the defects of other stereotypes and are to be avoided. The panel has not sought out empirical evidence on this topic and to its knowledge none exist. However, an Act 312 panel should not blink at reality or ignore its collective experience. Portage is a safe community where the vast majority of citizens are law abiding but it is surely the case that on occasion its police officers need to restrain assaultive and resisting persons, pursue fleeing youthful offenders on foot, and perform a multitude of physical activities that are core responsibilities of law enforcement officers. It is not stereotypic to conclude that age is not necessarily an irrelevancy in law enforcement. Nor should it be overlooked that over a long career police work can, at least for some officers, exact an emotional toll.

Unlike defined benefit plans, minimum age requirements are not typically contained in defined contribution pension plans. The majority of the panel is unaware of any agency – and would be surprised if they exist – that requires a law enforcement officer to attain the years of service shown in **TABLE 5** (at which 42% are still ineligible for any retiree health insurance).

Certainly the comparable communities do not. And that is the kind of "normal" and "traditional" information that Section 9(1)(i) requires to be taken into account.

Moreover, it is relevant that that this panel has not changed the ruling by the panel chaired by Arbitrator Gravelle that recently hired officers will receive substantially lesser retirement contribution than those hired before December 11, 2012. Particularly with regard to officers in that category, convincing justification to require them to work significantly longer than has historically been the case in the Portage Police Department in order to receive *any* retiree health care is lacking. The legislature concluded in Section 1 of Act 312 that it "is requisite to the high morale of [public safety] employees and the efficient operation of [police] departments." While there is no evidence of a morale problem (indeed the testimony of Chief Arnold points strongly in the other direction) the majority of the panel is concerned about the morale of newly hired officers as they mature in the careers. Admittedly some officers may choose to retire at a more traditional point in their careers and forego retiree health insurance. But the majority of the panel is unconvinced that forcing that choice would years from now constitute the best course to ensure the efficient operation of the Portage Police Department – an agency that by any objective assessment is the model of professionalism.

Taking into account the conditions of employment in comparable communities, the conditions of employment of other City employees, the interest and welfare of the public, and the morale of bargaining unit members, a majority of the panel concludes that increasing the City's contribution to the Portage Police Officers Association Retiree Health Plan is justified in light of the City's financial situation and other liabilities, whether on its balance sheet or not. Based on that finding the panel is obliged to consider whether the increases proposed by the City or the Association more closely correspond to the Section 9 criteria.

The City understandably criticizes the Association for not offering evidence to show precisely how granting its demand would change the point schedule. An actuarial report would be helpful. However, the majority of the panel concludes that the absence of a report is not fatal to the Association's case. Although the panel cannot determine the precise scope of the

improvement that increased funding will bring about, it is a reasonable conclusion that it will help to make retiree health care available to more officers at an earlier point in their careers.

Obviously a comparison to the IAFF's VEBA is relevant to this issue and both sides have relied on record evidence in that regard. As previously noted, the panel is handicapped in its evaluation because actuarial information about that plan is unavailable. The per capita contribution for PPOA members (without changes from this award) is \$3,564 and would increase after the Dispatch Authority becomes operational by \$994. In comparison, the annual contribution for the IAFF is \$186,000 for 32 members, or \$5,828.12 per capita. The City contends the comparison to the IAFF is inapt because a Police Officer with 20 years seniority earns \$3,800 more in salary than a Firefighter with equal seniority. In addition, the City relies on the testimony from Deputy City Manager Boulis that in 2004 and 2005 both the PPOA and the IAFF had increases to the City's VEBA contribution. Although the City's contribution to the IAFF's VEBA for those two years was \$30,000 greater than for the PPOA's VEBA, the wage increase for the IAFF was smaller than for the PPOA. He acknowledged, commendably in the chairperson's view, that, "I surmise that that was at least part of the rationale that they got such a large increase" because typically the City looks at the overall cost of increases for each bargaining unit.

For **2016**, the City proposes to increase the contribution from \$196,000 to \$200,000. The Association proposes to increase the contribution from \$196,000 to \$212,000. **The majority of the panel concludes that the Association's last offer of settlement of \$212,000 for the payment that was due on July 1, 2016 more closely corresponds to the applicable Section 9 criterion and makes that award.**

Micheal J. Falvo
Micheal J. Falvo, Chairperson

MARCH 30, 2018
Date

Robert A. Dubault, City Panelist
[] Concurs [] Dissents

Date

Brett M. Naumcheff, PPOA Panelist
[] Concurs [] Dissents

Date

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Robert A. Dubault, City Panelist
 Concurs Dissents

Date

Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

Date

03/30/18

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For **2016**, the City proposes to increase the contribution from \$196,000 to \$200,000. The Association proposes to increase the contribution from \$196,000 to \$212,000. **The majority of the panel concludes that the Association's last offer of settlement of \$212,000 for the payment that was due on July 1, 2016 more closely corresponds to the applicable Section 9 criterion and makes that award.**

Micheal J. Falvo, Chairperson

Date

RA Dubault

4/2/18

Robert A. Dubault, City Panelist

Date

[] Concurs [] Dissents

Brett M. Naumcheff, PPOA Panelist

Date

[] Concurs [] Dissents

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Micheal J. Falvo
 Micheal J. Falvo, Chairperson

MARCH 30, 2018
 Date

 Robert A. Dubault, City Panelist
 Concurs Dissents

 Date

 Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

 Date

For 2018, the City proposed no increase in funding over the previous year, except a one-time \$5,000 non-renewable contribution. The Association proposes to increase the contribution to be paid on July 1, 2017 by an additional \$19,000 for a total of \$250,000 due on July 1, 2018. During deliberations the City's panelist explained that its last offer of settlement in the third year was no increase above or reduction to the contribution level ordered by the panel for July 1, 2017. Consequently, in light of the panel's award for the first two years of the contract, the amount proposed by the City to be paid on July 1, 2018 is \$231,000. The panel unanimously concurs in that interpretation of the City's last offer of settlement. The justification offered by the Association for \$250,000 is that it corresponds to the per capita contribution to the IAFF. A majority of the panel is unconvinced that the comparison is apt. Among other reasons, the higher per capita contribution for IAFF members is at least partially attributable to an agreement to receive a

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 Micheal J. Falvo, Chairperson

 Date

 Robert A. Dubault, City Panelist
 Concurs Dissents

 Date

[Signature]

 Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

6/30/18

 Date

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4/2/18

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smaller wage increase than received by PPOA members. A number of arbitrators chairing Act 312 panels have been guided by the view previously expressed by Theodore J. St. Antoine in several awards. In his view, which the chairperson shares, 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. *See County of Saginaw & Michigan Fraternal Order of Police*, MERC Case No. L90 B-0787 (1992). In collective bargaining one side can seldom realistically expect to achieve all of its objectives in one round of bargaining. The panel's award for the first two years of the successor agreement is a significant step toward ameliorating the identified problem. **The majority of the panel concludes that City's last offer of settlement for the payment of \$231,000 that will be due on July 1, 2018 more closely corresponds to the applicable Section 9 criterion and makes that award.**

Michael J. Falvo
 Micheal J. Falvo, Chairperson

MARCH 30, 2018
 Date

 Robert A. Dubault, City Panelist
 Concurs Dissents

 Date

 Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

 Date

Issue 2: Payment to Defined Contribution Pension Plan

Article XXIII, Section 23.2, of the expired collective bargaining agreement in pertinent part states:

Pension. It is agreed that a money purchase defined contribution pension plan shall be implemented in lieu of the defined benefit 55/25 plan effective July 1, 1985, as set forth below. This plan shall be effective for all full-time bargaining unit members.

(a) The Association has established a Money Purchase Plan (hereinafter referred to as "MPP") for its members.

(b) Future contributions to the MPP shall be paid by the City to the designated fund administrator on behalf of each bargaining unit member in accordance with the following:

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Brett M. Naumcheff

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03/30/18

Date

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RA Dubault

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[✓]Concurs []Dissents

4/2/18

Date

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(a) The Association has established a Money Purchase Plan (hereinafter referred to as "MPP") for its members.

(b) Future contributions to the MPP shall be paid by the City to the designated fund administrator on behalf of each bargaining unit member in accordance with the following:

(1) For full-time bargaining unit employees hired prior to December 11, 2012 the Employer shall contribute eighteen (18%) percent of the employee's base salary, specified in Appendix A, each year to this money purchase pension plan. For full-time bargaining unit employees hired on or after December 11, 2012 the Employer shall contribute ten (10%) of the employee's base salary, specified in Appendix A, each year to the money purchase pension plan.

The Association's last offer of settlement is to change the amount contributed by the City as follow:

July 1, 2017	1% increase to 11% retroactive to July 1, 2017
July 1, 2018	1% increase to 12%.

The City's last offer of settlement is "status quo."

The panel is not writing on a clean slate. An Act 312 panel chaired by Thomas L. Gravelle awarded this language in 2012. In doing so that panel rejected the Association's last offer of settlement to start future full-time employees at a 10% contribution level and to increase that amount by 2% each year until the employee reached a 18% contribution level.

The prior award explained that based on recent legislation a 10% defined contribution "appears to have support in state public policy." The Association points out that the law has changed and that there is no longer any 10% new hire requirement. The Association also claims that the City has saved an average of \$43,000 per year since that decision and that at top pay the savings would be \$56,132 per year. "The PPOA proposal is not for the City to spend more money but to share \$5,600 of its outdated legislative enacted savings with their new employees." The City describes the Union's argument is disingenuous and misleading because newly hired employees were never at a higher level that was reduced and they were hired knowing that the City's contribution was 10%.

It is not inappropriate for either the Union or City to submit a recently decided issue in a subsequent Act 312 proceeding. In deciding the disposition of individual issues an arbitration panel considers the overall effect of the award and rejection of an issue may not necessarily be for lack of merit but because only so much can be achieved in one round of negotiations or one interest arbitration. However, when a subsequent panel is asked to change what another panel recently awarded, the moving party's justifications should be carefully considered.

The majority of the panel concludes that the prior panel carefully evaluated the Association's contentions and that the record in this proceeding does not support changing the 10% contribution level. New non-union employees and new employees in each of the three other bargaining units receive a 10% contribution. It would be unrealistic for the panel to surmise that increasing that contribution level would not result in demands by those employees to receive what this panel awards. The Association has not made a persuasive showing that the policy of treating all City employees equally should be changed.

No one would contend that affording an 18% pension contribution to some bargaining unit members and 10% to others is a desirable situation. Clearly it is not. Undoubtedly the panel chaired by Thomas Gravelle did not fail to recognize that fact. Portage is not alone. Five of the seven comparable cities (Battle Creek, Bay City, East Lansing, Kentwood, and Wyoming) have two-tiered retirement programs. Three of the seven comparable cities (East Lansing, Kentwood, and Wyoming) have defined contribution plans for new employees. The Employer contribution is 10½ percent in East Lansing, 9% in Kentwood, and 8% in Wyoming. Although East Lansing's contribution is slightly higher, unlike Portage, its employees are not eligible for social security and East Lansing does not pay the employer contribution of 6.2%.

A majority of the panel bases its conclusion primarily on the following Section 9 factors: 1(a)(i) – (iii); 1(d)(i-ii); 1(e); 1(g); and 1(i). **The majority of the panel concludes that City's last offer of settlement "status quo" for the defined contribution payment for employees hired after December 11, 2012 more closely corresponds to the applicable Section 9 criterion and makes that award.**

Micheal J. Falvo
Micheal J. Falvo, Chairperson

MARCH 30, 2018
Date

Robert A. Dubault, City Panelist
 Concurs Dissents

Date

Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

Date

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Micheal J. Falvo, Chairperson

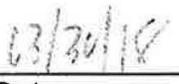
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Date

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Micheal J. Falvo, Chairperson

Date

RA Dubault

Robert A. Dubault, City Panelist
 Concur Dissents

4/2/18

Date

Brett M. Naumcheff, PPOA Panelist
 Concur Dissents

Date

Issues 3(a) & 3(b): Retroactivity/Effective Date of Section 20.6 Bonuses.

Because these issues are interrelated the panel will consolidate their consideration. In November 2016 the parties agreed to include in the successor collective bargaining agreement two new provisions: Section 20.6(a) and 20.6(b). Section 20.6(a) provides that Lab Officers and Accident Reconstructionists will receive an annual bonus of \$400, payable for the previous 12 months – prorated on a monthly basis (full or partial), if applicable. Section 20.6(b) provides that Field Training Officers (FTOs) and Communications Training Officers (CTOs) will receive one-hour pay (paid as overtime) for each 8 or 12 hour shift when assigned a new police officer or a new radio officer. The effective dates for these provisions were not determined. The Association seeks retroactivity to July 1, 2016. The City proposes to make the initial \$400 payment for the Lab Officers and Accident Reconstructionists on July 1, 2018. The City proposes to begin the training bonuses to FTOs and CTOs beginning the first full payroll period following the date of the panel's award.

As previously noted Public Act 322 permits the panel to award full retroactivity but leaves to its discretion whether to do so. Deputy City Manager Boulis testified that the City agreed to these provisions early on in the negotiations with the expectation that the parties would finalize the contract in a reasonable period. That did not happen and in the City's view the Association is responsible for a significant period of the delay – about 8 months – by not coming to the bargaining table. The City believes that retroactively paying the bonuses to July 1, 2016 would absolve the Association of any responsibility for its dilatory approach to the negotiation process. Deputy City Manager Boulis also testified that the bonuses were not budgeted during fiscal year 2016.

At the chairperson's urging, the co-panelists have agreed that the panel is authorized to issue an award varying from either last offers of settlement if a majority of the panel determines that it is necessary to do so in order to reach an equitable resolution of this issue.

The chairperson has reviewed a number of email communications from the City to the Association concerning what the City believed were delays. The chairperson cannot on the basis of the record substantiate the City's claim and does not believe attempting to do so would be useful. Act 312 is best understood as a continuation of the negotiation process and the parties can now move forward with a successor agreement.

The majority of the panel concludes that the bonus should not be retroactive to July 1, 2016 for the Lab Officers and Accident Reconstructionists because the tentative agreement was not reached until November 2016. If the collective bargaining agreement had been signed then it would be likely that the City would not have agreed to compensate these employees for performing services prior to the tentative agreement. The City could have, but did not, propose no retroactivity under Section 20.6(a). The majority of the panel believes that payment of \$400 on July 1, 2018 to cover services rendered in the preceding 12 months is a reasonable and equitable middle ground.

The majority of the panel does not agree that the City's proposal to make the bonuses for FTOs and CTOs is under the circumstances justified. The panel will not reiterate Director Arnold's testimony concerning FTOs except to say that it agrees with his assessment that those officers have a critical role in assuring that probationary officers meet the high standards of the Portage Police Department and to shape the type of officers they will become. In his words, FTOs are the "our eyes and ears with respect to new employees, how they are doing, are they going to fit in, are they catching on, so yeah, they're very important." Similarly, CTOs are responsible for ensuring new employees are competent to appropriately handle a difficult job under stressful conditions where incompetence can have tragic consequences.

The Association has presented a compelling case to make section 20.6(b) retroactive. However, the chairperson indicated in panel deliberations that the Association did not convince him that retroactive pay should precede the date of the tentative agreement and if retroactivity to July 1, 2016 were the only available option the chairperson might reluctantly vote to grant the City's last offer of settlement. A majority of the panel bases its conclusions primarily on the following Section 9 factors: 1(a)(i) – (iii); 1(d)(i-ii); 1(e); 1(g); and 1(i).

With regard to retroactive bonus payments pursuant to Section 26(a), the majority of the panel concludes that City's last offer of settlement more closely corresponds to the applicable Section 9 criterion and makes that award. The initial \$400 bonus for affected employees will be paid on July 1, 2018 and cover services rendered in the preceding 12 months.

Michael J. Falvo
Micheal J. Falvo, Chairperson

MARCH 30, 2018
Date

Robert A. Dubault, City Panelist
 Concurs Dissents

Date

Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

Date

With regard to bonus payments pursuant to Section 26(b), the majority of the panel directs that the described bonus is to be paid retroactive to November 1, 2016. The panel has issued this award pursuant to the stipulation of both parties that it is authorized to render an award that more closely corresponds to the applicable Section 9 criterion than the last offer of settlement submitted by either party.

Michael J. Falvo
Micheal J. Falvo, Chairperson

MARCH 30, 2018
Date

Robert A. Dubault, City Panelist
 Concurs Dissents

Date

Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

Date

The chairperson would like to express my appreciation to all of the participants. The quality of the presentations and the thoroughness of the post-hearing briefs were extraordinary. The panel members aided me immeasurably by the cogency of their input.

With regard to retroactive bonus payments pursuant to Section 26(a), the majority of the panel concludes that City's last offer of settlement more closely corresponds to the applicable Section 9 criterion and makes that award. The initial \$400 bonus for affected employees will be paid on July 1, 2018 and cover services rendered in the preceding 12 months.

Micheal J. Falvo, Chairperson

Date

RA Dubault
Robert A. Dubault, City Panelist
 Concurs Dissents

4/2/18
Date

Brett M. Naumcheff, PPOA Panelist
 Concurs Dissents

Date

With regard to bonus payments pursuant to Section 26(b), the majority of the panel directs that the described bonus is to be paid retroactive to November 1, 2016. The panel has issued this award pursuant to the stipulation of both parties that it is authorized to render an award that more closely corresponds to the applicable Section 9 criterion than the last offer of settlement submitted by either party.

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03/30/18

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6. SUMMARY OF AWARD

ISSUE 1 – RETIREE HEALTH CARE CONTRIBUTION. The panel awards the Association's last offer of settlement for the City's contribution that was due on July 1, 2016. The panel awards the Association's last offer of settlement for the City's contribution that was due on July 1, 2017. The panel awards the City's last offer of settlement for the City's contribution that is due on July 1, 2018.

ISSUE 2 – DEFERRED COMPENSATION PENSION. The panel awards the City's last offer of settlement for the required payment to the defined contribution pension program for employees hired after December 12, 2012.

ISSUES 3(a) and 3(b) – RETROACTIVITY OF SECTION 26. The panel directs that employees affected by Section 26(a) receive a bonus of \$400 on July 1, 2018 for services rendered in the preceding year. The panel directs that employees affected by Section 26(b) receive the described payments retroactively to November 1, 2016.