

MICHIGAN DEPARTMENT OF LICENSING AND REGULATION
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

CITY OF ALLEN PARK:

MERC CASE NO. D17 E-0560

Employer

and

ALLEN PARK FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1410

Union

COMPULSORY ARBITRATION

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

Arbitration Panel

Chair: Micheal J. Falvo

Employer Delegate: Steven H. Schwartz

Union Delegate: Christopher P. Legghio

Advocates

Employer Advocate: Steven H. Schwartz

Union Advocate: Christopher P. Legghio



PETITION FILED: *May 30, 2018*

PANEL CHAIR APPOINTED: *July 27, 2018*

SCHEDULING CONFERENCE HELD: *August 6 and 28, 2018*

HEARING DATES: *October 17 and 24, 2018; November 5, 9, 14 and 29, 2018; December 14 and 21, 2018, and January 9, 2019*

REMANDED FOR FURTHER BARGAINING (21 DAYS): *December 22, 2019*

POST-HEARING BRIEFS RECEIVED AND RECORD CLOSED: *February 23, 2019*

UNION'S MOTION TO REOPEN RECORD FILED: *March 12, 2019*

ORDER TO EXTEND AWARD DUE DATE BY 60 DAYS: *March 12, 2019*

SUPPLEMENTAL BRIEFS ON PANEL'S JURISDICTION FILED: *March 12 & 27, 2019*

RULING ON CHALLENGE TO PANEL'S JURISDICTION: *April 1, 2019*

AWARD ISSUED: *May 20, 2109*

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WITNESS LIST

City Witnesses

1. William Brickley, Plante Moran
2. Robert Cady, Finance Director – City of Allen Park
3. Mark Kibby, City Administrator – City of Allen Park
4. Jeffrey Tebeau, Gabriel Roeder
5. Amanda Wertz, Deputy Finance Director
6. Douglas LaFond, Fire Chief – City of Allen Park

Union Witnesses

1. Marlene Beach, UHY
2. William Bryson, Chief, Miami Fire Department (retired)
3. Grant Peace, Union President
4. Michael Stasick, Lieutenant, Allen Park Fire Department

1. INTRODUCTION AND BACKGROUND

Allen Park is a seven square mile community in Wayne County. The 2010 population was 28,210. The per capita income in the period 2012-2016 is \$32,441 and the median household income \$65,848. The City is governed by a City Council consisting of the Mayor and six Councilpersons. The City Administrator is charged with implementing City Council policies and, among other duties, the daily management of municipal operations.

Local 1410 is the collective bargaining representative for 24 members of the Fire Department up to and including the rank of Captain. The Fire Chief and Deputy Chief are not included in the bargaining unit. Fire Fighters are state licensed EMTs with Advance Cardiovascular Life Support (ACLS) certification and transport medical patients to area hospitals. In 2017, the City collected \$697,931 in medical transportation fees. The collective bargaining agreement expired on June 30, 2016.

The Allen Park Police Officers Association (APPOA) represents 29 Police Officers. The Allen Park Police Lieutenants & Sergeants Association (APPLSA) represents 11 Lieutenants and Sergeants. The Technical, Professional and Officeworkers Association of Michigan (TPOAM) represents unionized civilian employees. Each of these agreements expire on June 30, 2019.

On September 7, 2012, Governor Rick Snyder notified the City that a local government financial emergency existed and that an Emergency Manager would be appointed pursuant to the Local Government and School District Financial Accountability Act. Among other reasons for his decision, the Governor noted the City's bond rating fell

to a “junk” category, general fund expenditures exceeded budgeted amounts, vendors were not being paid, and mandatory payments to the City’s pension fund were missed. The Governor appointed Joyce Parker as Emergency Manager on October 28, 2012. The statute empowered her to circumvent charter requirements, reduce staffing levels, and unilaterally change or terminate contracts, including collective bargaining agreements.

The Emergency Manager implemented substantial cost-cutting changes. The changes included a ten percent wage reduction, increases in employee’s share of health insurance costs, increased pension contributions, reductions in sick, holiday and vacation pay, and reductions in the pension multiplier and accrual formula for pension benefits. Local 1410 agreed to these changes and they were incorporated in the 2013-2016 collective bargaining agreement. The APPOA did not and the reductions were imposed. In addition, retiree benefits were reduced. These changes resulted in \$54 million in savings.

On September 24, 2014, the Emergency Manager notified the Governor that she wished to relinquish her position because the City’s financial emergency had been sufficiently addressed and rectified. She concluded that the City’s structural and cumulative deficits were eliminated. She recommended the appointment of a Receivership Transition Advisory Board (RTAB) to assist the City in the transition back to local control and the Governor followed that recommendation. On January 27, 2017, the State Treasurer, on behalf of the Governor, notified the City that because it had made “significant progress” and corrected financial conditions in a “sustainable fashion,” the receivership status was terminated.

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.

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

The parties strongly disagree whether this is an "ability to pay" case and how the panel should interpret and apply that phrase. The Union asserts that this is not an "ability to pay" case because the City does not claim it is presently unable to cover expenses that would result from granting what it characterizes to be modest demands. It also insists that the record evidence unmistakably demonstrates that the City is now, and will continue to be in the future, in a financially sustainable position as the result of steps previously taken by the Emergency Manager, including immense sacrifices already made by bargaining unit members. According to the Union, the panel is being asked to defer to the City's judgment about controlling costs and how it uses its workforce. According to the Union, "the City's judgment is underpinned by an unsupported, free-floating economic anxiety about a catastrophic future (read: a post CBA period) – a future where long-standing millages fail, government revenue sharing collapses, investment returns shrink, and entrenched corporate residents (e.g. Ford) inexplicably leave the City."

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

On the other hand, the City emphasizes that the statute's "ability to pay" standard calls for a measured analysis of whether, given other present and future financial obligations, it is prudent for the panel to grant what the Union seeks. The City urges the panel to recognize, as other panels have recognized, that "ability to pay" means much more than the literal availability of resources to fund the Union's last best offers. In its view, the panel must consider whether decisions made today will promote fiscal stability over the long-term. The panel must take into consideration not only what is imminent but also the City's ongoing competing needs to other employees and taxpayers. The City argues that because it has weathered the worse of the financial downturn is not a good reason to ignore significant challenges – challenges that other cities do not need to worry about – that could again put the City in the dire situation from which it has finally emerged.

There is no doubt that the City's admonitions that the panel must exercise its discretion cautiously are on point. Although there are a few exceptions, most Michigan cities have never been placed in receivership by the state. That reality means that the decisions that both sides urge the panel to make must be scrupulously evaluated to assure that Allen Park's commendable progress in getting its financial house in order is not sidetracked. Each issue has been decided with an eye on the implications on the City's future ability to maintain its financial health.

One of those uncommon fiscal burdens concerns what the parties described as the "Southfield [Road] Movie Studio Project." In an optimistic effort to combat unemployment and a declining tax base, in 2009 the City embarked on an ambitious and costly business venture to build a state-of-the-art movie studio. Unfortunately, the plan flopped leaving the City on the hook for the \$28.5 million general obligation bonds issued with the City's full faith and credit. The Emergency Manager sold the property purchased for the movie studio for \$12 million on a land contract. The 2009 movie

studio bonds were issued at over 7% interest. She received authorization to call back those bonds and to refinance them through the Michigan Finance Authority with a rate under 5%. However, only 62% of the bondholders agreed to sell their bonds leaving \$9 million in debt (not including interest) on the original bonds. The refinancing of the remainder of the original bonds created what the parties refer to as the 2015 bonds. The City's debt service on the original bonds is \$17.9 million and the 2015 bonds is \$30.9 million (including interest). In 2018 the City paid \$1.75 million in debt service on the bonds. The City will continue to be responsible for annual payments in that amount until 2040 when the 2009 bonds are paid off and the annual amount due will drop to around \$1.4 million until 2045 when the refinanced 2015 bonds will be paid off.

When the Emergency Manager assumed her duties the City Hall building was dilapidated and beyond rehabilitation. She sold the property and temporarily relocated the offices to leased facilities. The combined cost of demolition of the old City Hall and construction of the new facility was approximately \$8 million. The City spent \$2.2 million still available from unspent movie studio bonds and \$2.1 million from proceeds of the sale of the old City Hall. In 2018 the City transferred \$3.5 million from the general fund to help pay for the new building.

A significant factor that triggered the appointment of an Emergency Manager was the City's failure to make required pension payments for two years. In 2013 the Emergency Manager obtained a \$2.6 million loan from the State of Michigan to pay overdue debts. The remaining balance is \$2,018,000 and must be repaid by 2025. This loan is secured by the City's annual state-shared revenue. Consequently, the City may only use the surplus over the required loan repayment for general operations. The infusion of the loan proceeds made the general fund balance appear healthier, but the picture was misleading because the improvement was with borrowed money. The total debt from the emergency loan and the movie studio bonds is \$54.4 million.

The Emergency Manager reduced the level of health insurance for retirees. Two lawsuits, both of which are still pending, were filed seeking restoration of the prior level of health insurance. The City has spent approximately \$400,000 in legal fees defending the lawsuits. The final outcome of the litigation is uncertain.

The City has two Tax Increment Financing Districts (TIFs): Brownfield Redevelopment Authority and the Downtown Development Authority. These were created to entice developers to perform costly environmental remediation and expensive improvements to the infrastructure. Both TIFs have succeeded in attracting substantial new business investment. However, any growth in real estate property tax revenue in these areas is captured by the TIFs, not the general fund. As an example, if the new Ford wind testing facility that is under construction had previously been taxed at \$10,000 and collects \$100,000 after completion, \$90,000 will go to the Downtown Development Authority and \$10,000 will go to the general fund. Together the two TIFs have \$17.2 million in debt service, underwritten by the City, payable through 2032, in addition to outstanding contractual reimbursements of \$7.3 million. Each authority has decision-making power independent of the City. The TIFs must stay in existence until the debt service is paid. These types of TIFs do not ordinarily dissolve and tax revenue after 2032 could continue to be dedicated to infrastructure improvements rather than being available to the City's general fund. The City receives \$250,000 annually from the Brownfield Development Authority for public safety services.

In addition to its unique financial obligations, Allen Park faces the customary limitations on a municipality's ability to raise revenue. Real estate property taxes are the City's main revenue source and, like the rest of the state, the taxable property values of homes in Allen Park plummeted with the collapse of the housing market in 2008. The state equalized value (SEV) of a residence is set at 50% of the market value at the time of purchase. The taxable value of homes in 2007 was \$1.1 billion. It dropped to \$750

million in 2012 and increased to \$771 million in 2018. The shortfall between 2007 and 2018 is \$311 million or 29 percent less taxable value. Like other cities, increases in home values in an improving economy will not result in a commensurate increase in property tax revenue. The Headlee Amendment has been in place since 1978 and Proposition A has been in place since 1994. The Headlee Amendment and Proposal A limit annual increases to property taxes by the rate of inflation, or 5%, whichever is less. The average rate of inflation since 1994 is 2.3%. This means that because taxable value can only increase by five percent or the rate of inflation, it will take fourteen years to recover to the 2007-2008 levels. Property tax revenue declined from \$12.7 million in 2015 to \$12.59 million in 2018. As of June 30, 2019, property taxes accounted for 57% of the total general fund revenue.

Voters in 1956 authorized the City to levy 12.5 mills to fund all city operations, including police and fire. However, because of Headlee rollbacks the collectible millage rate has been reduced to 10.4957 mills. Restoration of the full charter authorized levy requires an override vote by the citizens. The two mill loss between what the City Charter authorizes and what can be collected is \$1.5 million annually.

Michigan eliminated the personal property tax on businesses previously levied by local governments in 2014. That tax was based on the value of equipment used in the business. To offset the loss in revenue the legislature created the Local Community Stabilization Authority (LCSA). Some communities received funds from the authority that exceeded the lost revenue. In 2017, Allen Park received \$400,000 over and above what the City lost, and in 2018 the amount was \$200,000. According to the City's auditor the LCSA excess distribution will be decreased in upcoming fiscal years.

The second component of state funding is state shared revenue derived from sales tax. The Michigan Constitution mandates that local units of government, based on population, receive a portion of state sales tax. The legislature decides on an annual

basis how to distribute the remaining funds. The City most recently received \$2.3 million from the constitutional portion and \$400,000 from the statutory portion. The statutory allotment is not guaranteed. In the past the legislature has diverted sales tax revenues to other priorities and is likely to do so again. As previously discussed, the City can only use funds that remain after the required payment for the 2013 loan from the state is satisfied. The portion of the budget from state shared revenue from is 16%. Combined, revenue from property taxes and state sources account for 73% of general fund revenue.

Overall, general fund revenues declined by \$1.3 million between 2007 to 2018, from \$23.7 million to \$22.4 million. Notably, this reduction occurred despite the passage of two special millage increases earmarked for police and fire operations in 2012 and 2013. The 6.75 dedicated millage generates approximately \$4.7 million per year and expires in 2023 unless residents approve its extension. Because the special millage funds 51% of public safety operations, City Administrator Kibby and Finance Director Cady said that unless voters renew it in five years the consequences would be devastating.

The City's third largest source of revenue is user fees and interest income. Interest is no longer a significant factor because of low interest rates and the short period the City invests money. Revenues from licenses and user fees declined by over \$83,000 since 2015. Michigan law prohibits cities from charging user fees more than the cost of providing the service for which the fee is charged. Revenue from license and permits constitute 12% of general fund revenue and charges for services constitutes 1.5% of general fund revenue.

Like hundreds of other Michigan cities, townships, and villages, Allen Park provides retirees with medical benefits. Like the others, unfunded OPEB liabilities – other post-employment benefits – constitute a serious challenge. Changes in Michigan

law require that OPEB liabilities be calculated and disclosed. The City eliminated retiree health insurance for employees hired after July 1, 2013. These employees have health savings accounts that will not result in future unfunded liability for retiree health care. The City is responsible for retiree health insurance for 333 retirees and 115 active employees who were hired prior to July 1, 2013. Health insurance for current retirees is paid as bills become due from general fund revenue. As of the end of the 2016-2017 fiscal year, the unfunded OPEB liability was \$88.3 million. The City has been unable to make the actuarially recommended annual prefunding contributions of \$3.4 million but has for four consecutive years put \$500,000 toward that obligation. Under Public Act 202 of 2017, the City must develop a corrective action plan to address the shortfall over a 30-year payback period. The Union emphasized that if benefit levels are lowered or deductibles raised for active employees, those changes are automatically applied to retirees and could result in lower future costs.

Police Officers and Fire Fighters are in a defined benefit pension plan. This means that the City has promised to pay retirees a predetermined benefit for life upon retirement. Unlike a defined contribution plan, the risk that investments underperform is on the City, not individual employees. Other City employees who were hired after 2004 are in a defined contribution plan. Funding ratio is the ratio of valuation assets to accrued liabilities from vested benefits. The City's pension plan is currently 83.8% funded. The plan was overfunded in 2002 and was funded at 75.6% in 2013. The current shortfall below full funding is \$21.4 million. Because other city employees have been in a defined contribution plan since 2004, almost the entire debt is correlated to police officers and firefighters. According to the City's actuary, annual contributions by the City and covered employees will result in the pension fund being fully funded in 21 years.

The City's financial crisis curtailed significant repairs, maintenance, and capital expenditures. The City has substantial revenues from the Water and Sewer funds, but those funds cannot be used for general operations or to pay debt unrelated to the water and sewer systems. Voters approved a millage dedicated to road improvements that generates \$1.4 million annually and expires in 2024. In 2018 the City transferred approximately \$750,000 from the general fund toward road repairs.

A city's general fund is its chief operating fund. In some ways it is comparable to an individual's checking account. The general fund balance as a percentage of expenditures is a chief indicator of a city's financial health. The fund balance on June 30, 2018 was 23.9%. The Government Finance Officers Association recommends a fund balance of 16% and the City's expert said the industry standard was 20%. The general fund was reduced by paying \$3 million for the new City Hall, \$1.7 million for debt service, and \$750,000 to fund local road projects. Without those expenditures the fund balance would have been 31% of expenditures. The recommended 20% fund balance would pay for 87 days of operations. The general fund must have working capital to pay bills on time because revenue becomes available at different times throughout the year. Prudent financial practice requires cities to set aside money in the capital fund for future capital expenditures, such as purchasing a fire truck for \$1 million.

The Fire Department received a SAFER (Staff for Adequate Fire and Emergency Response) grant for \$2.5 million that expired in 2018. The City also received "distressed city" grants in 2017 for \$277,662 and in 2018 for \$319,321. The State recently reduced funding for that program by 50% and it is uncertain whether future grants will be available. The City has received federal community development block grants, but the funds must be spent on the project approved by the granting agency.

In 2017 the City switched to a self-funded healthcare plan that resulted in an annual savings of \$500,000. The City transferred the savings to the Retiree Health Care

Trust Fund. Negotiated changes concerning health insurance for active employees – such as increased co-pays and deductibles – also apply to retirees. The self-funded plan has stop loss coverage limiting the City's annual liability to \$75,000 per employee.

Public safety constitutes 47% of the City's general fund budget. Of that amount, 61% (\$5.6 million) of the expenditures are in the police department and 39% (\$3.6 million) in the fire department. The largest part of the fire department budget is salaries (58%), followed by pension contributions (19%), and fringe benefits (15%). The millage approved covers 51% of the total police and fire budget.

The panel heard extensive testimony from two well-credentialed, experienced certified public accountants. William Brickey is an audit partner at Plante Moran and oversees the preparation of the annual audit that is submitted to the state. He stated that the City's audit report contains an unmodified opinion. This means that the report has his firm's highest level of assurance that it is accurate and contains no material misrepresentations. An unmodified opinion is sometimes issued with an ongoing concern letter that indicates concerns about the ability of the enterprise to continue in its present condition. Plante Moran has not issued an ongoing concern letter or otherwise informed the public or regulators that the City is in a deficit position because the audit report considers the short term. Mr. Brickey agreed that the most recent financial statement indicates that the City's financial position is improving and sustainable as of June 30, 2017. However, when considered in the long term, in his view the City has a long-term deficit position considering its future bond indebtedness and pension and retiree healthcare responsibilities.

Marlene Beach is a certified public accountant employed by UHY, an organization that provides accounting and audit services to clients, including municipalities. Based on her review of financial documents, Ms. Beach testified that she agrees with the finding by the state treasurer that the city's improved financial situation is

sustainable. She stated that a general fund balance of 16.67% is recommended by the Government Financial Officers Association. She noted that approximately \$6 million was transferred out of the general fund for the new city hall, road improvements, and debt service and that the balance would have been considerably higher than 23.9% without those transfers. She agreed that it is prudent for the City to forecast future capital expenditures and to set aside funds. She noted that the City has projected in its five year financial plan that revenues will exceed expenditures in each year. The City has estimated an increase in state shared revenue from \$2.681 million in 2018-2019 to \$2.873 million in 2022-2023. She observed that the City's bond rating has improved making the price of borrowing money cheaper. The City projected a 4% increase in property values in 2019 but because of the Headlee rollback the taxes received will be reduced. Her assessment is that the city "is in stable financial position" and that maintaining that stability does not require that the panel impose caps on Fire Fighters' pensions.

Ms. Beach testified that the City estimates its pension contribution to increase 1% per year over the next five years if the panel does not grant the demand to cap fire department pensions. She testified that by raising the age for retirement eligibility and making changes in calculation formulas the Emergency Manager lowered the City's pension funding costs. She agreed that future pension funding levels are unknown because anticipated return on investments may be less than is actuarially predicted.

Ms. Beach listened to testimony from Mr. Brickey, City Administrator Kibby, Finance Director Cady, and Deputy Finance Director Wertz. She testified that she concurred with their assessment – as well as the assessment of the state treasurer – that the City's current financial conditions are sustainable. She agreed with the City's projection that revenues will exceed expenditures in the next five years are realistic and that the City's projections assume that the requested pension caps will not occur. She

concurred with the testimony that Allen Park does not have a structural deficit. She also agreed with City witnesses who testified that they don't know what the future holds but explained that no one is exempted from that limitation.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties have stipulated that the collective bargaining agreement will cover the period July 1, 2016 to June 30, 2022. 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 the tentative agreements and uncontested provisions are to be carried forward in the successor collective bargaining agreement.

The parties have stipulated to the following wage increases.

July 1, 2016: 2.5%

July 1, 2017: 2.5%

July 1, 2018: 2.5%

July 1, 2019: 2.5%

July 1, 2020: 2.0%

July 1, 2021: 2.0%

The parties have also resolved the following issues listed in the Act 312 petition.

1. Health insurance
2. Short term/long term disability
3. Step up pay
4. Grievance procedure
5. Turnout gear
6. Emergency Manager
7. Drug testing
8. Sick leave (See stipulation in Joint Exhibit 7)

The chairperson issued the following orders.

On September 30, 2018, the chairperson denied the City's Motion for Summary Disposition on the minimum staffing issue.

On December 22, 2018, the chairperson remanded the case to the parties to engage in further bargaining.

On April 1, 2019, the chairperson granted the Union's Motion to Reopen the Record to respond to the contention raised in the City's post-hearing brief that the panel lacked jurisdiction to grant the Union's pension demand.

On the same date the chairperson issued a ruling that the panel's jurisdiction to rule upon the Union's pension demand is not impaired by the Public Employee Retirement System Act (PERSIA) [MCL 38.1140(h)(5)].

4. COMPARABLES

By stipulation, the comparable cities considered by the panel are:

1. Eastpointe
2. Ferndale
3. Lincoln Park
4. Redford Township
5. Southgate
6. Trenton
7. Wyandotte

5. ISSUES BEFORE THE PANEL

Issue 1: Pensions

There are currently three "tiers" of pension benefits for bargaining unit members.

Tier 1 employees: Hired before July 1, 2008

Pension multiplier: 2.9% -- date of hire to 6/30/13;
2.5% -- 7/1/13 to retirement
75% maximum
FAC -- Best 3 of last 10 consecutive
Roll in to FAC-up to 80 hours unused vacation
time & 336 hours unused sick time based on
formula in Article 9, Section 17(K)
Overtime included in FAC
Age 52
7% employee contribution
10 year vesting
Employees are eligible for annuity withdrawal
No dollar cap on maximum pension amount

Tier 2 employees: Hired between July 1, 2008 and December 31, 2012

Pension Multiplier: 2.5%
75% maximum
FAC -- Best of 3 of last 10 consecutive
Roll in to FAC-up to 80 hours unused
Vacation time & 336 hours unused sick time
based on formula in Article 9, Section 17(K)
Overtime not included in FAC

Age 52
7% employee contribution
10 year vesting
Employees are eligible for annuity withdrawal
No dollar caps on maximum pension amount

Tier 3 employees: Hired after December 31, 2012

Pension Multiplier: 2.0%
FAC – Best 5 of 10 of last consecutive
Base salary only
Age 55 and 25 years of service
7% employee contribution
Employees are not eligible for annuity withdrawal
10 year vesting
No dollar cap on maximum pension amount

The City proposes one change. The City proposes that an employee's annual pension not exceed \$70,000 for Fire Fighter and Engineer and \$80,000 for Sergeant, Lieutenant, and Captain. The City's proposal excludes the three most senior employees, Joseph Hughes, Dean Love, and Michael Stasick, who would be grandfathered as stipulated by the parties. Further, no hard dollar pension cap will apply to any other employee who uses any years of service prior to the issuance of this Act 312 arbitration award in the calculation of final average compensation.

The Union's pension proposal maintains the status quo – *i.e.*, the terms of the 2013-2016 Emergency Manager negotiated collective bargaining agreement for 14 Tier 1, vested employees. That is, no pension caps. For current Tiers 2 and 3 employees, the Union pension proposal accepts the City's pension cap with one modification. That is, the Union counter-proposes \$80,000 caps for Fire Fighters and Engineers and \$90,000 for employees in Tier 2 (3 Fire Fighters) and Tier 3 (7 Fire Fighters). For current Tier 3, the Union proposes to raise the current multiplier from 2.0 to 2.5. The following is a summary if the Union prevails.

Tier 1 employees: Hired before July 1, 2008

Pension multiplier: 2.9% -- date of hire to 6/30/13; 2.5% from 7/1/13 to retirement
75% maximum of FAC
FAC – Best consecutive 3 of last 10 years
Roll in to FAC-up to 80 hours unused vacation time & 336 hours unused sick time based on formula in Article 9, Section 17(K)

Overtime included in FAC
Age 52
7% employee contribution
10 year vesting
Employees are eligible for annuity withdrawal at retirement
No dollar cap on maximum pension amount

Tier 2 employees: Hired between July 1, 2008 and December 31, 2012
Pension Multiplier: 2.5%
75% maximum
FAC – Best consecutive 3 of last 10 years
Roll in to FAC-up to 80 hours unused vacation time & 336 hours unused sick time
Overtime not included in FAC
Age 52 and 25 years of service
7% employee contribution
Employees are eligible for annuity withdrawal at retirement
Maximum pension limited to \$80,000 for Fire Fighter and Engineer, and \$90,000 for Sergeant, Lieutenant, and Captain.

Tier 3 employees: Hired after December 31, 2012 but before January 1, 2019
Pension Multiplier: 2.5%
FAC – Best consecutive 5 of last 10 years
FAC includes base salary only
Age 55 and 25 years of service
7% employee contribution
Employees are not eligible for annuity withdrawal at retirement
Maximum pension limited to \$80,000 for Fire Fighter and Engineer, and \$90,000 for Sergeant, Lieutenant, and Captain.

Tier 4 employees: Hired after January 1, 2019
Pension Multiplier: 2.0%
FAC – Best consecutive 5 of last 10 years
FAC includes base salary only
Age 55 and 25 years of service
Employees not eligible for annuity withdrawal at retirement
7% employee contribution
Maximum pension limited to \$70,000 for Fire Fighter and Engineer, and \$80,000 for Sergeant, Lieutenant, and Captain

The panel must base its award on this and all issues on each applicable Section 9 criterion giving the City's financial ability to pay the most significance. The City is correct that ability to pay is not determined by asking whether currently available funds can cover the cost of the panel's award. The panel recognizes that its responsibility is

greater than that. The award on this issue – as well as the other issues – is based on the panel's careful assessment of both the short-term and long-term consequences of its decisions. Changes in pension benefits will affect the City's financial stability for many years and cannot be considered in isolation. It is beyond debate that – at least with the benefit of 20/20 hindsight – the decision to take on \$28.5 million in debt to bring a movie studio to Allen Park was a misjudgment but the City is nevertheless constrained to make good on the legally enforceable commitment to bondholders. In addition to considerable debt, the panel must consider all of the City's other future obligations. Pension costs and unfunded retiree healthcare are prominent in that list. The City is likely to have little capacity to meaningfully increase revenue and, like every other municipality, will face increased costs. Without intending in any way to minimize how critically important they are, neither the City nor the panel can prioritize the present and future financial interests of this group of employees over other employees and, most importantly, the interests of Allen Park's citizens. It is in this context that the panel must make the difficult decision to adopt either the City's or the Union's last offer of settlement. That decision is not whether there should be a cap on retirement income. There is already a cap: 75% of average final compensation. The decision is whether to cap the existing cap.

In 2012, the Governor determined that Allen Park's deteriorating ability to meet its financial obligations constituted an emergency that required the state to temporarily remove the City's authority to manage its own affairs. As already discussed, Emergency Manager Joyce Parker exercised her statutory authority to reduce the City's expenses in numerous ways, including pension obligations. Those measures were negotiated with the Fire Department but unilaterally imposed on the Police Department. The age requirement for pension eligibility was increased from age 52 to 55 and a 25 year of service requirement was added. The pension multiplier was reduced by 14% from 2.9 to 2.5 decreasing the final multiplier after 25 years from 72.5% to 62.5% of final average

compensation. For employees who did not meet the ten year vesting requirement, she eliminated overtime (but not sick time) in calculating final average compensation and for new employees reduced the pension multiplier to 2.0% based on salary alone and changed the FAC formula to the best 5 out of 10 years rather than 3 out of 10 years. Whether considered individually or cumulatively, pension concessions that have already been implemented mean lifetime reductions that are considerable, more so for some than others.

These cost saving measures, along with many others, resulted in the Emergency Manager's declaration on September 24, 2014 that "the financial emergency in the City of Allen Park has been rectified," followed by the State Treasurer's decision on January 27, 2017 that the City's receivership status should be terminated because "financial conditions have been corrected in a sustainable fashion." The bottom line question facing the panel is whether the record supports the conclusion that the City wants the panel to reach: that the City needs additional pension concessions over and above those already negotiated with the Emergency Manager.

Section 9(e) directs the panel to consider wages, hours, and conditions of employment of other City employees. The City has understandably emphasized that the collective bargaining agreements with the two police unions contain the proposed \$70,000/\$80,000 pension caps. Because many aspects of retirement benefits between the two groups are similar and come out of the same pension fund that is a significant fact that weighs in favor of the City's proposal. However, the panel must be cautious in comparing different groups. Bargaining units are not alike in all respects. Ildiko Knott explained the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners (MERC Case No. L92 F-0095), p. 5.

Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal

sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends on the particular circumstances of their negotiations, their bargaining history and the job market. These circumstances cannot be automatically transferred to another unit. Each group must be judged on objective standards appropriate to that group.

The Union urges the panel not to be influenced by the pension caps for police officers because, in their view, they "were effectively 'purchased' by the City in negotiations in which the City increased pension multipliers, decreased employee contributions, and restored holidays and sick days for that bargaining unit". R. Eric Cline, an analyst with the state Department of Treasury, estimated the first year expense for those improvements as \$237,000. Finance Director Cady was asked how many of the 39 members in the two police unions would be affected by the caps. His "best guess" is "one, maybe." He conceded that the City proposed caps for police pensions without obtaining an actuarial report. The City has not calculated the anticipated savings from placing a second cap on one police officer's pension.

Of the seven comparables, Southgate is the only city with hard dollar caps. Finance Director Cady testified that the City decided to make its demand because the Southgate City Manager said that the caps saved that city money. The Southgate pension is 59.6% funded, 17% lower than Allen Park. That is the extent of the panel's knowledge about the Southgate pension fund, the number of employees affected, or the savings achieved.

It would serve no purpose to criticize the wisdom of the decision made years ago to include overtime in the calculation of final average compensation. A review of Act 312 awards discloses that it was not imposed by an arbitration panel. Nor would it be beneficial to criticize the City's decisions made long ago to pay substantial, arguably exorbitant, amounts of overtime as an alternative to hiring employees that would keep the department at or close to full staffing. In assessing the merits, the panel cannot

overlook that overtime that on its face might be considered exorbitant is not limited to past years. The base pay for Captain is \$82,290. In 2017, the two Captains were paid, respectively, about \$7,000 and \$42,000 above base pay. In 2018, they were paid, respectively, about \$42,000 and \$75,000 above base pay. City Administrator Kibby conceded that except for \$4,200 in retroactive pay, these differences between gross pay and base pay in 2017 and 2018 were attributable to overtime, that overtime is a function of shortage of staff, and that overtime in 2019 has been significantly reduced because new employees were hired. The point of this discussion is not to criticize how the City exercises its discretion concerning personnel matters. There is a degree of tension between on the one hand, the City's justification for putting a second cap on pensions because average final compensation includes overtime and, on the other hand, continuing to fuel the necessity for excessive overtime by declining to timely fill vacant positions.

Section 9(e) instructs the panel to consider those things that are normally or traditionally considered in private employment. Fairness is something that makes that list. At least in the chairperson's understanding of private employment (or for that matter public service), it is not a "normal" or "traditional" practice to retroactively devalue remuneration that an employee justifiably anticipates when services like overtime work is rendered. The panel should not overlook that these employees worked the overtime with the expectation that their retirement benefits would be enhanced. Presumably the overtime resulted in varying degrees of sacrifice – perhaps giving up time with family and friends, or missing a child's school events, or being absent from a family celebration, to mention a few. To be clear, the chairperson would vote, reluctantly, to frustrate expectations of compensation notwithstanding bargaining unit members' legitimate expectation that overtime would accrue to their benefit in retirement *if* evidence supported the conclusion that the City's future financial stability required it.

The Union has stressed that the Emergency Manager had the unrestricted authority to implement a pension cap on top of the existing 75% of FAC cap but made the considered judgment that achieving long term financial stability did not require it. Because no one would plausibly suggest that this panel's expertise on financial management exceeds her expertise, the point is important. Nothing the panel has heard indicates that the Emergency Manager imposed pension cuts with the expectation that additional cuts would be necessary in successor contracts.

As of December 31, 2017, the pension system's funding level was 83.8%. This is higher than all the comparables except Ferndale that is funded at 93.3%. It was funded at 100% in 2002 and, like other pension funds, had a significant (11.6%) loss in 2008 that continued for several years. The consensus of the witnesses is that the fund, all things considered, is healthy. The most recent actuarial report made three points concerning the future status of the fund based on the assumption of 7% annual return on assets.

- The employer normal cost² is sufficient to cover the cost of benefits accruing each year;
- The Unfunded Actuarial Accrued Liabilities (UAAL) will be fully amortized after the respective amortization period ends;
- The funded status of the Retirement System will continue to increase gradually toward a 100% funded ratio.

In other words, based on anticipated returns on investments, the pension fund is projected to be fully funded in 21 years if the City's demand for a hard dollar cap is rejected.

As already mentioned, the City did not obtain an actuarial report concerning the \$70,000/\$80,000 pension caps for the Police Department and obtained an actuarial report for the Fire Department caps on July 19, 2018, several months after the Act 312

² The normal cost of a defined contribution plan is the annual employer cost of the liability associated with the benefits earned in that particular year.

petition was filed by the Union. According to the report from the City's actuary, adoption of the City's proposal would result in projected annual savings of \$157,182. But the author of that report, Jeffrey Tebeau, conceded during testimony that the projected savings could be illusory, and worse, having hard dollar caps could cost – not save – the pension system money.

The longer an employee works and is paid by the employer, the amounts received during retirement will be decreased, helping the pension fund's solvency. For example, if fire department "A" allows retirement at 25 years of service (with no age limitation) a male Fire Fighter who is hired at age 21 and retires upon eligibility, and lives to age 84 (the life expectancy figure used in the actuarial report), he will draw funds from the system for 38 years. If fire department "B" requires that employees attain age 52 before retiring with 25 years of service, everything else being equal, the second Fire Fighter would receive retirement benefits for only 32 years. Six years of pension payments not received, multiplied by all eligible employees, adds up.

Depending on years of service, an employee might be at the 75% FAC cutoff when first eligible to receive a pension. But he might not. If the proposed caps were adopted, the employee who wants to increase his pension benefit as much as possible would likely retire before reaching the existing 75% FAC cap if the \$70,000/\$80,000 cap would kick in first. Stated differently, if there is no hard dollar cap the calculus for that employee involves figuring out when working longer would not increase the pension beyond 75% FAC. On the other hand, if hard caps are imposed some employees who would otherwise work until the 75% FAC cap is reached will have no incentive to work longer if the hard dollar cap kicks in. Fire Fighters can retire at an age when obtaining new employment is feasible. As noted in the preceding paragraph, the earlier the employee retires the greater the strain on the pension system. According to the City's

actuary, the likelihood that the caps proposed by the City would have unintended consequences is not theoretical or improbable.

Mr. Tebeau explained that one should not assume that the timing of an employee's retirement is unaffected when caps are imposed.

Q: [by Mr. Schwartz] Can you explain the note on the bottom of C9, please.

A. Okay. So the chart above this is rates of retirement depending on age. So for example, police officers at 52 we would assume that has a 40 percent probability that they will retire. So the note at bottom is just explaining some adjustments to those above rates. So the first sentence says at least 50 percent of remaining members will retire once they reach the percentage cap on their benefit. And then for -- The second sentence says for police groups their rate would double. So for example, if they were age 52 and they were already hitting the dollar benefit cap, then their rate would double to 80 percent probability of retirement if they hit the dollar benefit cap.

Q: If everything else stayed the same and there was a dollar cap on pensions, would that likely increase or decrease the overall cost of those pension benefits.

A: It depends.

Q: On? If everything else stays the same.

A: And that was the only change, there was no --

Q: (Interposing) Yeah.

A: One of the issues with analyzing that is that generally, that's going to change the behavior of a retiree if they -- the sudden their benefit is capped. They're generally not going to retire at the same rates at which they did before. So it's difficult to say whether that's --

Q: Okay

A: Going to increase it or decrease it.

MR. LEGGHIO: Increase or decrease what?

THE WITNESS: He was talking about liabilities I think.

[Tebeau, Vol. 7, pp 76-77].

Mr. Tebeau elaborated on his reasoning during cross-examination.

Q: [by Mr. Legghio] Well, to get to the core issue, you can't determine from the caps alone whether there was a savings or a cost to the City by the fire fighter caps -- I mean the police caps, can you?

A: No

Q: It's – because as an actuary there's all those things impacted, and one of them would be whether the caps influenced the rate of retirement.

A: Correct.

Q: So for example, if you put caps on pensions and you're a police officer who might otherwise stay on the force where there are not capped pensions, the capped pensions themselves might accelerate your retirement. A number of people say it's easier to leave now because I'm not really making anything in retirement.

A: I believe that's things that we've seen as far as experience from actual plans.

Q: That's what people do, isn't it?

A: Right.

Q: And so in some respects – I mean, I'm not an actuary but I want to understand this. If you are taking steps to encourage people to retire faster, you're actually – ostensibly, you could be adding to your funding liability because people will be leaving at the very moment they can retire rather than staying on the force for four or five more years; isn't that true?

A: Yes.

Q: Because the earlier they retire, the faster – the more your funding level goes up, correct.

A: I think it's the opposite. The faster – the sooner they retire, the higher the liabilities –

Q: (Interposing) Your funding obligation, right. I mean, isn't that the case? I mean, this is the reason why early retirements; unreduced early retirements are a problem for employers or cities because that invites people to leave earlier, which means they're going to live longer, and they're going to collect a pension for a longer period of time.

A: Correct.

Q: So the caps on the police you cannot testify is a plus for the City with regard to the obligations of the pension plan.

A: No, I can't.

[Tebeau, Vol. 7, pp 91-92].

The hypothetical questions Mr. Tebeau answered concerned pension caps for police officers, but the same reasoning applies to fire fighters. Speaking only for himself, the chairperson finds the admonishment that awarding hard dollar caps could accelerate retirements and deplete pension assets quicker logical. The experience of other pension systems where that was the result makes the conclusion more rational. Well intended

ideas about complicated stuff like human behavior in deciding important life choices can have bad unintended consequences.

Before implementation – particularly when imposed rather than negotiated -- changes to pension plans must be scrupulously scrutinized. An award on sick time or holiday pay that does not work out can be renegotiated in the next contract. Pension decisions must look decades ahead so that promises made to Police Officers and Fire Fighters who regularly risk their lives to save the lives of others are kept. Misguided decisions about pensions are not easily corrected. Actuaries do not give advice concerning the wisdom of proposed changes but Mr. Tebeau's testimony that the proposed hard dollar caps could backfire is a red flag signaling caution before ratifying the "common sense" conclusion that it will save money.

A recurring question throughout nine days of hearing asked whether the City's finances are sustainable in the long term and whether placing an additional cap on pensions is necessary to keep the City on the right financial track. Because only one Police Officer would probably be affected by the proposed caps the question is whether hard dollar caps on the pensions of Fire Fighters are necessary. Finance Director Cady summarized the City's position on that question. He agreed that "right now" the City's finances are sustainable without the caps but insisted caps are necessary because they are "all pieces of the same puzzle." "It's one of the many items we need to balance the City budget. You can pull one item out and say this one will break the city or this one won't." Deputy Finance Director Wertz testified that she agreed with the state treasurer's statement that Allen Park's financial statement has been corrected in a sustainable way, as long as "nothing changes" and "all things [are] held constant." City Administrator Kibby testified that while he agrees that the City's financial conditions have been corrected in a sustainable way, in his opinion the City needs the pension caps.

Q: [by Mr. Legghio] Mr. Kibby, are you taking the position that the City cannot sustain itself economically if it does not cap pensions for fire fighters?

A: I think they're necessary to be able to sustain the future of the community.

Q: So it's not sustainable? The City cannot sustain itself unless it realizes the caps that it's proposed; is that your testimony?

A: I think it's necessary.

Q: That's not – you're rephrasing the question. Can the City sustain itself economically unless it gets the cuts?

A: It's necessary to have that. If it's not, then other cuts will be necessary elsewhere.

The import of Mr. Kibby's testimony is that the City's financial position is not static. He conceded that "[t]he stability is fine today" but "there are always factors that are going to be coming into play." He identified a big factor: "But there's one major factor. And that's the vote of the millage. That is a big factor that comes into play."

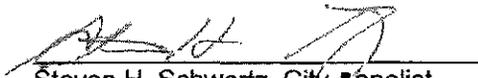
It was apparent to the chairperson throughout the hearing that City Administrator Kibby, Finance Director Cady, and Deputy Finance Director Wertz are highly competent public servants. They are unwavering in their determination to make sure that the City's substantial progress since emerging from receivership is not reversed. It is understandable – indeed commendable -- that they are worried about the possibility that voters will not renew the police and fire millage because the City would be short \$4.8 million annually – half the budget for those departments. Certainly the restoration of the Emergency Manager's cuts to police pensions – increasing the multiplier and decreasing employee contribution – were agreed to with the awareness that in 2023 the voters might not vote to retain the millage, even though the last millage passed comfortably with 70% of the citizens voting "yes." "Ability to pay" requires the panel to realistically assess the long term ramifications of its decisions. But the Legislature did not intend that Act 312 panels automatically make that determination on a worst case scenario basis. A majority of the panel is not persuaded by supposition that the Emergency Manager anticipated that further pension cuts would become necessary but declined to

declined to impose them based on the expectation that they would come later. A majority of the panel concludes that the savings that will be achieved by the Union's proposal are significant. Prospective employees can decide if the job is worth taking with a 2% multiplier and hard dollar caps. The City voluntarily raised the multiplier for police officers in 2017 to 2.5%. There is no principled reason to do otherwise for the seven similarly situated Fire Fighters.

The majority of the panel concludes that the Union's last best offer of settlement on pension changes more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents

5/23/19

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

Issue 2: Duty and Non-Duty Disability

The City proposes to change the way duty and non-duty disability benefits are calculated. If granted, the City's last offer of settlement would remove the existing contractual provisions and, on the effective date of the award, apply the provisions in Ordinance Sections 2-189 and 2-190. The ordinance currently applies to three unions: the APPOA, APPLSA, and TPOAM.

The City's proposal would change four items in the formula: the amount the retiree contributes to the City's retirement system for a duty-related disability, the age when the retiree's pension is recalculated, the time period for calculating average

impose them based on the expectation that they would come later. A majority of the panel concludes that the savings that will be achieved by the Union's proposal are significant. Prospective employees can decide if the job is worth taking with a 2% multiplier and hard dollar caps. The City voluntarily raised the multiplier for police officers in 2017 to 2.5%. There is no principled reason to do otherwise for the seven similarly situated Fire Fighters.

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Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher P. Legghio / ms

Christopher Legghio, Union Panelist
 Concurs Dissents

5/22/19

Date

Issue 2: Duty and Non-Duty Disability

The City proposes to change the way duty and non-duty disability benefits are calculated. If granted, the City's last offer of settlement would remove the existing contractual provisions and, on the effective date of the award, apply the provisions in Ordinance Sections 2-189 and 2-190. The ordinance currently applies to three unions: the APPOA, APPLSA, and TPOAM.

The City's proposal would change four items in the formula: the amount the retiree contributes to the City's retirement system for a duty-related disability, the age when the retiree's pension is recalculated, the time period for calculating average

final compensation, and the physician that certifies the employee's total incapacity. The differences in the ordinance and the collective bargaining agreement are shown below.

Duty disability

1. Benefit level

2013-2016 Agreement: If the duty-related disability occurs before the age of 52, the member receives 66 2/3% of his final compensation at the time of the disability retirement. If the duty related disability occurs after the age of 52, he receives the pension amount he would have received under a regular retirement.

Ordinance: If the duty-related disability occurs before age 57, the member receives 66 2/3% of final average compensation at the time of retirement. If the duty-related disability occurs when the member is 57 or older, the member shall receive the pension amount he would have received under a regular retirement.

2. Computation of final average compensation

2013-2016 Agreement: FAC is the average of the highest 3 consecutive years of service in the last 10 years.

Ordinance: FAC is the highest annual compensation paid in the 36 months preceding the normal retirement for the rank of the member receiving the disability pension.

3. Employee contribution

2013-2016 Agreement: 3%

Ordinance: 7%

4. Physician determination

2013-2016 Agreement: Medical Director or personal physician

Ordinance: Medical Director

Non-duty disability

2013-2016 Agreement: If less than 10 years of service return of accumulated contributions or distribution by a cash refund annuity. If under age 52, years of service multiplied by FAC multiplied by the applicable multiplier (2.9% before July 1, 2013 and 2.5% after July 1, 2013). The reduced multiplier does not apply to employees hired before July 1, 2008. Final average compensation is the highest three (3) consecutive years of service of the last ten (10) years.

Ordinance: Any member with 10 years of service leaving the employ of the City prior to voluntary retirement age will be eligible to draw pension following the date he would have been eligible to retire, with no service credit for years not worked.

The duty and non-duty disability provisions in the collective bargaining agreement are the product of negotiations between the Union and the Emergency

Manager. The agreement was signed on September 8, 2014 by the Union's president and vice president and, on behalf of the City, Joyce A. Parker.

There is no rule that a newly negotiated provision in a collective bargaining agreement will not be changed in the next round of negotiations. However, Section 9(i) instructs the panel to take into consideration how collective bargaining normally and traditionally works. These parties need no enlightenment from the panel that negotiation is a "give and take" process. The proponent of undoing a recent deal should have justification for its position. The City does not claim that there has been any abuse by members of this bargaining unit. The City's justification for the adoption of its proposal is – solely -- consistency with the other unions, particularly the police unions.

Q: [by Mr. Legghio] All right. So let me unpack that for a minute. Your reasons for going to the ordinance is to – for consistency?

A: [by Mr. Kibby] Consistency, yes.

...

Q: Other than consistency, is there any other reasons that you are making the offer of using the City ordinance rather than the current collective bargaining agreement?

A: My opinion, it's about consistency at this point. In my opinion it's about consistency.

Q: Well, when you all were brainstorming as to how – what last best offers you would make, is that what the purpose was for the City was just for consistency?

A: Yes

Q: There's not economics involved in this?

A: There's an economic component to it, but I don't think that's a – was a major factor what the City was looking at because they're looking at the consistency from unions to union.

The City contends a reason to adopt its proposal is that "it cannot be asserted that the firefighters are more likely to have a duty or non-duty disability than the law enforcement officers." That statement is true but overlooks something that the majority of the panel considers important. Unlike the police unions that made the decision not to engage in negotiations with the Emergency Manager, this bargaining unit made the opposite choice. Under these circumstances the argument that a recently negotiated

benefit should be changed for no reason other than to have consistency with other bargaining units that chose not to engage in collective bargaining is unpersuasive. In contrast, the Union's justification for holding onto what it achieved in the give and take of contract negotiations is persuasive. City Administrator Kibby candidly stated that he had no idea what, if anything, the Union gave up in order to get benefits different than those provided in the ordinance.

The majority of the panel concludes that the Union's last best offer of settlement concerning duty and non-duty disability benefits more closely corresponds to the applicable Section 9 criteria and makes that award.

Michael J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

Issue 3: Longevity pay

The City proposes to eliminate longevity pay for Fire Fighters hired after the date of the award. The Union's demand is to maintain the status quo.

The current agreement provides that longevity pay will be calculated at \$45 per year for service up to 10 years and \$50 per year of service over 10 years. The same provision is contained in both police contracts. Employees covered by the TPOAM agreement who were hired after July 1, 2015 do not receive longevity pay. The current cost of longevity pay for Fire Department employees is \$12,000 annually.

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Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents

5/20/19

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

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The majority of the panel concludes that the Union's last best offer of settlement concerning duty and non-duty disability benefits more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist

Date

Concurs Dissents

Christopher P. Legghio

Christopher Legghio, Union Panelist

Date

Concurs Dissents

5/25/19

Issue 3: Longevity pay

The City proposes to eliminate longevity pay for Fire Fighters hired after the date of the award. The Union's demand is to maintain the status quo.

The current agreement provides that longevity pay will be calculated at \$45.00 per year for service up to 10 years and \$50 per year of service over 10 years. The same provision is contained both in both police contracts. Employees covered by the TPOAM agreement who were hired after July 1, 2015 do not receive longevity pay. The current cost of longevity pay for Fire Department employees is \$12,000 annually.

Eastpointe does not pay longevity pay. Fire Department employees in Lincoln Park are not eligible for longevity pay if hired after July 1, 2011. Fire Department employees in Redford are not eligible for longevity pay if hired after April 1, 2017. Fire Department employees in Southgate receive longevity pay after five years of service. Fire Department employees in Trenton are not eligible for longevity pay if hired after July 1, 2012. Wyandotte does not pay longevity pay. Ferndale only pays percentage longevity after 25 years of service for employees hired before April 1, 1994. Employees hired after that date receive a lump sum annual longevity payment beginning at five years of service at \$250 with a maximum of \$1,500 after 25 years of service.

The City concedes that because the elimination of longevity pay will only affect new employees there will be minimal short-term savings. The City predicts that ten Fire Fighters will retire in the next decade and when they are replaced substantial savings will be realized. The City intends to negotiate the same limitation on longevity pay in the police contracts that expire in 2019 and believes it will be in a strong negotiating position if this demand is granted.

The Union argues that the Emergency Manager put the City on the path to financial stability and found it unnecessary to eliminate longevity pay. The chairperson found that argument persuasive regarding proposed pension cuts over and above what the Emergency Manager negotiated. However, as the City points out, at that time she was attempting to subcontract fire suppression as part of her deficit elimination plan making it unlikely that she considered longevity for new hires.

The City has made remarkable progress since the state declared the financial emergency in 2012. But the reality is that the City can no longer afford all of the fringe benefits that could be afforded in the past. Having employees who work side by side not receiving the same longevity is not an ideal situation. Regrettably, that cannot be

avoided. The City's decision not to propose the elimination of longevity for incumbent employees is a reasonable course.

The majority of the panel concludes that the City's last best offer of settlement concerning longevity pay more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 4: EMPLOYEE INJURIES

The parties have stipulated that this is a non-economic issue. This means that the panel is not limited to selecting either party's last offer of settlement.

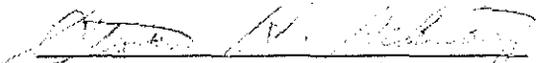
The City's position is that the status quo should be maintained. The Union has expressed concern with the quality of medical care from the clinic used by the City for treatment of employee injuries. Specifically, Fire Fighter Peace stated that the examining physician has made erroneous determinations that an injured employee can be returned to work on light duty. The Union is also concerned that there are inadequate procedures to challenge a medical decision not supported by the facts. The panel is aware that the City has a Worker's Compensation carrier and that the carrier's requirements, as well as statutory requirements, are involved. It is not the intent of the award to alter in any way applicable workers compensation requirements. Based on the

avoided. The City's decision not to propose the elimination of longevity for incumbent employees is a reasonable course.

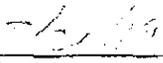
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Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist



Date

Concurs Dissents

Christopher Legghio, Union Panelist

Date

Concurs Dissents

ISSUE 4: EMPLOYEE INJURIES

The parties have stipulated that this is a non-economic issue. This means that the panel is not limited to selecting either party's last offer of settlement.

The City's position is that the status quo should be maintained. The Union has expressed concern with the quality of medical care from the clinic used by the City for treatment of employee injuries. Specifically, Fire Fighter Peace stated that the examining physician has made erroneous determinations that an injured employee can be returned to work on light duty. The Union is also concerned that there are inadequate procedures to challenge a medical decision not supported by the facts. The panel is aware that the City has a Worker's Compensation carrier and that the carrier's requirements, as well as statutory requirements, are involved. It is not the intent of the award to alter in any way applicable workers compensation requirements. Based on the

avoided. The City's decision not to propose the elimination of longevity for incumbent employees is a reasonable course.

The majority of the panel concludes that the City's last best offer of settlement concerning longevity pay more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist

Date

Concurs Dissents

Christopher Legghio

Christopher Legghio, Union Panelist

5/20/19

Date

Concurs Dissents

ISSUE 4: EMPLOYEE INJURIES

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record evidence after considering the arguments from each side, the panel directs that

Article X, Section 9, Subsection A (Employee Injuries) be revised as follows:

Treatment for injuries to personnel will be treated at a medical facility designated by the employer. In the event that the evaluating physician determines that the employee can return to work in a full or limited duty capacity, and the employee disagrees with that determination, the employee shall be allowed to obtain a second opinion from a physician of his/her choice, at the City's expense. If the second opinion differs from the opinion of the physician designated by the City, the Union may file a grievance on the employee's behalf. If unresolved in the grievance process, the designated arbitrator will resolve the dispute.

Whenever an employee is injured or becomes ill from an on-duty event, or while off duty and acting in the capacity of the employee's oath of office, and is unable to work, the City will continue the employee's normal rate of pay without a loss of accumulated sick days for a period of one (1) year from the date of injury, or the date when the employee first became ill. If the employee is still unable to return to work, the City shall have the employee examined by an Independent Medical Evaluator ("Evaluator") – mutually selected by the City and Union – to determine whether the employee has a reasonable likelihood of returning to work within the next six (6) month period. If the Union and the City cannot agree on a neutral Evaluation, an arbitrator shall select an Evaluator.

Should the Evaluator determine that there is a reasonable likelihood of the employee being able to return to work during the next six (6) months from the injury/illness, the employee will be entitled to an additional six (6) months of these benefits.

Should the Evaluator determine there is not a reasonable likelihood of the employee returning to work in the next (6) months, the employee will not be eligible for the additional six (6) month benefit. The decision by the Evaluator shall be final and binding.

Thereafter, whether at the end of one year or at the end of eighteen (18) months, the employee shall receive only those benefits to which the employee is entitled to under Worker's Compensation. When a question arises as to whether the employee's injury or illness is a result of an on-duty event or action taken in the capacity of the employee's oath of office, the determining factor will be the decision of the Worker's Compensation Board.

Except as indicated above, all other provisions of Article X, Section 9 are unchanged.

The majority of the panel concludes that the replacement language shown above concerning employee injuries corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 5: ASSIGNMENT/HAZARDOUS PAY

Article XI, Sections 9 and 10 of the expired agreement provide:

Section 9. Hazardous Duty Assignment compensation

A. Annual payments to be made on May 1 of each year. New Employees must have thirty (30) days employment to receive compensation.

B. Effective July 1, 2013 the assignment compensation shall be reduced to three percent (3%) of the employee's base hourly rate for the first assigned rescue crew. Rules for running Rescue will be as follows:

1. The two (2) lowest seniority members of the Allen Park Fire Department working that day will be placed on the front line rescue.
2. Rescue hours will be logged and maintained by the officer in charge of the shift that day.

Section 10. Rescue

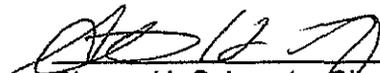
The lowest seniority members of the Allen Park Fire Department working on any given day will be placed on the front line rescue. If a higher seniority member wishes to be assigned to rescue for a shift, or portion of a shift, they may make that request to the officer in charge, who may allow them to do so. There shall be no additional compensation for this duty.

The City proposes to replace the existing language with the following provision:

The majority of the panel concludes that the replacement language shown above concerning employee injuries corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents

5/20/19

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

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Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist

Date

Concurs Dissents

Christopher P. Legghio

5/20/19

Christopher Legghio, Union Panelist

Date

Concurs Dissents

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The City proposes to replace the existing language with the following provision:

Effective [date of the arbitration ward] all on-duty employees shall be responsible for responding to emergencies and rescue runs, regardless of seniority.

The Union proposes to maintain the current language.

Finance Director Cady testified that the City believes that all Fire Fighters should be required to respond to medical emergency and rescue runs to maintain competence because skills become rusty without regular practice. In addition, the City believes that as a matter of fairness everybody should be responsible for handling emergency and rescue runs. Mr. Cady testified that he was employed in another city and junior Fire Fighters were "burning out" because they were taking all the emergency and rescue runs.

On cross-examination, Mr. Cady testified that no one consulted the Fire Chief concerning this proposal. He does not know whether more senior Fire Fighters are also handling these runs. He is unaware if anyone has flunked ALS or other recertifications. He does not know if the City previously used a rotational system for handling these runs. He is unaware of any evidence that anyone in the Allen Park Fire Department has suffered burnout. He said that the Fire Chief has not indicated that the present system deprives more senior personnel of the opportunity to hone their emergency medical skills. He does not know if there is an operational advantage to having more senior personnel in the station and available to fight fires rather than being assigned to emergency rescue runs. He said that he did not contact Southgate and Wyandotte that also assign emergency and rescue runs based on seniority. He does not know whether the five other departments assign emergency and rescue runs based on seniority or otherwise.

Chief LaFond testified that no one asked him whether the proposal was a good idea and, if he had been asked, he would have given "no" for an answer. He said that personnel receive 40 hours training every 3 years to maintain EMT certification. ACLS

recertification is required annually. He said that no one has failed recertification during his tenure as Chief and he has not seen any diminution in skills. He said that the Fire Department brings in instructors to work with personnel every month. On a normal shift with six members assigned there is one senior officer (a Lieutenant or Captain), one junior officer (Sergeant or acting Sergeant), two Engineers, and two Fire Fighters. Because the four new probationary Fire Fighters are on different platoons, it could happen that two probationary fire fighters are assigned to handle emergency rescue runs together but it would be rare. For 30 days probationary personnel do not count, and they go on these runs as a third person. He said that the only way the senior officer and junior officer would respond to these runs would be if the two Fire Fighters and two Engineers already had the two ambulances out. In that case the senior and junior officer would take the ALS engine, stabilize the patient, and call for mutual aid to convey. Chief LaFond disagreed that the City's proposal would afford him greater discretion to assign a more experienced or skilled person to mentor new employees. "I can do it under the contract the way it is now."

Chief LaFond testified that the City abandoned the rotational system for emergency and rescue runs in the early 2000s. At that time shift staffing was higher. The officer-in-charge, the second officer, and the Engineers were excluded from the rotation. Fire Fighters were assigned rescue duty for 24 hours and every morning the Fire Fighter with the least amount of time on rescue ran the rescue. If that system with those exclusions were in place today, when six personnel are assigned to a shift, the two lowest seniority Fire Fighters would be assigned.

Chief LaFond was asked whether eliminating the 3% pay and rotating assignments makes operational sense. He said that he understands why the City administration thinks that way, but he thinks the administration is wrong.

Q: [by Mr. Legghio] You heard me say that – ask the question about whether as a – as the chief you prefer to have more senior people responding to a fire scene; is that true?

A: I would much rather have my senior officers and engineers operating and responding. Operating apparatus and responding to the fire scene, yes.

Q: And this current procedure where the least senior people make the EMS runs facilitates that actual fact, right?

A: For the most part, unless they go out and then the senior guys go out on a second rescue, and the junior guys clear, which would be – you know, it still could happen. But for the most part we try to keep our more senior personnel on the fire apparatus so that they operate it the best, they drive it the best, they have the most experience doing all these things. And then you have your senior officers – who have the most, obviously command experience.

Q: So it's safer to use more senior fire fighters on the fire scene?

A: Oh, I believe so yes.

Chief LaFond identified two other reasons why, if asked, he would have advised that the rotation proposal would not enhance efficiency. First, by handling many runs, lower seniority employees become very experienced early in their careers. By the time he made sergeant, he said that he had made around 8,000 EMS runs. Second, he said that because starting pay is low the 3% helps new Fire Fighters. In fact when interviewing candidates he points out that in addition to the starting salary they will earn more because 3% is added in.

The City's post-hearing brief claims there are two problems with the current operational model. The first is fairness. The two least senior Fire Fighters are bearing a disproportionate amount of the work. The second problem is that it does not provide more senior officers with enough actual practice in the field to maintain proficiency. If adopted, its proposal would allow the Chief to assign a Sergeant or Lieutenant to help a new person to become proficient. The City believes the present system exposes the City to potential civil liability because new employees are trained by someone with minimal experience. The City points out that police officers do not receive hazardous pay and no other union contract restricts management's right to assign different

employees to different tasks. Finally, the City urges the panel to adopt the proposal because it would give the Fire Chief more flexibility than he currently has in assigning personnel. If Chief LaFond wanted more experienced command officers to remain in the station so that they are immediately available to respond to fire calls he could do so under the City's proposal.

This issue presents a dilemma. Typically the decision confronting the panel is whether the City's proposal, or the Union's proposal, best meets Section 9 criteria. On first blush the chairperson thought the City's proposal had merit. But on closer scrutiny its reasonableness comes into question. The sentence -- "all on-duty employees shall be responsible for responding to emergencies and rescue runs, regardless of seniority" -- does not exempt senior officers but in its brief the City says the panel should interpret it to mean that Captains and Lieutenants could remain in the station unless all other personnel were already on emergency rescue runs. Lieutenant Stasick testified that on occasion a sergeant is the highest ranking member in charge of a shift. Would the Sergeant -- the ranking officer at a fire -- be exempted from an emergency rescue run if he is next up on the rotation? If a Lieutenant and a Sergeant are working and the Sergeant is dispatched on an emergency rescue run, how would that affect the chain-of-command at a fire? Assume that there is one Lieutenant, one Sergeant, two Engineers, and two Fire Fighters on duty. At noon an emergency medical call is received. A Fire Fighter and an Engineer are next up in the rotation and take the call. Ten minutes later, a second emergency medical run is dispatched, and the second Engineer and second Fire Fighter are dispatched because they are next up in the rotation. Ten minutes later there is a fire. Who operates the pumper?

The chairperson has no expertise qualifying him to knowledgably opine on fire suppression or emergency medicine. In matters where decisions have life and death consequences, a lay person's ignorance is dangerous when it is substituted for

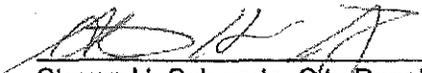
professional expertise. To credit the City's position the panel would need to discredit the considered judgment of Chief LaFond, his impressive credentials, and his extensive experience.

The City's argument is flawed for another reason. As pointed out, the wording describes a mandatory requirement that everyone "shall" be responsible for responding to these runs. The City explains that assigning all personnel is optional: The Chief can do as he sees fit. He could not have been more emphatic that if the decision is his he will assign the two Fire Fighters with the least seniority to emergency and rescue runs. What happens to the 3% stipend in the current contract? The 2.5% raise that will be granted in a couple months would be offset by a 3% loss, not to mention future ineligibility for longevity pay.

The majority of the panel concludes that the Union's last best offer of settlement concerning Hazardous Duty and Rescue assignment compensation more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents

5/23/19

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

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The majority of the panel concludes that the Union's last best offer of settlement concerning Hazardous Duty and Rescue assignment compensation more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher P. Legghio

Christopher Legghio, Union Panelist
 Concurs Dissents

5/20/19

Date

ISSUE 6: PROMOTIONAL PROCEDURES

The parties have stipulated this is a non-economic issue meaning that the panel is not required to choose one of the parties' last offer of settlement.

The current contract establishes qualification for promotion to different ranks. Promotions are based on seniority in rank if the employee meets the qualification standards.

1. SERGEANT

For the promotion to the rank of Sergeant, the employee shall obtain the following qualifications to pass their probation and shall maintain these qualifications as a condition of probation.

- 5 years seniority in Fire Department
- Seniority time in rank
- State of Michigan Paramedic License
- Fire Officer I

2. LIEUTENANT

For the promotion to the rank of Lieutenant, the employee shall obtain the following qualifications to pass their probation and shall maintain these as a condition of promotion.

- Rank of Sergeant
- Seniority time in rank
- State of Michigan Paramedic License
- Fire Officer I and II

3. CAPTAIN

For the promotion to the rank of Captain, the employee shall obtain the following qualifications to pass their probation and shall maintain these qualifications as a condition of promotion.

- Rank of Lieutenant
- Seniority time in rank
- State of Michigan Paramedic License
- Fire Officer I, II, and III.

4. FIRE INSPECTOR/CAPTAIN

For the promotion to the rank of Fire Inspector/Captain the employee shall obtain the following qualifications to pass their probation and shall maintain these qualifications as a condition of employment.

- Rank of Sergeant or higher
- Seniority time in rank

- State of Michigan Paramedic License
- Employee is required to obtain within one year of promotion, Fire Inspector 1 certification.
- Employee is required to obtain with two years of promotion, State Certification in Arson Investigation.
- Employee is required to obtain within three years of probation, Fire Officer I and II.

The City proposes to maintain the above listed requirements and to add the following clause.

For the promotion of all ranks below Fire Chief, the written examination shall be prepared by an independent testing agency, such as EMPCO or a comparable organization. Candidates shall have 60 calendar days to study for the examination and shall receive notice of the study materials related to the examination. The study materials shall be available at the fire station and, if feasible, on-line. Employees may challenge questions where they believe there was more than one correct answer to a multiple-choice question within 5 calendar days of receiving their scores on the examination.

Any disputes arising under the promotional process shall be resolved by an arbitrator appointed under Article VI, not the Police and Fire Civil Service Commission. The arbitrator shall have jurisdiction to interpret Act 78 as it applies to promotions.

If the City's proposal is granted the most senior candidate who possessed the necessary qualifications and scored 70% or better on the written test would receive the promotion. The Union's proposal is to maintain the status quo.

Finance Director Cady explained the rationale for the City's proposal. He said that promotions in the police department are based on testing, not seniority. In his view, if adopted the City's proposal would make candidates interested in taking on the next role and would "make sure that they're well prepared in the services that they're looking to move up to." He said that several people in the Fire Department were hired on the same day complicating promotions based on seniority. He said that he is unsure how same day hires are currently ranked for promotion. The Fire Chief was not consulted on his views to avoid putting him in a difficult position with his subordinates. He agreed that the Fire Chief would be a good person to ask about promoting Fire Fighters.

Lieutenant Michael Stasick joined the Allen Park Fire Department in 1994 and was promoted to lieutenant 12 years ago. He testified, without contradiction, that around 2000 the Fire Department changed the promotional procedure. The system before the change was comprised of a written test prepared by an outside consultant and an oral interview conducted by members of the Civil Service Commission. He stated that the system was perceived as biased since commissioners could award high scores to persons they liked and low scores to persons they disliked, perhaps the Union president. He said the system was chaotic: someone would retire, and the City would "drag their feet" because they did not want to pay for a new test and it could take up to a year for the vacated position to be filled.

Lieutenant Stasick explained that because of the problems the City and the Union negotiated the present procedure that required members to attend and successfully complete specified fire officer in-service training classes to qualify for promotion.

Chief LaFond testified that he was involved on the part of the Union when the present system was negotiated. He agreed with Lieutenant Stasick that there were delays up to a year in filling positions. He was not asked about his views but if asked he would have advised that the proposed change would not be an improvement because, among other reasons, it could cause dissension.

A: The testing procedure seems to create a lot of dissension in the ranks, especially if somebody leapfrogs somebody else with more seniority by either like one or two written test points or by an unusually high oral board score, things of that nature. The men on the floor, the fire fighters, engineers, you know, they know who the leaders of the department are. They know who they look up to; they know the people that are knowledgeable. And then you get somebody that can potentially jump positions that has lower seniority, they have a lot of trouble respecting that person. They respect the person more than – more usually that should've been in that position.

Q: [by Mr. Legghio] Because of more seniority.

A: Right. And more knowledge. You know, knowledge comes with time.

The City points out that the Civil Service Commission has no role in the proposed promotional model and that appeals over test questions would be resolved by an arbitrator. According to the City, automatic promotion based on seniority means the best leaders are not promoted.

There are a few potential problems with the wording of the proposal. First, Article X, Section 8, Subsection B (which is left untouched in the City's proposal) states that "this promotions section supersedes and replaces the promotional system set forth in the Allen Park City Charter adopting Act 78" If adopted, the new Article X, Section 8, Subsection F inexplicably says that "the arbitrator shall have jurisdiction to interpret Article 78 as it applies to promotions." Second, the proposal states that an employee can challenge a question if he believes there is more than one correct answer to a multiple choice question. Unless the assigned arbitrator rewrote the language (which is expressly forbidden by every collective bargaining agreement) an appeal could not be based on, for example – a question that had no correct answer, a question that was not in the study materials, or a question that is so confusingly written to be unintelligible. Because this is a non-economic issue, the panel could easily resolve the wording issues.

Section 9(i) directs the panel to take into consideration "factors that are normally taken into consideration" in voluntary collective bargaining, fact-finding, and arbitration in public service and private employment. The predominant view is that a party proposing to alter a long-established contractual provision needs to show there is clear justification for the change. There is nothing in the record that demonstrates that the current system has resulted in incompetence demonstrated during the one year probationary period or thereafter. However, an Act 312 panel should not reject proposals that are demonstrably better because the present system does not appear broken.

The comparable cities use several promotional models. Three cities – Eastpointe, Lincoln Park, and Redford Township – base promotions on seniority.

Southgate promotes by seniority if the candidate has attained specified certifications. Ferndale and Trenton promote employees from promotional lists based on written examinations, oral boards, and seniority.

The Allen Park Police Department uses a written test, oral interview, and seniority to determine the candidate's position on an eligibility list. TPOAM employees who achieve a passing score on a test are promoted based on seniority.

Before deciding to fundamentally change a promotional system the changers should have enough information to give confidence that they know what they are doing. It would be ill-advised to choose one's surgeon based solely on test scores. For similar reasons the panel cannot uncritically ratify the City's contention that a higher score on a multiple choice examination reliably identifies "the best leaders that are ready to be promoted." The panel needs to know how the proposed test relates to competence and decision-making at a fire scene, and not smarter test-taking technique or memorization of minutiae. Industrial psychologists use the term "content validity" to assess how well the proposed test measures the knowledge and competencies the position requires. The panel needs to understand how, if at all, any proposed test was validated. The panel is in the dark concerning how the test for one rank would be different than for other ranks. Surely Deputy Chiefs need different competencies than first-line supervisors. To be clear, the reader should understand that the panel is not saying that the proposed tests are unsatisfactory. The concern is different. The panel's duty of due diligence is not satisfied by unexamined assumptions. The City has identified a valid concern with the present system. Promotions based on seniority are problematic when two candidates have the same date of hire. Without further information, it cannot be presumed that a pass/fail test would solve the problem. If the percentage of candidates who fail the test is small, the new procedure would not differentiate employees hired on the same date.

The majority of the panel concludes that the Union's last best offer of settlement concerning promotional procedures more closely corresponds to the applicable Section 9 criteria and makes that award.

Michael J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 7: MINIMUM SHIFT STAFFING

Article IX, Section 2 of the expired agreement provides:

Minimum Manning: The minimum personnel complement, if determined possible by the City, will be six (6) in fire suppression on-duty each shift to respond to alarms ("Out the Door"), not including the Chief, Deputy Chief, or Fire Inspection personnel. The City shall also strive to maintain a total of 22 Members in fire suppression, again, not including Deputy Chief, Chief or Fire Inspection personnel. This is not a guarantee of a minimum number of personnel.

The City proposes to remove this provision. The Union's last offer of settlement removes the reference to overall department staffing but not shift staffing. The Union proposes to delete the existing language in Article IX, Section 2 and replace it with the following:

Minimum Manning. The minimum personnel complement will be six (6) in fire suppression on-duty each shift to respond to alarms ("Out the Door"), not including the Chief, Deputy Chief or Fire Inspection personnel.

The majority of the panel concludes that the Union's last best offer of settlement concerning promotional procedures more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist



Date

Concurs Dissents

Christopher Legghio, Union Panelist

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Micheal J. Falvo, Chairperson

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Steven H. Schwartz, City Panelist
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There is an uncommon aspect to this issue. Currently at least six fire suppression personnel are always on duty. The Chief, Deputy Chief, and Fire Inspector are not counted in that number. If the panel adopts the Union's demand the status quo on manning will continue: the minimum "out the door" personnel complement on each shift (excluding the Chief, Deputy Chief, and Fire Inspector) will be six, and the current practice of using overtime to maintain that number if necessary will continue. If the panel adopts the City's demand the status quo will continue: the minimum "out the door" personnel complement on each shift (excluding the Chief, Deputy Chief, and Fire Inspector) will be six, and overtime will be used to maintain that number if necessary. City Administrator Kibby testified that the City will defer to Chief LaFond's judgment that at least six fire fighting personnel should be on each shift. He stated that the City would not change the present staffing unless something "catastrophic" occurs; for example, if voters do not renew the public safety millage when it expires.

William Bryson testified in support of the Union's minimum manning demand. He began his career in the Miami Fire Department as a Fire Fighter in 1975 and served as Fire Chief for nine years. Upon retirement he became the Fire Chief of the Miami-Dade Fire Department for two years. He is the chairperson of the Fire Suppression and Emergency Medicine Committee of the National Fire Protection Agency (NFPA). NFPA sets national standards for fire departments throughout the nation. He has been a subject matter expert for the National Institute of Standards & Technology (NIST) that sets standards for Fire Fighter equipment. He is employed by an organization that does consulting work for fire departments concerning the number of personnel needed and other matters. He has testified as an expert many times, including at interest arbitrations.

Chief Bryson explained NFPA Standard 1710. The standard is revised every four years and establishes, among other things, the appropriate response times to fires

and the minimum number of fire suppression personnel needed at a fire scene. For a residential fire the standard states that 14 Fire Fighters should respond. He acknowledged that large departments have enough personnel to meet this number, but smaller departments do not.

He explained why adequate personnel are needed immediately at a fire scene. The Engineer must always remain at the pumper engine to make sure that the supply of water is properly maintained. If the water pressure is either too high or too low, it endangers Fire Fighters in the building. He stated that the pumper engine can supply water from its tank for about four minutes but a secondary line from a hydrant must be established to replenish the water. If there are not enough personnel at the scene important steps, such as ventilation of the fire and positioning ladders, are delayed. Delay in getting everything done increases the danger to personnel because a fire quadruples in size every minute and after six minutes flashover occurs causing everything in the structure to be destroyed. He explained that the leading cause of traumatic deaths in fires is roof collapse and the greater delay in extinguishing the fire the more likely that will happen.

Chief Bryson discussed the "2 in – 2 out" OSHA regulation. This requirement is in place to rescue Fire Fighters inside the building if they get into trouble. He stated that an Incident Commander should not be one of the two personnel outside the building because he must perform other tasks, such as assessing the best way to enter and fight the fire from different areas of the building, determining from neighbors if it is likely that someone is inside, and coordinating the deployment of additional responders. He stated that compliance with the "2 in – 2 out" requirement is not necessary if the fire can be extinguished easily without the need for self-contained breathing apparatus. He explained that when immediate action is needed to rescue someone in the burning building Fire Fighters will go in with or without adequate back up. According to Chief

Bryson, minimum manning is important since Allen Park has some large industrial buildings as well as large commercial buildings. Many structures do not have sprinkler systems.

Chief Bryson explained the distinction between automatic aid and mutual aid. Automatic aid requires the assisting fire department to respond but a mutual aid agency can decline a request, particularly if short staffed. He stated that mutual aid is not a substitute for adequate staffing for several reasons. In most circumstances mutual aid is not requested until fire units are on scene. Secondly, because the fire stations are usually more distant, arrival at scene is delayed. Delays compound the danger to the Fire Fighters at the scene. In his opinion mutual aid is not a substitute for adequate manpower. "Mutual aid is supposed to be a supplementary, seldom-used tool to take care of situations when you've exhausted your resources."

Chief Bryson stated that minimum manning provisions in collective bargaining agreements are important for the safety of Fire Fighters because people who are making staffing decisions do not have the expertise needed to make such judgments. He said that in Allen Park, unlike larger departments, "shift staffing" and "scene staffing" are the same thing because everyone in the station responds to a fire.

On cross-examination Chief Bryson conceded that he did not know the available manpower in other downriver communities. He was unaware that the fire station in Lincoln Park is closer to the northern part of the city than the Allen Park station.

Grant Peace was hired as a Fire Fighter in Allen Park in 2007 and serves as the president of Local 1410. He stated that currently six Fire Fighters are assigned to every shift and everyone in the station responds to a fire. For a period under the Emergency Manager the number was reduced to five. He explained the reasons for his conclusion that having five Fire Fighters on duty endangers their safety. He stated that the number

of fire and EMS runs in the Fire Department have increased substantially since he started. In 2007 there were 2,800 runs and around 4,200 in 2018.

When only five Fire Fighters are on duty, the pumper truck, an ambulance, and either a ladder truck or an engine truck are sent. The ambulance is occupied by one Fire Fighter and the two other vehicles have two Fire Fighters. The pumper truck pulls in front of the dwelling. It carries 750 gallons of water, an amount that is depleted in three or four minutes. It is always essential that a Fire Fighter remain at the pump to make sure that it is functioning properly and that the water pressure is correct. The ambulance is parked in front of the house. The second fire engine pulls up to a fire hydrant to hook a second hose that is used to replenish the supply of water in the pumper. The five inch diameter hose must first be wrapped around the hydrant to prevent it from ripping when it is energized. Before hooking the hose to the hydrant dirty water containing mud or rocks must be flushed so that particles do not go into the pumper's intake. While this is occurring the officer in charge does a 360 degree walkaround to find the main seat of the fire and the proper tactics to deploy. While this is being done the Fire Fighter who drove the ambulance is responsible for deploying the first line from the pumper. He said that with five Fire Fighters on scene there is frequently not enough personnel to deploy a second rescue line as soon as it is needed. Because the officer in charge is conducting the assessment of the entire structure he may not be immediately available to enter the building if two Fire Fighters have entered to do an interior attack on the fire. Having only one Fire Fighter on the exterior immediately available to enter if the Fire Fighters inside get into trouble violates the "2 in – 2 out" requirement. In addition, when only five Fire Fighters are at the scene essential tasks, such as performing ventilation on the roof or a window to get super-heated smoke out of the structure and allow personnel to see, do not get done when needed. If a ladder is needed to put on the side of a house two persons are required – one to climb and one to butt the ladder. In one fire a Fire Fighter

was told to break out the basement windows to vent the fire but could not finish the task because he was needed elsewhere. A second Fire Fighter eventually did what the first Fire Fighter could not do but at that time the influx of oxygen caused the fire to flash over and roll on top of Fire Fighters on the stairs, causing them to fall. The basement fire got out of control because of the delayed venting and he almost fell from the first floor into the basement, but his partner grabbed him. He said that when there are inadequate personnel at the scene tasks get missed or not done in the proper sequence. All this avoidably endangers fire personnel.

Fire Fighter Peace stated that if somebody is inside the building one firefighter may have to enter alone. This could occur if two Fire Fighters are on an EMS run when the fire call comes in. Entering is against protocol but is necessary to save the occupant. He stated that entering alone is dangerous because the person needing to be rescued could weigh more than the Fire Fighter making it more likely that he will become disoriented or exhausted. He explained that when six are on the shift there are two in the ambulance. The "2 in – 2 out" standard can be met with a six person crew because there are four Fire Fighters available in addition to the person attending the pumper and the officer in charge. This allows entries into the interior to get a quick knock down of the fire.

Fire Fighter Peace described mutual aid as a double-edged sword. On some occasions it does not initially appear that additional resources are needed. There are many bungalow homes in the city and their design allows the fire to enter the walls and eventually reach the attic. These structures are particularly likely to have roof collapses. When undetected spreading occurs it could be 30 minutes before mutual aid is requested and longer before helps arrive. He said that it is scary to enter an engulfed building with a Fire Fighter from another jurisdiction because he does not know how the other person works. Normally Lincoln Park, Taylor, Dearborn Heights, and Dearborn

regularly respond to mutual aid requests. Typically Taylor and Lincoln Park will send three Fire Fighters, and Dearborn will send six. When Allen Park responds to a mutual aid request normally three Fire Fighters are sent.

His reaction to the City's insistence that the collective bargaining agreement should not contain a minimum manning requirement is that there is no concern for safety. It makes him not want to work in the Department, a sentiment he says is shared by his coworkers.

On cross-examination, Fire Fighter Peace agreed that under the present situation overtime must be paid if a scheduled employee is sick or has a personal emergency and staffing would fall below six. He conceded that if the Union's demand is granted a mutual aid response to a neighboring city would bring a six person crew down to three persons. Once at the scene in the other city the Allen Park personnel cannot leave until released by the other department.

Chief LaFond testified that in 2010 and 2011 the Emergency Manager cut shift staffing to five. Previously minimum shift staffing was seven. After that was in place he voiced his concern to the Emergency Manager and eventually minimum manning was increased to six. Since one Fire Fighter must remain with the pumper he would hope that an interior entry would not be attempted by the other three Fire Fighters because the "two-in two-out" requirement would be violated. He said that when the crew size is five the "two-in two out" rule can be observed but the problem is that the two outside Fire Fighters are unable to do other tasks, such as ventilation, that could not be immediately dropped to respond inside.

Chief LaFond stated that ordinarily two Fire Fighters respond on EMS runs but three are sent for cardiac arrests or severe trauma. If two Fire Fighters are on an EMS run, the four remaining would respond to a fire in two trucks. Most patients are

conveyed to Beaumont Dearborn, but a small number are conveyed to Wyandotte Hospital or Heritage Hospital in Taylor.

Chief LaFond said that prior to testifying he was not aware that the City had proposed removing minimum manning language from the collective bargaining agreement. He is not in favor of any reduction in daily shift staffing, but it is not his job to dictate what is in the agreement. In his opinion elimination of a contractual minimum staffing requirement is not consistent with his duty to protect Fire Fighters. He said that he agreed with a letter written by his predecessor on May 3, 2010 that stated, "reduced staffing levels significantly increase the danger to the civilian population, a loss of property to fire, and safety of Fire Fighters." He said that at the time of his testimony the Fire Department was on track to handle more than 4,1000 calls for service in 2018.

Chief LaFond explained a standing order issued on November 3, 2011. It states:

The Allen Park Fire Department has a long standing practice of following the MI-OSHA rule required in the 2 in 2 out rule. For the purpose of clarity I thought it be proper to reinforce that practice with the issuing of a standing order. From here forward we will only enter IDLH [immediately dangerous to life and health] atmospheres if enough personnel are present on scene to comply with section 1910.134(g) of the OSHA respiratory protection standard. For clarification, the management of the Allen Park Fire Department feels that using the fire apparatus engineer as one of the 2 in 2 out would jeopardize the safety or health of the firefighters working at the incident. In other words, we will not commence interior firefighting operations, where an IDLH atmosphere exists, without a minimum of 5 fully equipped and trained firefighters on scene, with the exception of note 2 below.

Note 2 states: "Nothing in this section is meant to preclude firefighters from performing emergency rescue activities before an entire team has assembled." He issued the order as the result of layoffs in the Fire Department.

Chief LaFond discussed a fire that occurred on February 17, 2014. One Fire Fighter injured his ankle when he fell through the floor to his waist. Another received burns to both ears. A third Fire Fighter injured his shoulder. The Captain in charge of the scene wrote in his report that having only five Fire Fighters at the scene made it difficult to avoid being injured.

The panel's authority is restricted to mandatory subjects of bargaining. Absent agreement of the parties the panel lacks authority to decide a permissive subject of bargaining. Depending on the facts a minimum manning proposal can constitute a mandatory or permissive subject of bargaining. The Union contends, based on the evidence presented, that the panel has the authority to grant its demand because it is a mandatory subject of bargaining. The City maintains that the record evidence does not support the finding that the Union's demand is a mandatory subject of bargaining meaning that the panel is without jurisdiction on this issue. The chairperson denied the City's motion for summary disposition on September 30, 2018 after concluding that the panel's jurisdiction could not be decided in the absence of a factual record.

In deciding whether the Union's demand is arbitrable the panel must apply the legal standards established in case law and Commission precedents. The cases are voluminous – too voluminous to be recounted here. The interpretation of the Public Employment Relations Act has not been entirely consistent on this issue.

Someone unfamiliar with Michigan labor law would likely be astounded by the conclusion that safety is not intertwined – inextricably or otherwise – with a Fire Fighter's job. That conclusion is counterintuitive because normal people flee, rather than run into, burning buildings. However, Commission precedent and case law provides that to constitute a mandatory subject of bargaining it is not enough to show that minimum manning “affects safety” or is “related to safety.” The test is “whether there is a significant impact on safety to the extent that safety concerns are arguably intertwined with and inseparable from, the minimum staffing issue.” *City of Oak Park*, MERC Case No. CU03 A-005, *aff'd*, 277 Mich. App. 317 (2007).

Applying the established facts in the record to binding precedent leads the majority of the panel to conclude that the Union's minimum staffing proposal constitutes a permissive subject of bargaining. As in *Oak Park*, an incident commander makes the

decision whether personnel will enter or remain outside. Similarly, the ALJ considered that the command officer has other duties and that the two Fire Fighters stationed outside in compliance with OSHA's "two-in two-out" rule are unavailable to do things like ventilation or retrieving ladders with the result that things that should be done are delayed or not completed. The Union's witnesses explained the inherent delay for mutual aid to arrive and how the size of fires increase in a few minutes. However, the *Oak Park* case says that delayed response is not a sufficient basis to conclude that minimum staffing constitutes a mandatory subject of bargaining.

The City relies on the standing order that, except to accomplish an emergency rescue, entry will not be made unless the "two-in two out" regulation can be met. In *City of Wyandotte*, MERC Case No. C88 I-235 a standing order not to enter the building if enough Fire Fighters are not on the scene is itself adequate to defeat the inextricably intertwined standard. Although Wyandotte's policy did not have an exception for an emergency rescue, the fact that the entry decision will be made by the officer in charge is critical in the analysis. Additionally, the proposed six person minimum staffing requirement would not ensure that Fire Fighters will be available at a fire scene when already dispatched on an EMS run.

While replete with evidence showing that having fewer than six Fire Fighters on each shift is related to safety, the stricter standard of inextricably intertwined with safety required by precedent has not been shown. Consequently, the panel is without jurisdiction to decide the Union's minimum staffing demand.

The majority of the panel concludes that the Union's minimum staffing demand constitutes a permissive subject of bargaining and the panel is without authority to consider the demand.

Micheal J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 8: UNION TIME

Article I, Section 2 of the expired agreement states:

The chairman, on request to the Chief or his/her designated representative, will be granted a maximum of two hours with pay in each work week for the purpose of conducting Union business. Additional time may be granted on an individual request basis by the City or city Administrator. If minimum strength is maintained on a volunteer basis, time off the job may be granted to two other Union representatives upon notification to the Chief. The chairman shall be permitted time off to attend any grievance appeal at the second stage before the City Administrator, arbitration hearings, and union negotiations. During hours of contract negotiation, other members of the five-man Union negotiation team may be off during negotiation hours if minimum strength is maintained on a voluntary basis.

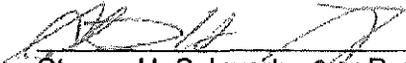
Article IX, Section 12 of the expired agreement states:

The five (5) Executive Committee members of the Allen Park Association of Fire Fighters shall be permitted to a total of (9) twenty-four hours days per year for Association business providing minimum strength as per Article IX, Section 1.B, is maintained for the units. This section is independent of Article I, Section 2, and the restriction contained therein shall not apply to this paragraph. If the Department is unable to furnish minimum manpower under the overtime clause, it then becomes the Union's obligation to furnish manpower for the above. Union time may only be utilized if it does not result in overtime. This does not apply if the situation involves a discharge.

The majority of the panel concludes that the Union's minimum staffing demand constitutes a permissive subject of bargaining and the panel is without authority to consider the demand.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist

5/23/19

Date

Concurs Dissents

Christopher Legghio, Union Panelist

Date

Concurs Dissents

ISSUE 8: UNION TIME

Article I, Section 2 of the expired agreement states:

The chairman, on request to the Chief or his/her designated representative, will be granted a maximum of two hours with pay in each work week for the purpose of conducting Union business. Additional time may be granted on an individual request basis by the City or city Administrator. If minimum strength is maintained on a volunteer basis, time off the job may be granted to two other Union representatives upon notification to the Chief. The chairman shall be permitted time off to attend any grievance appeal at the second stage before the City Administrator, arbitration hearings, and union negotiations. During hours of contract negotiation, other members of the five-man Union negotiation team may be off during negotiation hours if minimum strength is maintained on a voluntary basis.

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The majority of the panel concludes that the Union's minimum staffing demand constitutes a permissive subject of bargaining and the panel is without authority to consider the demand.

Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher P. Legghio

Christopher Legghio, Union Panelist
 Concurs Dissents

5/22/19

Date

ISSUE 8: UNION TIME

Article I, Section 2 of the expired agreement states:

The chairman, on request to the Chief or his/her designated representative, will be granted a maximum of two hours with pay in each work week for the purpose of conducting Union business. Additional time may be granted on an individual request basis by the City or city Administrator. If minimum strength is maintained on a volunteer basis, time off the job may be granted to two other Union representatives upon notification to the Chief. The chairman shall be permitted time off to attend any grievance appeal at the second stage before the City Administrator, arbitration hearings, and union negotiations. During hours of contract negotiation, other members of the five-man Union negotiation team may be off during negotiation hours if minimum strength is maintained on a voluntary basis.

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The Union proposes to amend Article I, Section 2 as follows:

The President, on request to the Chief and his/her designated representative, will be granted a maximum of two hours with pay in each work week for the purpose of conducting Union business. Additional time may be granted on an individual basis by the City or City Administrator.

If the minimum shift manning is maintained on a volunteer basis, time off the job may be granted to two other Union representatives upon notification to the Chief. The President shall be permitted time off to attend any grievance appeal at the second stage before the City Administrator, arbitration hearing, mediation, and Union negotiations. The President shall also be permitted to attend conferences and district meetings while on-duty. During hours of contract negotiation, and if necessary grievances and or arbitration hearing, other members of the five-person Union negotiation team may be off during negotiation hours and minimum shift manning shall be maintained.

The Union also proposes to amend Article IX, Section 12 as follows:

The five (5) Executive Committee members of the Allen Park Association of Fire Fighters shall be permitted to a total of nine (9) twenty-four (24) hour days per year for Association business provided minimum shift manning, as per Article IX, Section 1.B, is maintained on the units. This section is independent of Article 1, Section 2, and the restriction contained therein shall not apply to this paragraph. If the Department is unable to furnish minimum manpower under the overtime clause, it then becomes the Union's obligation to furnish manpower for the above.

The City proposes to amend Article IX, Section 12 as indicated:

The five (5) Executive Committee members of the Allen Park Association of Fire Fighters shall be permitted to a total of nine (9) twenty-four (24) hour days per year for Association business providing adequate on-duty manpower, in the judgment of the Fire Chief, as per Article IX, Section 1.B, is maintained on the units. This section is independent of Article 1, Section 2, and the restriction contained therein shall not apply to this paragraph. ~~If the Department is unable to furnish minimum manpower under the overtime clause, it then becomes the Union's obligation to furnish manpower for the above.~~ Union time may only be utilized if it does not result in overtime. ~~This does not apply if the situation involves a discharge.~~

The panel recognizes the complication that both parties faced when formulating their last best offer on this issue. Neither party could predict the panel's decision on minimum manning and, depending on the outcome of that issue, the appropriate wording of the proposals on Union time would depend on which party prevailed on that issue. The panel has taken that circumstance into account in reaching its decision.

The agreement with the Allen Park Lieutenants and Sergeants Association, comprised of 11 bargaining unit members, allows the 3 executive officers a total of 9 days off annually for union business, not conditioned on the judgment of the Chief of Police concerning manpower. On-duty Union Committee members are permitted to process grievances without loss of pay or benefits, not subject to approval by the Chief of Police. The agreement with the Allen Park Police Officers Association, comprised of 29 bargaining unit members, allows the 4 executive officers 18 days off annually for union business, not conditioned on the judgment of the Chief of Police concerning manpower. On-duty Union Committee members are permitted to process grievances without loss of pay or benefits, not subject to approval by the Chief of Police.

All comparable cities allow officials "reasonable time" during working hours to fulfill union responsibilities without the loss of pay. One city – Trenton – specifies that attending to union business cannot result in overtime. Six of the comparable cities – Ferndale, Lincoln Park, Redford Township, Southgate, Trenton, and Wyandotte – do not require permission to attend to union business during working hours. The Eastpointe agreement states:

The president or alternate of the Association shall be afforded reasonable time during regular working hours, without loss of pay, to fulfill Association responsibilities. These responsibilities shall include, but not be limited to, negotiations with the City, processing of grievances, administration of this Agreement and enforcement of this Agreement.

It is understood that the time allowed to conduct the Association business afore-referenced shall be subject to approval of the Fire Chief or the Chief's duly authorized representative. It is further understood that approval shall not be arbitrarily withheld by the Fire Chief or the Chief's duly authorized representative and that all reasonable requests shall be granted.

Four of the comparable cities – Ferndale, Redford Township, Southgate, and Trenton – allow union officials to be released from duty to attend convention or seminars. Ferndale allows 3 officials 2 days each per year. Redford Township allows one official 5 days per year. Southgate allows a total of 18 days per year. Trenton

allows 120 days per year. The agreements in Southgate and Trenton condition attendance at conferences and seminars on staffing considerations.

A collective bargaining agreement should not allow one party to the agreement to unduly restrict the other party's capacity to protect its contractually secured interests. Article III, Section 4 ensures that the Union cannot intrude on the exercise of reserved management rights. If adopted, the City's proposal would condition the Union's ability to use bargained for time to take care of the Association's business on the judgment of the Fire Chief concerning adequate on-duty manpower. Although not the case with these parties, sometimes labor relations become acrimonious with the unfortunate result that good faith contractual interpretation goes out the window. The panel's concern would be alleviated if the City's demand contained some safeguard against abuse. Eastpointe's agreement requires the Fire Chief's approval but specifies that "all reasonable requests shall be granted" and "approval shall not be arbitrarily withheld." If a future chief said, in his judgment, nine personnel should be assigned to a shift when the Union needed to attend to business, the Union would be stuck. That the City wants the Fire Chief, but not the Chief of Police to have veto power weighs in the Union's favor.

The last best offers concerning union time had to be formulated when neither party could know if the City or the Union would prevail on the minimum staffing issue. In the ordinary situation, what the contract means depends on the intent of the contracting parties. Ordinarily, that intent is ascertained by determining what the chosen words would convey to a reasonable person. However, in construing a provision imposed in interest arbitration, the intent of the parties is irrelevant; it is the intent of the panel that controls. The award on one issue must be understood in the context of the entire award. In other words, the panel's award on union time must be understood in the context of the panel's award on minimum staffing. In granting the Union's proposal, the panel intends the term "minimum manning" in the clause on union time to mean the "normal minimum

manning” on a day to day basis. The City has assured the panel that if the Union’s minimum staffing demand was denied it has no intention to change what is done today unless something “catastrophic” happens. Recognizing the City has won the right to change current practice, unless and until it exercises that right the term “minimum manning” in Article I, Section 2 and Article IX, Section 12 means six on-duty personnel per shift.

The majority of the panel concludes that the Union’s last best offer of settlement concerning union time more closely corresponds to the applicable Section 9 criteria and makes that award.

Michael J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 9: YEARS TO TOP PAY

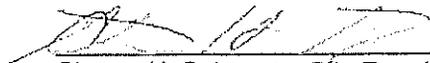
The parties agree on most of the changes to the wage scale. Prior to the Emergency Manager, a newly hired Fire Fighter would start at “0-1 step” and reach maximum pay in six years, taking seven steps. The Emergency Manager negotiated a contract which required new Fire Fighters to start at the “0-1” step and reach maximum pay in seven years, taking eight steps. In their Last Best Offers, both parties proposed that the wage scale be compressed, so that new Fire Fighters would start at the “0-1 year” step and reach maximum pay in five years, taking six steps. The compressed wage scale would apply to Fire Fighters hired after the effective date of the award. The

manning" on a day to day basis. The City has assured the panel that if the Union's minimum staffing demand was denied it has no intention to change what is done today unless something "catastrophic" happens. Recognizing the City has won the right to change current practice, unless and until it exercises that right the term "minimum manning" in Article I, Section 2 and Article IX, Section 12 means six on-duty personnel per shift.

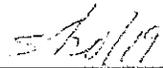
The majority of the panel concludes that the Union's last best offer of settlement concerning union time more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents



Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 9: YEARS TO TOP PAY

The parties agree on most of the change to the wage scale. Prior to the Emergency Manager, a newly hired Fire Fighter would start at "0-1 step" and reach maximum pay in six years, taking seven steps. The Emergency Manager negotiated a contract which required new Fire Fighters to start at the "0-1" step and reach maximum pay in seven years, taking eight steps. In their Last Best Offers, both parties proposed that the wage scale be compressed, so that new Fire Fighters would start at the "0-1 year" step and reach maximum pay in five years, taking six steps. The compressed wage scale would apply to Fire Fighters hired after the effective date of the award. The

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The majority of the panel concludes that the Union's last best offer of settlement concerning union time more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio

Christopher Legghio, Union Panelist
 Concurs Dissents

5/20/19

Date

ISSUE 9: YEARS TO TOP PAY

The parties agree on most of the change to the wage scale. Prior to the Emergency Manager, a newly hired Fire Fighter would start at "0-1 step" and reach maximum pay in six years, taking seven steps. The Emergency Manager negotiated a contract which required new Fire Fighters to start at the "0-1" step and reach maximum pay in seven years, taking eight steps. In their Last Best Offers, both parties proposed that the wage scale be compressed, so that new Fire Fighters would start at the "0-1 year" step and reach maximum pay in five years, taking six steps. The compressed wage scale would apply to Fire Fighters hired after the effective date of the award. The

parties are also in agreement that four Fire Fighters hired in 2018 (Michael Koppsch, Christopher Ajlouny, Derek Brown, and Alex Charbenneau) would be advanced two steps, so that Fire Fighters hired in 2019 would not leapfrog over them in wages. The cost of advancing the four Fire Fighters in 2018 will cost approximately \$128,000 over the life of the contract.

There are three Fire Fighters who are currently not at the maximum step: Jason Pelty (hired January 13, 2014); Christopher Clark (hired February 9, 2015), and Kevin Maury (hired June 29, 2015). The City proposes to leave them on their original scale and allow them to reach maximum pay under that original scale. The Union proposes to advance them two steps, thus accelerating their advancement to maximum pay. The cost of adopting the Union's proposal is \$78,256.

The difference between the City's proposal is that it would advance only the four Fire Fighters hired in 2018 to the five year, six step scale. The Union's proposal would also apply the five year, six steps pay scale to the three employees not yet at full pay. The Union asserts that more recently hired employees should not reach maximum pay in a shorter time than the more senior employees. According to the Union, this could create a morale problem.

The logic of applying the new five year, six step scale to employees hired in 2018 is that without the adjustment employees hired after the award is issued would leapfrog those hired in 2018. In the view of the majority of the panel this compromise is a reasonable way to handle the transition. If the City's proposal is adopted, no employee on the five year, six step scale will leapfrog any employees not yet at full pay. The compression of the steps is a move that is in the overall interests of the City and the Union membership. The logic for applying the five year, six step scale for employees hired in 2018 does not support changing the scale for employees who would not be leapfrogged.

The majority of the panel concludes that the City's last best offer of settlement concerning years to top pay more closely corresponds to the applicable Section 9 criteria and makes that award.

Michael J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 10: CAPTAIN RANK

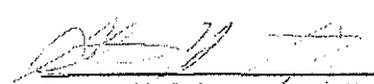
The City proposes to eliminate the Captain rank after the two employees currently holding that rank retire. The City asserts that it should have the managerial right to determine the Department's rank structure and that its considered judgment is that the elimination of the rank is consistent with organizational efficiency. The record demonstrates that recently the two Captains have, by working substantial overtime, earned more than the City Administrator, Fire Chief, and other department heads. The City points out that the elimination of the rank will create a future savings because overtime will be based on a lower hourly rate. Finance Director Cady stated that the police department formerly had the equivalent rank of Inspector, but the rank was phased out. If granted, duties performed by Captains will be assigned to Lieutenants who will not receive extra compensation.

Chief LaFond is not in favor of the City's proposal to phase out the Captain rank. Captains are responsible for the day-to-day operations on the assigned shift. They handle reports, scheduling, and assignment to training. When fire departments respond

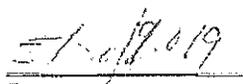
The majority of the panel concludes that the City's last best offer of settlement concerning years to top pay more closely corresponds to the applicable Section 9 criteria and makes that award.

Micheal J. Falvo, Chairperson

Date



Steven H. Schwartz, City Panelist
 Concurs Dissents



Date

Christopher Legghio, Union Panelist
 Concurs Dissents

Date

ISSUE 10: CAPTAIN RANK

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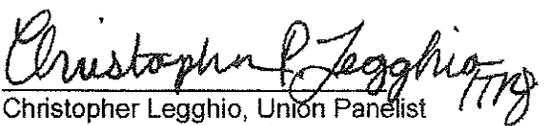
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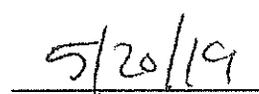
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to a fire scene in another city the officer-in-charge is the highest ranking person from the city where the fire is located. Therefore, a Sergeant in Allen Park would have command even if a Captain from another city responded to a mutual aid request. Although he has not seen it occur, Fire Fighter Peace opined that not having Captains from this Department has the potential to create a power struggle at a fire scene. Furthermore, he explained that the potential of being promoted to this rank is important to Fire Fighters.

For reasons previously discussed, the chairperson, speaking for himself, believes there are concerns with the City's rationale concerning the recent spikes in the two Captains' pay because to a large extent that resulted from a decision not to fill vacant positions. Nevertheless, on balance, a majority of the panel concludes that the City's demand should be granted. Although the City's demand constitutes a mandatory subject of bargaining, topics such as rank structure involve decisions about how the agency is to be managed. The panel must be circumspect in deciding whether its actions inappropriately encroach on the decision-making authority of elected and politically accountable officials. There is nothing in the described administrative duties to suggest that they should not be assigned to either a Deputy Chief or a Lieutenant. While a stronger case can be made concerning command authority at a fire scene, the existing practice frequently results in a command officer other than a Captain being in charge.

The majority of the panel concludes that the City's last best offer of settlement concerning phasing out the rank of Captain more closely corresponds to the applicable Section 9 criteria and makes that award.

Michael J. Falvo
Micheal J. Falvo, Chairperson

5/20/19
Date

Steven H. Schwartz, City Panelist
 Concurs Dissents

Date

Christopher Legghio, Union Panelist
 Concurs Dissents

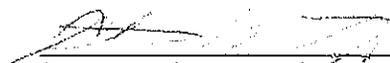
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The chairperson would like to express his appreciation to all the participants. The quality of the presentations and the thoroughness of the post-hearing briefs were extraordinary. The panel members aided the chairperson immeasurably by the cogency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

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Date



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 Concurs Dissents

5/26/19

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ISSUE 1 -- PENSIONS. The panel awards the Union's last offer of settlement on this issue.

ISSUE 2 -- DUTY & NON-DUTY DISABILITY. The panel awards the Union's last offer of settlement on this issue.

ISSUE 3 -- LONGEVITY. The panel awards the City's last offer of settlement on this issue.

ISSUE 4 -- EMPLOYEE INJURIES. Cognizant that this is a non-economic issue, the panel awards neither parties' last offer of settlement and adopts its own award.

ISSUE 5 -- ASSIGNMENT/HAZARDOUS PAY. The panel awards the Union's last offer of settlement on this issue.

ISSUE 6 -- PROMOTIONAL PROCEDURES. Cognizant that this is a non-economic issue, the panel awards the Union's last offer of settlement on this issue.

ISSUE 7 -- MINIMUM MANNING. Because it is determined to constitute a permissive subject of bargaining, the panel concludes it is without jurisdiction to rule upon the Union's last offer of settlement on this issue.

ISSUE 8 -- UNION TIME. The panel awards the Union's last offer of settlement on this issue.

ISSUE 9 -- YEARS TO TOP PAY. The panel awards the City's last offer of settlement on this issue.

ISSUE 10 - CAPTAIN POSITION -- The panel awards the City's last offer of settlement on this issue.