

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

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**CITY OF HAMTRAMCK**

Employer

MERC CASE NO. 19-K 2093-CB

and

**HAMTRAMCK FIRE FIGHTERS  
UNION, LOCAL 750, I.A.F.F.**

Union

RECEIVED  
STATE OF MICHIGAN

JAN 25 2021

EMPLOYMENT RELATIONS  
COMMISSION  
DETROIT OFFICE

**COMPULSORY ARBITRATION**

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

**Arbitration Panel**

Chairperson: Micheal J. Falvo  
Employer Delegate: Charles S. Rudy  
Union Delegate: Michael L. O'Hearon

**Advocates**

Employer Advocate: Charles S. Rudy  
Union Advocate: Michael L. O'Hearon

PETITION FILED: *March 6, 2020*

PANEL CHAIR APPOINTED: *April 20, 2020*

SCHEDULING CONFERENCES: *May 1, 2020 & June 2, 2020*

PARTIES' POSITION PAPERS SUBMITTED: *May 15, 2020*

RULING ON MOTION TO CHANGE DURATION: *June 3, 2020*

RULING ON MOTION TO AMEND ARTICLE 2: *June 6, 2020*

LAST OFFERS OF SETTLEMENT RECEIVED: *June 11, 2020*

HEARING DATES: *August 3, 4, 5, 6, 7, 31 and September 1, 2, 3*

POST-HEARING BRIEFS RECEIVED AND RECORD CLOSED: *October 27, 2020*

ORDER EXTENDING ISSUANCE OF AWARD: *November 23, 2020*

RULING ON MOTION TO SUPPLEMENT RECORD: *December 11, 2020*

AWARD ISSUED: *January 22, 2021*

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**WITNESSES**

James Allen Sr., City Attorney

Kathleen Angerer, City Manager

Howard Bunsis, Consultant

Andrew Capo, Senior Firefighter, Hamtramck Fire Department

James Carden, Motor Engineer, Hamtramck Fire Department

Nancy Ciccone, Consultant

Michael Crandall, Lieutenant, Hamtramck Fire Department

Jonathan Davis, Firefighter, Hamtramck Fire Department

William Diamond, Fire Marshal, Hamtramck Fire Department

William Dickens, Firefighter, Hamtramck Fire Department

Susan Hendricks, City Controller

Andrea Karpinski, Council Member

Chad Kersten, Firefighter, Hamtramck Fire Department

John Krajewski, Firefighter, Hamtramck Fire Department

Joseph Lafever, Motor Engineer, Hamtramck Fire Department

Nicholas Mancina, Motor Engineer, Hamtramck Fire Department

Andrew Oleksiak, President Local 750

Katrina Powell, Former City Manager

Matthew Wyszczelski, Captain Hamtramck Fire Department

## **SECTION 1 -- INTRODUCTION**

Hamtramck is in Wayne County and covers approximately 2.9 square miles. In 2010 the population was 22,423 and it dropped 3.8% to 21,599 in 2010. Except for a small part of its western border that adjoins Highland Park the city is surrounded by Detroit. The median per capita income is \$11,371 and the median household income is \$25,478. Of the cities used as comparables in this case Hamtramck has the highest percentage of persons in poverty, 49%. The unemployment rate in the City is higher than the national or state unemployment rates.

Hamtramck is governed under a council-manager form of government in which the elected Mayor is the Chief Executive Officer. Though part of the City Council the Mayor is elected separately and votes only in case of ties and on ordinances and contracts. There are six elected Council members. The City Manager is the Chief Administrative Officer of the City. She is required to prepare the budget for Council's review and approval, appoints department heads and city employees, and implements all laws, charter provisions, and acts of Council.

After determining that a condition of financial distress as defined by statute existed, two Governors have appointed emergency managers to oversee the fiscal and other affairs of the City. Louis H. Schimmel, Jr. served in that capacity from 2000 until 2005. Seven years later, Cathy Square was designated to serve as emergency manager from June 2013 to December 2014. The City's finances continued to be monitored by a Receivership Transition Advisory Board until May 2018.

The Hamtramck Fire Fighters Union, Local 750, is the collective bargaining representative for 27 members of the Hamtramck Fire Department holding the positions of Firefighters (I-V), Motor Engineer, Lieutenant, Captain, and Fire Marshal. The Fire Chief is not in the bargaining unit.

The expired collective bargaining agreement covered the period July 1, 2017 through January 1, 2020.

Except for the Fire Marshal, personnel are assigned to the Fire Suppression Division. The Fire Marshal's schedule is 8 hours per day, 40 hours per week. Fire suppression employees are scheduled on 24-hour shifts, averaging nine shifts per month. The Fire Department has not operated an ambulance service since 2013. At the present time a private company provides emergency medical services on a no-cost basis to the City.

Non-supervisory sworn personnel in the Hamtramck Police Department are represented by the Hamtramck Police Officers Association (HPOA), affiliated with the Police Officers Association of Michigan (POAM). Sergeants and Lieutenants are represented by the Hamtramck Command Officers Association (HCOA). The collective bargaining for both associations expires on June 30, 2022.

Local 666 of the American Federation of State, County and Municipal Employees (AFSCME), affiliated with Michigan AFSCME Council 25, represents unionized civilian employees, with the exception of executive employees. The collective bargaining agreement expires on June 20, 2022.

The hearing commenced on August 3, 2020 and was continued on August 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 31<sup>st</sup>, and September 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup>, 2020. The panel heard testimony from 19 witnesses. The transcript consists of 1,550 pages. The record contains several hundred exhibits. Post-hearing briefs were received on October 27, 2020. On November 23, 2020 the chairperson notified the Commission and the parties that pursuant to Section 8 of Act 312 the time period for issuing the panel's award would be extended 60 days.

The chairperson issued several rulings on Motions. On June 3, 2020, the City filed a motion to change the end date and duration of the collective bargaining agreement specified in the City's Act 312 petition. The chairperson denied the motion. On June 6, 2020, the City's proposal to add an issue concerning subcontracting to the list of issues to be decided was denied for the reasons that it was not specified in the City's Act 312 position nor listed in its position paper

submitted on May 15, 2020, as required by MERC rule, R.423.507(3)(a)(1). On December 11, 2020, the City's Motion to supplement the record evidence was granted in part and denied in part.

The hearings were held during the Covid-19 pandemic at the law offices of Allen Brothers PLLC in Detroit, Michigan. With the concurrence of everyone involved precautions to protect attendees were followed, including daily temperature checks; daily written screening questions concerning contacts, diagnoses, and symptoms; mandatory use of masks and/or face shields; disinfecting of surfaces; providing hand sanitizer; and limiting the number of persons in the hearing room to seven. Arrangements were made to allow interested parties to observe the proceedings remotely. The screening documents have been made a part of the record.

On behalf of the panel I would like to thank Allen Brothers PLLC for allowing the hearings to be held at their offices.

## **SECTION 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, opinions, 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.<sup>1</sup>

## **SECTION 3 – STIPULATIONS & PRELIMINARY RULINGS**

### **PRELIMINARY RULINGS**

1. Ruling on duration of successor collective bargaining agreement. (6/3/2020)
2. Ruling on arbitrability to amend Article 2. (6/6/2020)
3. Ruling on motion to supplement record. (12/11/2020)

### **STIPULATIONS**

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

The parties stipulate that tentative agreements and uncontested provisions are to be carried forward in the successor agreement.

#### **SECTION 4 – COMPARABLES**

1. Detroit
2. Hazel Park
3. Highland Park
4. Inkster

#### **SECTION 5 – ABILITY TO PAY**

A number of Act 312 arbitrators have noted that the phrase used in Section 9(a) – “the financial ability of the unit of government to pay” – is not self-defining. In one sense it might be said that a unit of government necessarily has the financial ability to pay as long as there exists sufficient cash flow to meet payroll. That is not the intended meaning. Subsections (i) – (iii) require that the panel take account of additional factors: (1) the financial impact on the community; (2) the interests and welfare of the public; and (3) all other financial liabilities. Exacting consideration of these criteria is imperative since Public Act 116 requires, if supported by substantial evidence, that the financial ability of the local government to pay be accorded the most significance.

The City’s ability to pay case was presented by the City’s controller, Susan Hendricks. Ms. Hendricks received a bachelor’s degree in business administration and a master’s degree in accounting from Central Michigan University, and a master’s degree in finance from Walsh University. She is a Certified Public Accountant. She was previously employed by the Wayne County Auditor General’s office, as finance director for Independence Township, and as treasurer in the City of Pontiac. She served as the Hamtramck treasurer for a short time in 2014 and has been in her current position since 2017.

Ms. Hendricks is responsible for preparing the City’s five-year projection of revenues and expenditures. The document was updated on June 30, 2020 and contains actual and projected



amounts. It shows the actual amounts for three fiscal years (ending on 6/30/2017, 6/30/2018, and 6/30/2019), as well as unaudited (at the time of the hearing) amounts for the fiscal year that ended on 6/30/2020. In addition, the document shows the City's estimated future revenue and expenditures for five fiscal years (ending on 6/30/2021, 6/30/2022, 6/30/2023, 6/30/2024, and 6/30/2025). In the City's view, the financial information supports a finding by the panel that it lacks the ability to pay for the salary increases and benefit enhancements proposed by the Union.

On June 3, 2020 I issued a ruling, consistent with the time frames in the petition, that the successor agreement will have a three-year term covering the period January 1, 2020 through December 31, 2022. Ms. Hendricks explained her assessment that diminishing revenues and increased expenditures during that period, and beyond, will create a serious financial predicament. In her view the City should anticipate what it projects for the next four years to allow it to determine the trajectory of its finances.

The five-year projection lists eight sources of revenue: property taxes, income taxes, licenses and permits, federal grants, state revenue sharing and grants, charges for services, fines and forfeitures, and other revenue.

Property tax revenue: Property taxes constitute the largest source of the City's revenue. In the fiscal year that ended on 6/30/2020, property taxes accounted for approximately 42% of the total revenue. Revenue from property taxes has declined approximately 2.4% from \$6,857,051 in 2017 to \$6,689,500 in the fiscal year that ended on 6/30/20. The City estimates that property tax revenue will decrease approximately \$95,000 in the fiscal year ending 6/30/2021. In the fiscal year ending 6/30/22 the City estimates that property tax revenue will increase by approximately \$33,000 over the amount received in the fiscal year ending on 6/30/2020.

As shown in **TABLE 1**, data derived from real estate closings indicates that property values are trending upward.

**TABLE 1**  
**Real Estate Closings**

	<u>2018</u>	<u>2019</u>	<u>2020</u> (partial year)
<i>Total Closings</i>	55	116	34
<i>Low Closing Price</i>	\$30,000	\$30,000	\$35,000
<i>High Closing Price</i>	\$195,000	\$210,000	\$188,000
<i>Average Closing Price</i>	\$89,000	\$104,000	\$115,000

Like other cities, increases in home values will not result in a commensurate increase in property tax revenue. Under Proposal A enacted in 1994 unless a property is sold or transferred property tax increases cannot increase on an annual basis more than the rate of inflation as determined by the Consumer Price Index (CPI) or 5 percent, whichever is less. The inflation rate has not recently exceeded five percent.

*Income tax revenue:*

Hamtramck has an income tax of 1% for residents and 0.50% for non-residents. Revenue from the income tax has declined from approximately \$2,366,030 for the fiscal year that ended on 6/30/2017 to \$2,327,368 for the fiscal year that ended on 6/30/2020. The City anticipates that the income tax revenue for the fiscal year that ends on 6/30/2021 to be approximately 10% lower. The shortfall is based on fewer individuals being employed. First, the effect of executive orders related to the Covid epidemic have been devastating to businesses, some more than others, and it is expected that closures will be permanent for a substantial number of businesses. State law provides that unemployment benefits cannot be taxed by municipalities. Secondly, for a period the City will collect substantially less income from employees employed at the General Motors "Poletown" facility. The City receives property tax revenue from that facility on a shared basis (one third to Hamtramck and two-thirds to Detroit).

The GM Poletown plant is located on the border of Detroit and Hamtramck. In 2019 the company announced its intention to close the plant. Subsequently the company made the decision to manufacture electric vehicles at the facility. The City has been advised that retooling

the plant will not be finished until the fourth quarter of 2021 and that few GM employees will be used to complete the process. The City has been advised that production will begin with one shift and increase gradually depending on demand for electric vehicles. The revenue received in the fiscal year ending 6/30/2019 was \$587,142. The City estimates that revenue received in the fiscal year ending on 6/30/2020 will be reduced from the prior fiscal year by 36% (\$375,000). Because the plant will not be operational the City anticipates no revenue in the fiscal year ending 6/30/2021, \$75,705 for the fiscal year ending on 6/30/2022, and \$454,230 for the fiscal year ending 6/30/2023. In the two following fiscal years the City estimates revenue of \$908,461.

**TABLE 2** indicates the actual and projected revenue from income taxes for the fiscal year ending 6/30/2017 to 6/30/2025.

**TABLE 2**  
**Income Tax Revenue**

<u>Period</u>	<u>Amount</u>	<u>Actual/Projected</u>
FY2016-2017	\$2,366,030	Actual
FY2017-2018	\$2,733,968	Actual
FY2018-2019	\$3,078,125	Actual
FY2019-2020	\$2,327,368	Actual/Audit pending
FY2020-2021	\$2,096,015	Budgeted
FY2021-2022	\$2,572,618	Projected
FY2022-2023	\$2,810,920	Projected
FY2023-2024	\$2,837,133	Projected
FY2024-2025	\$2,863,609	Projected

#### State-Shared Revenue & Grants

State shared revenue is the second largest source of revenue. Revenue sharing funds are in two categories: constitutional and statutory. The first category consists of a proportionate share of state sales and use taxes and is calculated on population. The amount of statutory revenue sharing is determined year-to-year by the Legislature and it can reduce non-constitutional revenue sharing. The state operates on a fiscal year basis that runs from October 1<sup>st</sup> through September 30<sup>th</sup>.

The amount in the *state's* fiscal year 2018-2019 that the City received was \$3,360,279. It decreased in the *state's* fiscal year 2019-2020 to \$3,145,722, for a reduction of \$214,500.<sup>2</sup> Ms. Hendricks testified that the City received information from various sources that the amount for *state* fiscal year 2020-2021 would be significantly decreased, perhaps by 40%. Consequently the *City's* budget ending on 6/30/2021 estimated state revenue as \$2,615,895. That budgeted amount was reduced from the previous fiscal year amount (\$3,554,400) by approximately 36%. Happily, after the hearing concluded, the parties notified the panel that the Governor recommended that local governments receive a slight increase in state revenue sharing and the Michigan Legislature adopted the Governor's budget. The *state* fiscal year 2020-2021 revenue sharing for Hamtramck is \$3,431,624, an 8% increase of \$285,902 above the revenue sharing amount in the 2019-2020 *state* fiscal year (\$3,145,722). The City emphasizes that the panel should not overlook the proviso accompanying the announced increase: "All amounts are projected based on the FY2021 Governor's Executive Budget Recommendation and the August 2020 Consensus Revenue Estimates. Projected amounts may change based on changes made by the legislature and/or changes in the economy."

The City's projections for the state shared revenue for the following four fiscal years predict similarly significant reductions from the \$3,554,400 in for the fiscal year ending on 6/30/2021. The projected reductions from the shared state revenue that Hamtramck is scheduled to receive in the current fiscal year are shown in **TABLE 3**.

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<sup>2</sup> The City's fiscal year is from July 1 to June 30 and the State's fiscal year is from October 1 to September 30. For that reason the record does not permit an exact budget to budget comparison.

**TABLE 3**  
**State Shared Revenue**

<u>Period</u>	<u>Current Amount</u>	<u>Projected Amount</u>	<u>Projected Reduction</u>	<u>Percentage Reduction from Current Amount</u>
FY ending 6/30/2022	\$3,431,624	\$1,993,851	\$1,437,773	41.9%
FY ending 6/30/2023	\$3,431,624	\$1,713,931	\$1,717,693	50.1%
FY ending 6/30/2024	\$3,431,624	\$1,713,931	\$1,717,693	50.1%
FY ending 6/30/25	\$3,431,624	\$1,713,951	\$1,717,693	50.1%

Licenses and Permits

The fourth largest category of the City's revenue is from licenses and permits. As indicated in **TABLE 4**, revenues from this source have diminished in the last four fiscal years and the budget ending on 6/30/2021 estimates an additional loss of \$15,650.

**TABLE 4**  
**License and Permit Revenue**

<u>Period</u>	<u>Amount</u>	<u>Actual/Projected</u>
FY ending 6/30/2017	\$1,329,278	Actual
FY ending 6/30/2018	\$1,288,276	Actual
FY ending 6/30/2019	\$1,233,081	Actual
FY ending 6/30/2020	\$1,175,150	Audit pending
FY ending 6/30/2021	\$1,159,500	Budgeted
FY ending 6/30/2022	\$1,167,400	Projected
FY ending 6/30/2023	\$1,173,967	Projected
FY ending 6/30/2024	\$1,171,529	Projected
FY ending 6/30/2025	\$1,169,247	Projected

Fines and Forfeitures – District Court

During the time period covering the fiscal years that ended on 6/30/2017 to 6/30/2020 the revenue from fines and forfeitures imposed by the 31<sup>st</sup> District Court averaged \$1,271,000. Testimony established that the Court, not the City, sets the budget for its operations. During that period the average annual revenue after deducting funding for the Court was \$686,400. As **TABLE 5** shows the historic percentage of excess revenue after expenditure has diminished. **TABLE 6** shows the same information based on the City's future projections in its five-year plan.

The projected decline in the fiscal year ending on 6/30/2021 is partially based on a curtailment of traffic enforcement due to the pandemic resulting in a decline of traffic fines.

**TABLE 5**  
**District Court Revenue & Expenditures**

<u>Period</u>	<u>District Court Revenue</u>	<u>District Court Expenditure</u>	<u>Net Revenue After Expenditure</u>	<u>Net Revenue Percentage</u>
FY ending 6/30/2017	\$1,264,837	\$631,879	\$632,958	50.0%
FY ending 6/30/2018	\$1,288,191	\$639,384	\$648,807	50.4%
FY ending 6/30/2019	\$1,455,972	\$719,293	\$700,928	48.1%
FY ending 6/30/2020	\$1,075,000	\$755,044	\$319,956	29.7%

**TABLE 6**  
**Projected District Court Revenue & Expenditures**

<u>Period</u>	<u>Projected District Court Revenue</u>	<u>Projected District Court Expenditure</u>	<u>Projected Net Revenue After Expenditure</u>	<u>Projected Net Revenue Percentage</u>
FY ending 6/30/2021	\$1,079,000	\$926,950	\$152,050	14.1%
FY ending 6/30/2022	\$1,348,750	\$939,839	\$408,911	30.3%
FY ending 6/30/2023	\$1,483,625	\$951,066	\$532,559	35.9%
FY ending 6/30/2024	\$1,483,625	\$962,543	\$521,082	35.1%
FY ending 6/30/2025	\$1,483,625	\$974,279	\$509,346	34.3%

Increased Cost of Operation of City Assessor's Office

The City is required, on an annual basis, to update assessments of property. After the individual who provided in-house assessment retired the City advertised but was unsuccessful in hiring a qualified replacement. The contract with an assessment company resulted in an increased cost of \$31,000 in the fiscal year ending 6/30/2021.

Charges for Services

During the period fiscal year ending 6/30/2017 to fiscal year ending 6/30/2020 the average revenue in this category was \$132,316, approximately 0.75% of the total budget. The amount fluctuated from a high of \$198,543 in the fiscal year ending 6/30/2017 to a low of \$103,300

in the fiscal year ending 6/30/ 2020. For the period covering the fiscal years ending in 6/30/2021 to 6/30/2025, the City projects that the average revenue in this category will be \$153,000.

#### Other Revenue

During the fiscal year that ended on 6/30/2017 to fiscal year ending 6/30/2020 the average revenue in this category was \$562,081, approximately 3.4% of the total budget. The amount fluctuated from a high of \$644,002 in the fiscal year ending on 6/30/2020 to a low of \$444,731 in the fiscal year ending 6/30/2018. For the period covering the fiscal years ending in 6/30/2021 to 6/30/2025, the City projects that the average revenue in this category will be \$417,000.

#### Federal Grants

The Staffing for Adequate Fire and Emergency Response (SAFER) is a federal grant program that provides funding to fire departments to increase or maintain adequate staffing. The Hamtramck Fire Department received SAFER grant funds prior to its expiration in the fiscal year ending on 6/30/ 2020. **TABLE 7** indicates the revenue received.

**TABLE 7  
SAFER Grant Revenue**

<u>Period</u>	<u>Amount</u>
FY ending 6/30/2017	\$334,848
FY ending 6/30/2018	\$1,459,851
FY ending 6/30/2019	\$198,572
FY ending 6/30/2020	\$368,349
FY ending 6/30/2021	0

In addition to the diminished income tax revenue that the City will receive before the GM plant resumes production, the City anticipates losing another source of substantial revenue. Wayne County owns and operates a jail in Hamtramck known as the Dickerson Facility. As a public entity Wayne County does not pay property tax. In 1989 the City and County entered into a Payment in Lieu of Taxes Agreement (PILOT agreement). The agreement specified that the County would make an annual payment of \$500,000, plus the percentage increase in the equalized value of property in the County. The agreement specifies that the payments are to

continue "as long as the Jail is used as a County Jail." The annual amount was increased in 2007 to \$1,000,000 per year, plus an inflation factor. A new County Jail is under construction and is scheduled to open in 2022 at which time the Dickerson Facility will close. The most recent payment received in the fiscal year ending 6/30/2020 was \$1,250,000. The City interprets the PILOT agreement to relieve the County of the obligation to make payments after the facility is no longer used as a County Jail.

The City has attempted to increase revenue by applying for any available grants. It is actively marketing 30 vacant lots that it acquired through tax foreclosures. The City has entered into a contract to replace parking meters with advanced technology meters that will permit payment by credit card or phone app. and automatically generate a ticket for parking violations that are mailed. Council has considered, but not adopted, licensing businesses to sell medical or recreational marijuana.

The Municipal Employees' Retirement System (MERS) administers the pension system for all current retirees and all future retirees. It calculates the annual amount that the City, as supplemented by the amount contributed by employees, that is needed to pay current and future retirees what they have been promised. Members of the bargaining unit hired before December 1, 2013 are in a defined benefit plan with a 2.5% multiplier bridged to a 2.0% multiplier after that date and are eligible to retire after 25 years of service. Those employees contribute 15% of base wages toward their pension. Employees hired after that date participate in a hybrid pension plan that includes a defined benefit and defined contribution component. The multiplier for the defined benefit component of the hybrid plan is 1.75%. Employees in the hybrid plan can make a one-time irrevocable election to contribute up to 5% of their wages that the City matches.

MERS provides an annual Actuarial Valuation Report that provides financial information concerning the various divisions in the plan. The divisions include General, Police, Fire, Salaried, and AFSCME. The actuarial report in the record is for the period ending December 31, 2018. The Executive Summary to the report synthesizes its content and makes two points. First, the



plan is considered “very mature” because among all divisions approximately 89% of liability is attributable to inactive members. In the Fire Department the report lists 16 active members. There are 52 former retirees or beneficiaries receiving a pension. Second, the funded ratio was 43%, a reduction of 2% from the 2017 valuation. The underfunding had two consequences. First, Public Act 202 of 2017 required the City to submit a corrective action plan to the state because the funding level was below 60%. Second, MERS notified the City that in the next fiscal year it would be required to pay, in addition to the normal payment, three times the normal payment to address the insufficiency. The one-time cost was \$7,530,000. Since the City could not make that payment without eliminating essential services, an alternative plan allowed the City to “smooth out” the additional payment over ten years. In addition, the City pledged the proceeds from the sale of 30 vacant lots it owned to MERS. City Council approved a 10 year smoothing period. **TABLE 8** shows the additional amounts

**TABLE 8**  
**Supplemental Pension Payments**

<u>Period</u>	<u>Amount</u>
FY beginning 7/1/2020	\$5,100,000
FY beginning 7/1/2021	\$5,460,000
FY beginning 7/1/2022	\$5,690,000
FY beginning 7/1/2023	\$5,940,000
FY beginning 7/1/2024	\$6,210,000
FY beginning 7/1/2025	\$6,430,000
FY beginning 7/1/2026	\$6,630,000
FY beginning 7/1/2027	\$6,840,000
FY beginning 7/1/2028	\$7,040,000
FY beginning 7/1/2029	\$7,240,000
FY beginning 7/1/2030	<u>\$5,600,000</u>
	\$68,190,000

On November 3, 2020 the citizens of Hamtramck voted on a proposed millage increase that would be applied to the debt the City owes for police and fire pensions. If passed, the millage increase would have produced over \$2,000,000. The voters rejected the ballot question.

Increased insurance costs

The City carries various categories of insurance, including property, general liability, business auto, commercial umbrella, excess commercial liability, crime, director's & officers, employment practices liability, professional liability, and workers compensation. The City has been advised that the premium for insurance will increase significantly the next fiscal year.

New home construction

*Garrett, et al v. City of Hamtramck* is a housing discrimination case filed in the United States District Court for the Eastern District of Michigan in 1968. A consent judgment required the City to build 200 single-family homes. To date 197 homes have been built. The City is required to have the remaining three homes built by a deadline of July 1, 2021. The estimated cost to build each home is \$265,045 for a total of \$795,163. In addition to the cost of building the homes the City is required to pay the plaintiffs' attorney fees and other litigation costs. After a \$300,000 contribution from Wayne County and the remainder of a Housing Development Fund, the amount that will be incurred by the City at least \$495,135.

Testimony established that that alleys are particularly important in Hamtramck because very few houses have driveways and access to garages is through alleys. Streets are narrow and businesses use alleys for deliveries. Alleys in Hamtramck are in bad shape because they have been ignored for decades. Annual budgets have repeatedly contained money for repaving alleys, and more recently, parking lots. City Manager Angerer testified that she removed funds for repaving from the proposed budget presented to Council for the fiscal year beginning on 7/1/2020. On May 26, 2020 a motion by a Council Member to add \$500,000 for that budget passed by a majority vote. The City is prohibited by state law from using funds allocated for road funds for alley repairs.

There is extensive testimony – pointing in different directions – concerning a substantial increase of 29% in the Fire Department budget in the fiscal year beginning in on 7/1/2021. **TABLE 9** indicates information contained in the City's five year budget projection.

**TABLE 9**  
**Five Department Budget**

<u>Period</u>	<u>Status</u>	<u>Fire Dept. Budget</u>	<u>Increase/ Decrease</u>	<u>Percentage</u>
FY beginning 7/1/2016	Actual	\$3,412,198	Not available	Not available
FY beginning 7/1/2017	Actual	\$3,484,198	+\$72,000	+2.11%
FY beginning 7/1/2018	Actual	\$3,832,253	+\$348,000	+10.0%
FY beginning 7/1/2019	Pending audit	\$3,802,031	-\$30,222	-0.79%
FY beginning 7/1/2020	Budget	\$3,621,768	-\$180,263	-4.8%
<b>FY beginning 7/1/2021</b>	<b>Budgeted</b>	<b>\$4,672,577</b>	<b>+\$1,050,809</b>	<b>+29.0%</b>
FY beginning 7/1/2022	Projected	\$3,686,995	-\$985,622	-21.1%
FY beginning 7/1/2023	Projected	\$3,722,470	+\$35,475	+0.96%
FY beginning 7/1/2024	Projected	\$3,758,851	+\$36,381	+0.98%

The Fire Department has four “apparatuses” – two engines, a ladder (aerial) truck, with one of the engines serving as a backup. City Controller Hendricks testified that the City budgeted an additional \$1,000,000 to purchase a new fire truck in the next fiscal year. Union President Andrew Oleksiak testified that the service life of a fire truck is 20 years and that the City’s fire equipment is aging but serviceable and that one fire engine is currently out of service and being repaired. He contended that the City’s objective in spending one million dollars on a fire truck in 2021 is to give the panel the impression that it is struggling financially but in fact is “chewing through its fund balance in order to project an image that it doesn’t have money in an ability to pay case.” (Vol. 3, p. 178). The City categorically denies that the accusation has any validity. In light of the Union’s allegation and the City’s disavowal the panel has carefully reviewed the record evidence.

Hamtramck’s Fire Chief is Danny Hagen. He has been reduced to a part time employee. City Controller Hendricks testified that the Fire Chief annual budget request for equipment maintenance has been between \$30,000 and \$35,000, that he requested that it be raised to \$36,000 in the budget beginning on 7/1/2020, and that the request decreased for the following year. She stated that the Fire Chief has “told us that we’re going to need to look at [purchasing fire trucks]” and indicated “that there is going to be a need for new equipment but it is not a tomorrow need. We didn’t want to ignore the fact that the City is going to have to purchase some

capital, spend some money on capital.” (Vol. 2, p. 15). She testified that the City has not obtained estimates or bids on a fire truck but based on her experience “a million dollars is very spendable.” (Vol. 2, p. 16). City Manager Angerer testified that Hamtramck’s response to fires under the automatic aid agreement creates “a lot of wear and tear” on fire apparatus” and “the Fire Chief did indicate that not only the fire engine, but a lot of our equipment would need replacing.” (Vol. 9, pp. 152-53).

City Council member Andrea Karpinski testified about her conversation with Fire Chief Hagan concerning his opinion on the need for purchasing a new fire truck in the fiscal year beginning July 1, 2021.

Q: (by Mr. O’Hearon): Now I’ll ask you to look at the fire department line, which is line 336, and if you could follow that across to 6/30/2021, where the projected budget for the fire department is 3,621,768. Do you see that?

A: Yes.

Q: The very next year, that goes to \$4,672,577.56. Do you see that?

A: Yes.

Q: Have you been given a presentation at the City Council for the explanation for the million dollar jump in that year?

A: No.

Q: Okay. Well, we’ve had some testimony here that the reason for the million dollar expense in that year is for equipment expenditures in the fire department. Are you aware of any equipment in the fire department that needs to be replaced?

A: No. And I spoke to the chief, and he was not aware of that either.

Q: Okay. You spoke with the fire chief?

A: Fire Chief, I’m sorry.

Q: And when you say he’s not aware of it either, what do you mean by that?

A: He said that he did not, you know, give any quote for these million dollars – that he did not believe that any equipment needed to be replaced would equal that amount.

Q: Okay. So if someone said that that million dollars is projected to be allocated based on the word of the fire chief, what would you say to that?

A: That somebody was lying.

(Vol. 6, pp. 32-33).

The City points out that Firefighter Jonathan Davis, who frequently works as a Motor Engineer driving and maintaining equipment, testified that the oldest engine is used as a backup when an engine is out for service; “however it’s not the most reliable vehicle or apparatus in itself, so it’s not much of a backup, but it’s there.” (Vol. 8, p159).

The Union notes that Fire Chief Hagan was not included on the City's witness list and he did not testify. In its post-hearing brief the Union requests that the panel draw an adverse inference against the City for not producing him as a witness because it can be reasonably presumed that he would have testified adversely to the claimed need to budget \$1,000,000 to purchase a new fire apparatus in the budget for the fiscal year beginning 7/1/2021. Speaking for himself and not the panel, the chairperson declines to draw the requested adverse inference. In my view the record evidence is too equivocal to credit the allegation that the purpose of this expenditure is to "chew through the fund balance" to make it appear that the City has an inability to pay. That said, since Chief Hagan is presumably the most qualified City official to enlighten the panel – and because the conclusions by the City Manager and Controller were apparently reached on the basis of his advice – and in light of Council Member Karpinski's assertions – the panel's understanding would have benefitted from his testimony.

A municipality's general fund is the core budgeting instrument used to fund its operations. It accounts for revenue, other than revenue associated with special purpose funds, as well as expenditures made by the city. The fund balance is the amount remaining at the end of a fiscal year and is the indicator that is most used to determine a city's financial condition. As shown in **TABLE 10**, if the City's future projections are accurate, the diminishment in the fund balance from the fiscal year ending 6/30/2017 compared to the fiscal year ending 6/30/25 is \$19,508,718.

**TABLE 10**  
**Five-Year Budget Projection**

<u>Period</u>	<u>Beginning Fund Balance</u>	<u>Revenue</u>	<u>Appropriations</u>	<u>Net Amount</u>	<u>Ending Fund Balance</u>
FY ending 6/30/17	5,803,554	16,350,489	15,614,680	+735,808	6,539,362
FY ending 6/30/18	6,539,362	17,455,740	15,740,459	+1,715,290	8,254,653
FY ending 6/30/19	8,254,643	16,872,227	18,325,520	(1,453,293)	6,801,351
FY ending 6/30/20	6,801,351	15,937,420	16,954,928	(1,017,508)	5,783,842
FY ending 6/30/21	5,783,842	14,124,160	17,432,720	(3,308,506)	2,457,282
FY ending 6/30/22	2,475,282	14,373,507	18,507,197	(4,133,689)	(1,685,407)
FY ending 6/30/23	(1,685,407)	13,705,382	17,906,735	(4,201,252)	(5,859,760)
FY ending 6/30/24	(5,859,760)	14,237,448	17,755,610	(3,518,162)	(9,377,922)
FY ending 6/30/25	(9,377,922)	14,316,243	17,907,677	(3,591,434)	(12,969,356)

The Union presented testimony by Howard Bunsis, Ph.D. Dr. Bunsis has been a Professor of Accounting at Eastern Michigan University for over 20 years. In addition to his doctorate degree he is a Certified Public Accountant and an attorney. His teaching interests include government accounting, government finance, and pensions and retiree health care. He prepared a 30 page report in July 2020 concerning the City's finances and ability to pay.<sup>3</sup> He estimated that he has served as an expert witness on behalf of unions more than 20 times. He has also held positions in the American Association of University Professors (AAUP).

Dr. Bunsis used a number of sources in preparing his report. These included the City's Comprehensive Annual Financial Reports (CAFR) submitted to the State of Michigan, reports from the House and Senate Fiscal Agencies of the Michigan Legislature, and information from the Southeastern Michigan Council of Governments (SEMCOG), in association with Munetrix.<sup>4</sup>

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<sup>3</sup> The reader should note that Dr. Bunsis used some reported data on the City's website or documents provided by the City that predated **CITY EXHIBIT 101**, the latest five-year projection that was updated on June 30, 2020. His analyses are based on the previous five-year projection completed in March 2020. This accounts for the fact that there are some minor differences in the amounts in some documents he considered.

<sup>4</sup> The Comprehensive Annual Financial Report for the fiscal year ending June 30, 2019 was the latest available report when the analysis was completed.

SEMCOG is a regional planning partnership of governmental units in seven counties in Southeastern Michigan. Munetrix, a Michigan company, is an aggregator of financial data about municipalities and school districts and compiles analyses that provide an overview of the City's finances and its fiscal health. The bottom-line conclusion drawn from his analyses is summarized in the opening sentences of the report.

The City has described the financial situation of the City of Hamtramck as follows: "***What was previously a crisis has turned into a calamity.***" The pre-Covid situation was also described as "***dire.***"

This report will demonstrate that the previous situation was definitely not a crisis, and certainly not dire. In addition, this report concludes that the current situation is nowhere close to a calamity (the synonym for calamity is disaster).

The analysis below will report the financial health of the City, through June 30, 2019, was actually solid, and that the effects of the coronavirus, although significant, are not debilitating to the financial health of the City.  
(Emphasis in original).

In addition to the General Fund, Hamtramck has a Major Street Fund, a Local Street Funds, and about a dozen "Non-Major" funds. A City's fund balance does not include any money from these other funds. The General Fund is used to pay the various expenses involved in running a municipality. The General Fund balance is the most important metric used to assess the financial health of municipalities. The unrestricted General Fund balance is the numerator and the denominator are the General Fund expenditures. SEMCOG considers a ratio of 12% or higher to be safe. A ratio of 10% is considered a "trigger rate" requiring some sort of corrective action. **TABLE 11** shows the percentage ratio from fiscal years 2010 to 2019.

**TABLE 11**  
**Fund Balance Percentage**

<u>Period</u>	<u>Percentage of Fund Balance</u>
2010	6.5%
2011	15.3%
2012	-4.2%
2013	5.1%
2014	1.1%
2015	23.1%
2016	37.4%
2017	41.9%
2018	52.4%
2019	37.7%

Dr. Bunsis stated that the information in the City's audited reports does not support the conclusion that Hamtramck is in such financial distress that the Union's demands in this proceeding cannot be afforded. Dr. Bunsis's overall assessment considered a number of other factors.

One measurement he considered is the amount of long-term debt as a percentage of taxable property value. SEMCOG considers the trigger for financial concern to be 5%. The 2019 debt was \$1,415,105 and the taxable value was \$205,696,836. Hamtramck's percentage was around 4% in 2006, has been decreasing since then, and the most recent estimate as is 0.7%.

TABLE 12 shows the ratio of debt to taxable value in 2019.

**TABLE 12**  
**Debt/Taxable Value Ratio**

<u>City</u>	<u>2019 Debt/Taxable Value Ratio</u>
Detroit	27.1%
Highland Park	9.7%
Inkster	1.8%
Hazel Park	1.6%
<b>Hamtramck</b>	<b>0.7%</b>

Dr. Bunsis's report discusses a 10-factor framework to assess the financial health of cities. Historical data is obtained from census data and by the State Treasurer or Controller's office.



Current and future year data is based on current budget and forecast information, or by Munetrix from available audited or budget information in the public domain. Each category is given a value of 0 (indicating a favorable score) or 1 (indicating an unfavorable score). The lower the score the better. The totaled score is judged on a continuum from 0 (low risk) to 10 (high risk). **TABLE 13** shows the SEMCOG scores for 2019.

**TABLE 13**  
**SEMCOG Assessment of Financial Stability**

1. Population change from 2010 to 2020. 0 if increase or small decline; 1 if decline is more than trivial.  
**Hamtramck score: 1**
2. Taxable Value Growth. 0 if change is positive; 1 if negative.  
**Hamtramck score: 0**
3. General Fund Expenditures/Taxable Property Value. 0 if less than 5%, 1 if greater than 5%.  
**Hamtramck score: 1**
4. Operating Results (General Fund Revenues minus General Fund Expenditures/General Fund Revenue. 1 if deficit is large relative to General Fund Balance; 0 if otherwise.  
**Hamtramck score: 0**
5. Prior 1 year Operating Results. General Fund Revenues minus General Fund Expenditures/General Fund Revenue. 1 if large; 0 otherwise.  
**Hamtramck score: 0**
6. Prior 2 year Operating Results. General Fund Reserves minus General Fund Expenditures when compared to reserves. 1 if large; 0 otherwise.  
**Hamtramck score: 0**
7. Size of Available Fund Balance. General Fund Balance as percentage of General Fund Expenditures. 1 if less than 10%, 0 otherwise.  
**Hamtramck score: 0**
8. Fund Balance Trend. 1 if below 10% for 3 straight years, 0 otherwise.  
**Hamtramck score: 0**
9. Major Fund Deficits. Negative balance in any major fund. 1 if negative, 0 otherwise.  
**Hamtramck score: 0**
10. Debt as percentage of Taxable Value. 1 if above 6%, 0 if below 6%.  
**Hamtramck score: 0**  
**Total score: 2**

Dr. Bunsis opined that a total score of 2 on a 10 point scale is indicative of a low risk municipality. In 2019, one city (Hazel Park) had a better score (1) and two cities (Detroit and Highland Park) had a worse score (3) than Hamtramck. Information from Inkster was not available when he prepared the report.

Dr. Bunsis noted that the estimated Fire Department expenditures for the fiscal year beginning July 1, 2021 is “way out of line with past increases.” Up to 2019, the average percentage change in fire department expenditures was 0.3% compared to the 21.7% **TABLE 14** shows the annual percentage of change for Fire Department expenditures.

**TABLE 14**  
**Fire Department Expenditures**

<u>Period</u>	<u>Percentage of Change</u>
2013 to 2014	+0.7
2014 to 2015	+11.9%
2015 to 2016	-10.8%
2016 to 2017	+6.1%
2017 to 2018	-2.5%
2018 to 2019	-3.6%
2019 to 2020	-2.2%
<b>2020 to 2021</b>	<b>+21.7%</b>

In evaluating the estimate of a 21.7% increase in the Fire Department Dr. Bunsis urged the panel to scrutinize how well past estimates turned out to be correct. In his view the City's budget estimates have underestimated revenue and overestimate expenditures. **TABLE 15** shows the City's budget estimates of revenue and actual revenue for the last three years that are available in CAFR reports.

**TABLE 15**  
**Budget Estimated & Actual Revenue**

<u>Year</u>	<u>Estimated Surplus or Deficit?</u>	<u>City Estimated Amount</u>	<u>Actual Amount</u>	<u>Amount City Under Estimated</u>	<u>Amount City Over Estimated</u>
2017	Deficit	(459,758)	835,449 Surplus	1,295,607	n/a
2018	Surplus	580,449	1,810,280 Surplus	1,229,831	n/a
2019	Deficit	(2,080,762)	(1,090,501) Deficit	990,261	n/a
2017 to 2019 Total	Deficit	(1,960,111)	1,555,588 Surplus	3,515,699	n/a

In assessing the weight, if any, to what Dr. Bunsis labeled a “past history of budget pessimism” when estimating future revenue, the panel must keep in mind several considerations. What is considered pessimistic can as easily be characterized as prudence. City officials should not be criticized for declining to make decisions based on hopes for a rosy future. As an example, it is by no means a sure thing that talked about federal assistance for cities and states as a result of the pandemic will actually materialize. Moreover, as Dr. Bunsis agreed, forecasting the future is tricky and the farther out one attempts to predict the more imprecise predictions are likely to turn out. Dr. Bunsis also compared the budget and actual expenditures for the last three years for which a CAFR is available. The same caveat that applies to revenue is true for expenditures. As one example, large and sometimes unruly demonstrations require enormous unbudgeted overtime. **TABLES 16, 17, 18, 19 and 20** show the “budget/actual” amounts for the Fire Department, Police Department, Retiree Benefits, all other General Fund expenditures, and total expenditures.

**TABLE 16**  
**Fire Department—Budget Estimated & Actual Spent**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>3-year Total</u>
<b>Budgeted</b>	3,332,300	3,661,168	3,944,956	10,928,424
<b>Actual</b>	3,412,198	3,484,198	3,832,254	10,728,650
<b>Budget Under or Over Estimated Expenditures</b>	<u>Under</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated
<b>\$ Difference</b>	89,898	176,970	10,600	199,774
<b>% Difference</b>	2.7%	4.8%	2.9%	1.8%

**TABLE 17**  
**Police Department—Budget Estimated & Actual Spent**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>3-year Total</u>
<b>Budgeted</b>	3,653,875	3,825,907	4,185,971	11,801,978
<b>Actual</b>	3,790,100	3,566,349	4,196,571	11,416,795
<b>Budget Under or Over Estimated Actual Expenditures</b>	<u>Under</u> Estimated	<u>Over</u> Estimated	<u>Under</u> Estimated	<u>Over</u> Estimated
<b>\$ Difference</b>	136,225	259,558	10,600	385,183
<b>% Difference</b>	3.6%	6.8%	0.3%	3.3%

**TABLE 18**  
**Retiree Benefits—Budget Estimated & Actual Spent**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>3-year Total</u>
<b>Budgeted</b>	2,900,400	2,969,762	2,774,740	8,644,902
<b>Actual</b>	2,843,428	2,754,781	2,728,695	8,326,904
<b>Budget Under or Over Estimated Actual Expenditures</b>	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated
<b>\$ Difference</b>	56,972	214,981	46,045	317,998
<b>% Difference</b>	2.0%	7.2%	1.7%	3.7%

**TABLE 19**  
**All Other General Fund Expenditures – Budget Estimated & Actual Spent**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>3-year Total</u>
<i>Budgeted</i>	5,824,477	6,141,045	7,290,995	19,256,517
<i>Actual</i>	5,605,180	5,840,129	7,149,207	18,594,516
<i>Budget Under or Over Estimated Actual Expenditures</i>	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated
<i>\$ Difference</i>	219,297	300,916	141,788	662,001
<i>% Difference</i>	3.8%	4.9%	1.9%	3.4%

**TABLE 20**  
**Total Expenditures (2017-2019) – Budget Estimated & Actual Spent**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>3-year Total</u>
<i>Budgeted</i>	15,701,052	16,338,324	18,207,262	50,246,638
<i>Actual</i>	15,514,681	15,645,457	17,906,727	49,066,865
<i>Budget Under or Over Estimated Actual Expenditures</i>	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated	<u>Over</u> Estimated
<i>\$ Difference</i>	186,371	692,867	300,535	1,179,773
<i>% Difference</i>	1.2%	4.2%	1.7%	2.3%

On cross-examination Dr. Bunsis acknowledged that he did not attempt to make projections concerning future challenges that Hamtramck could face. Rather, his objective was to evaluate the current and recent finances as reported in various reports, primarily the Comprehensive Annual Financial Reports filed with the State. Consequently, he reported but did not make a conclusion concerning the City's projection of a budget deficit during the four partial or full fiscal years involved in the agreement that will cover January 1, 2020 to December 31, 2022. He said that he did not consult with the Controller or anyone from the City in conducting his analysis. He agreed that the financial records show significant fluctuations in revenue and

expenditures and that every municipality has to base budgetary decisions on different circumstances.

Dr. Bunsis testified that he was aware the City's pension plan is underfunded and that MERS insisted that increased payments be made but was unaware of the specific details except as noted in the five-year projection. He was aware in general terms concerning the arrangement between Detroit and Hamtramck to allocate income tax revenue from the General Motors plant and did not do an analysis concerning whether the City's projected loss of income tax revenue during the retooling was realistic. He was aware that the SAFER grant expired and the grant revenue decreased from \$1,400,000 to \$198,000 to zero and the anticipated effect of the closing of the Dickerson Jail Facility. In response to those questions, he stated: "Again, I am not doing forecasting. I'm looking at the overall numbers and I just report what I saw." Dr. Bunsis testified that he is not an expert in running a city and his report does not make any statements concerning best practices or whether Hamtramck officials are following best practices.

In response to a question from the Chairperson, Dr. Bunsis concurred that his disagreement with the terms "crisis" and "calamity" is based upon past and perhaps current, but not future information.

### **Synopsis of Union's position on "ability to pay"**

Public Act 116 of 2011 amended Act 312 by moving up the ability to pay on the list of factors the panel is to consider. Because it is to be accorded the most significance does not mean that it is determinative of the panel's decisions. The act does not instruct the panel to ignore the other factors, particularly the interests and welfare of the community. There are staffing and operational issues before the panel that have a crucial impact upon the interests and welfare of the community. Further, the public has an interest in knowing that its firefighters are well-trained, well-compensated, and are not being treated unfairly by the Employer. Because of the vital and indispensable services provided by the Union's bargaining unit, any consideration of the interests and welfare of the community in the instant case should fundamentally be presumed to favor the

Union's position, unless the panel determines that the Union's demands are fundamentally detrimental to the financial security of the City. The record as a whole does not support such a finding.

In considering the merits of each party's it is important that the panel not lose sight of the fact that in coming into this litigation the Union has made significant concessions. The Union conceded four bargaining unit positions during the term of the expired collective bargaining agreement and conceded an additional two positions in its last offer of settlement. In response to the City's global leave time reformation proposal, the Union incorporated into its own sick leave accrual issue a reduction in Tier 1 maximum sick leave accumulation from 125 to 100 days. When the Union's concessionary issues are considered in light of the whole record it is clear that the Employer has the **ability** to pay what the Union seeks. What it lacks is the **willingness** to provide appropriate benefit levels to bargaining unit members. "Ability" is defined as "possession of the means or skill to do something." "Willingness" is defined as "the quality or state of being prepared to do something." The record evidence shows that the Employer repeatedly opts for the reduction or elimination of employee benefits (and employees) within the bargaining unit, rather than developing a strategy to put appropriate funding mechanisms in place to maintain the benefits or staffing levels. (Emphasis by Union).

The City's ability to pay case was presented by Susan Hendricks, the City controller, who holds a master's degree in accounting and finance. The Union's ability to pay case was presented by Dr. Howard Bunsis, professor of accounting at Eastern Michigan University for more than two decades, who holds a Ph.D. in accounting, a master's degree in business administration and a juris doctor degree. Ms. Hendricks relied heavily on a five-year projection plan the she described as a profit statement of revenue and expenditures which is frequently changed. In contrast, Dr. Bunsis completed his analysis using the most recent audited comprehensive annual financial reports that contained actual numbers, not the various renditions of what the City thinks or expects

may happen in the next five years. The difference between the two presentations is that the Union's expert was analytical and evaluative, and the Employer's was merely descriptive.

Dr. Bunsis's report contradicts the City's claimed inability to pay improved salary and benefits for its firefighters. For example, in 2019 the unrestricted fund balance expressed as a proportion of total general fund expenditures was 37.7%, well above the 12% ratio that SEMCOG considers safe. He also showed that the City's recent past budgets have underestimated actual income and overestimated actual expenditures. He explained: "When you consider all of the evidence, it is fair to conclude that the City's estimates of future revenues and expenses are likely overly pessimistic, given their past history of budget pessimism."

In the summer of 2019 the parties began discussing, at the City's request, the successor collective bargaining agreement even though the existing agreement did not expire until January 2020. It demanded concessions from the Union worth approximately \$300,000 per year because of the lost revenue from the permanent closures of the Dickerson Facility and the General Motors Poletown Plant. The jail has not closed and General Motors changed its mind and will restart production of electric vehicles within 18 months. It predicted reductions in state revenue sharing that have not occurred. It realized a tremendous windfall when it unilaterally modified and then eliminated retiree health insurance coverage for current retirees.

To the Union's eye the City's actions do not match its words. Only a year before demanding concessions it entered into an agreement with the police patrol units granting significant wage increases and additional step increases. In January 2020 it granted the patrol units enhanced health insurance benefits for employees in the second tier: the very same benefits the Union seeks but the City opposes in this proceeding. Its generosity is not limited to police employees. In addition to a six-figure salary, the City Manager's contract includes a 100% healthcare opt out payment at single coverage rate; six weeks of paid vacation; a \$50 stipend to offset the cost of disability insurance; a \$500 monthly vehicle allowance; \$3,000 per year to offset the cost of dues in professional organizations; and \$5,000 annual tuition reimbursement. The



City also hired a former police chief who is paid \$85,000 annually with four weeks paid vacation and \$3,000 annual tuition reimbursement to fill a position designed to place him at the center of a nascent public safety project. The panel should view the claims of financial distress skeptically in light of \$500,000 budget amendment added on May 26, 2020 and the inclusion of \$1,000,000 for equipment replacement in the fire department that a city councilmember testified that the fire chief denies requesting.

In addition to the projected reduction in state revenue sharing that did not happen, the panel should note that Michigan municipalities will receive significant relief for first responder payroll expenses in the form of a Covid-19 grant. In addition, the City will be able to apply for another SAFER grant to partially fund fire department operations in the near future.

The Union asks the panel to credit all of the evidence presented at the hearing which reflects on the City's ability to pay for the wages and benefits requested by the Union and make a determination on the ability to pay issue in the affirmative.

#### **Synopsis of City's position on "ability to pay"**

Hamtramck is fighting for its life as an independent, self-governing city. Without exaggeration, its financial condition is dire. It has been in this situation twice before and, on both occasions, ended up in Emergency Management. Both times, various stakeholders quickly went back to their former spendthrift ways, ignoring the persistent structural weaknesses from which poverty-stricken urban communities like Hamtramck suffer. The City's current administration is trying to resist that impulse by raising money wherever it can and holding the line on spending. To do so, the City needs the assistance of this arbitration panel.

The General Fund is a discretionary fund used to pay all aspects of City operations which are not covered by dedicated funds. Revenue funds, such as the water and sewage fund or road funds, are funded by user fees or earmarked payments by the state and which, by law, can only be used for specific things. The Fund is sometimes called a "rainy day fund" and it is a good

financial practice to keep a positive fund balance. If the fund balance dips too low the State of Michigan will step in and the City could go back into Emergency Management.

At the end of fiscal year 2018-2019, the last audited year, the City operated at a deficit of \$1,453,000. That deficit resulted in a reduction of the General Fund balance from \$8,254,000 at the end of the previous Fiscal Year to \$6,801,000 as of 6/30/2019. In the fiscal year that ended on 6/30/2020 expenses exceeded revenues by \$1,17,000, resulting in a further decline of the General Fund balance from \$6,801,000 to \$5,783,000. In the current fiscal year, 2020-2021, a deficit of \$3,300,000 is projected, further reducing the General Fund balance to \$2,475,000. Susan Hendricks, the City Controller, testified that before the City reaches that point the State will step in and Hamtramck will be back in receivership.

The City's five-year plan is formulated based on a realistic assessment of its finances in terms of both reduced revenues and increased expenses.

The coronavirus pandemic will certainly have a significant effect for the next several years. The City already experienced a decline in revenues before the pandemic. Since March 2020 many people have not been working and are not paying resident and non-resident income tax. Although unemployment rates have declined somewhat in recent months, the unemployment rate in Hamtramck exceeds state and national rates. The City cannot collect municipal income tax on unemployment compensation. Accordingly, the City projects a decline in income tax revenues of \$751,000, from \$3,078,000 in the fiscal year ending on 6/30/2019 to \$2,327,000 in the fiscal year ending on 6/30/2020 and a further decline of \$231,000 to \$2,096,000 in the fiscal year ending on 6/30/2021.

The City will experience a substantial decline in income tax as the result of the retooling of the GM Poletown Plant to produce electric vehicles. Detroit and Hamtramck share income tax from resident and non-resident employees with two-thirds allocated to Detroit and one-third allocated to Hamtramck. For the three years ending on 6/30/2017, 6/30/2018, and 6/30/2019 the amounts received for income taxes declined from \$908,461 to \$612,027 then to \$587,142. Based

on the City's understanding of when the plant will resume operations and eventually increase production on three shifts, the City conservatively projects that income tax revenue will be reduced to \$375,000 for fiscal year 2019-2020; no revenue for fiscal year 2020-2021; \$75,505 for fiscal year 2021-2022; \$454,230 for fiscal year 2022-2023; and \$908,461 for subsequent fiscal years, the same amount received in fiscal year 2016-2017 when the plant ran three shifts.

Based on preliminary information the City projected a decline of \$981,000 in state revenue sharing for the fiscal year ending on 6/30/2021. As it turned out for the state fiscal year 2020 – 2021 (October 1, 2020 to September 30, 2021), the legislature approved a slight increase from the previous fiscal year. It is important to note, however, that the Department of Treasury has advised that projected amounts may change based on decisions by the legislature and/or changes in the economy. The City projects a further reduction in the city fiscal year ending 6/30/2022 of approximately \$1,600,000 from the amount received in the city fiscal year ending 6/30/2000. The collective bargaining agreement will expire on January 1, 2023 and if history is a guide to the future, state revenue sharing will likely go down, not up. The City is aware that federal legislation providing assistance for states and local governments was passed in the House but has yet to receive any consideration in the Senate.

The panel should be aware that three other sources of revenue have diminished. The City anticipates that income from the rental of parks and parking meter receipts will decrease by approximately \$10,000 in the fiscal year ending 6/30/2019 before returning to normal levels. Although the District Court is still open its operations have been reduced. The pandemic has resulted in a decline in traffic fines. The City projects a decline from \$1,455,000 in the fiscal year ending 6/30/2019 to \$1,075,000 in the fiscal year ending on 6/30/2020 and \$1,079,000 in the following fiscal year. Furthermore, the sizable SAFER grant has expired creating a hole in the annual budget of \$1,459,000.

The City faces an additional loss of revenue from the announced closure of the Wayne County Jail known as the "Dickerson Facility." In April 1989 Wayne County and Hamtramck

entered into an agreement for a \$500,000 payment in lieu of taxes, plus the percentage increase in the value of property in the County, "as long as the Jail is used as a County Jail." The new Criminal Justice Complex will include a new County Jail with an anticipated completion date in mid-2022. The most recent payment was \$1,125,000 and when the facility closes the revenue will be lost.

In addition to the substantial projected lost revenue the City's presentation demonstrated that its financial condition will be strained in the next few years by increased expenses. One of the most dramatic is the City's mandatory contribution to the Michigan Employees Retirement System (MERS) defined benefit plan. The State requires a funding ratio of 60% or higher and the City's funding ratio was 45% in 2017 and 23% in 2018. In lieu of a massive one-time payment the City is required to make annual payments ranging from \$5,500,000 to \$7,240,000 (see earlier table for amounts) until 2030. A ballot proposal to increase the millage levy from its current 0.5 mills up to 10.5 mills was rejected by the voters on November 3, 2020.

The City has been advised that the premium for insurance will increase significantly in the next fiscal year. One reason for the increases in municipal insurance is the increased liability exposure that some cities have recently experienced.

As required by the settlement in the *Garrett, et al v. City of Hamtramck* litigation the City must complete construction of the last three of 200 affordable single-family homes by July 1, 2021. After a payment from Wayne County of \$300,000, the City will be responsible for approximately \$495,135 that must be paid from the General Fund.

The parties spent a good deal of time discussing the cost of alley repairs and the paving of city parking lots. Very few houses in Hamtramck have driveways and access to garages is through alleys. Streets are narrow and businesses use alleys for deliveries. There is no dispute that alleys have been ignored for decades and are in disrepair making deliveries difficult.

The City adopted a 30-year plan to repair alleys spending \$250,000 per year. Council increased that amount in the fiscal year ending 6/30/2019. City Manager Angerer testified that

she removed the alley and parking lot repair funds for the fiscal year ending 6/30/2021 but a majority of Council voted to add \$500,000 to the budget. Council Member Andrea Karpinski testified that she voted against the increase. She acknowledged that the alley repair program is legitimate but that in her opinion it should not take precedence over being able to staff a fire department. Her opinion is shared by the Union President who testified that the alley repair program leads him to believe that the City is not in financial distress. He explained:

So, yes, when we're arguing ability to pay and one of the issues that the City is putting on is laying off two fire fighters that costs \$100,000 a year and there's an alley replacement program on the budget that could pay for five years of those two fire fighters, I certainly think there is the ability to pay. (Vol. 3, pp. 170-172).

The Union's witnesses obviously think the City's *raison d'être* is to be a funding source for the Fire Department and Local 750. To the contrary, City Council's role is to look at all the services residents need from the City, decide which ones should be provided and to what extent, and then figure out a way to pay for them. The Union misperceives the role of Act 312 and the panel. An Act 312 panel is not a substitute City Council, nor does it have the authority to act like an Emergency Manager. The panel cannot ignore the legitimate management decisions made by City Council (*e.g.*, should the City fund alley repair or use that money to provide greater benefits to Local 750 members?) and substitute its own priorities. Rather, the panel must respect the legitimate managerial prerogatives of City Council and decide if the City has the financial ability to satisfy the Union's demands *after* paying for legitimate expenditures like alley repair.

Ms. Hendricks testified that she included \$1,000,000 in her projection the amount necessary to fund the Fire Department in the fiscal year beginning 7/1/2021, in part for the purchase of a new fire engine. (Vol. 2, pp. 15-17, 72). She testified that the Fire Chief had submitted a budget which included a request for additional funds for maintenance of the City's fire engines and for replacement of one of the engines.<sup>5</sup> (Vol. 2, pp. 72-73). Ms. Angerer testified

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<sup>5</sup> Testimony concerning whether Fire Chief Hagan requested the replacement of a fire apparatus in the fiscal year beginning on July 1, 2021 – as well as the Union's request that a negative inference be drawn

that the Fire Chief advised her that the City's Automatic Aid Agreement with Detroit put a lot of wear and tear on the equipment and some of it will need to be replaced. Union President Oleksiak testified that in his opinion, the replacement of a fire engine is unnecessary "frivolous spending" because the equipment is being maintained and there are no alarming issues that require such severe attention that they would have to be replaced. In his opinion, if replaced, the City does not need to purchase a new apparatus. His opinion was not shared by Firefighter Jonathan Davis who frequently works as a Motor Engineer driving and maintaining Fire Department equipment. He testified that the Department's oldest vehicle is "not the most reliable vehicle or apparatus in itself, so it's not much of a backup, but it's there." Clearly, it is prudent for the City to plan on replacement of this unreliable fire engine. As demonstrated by the citations in its post-hearing briefs, Act 312 panels consider and give weight to projections concerning the City's ability to pay.

For various reasons the panel should not be persuaded by the testimony of Dr. Bunsis. He said that he was testifying as an expert in municipal finance but that he has never been qualified by a court in municipal finance. None of the 40 presentations listed on his resume concern municipal finance. None of the seven publications listed on his resume concern the subject of municipal finance. In sum, his qualifications as an expert in municipal finance appear to be rather thin.

Dr. Bunsis was not a neutral expert. He has served as an officer of the Eastern Michigan University Chapter of the American Association of University Professors and as the Chair of the AAUP Collective Bargaining Congress. He has appeared frequently as an expert witness but never on behalf of an employer. He was awarded a resolution honoring him for his "fierceness in advocating on behalf of the WMU/AAUP chapter." It seems clear that he is a fierce advocate, not a neutral witness.

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from the failure to call him as a witness – was outlined earlier. Although the testimony could be interpreted differently, it is not my understanding that anyone testified that Chief Hagan submitted a budget request document for replacement of one of the fire engines in that fiscal year.

Dr. Bunsis agreed that administrators must make forecasts into the future on how to operate a city and agreed that forecasting is difficult. He claimed that he was aware of the huge pension contributions demanded from the City by MERS but he did not include them in his analysis because he did not forecast. He showed a shocking ignorance about major events that will have a significant impact on the City's financial condition. For example, he admitted that he did not know of the specifics about the loss of income tax resulting from the conversion of the General Motors Poletown Plant to electric vehicles. He was unaware of the amounts lost when the SAFER grant expired. He was unaware of the agreement with Wayne County regarding the Dickerson Facility. He played down the financial effects of the Coronavirus pandemic and the loss of income tax revenues. He was unaware that Hamtramck's unemployment rate has been significantly higher than national or state unemployment rates.

Dr. Bunsis's financial analysis does not provide any useful information for the panel in its resolution of the paramount issue in this proceeding: The City's financial ability to pay for the Union's demands over the next three years, for which he has provided no projections.

It is important to note that the current version of Section 9 of Act 312 reflects several important changes made by Public Act 116 of 2011. First, the public employer's ability to pay is the preeminent factor that the panel must consider. Second, it defined what the panel must consider in determining the ability to pay.

The Act requires that the following factors apply to a panel's determination of a government unit's ability to pay: 1) the financial impact on the community of any award made by the arbitration panel; 2) the interests and welfare of the public; 3) all liabilities, whether or not they appear on the balance sheet of the unit of government; and 4) any state law that places limitations on a unit of government's expenditures or revenue collection.

Michigan courts have placed limits on the authority of Act 312 panels. In *Metropolitan Council No. 23 & Local 1277 AFSCME, AFL-CIO v. City of Center Line*, 414 Mich. 642 (1982), the Michigan Supreme Court considered an Act 312 award that limited the City's ability to layoff police officers for a general lack of funds only in conjunction with layoffs and cutbacks in other

city departments. The Court concluded that Act 312 panels do not have unbridled authority and can only compel agreement as to mandatory subjects of bargaining, *i.e.*, wages, hours, and other terms and conditions of employment. The Court overturned the award because it constituted a permissive subject of bargaining and an Act 312 panel had no authority to issue an award on that subject because issues of policy are reserved to the employer's managerial discretion. The Court stated:

The distinction drawn between mandatory and permissive subjects of bargaining is significant in determining the scope of the Act 312 arbitration panel's authority. Given the fact that Act 312 complements PERA and that under § 15 of PERA the duty to bargain extends to mandatory subjects, *we conclude that the arbitration panel can only compel agreement as to mandatory subjects. It would be inconsistent to conclude that the arbitration panel can issue an award on a permissive subject when the parties do not even have a duty to bargain over such a subject.* To hold otherwise would grant the Act 312 arbitration panel a free hand to compel agreement on any matters, even those beyond "wages, hours and other conditions of employment." *It is clear that the Legislature, while interested in foreclosing strikes in police and fire departments and providing an "alternate, expeditious, effective and binding procedure did not intend for the arbitration panel to have unbridled authority.* (Emphasis by City).

The Court described the concept of managerial prerogative in the public sector as "[p]erhaps the single greatest, and almost universally recognized, limitation on the scope of bargaining or negotiation. In essence, the concept creates a dichotomy between 'bargainable' issues, that is, those issues which are conditions of employment, and issues of 'policy' which are exclusively reserved to government discretion and cannot be made mandatory subjects of bargaining."

In a series of subsequent cases the Michigan Employment Relations Commission, the Michigan Court of Appeals and Michigan Supreme Court considered whether a staffing provision constitutes a mandatory subject of bargaining. In summary, it is settled law that minimum staffing issues are mandatory subjects of bargaining only if they are "inextricably intertwined with safety." To rule otherwise would "invade the city's prerogative to determine the size and scope of its business, including the services it will provide." *Detroit Fire Fighters Association v. City of Detroit*, 482 Mich. 18, 20 (2008), *quoting Oak Park Public Safety Officers Association v. City of Oak Park*, 277 Mich. App. 317,330 (2007).



These decisions concerning the limits on the authority of an Act 312 panel are applicable to this case. It is a managerial policy decision by City Council to spend money on alley and parking lot repair, efforts to improve training and supervision of police officers to reduce the threat of litigation and the purchase of a new fire engine. These things are clearly not mandatory subjects of bargaining and are beyond the scope of the panel's authority. Others may disagree with the City's spending priorities but neither Local 750 nor this panel have the authority to substitute their priorities for those of City Council. Unlike the Union, City Council must take into account all of the services provided to citizens. An arbitration panel is not a substitute City Council, nor does it have the authority to act like an Emergency Manager. The panel must respect the legitimate managerial prerogatives of City Council. The decision the panel is permitted to make is "if the City has the financial ability to satisfy the Union's demands *after* paying for legitimate expenditures like alley repair." (Emphasis by City).

#### **Findings & Conclusion Concerning Ability to Pay**

This is a voluminous record. Based on a careful review of the record, I am unable to concur with the viewpoint of either of the co-panelists concerning the City's ability to pay. Although in my view, for the *most* part, the Union's proposals are reasonable and merited, I disagree with the Union's panelist that the City has the ability to pay for all of its proposed changes. I also disagree with the City's panelist that the record supports a finding that the City does not have the financial resources to pay for *any* of the Union's proposals and, in addition needs to win each one of what the Union would derogatorily call "takeaways."

The panel has considered each of the section 9 factors (when applicable) but has on each issue accorded the City's ability to pay the most significance. In reaching a determination of the City's ability to pay the panel has considered: the financial impact of its award on the community' the interests and welfare of the public; all liabilities, whether or not they appear on the balance sheet; and any state law that places limitations on expenditures or revenue collection. The panel recognizes, as other panels have recognized, that decisions today must be made with an eye to

financial stability in the long term. The panel appreciates the observation that having come out of state financial management twice, Hamtramck does not have the luxury, “like an overweight individual who after going on a crash diet, quickly returns to his former eating habits”, or in the case of a municipality, profligate spending. Consequently, the panel has thoughtfully considered the testimony concerning financial projections presented by both sides. The panel has declined to award the full pay increase requested by the Union. The panel’s acceptance of the Union’s concessionary proposal concerning sick leave accrual significantly decreases the City’s payout exposure, but substantially less than the City thinks appropriate. The award allows the City to reduce two positions, through attrition, in addition to the reduction of four positions in the expired agreement. Further, speaking for himself and not the panel, the chairperson has reluctantly voted to deny the Union’s request to provide retiree health care that some bargaining unit members were promised.

It should be noted that the failure to discuss a specific section 9 factor does not signify that each factor was not considered. They were.

## **SECTION 6 – ISSUES BEFORE THE PANEL**

### **A. Bereavement Leave (Union Proposal) (Economic)**

Article 10, Section 2 of the expired collective bargaining agreement states:

#### **Section 2 – Bereavement Leave**

- a. An employee shall be entitled to use up to four (4) days per funeral to make reparation *[sic]* for and attend the funeral and burial of an immediate member of his/her family. An immediate member of the family for this purpose shall be deemed to be husband, wife, parent or child of the employee.
- b. Three (3) days for funeral attendance will be permitted for the purpose of attending the funeral of the following relatives: parent-in-law, brother, sister, brother-in-law, sister-in-law, or grandparent. Two (2) days funeral leave will be permitted for the purpose of attending the following relatives: aunt, uncle, niece, nephew, or spouse’s grandparents.
- c. All days off must be used in consecutive days, regardless if the employee is scheduled to work or not.

- d. Employees are required to provide specific documentation to evidence attendance at funeral, including a copy of the obituary and documents provided at the funeral home and/or funeral.

The Union's last offer of settlement on this issue states:

**Section 2 – Bereavement Leave**

- a. An employee shall be entitled to ~~charge up to four (4) days per funeral to make preparation for and attend the funeral and burial~~ of paid bereavement leave due to the death of an immediate member of his/her family. An immediate member of the family for this purpose shall be deemed to be husband, wife, parent or step-parent, child or step-child, brother, sister, or grandparent of the employee.
- b. ~~Three (3) days for funeral attendance will be permitted for the purpose of attending the funeral of the following relatives: parent in law, brother, sister, brother in law, sister in law, or grandparent. Two (2) days funeral attendance will be permitted for the purpose of attending~~ of paid bereavement leave shall be granted due to the death of the following relatives: aunt, uncle, niece, nephew, brother-in-law, sister-in-law, or spouse's grandparents. This day must be used on the day of the burial.
- c. All days off for ~~funeral~~ bereavement leave must be used ~~in consecutive days, regardless if the employee is scheduled to work or not.~~ within a single 30-day period.
- d. Employees are may be required to provide ~~specific~~ documentation to evidence attendance at funeral, including a copy of obituary and documents provided at the funeral home and/or funeral. the passing of a relative for whom they are claiming bereavement leave.

The City proposes that Article 10, Section 2 remain unchanged.

The Union contends that the bereavement leave provision in the expired collective bargaining agreement is antiquated and should be modernized. In its view the way people grieve is a constantly evolving, yet highly personal, cultural norm in this society as in most. It says that the proposed changes should be endorsed by the panel to make bereavement leave a useful benefit. The Union explains that a part of the motivation for its proposal is that an employee under the stress and anguish caused by the death of a loved one may affect decision making.

The testimony from a bargaining unit member illustrated the problem with tying entitlement to bereavement leave to attendance at a funeral or burial. The deceased relative was cremated and there was no funeral service but a memorial service is planned for the future and the family intends

to gather together to bury her ashes with those of her husband. As the result of the pandemic traditional funerals have occurred less frequently and replaced with an appropriate future service.

The City finds the elimination of the requirement to actually attend the funeral or memorial service and the additional expense to the City, although not huge, is totally unnecessary and unjustified. It points out that all other City employees are required to attend the funeral or memorial service and the same is true in the Detroit, Hazel Park, and Inkster collective bargaining agreements.

A well respected scholar and arbitrator said that the role of the chairperson of an Act 312 panel is not to try to impose solutions that he might find most appealing but rather to resolve each issue in the way the parties would have most likely handled it themselves, if their negotiations had resulted in a voluntary settlement.<sup>6</sup> One reason for this perspective is the recognition that the chairperson's understanding of the operations of the Hamtramck Fire Department is inferior compared to that of the parties. I think the Union is correct that entitlement to this benefit should not be strictly tied only to attendance at a traditional funeral. I am not confident, however, that adopting the Union's proposal would not create unintended problems. The Union's post-hearing brief takes issue with the City Controller's cost estimate because "the proposal does not guarantee four days of bereavement leave regardless of the need." A Union witness made the cogent observation that "gray areas" in a labor contract encourage arguments. Because there is no guarantee that an employee is automatically entitled to four days of bereavement leave, reasonable persons can have genuine differences of opinion about what type of non-funeral bereavement activities would qualify. Unseemly squabbles on such a sensitive topic are not worth having.

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<sup>6</sup> *Macomb County Professional Deputies Association and County of Macomb*, MERC Case No. D91 I-1674 (St. Antoine Chairperson, December 14, 1992).

The majority of the panel concludes that the City's last best offer of settlement concerning bereavement leave more closely corresponds to the applicable Section 9 criteria.

Michael J. Falvo  
Michael J. Falvo, Chairperson

1/22/2021  
Date

Charles S. Rudy  
Charles S. Rudy, City Panelist  
☒ Concurs ☐ Dissents

1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
☐ Concurs ☒ Dissents

1/22/21  
Date

**B. Health Care "Opt-Out" Payment (Union Proposal) (Economic)**

The Union's last offer of settlement on this issue states:

Article 7  
EMPLOYMENT AND WORKING CONDITIONS  
\* \* \*

F. Effective immediately, the City shall ~~cease~~ resume making any payments in lieu of an employee's decision not to receive offered health coverage or other provided benefits. For every month that an employee opts out of City-provided health insurance coverage, the City shall pay the employee the equivalent of 50% of the City's premium cost for a single coverage plan. The payment shall be made in the last payroll of each month. The City may require proof of alternative coverage once per calendar year.  
\* \* \*

The expired collective bargaining agreement does not contain a "health care opt-out" payment provision and the City's last offer of settlement is to maintain the status quo. All three Hamtramck collective bargaining agreements at one time contained a health care opt-out provision along the lines proposed by the Union but were previously removed. Detroit, Highland Park, and Detroit do not. Hazel Park allows an employee who has opted out of health care an annual payment of \$2,100 for single coverage, \$2,300 for 2-person coverage, and \$2,500 for family coverage. Significantly, unlike Hamtramck, an employee in Highland Park whose spouse has paid health insurance through an employer or former employer is eligible for coverage on the


City's health insurance. The City estimates that the annual cost of granting this demand is \$40,328.86 and the amount will increase as premiums increase. In the Union's view the City receives a windfall from the four bargaining unit members who currently waive their entitlement to health insurance. The City is obligated to at least pay the cost of single person coverage for every member and granting this demand would not be an added cost but a reduced savings.

In scrutinizing cost increasing proposals the panel must be aware of the cumulative expense of what it does. With that in mind and considering that the panel must give the greatest significance to the City's ability to pay, a majority of the panel concludes that this demand should be denied.

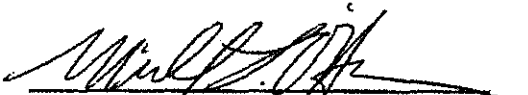
The majority of the panel concludes that the City's last best offer of settlement concerning health care opt-out payments more closely corresponds to the applicable Section 9 criteria.

  
Micheal J. Falvo, Chairperson

1/22/2021  
Date

  
Charles S. Rudy, City Panelist  
☒ ]Concurs [ ]Dissents

1/22/2021  
Date

  
Michael L. O'Hearon, Union Panelist  
[ ]Concurs [☒ ]Dissents

1/22/21  
Date

**C. Food Allowance (Union Proposal) (Economic)**

The Union proposes to add the following provision to the collective bargaining agreement.

18. **Food allowance- define benefit level (Economic).** The Union proposes modifying Article 7, by adding new Section 20 as follows:

**Article 7**  
**EMPLOYMENT AND WORKING CONDITIONS**  
\* \* \*

Section 20- Food Allowance

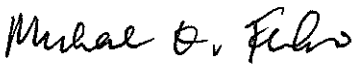
The City shall pay each bargaining unit member an annual food allowance of \$750.00 to defray the cost of meals eaten on the City's premises for the Employer's convenience that year. Half of the allowance (\$375.00) shall be paid in the first payroll check in January of each year and the other half of the allowance (\$375.00) shall be paid in the first payroll check in July of each year. Employees hired after the food allowance is paid shall receive a prorated amount in their first full payroll check.


There is no food allowance in the expired collective bargaining agreement and the City's last offer of settlement is status quo.


Food allowances are commonly found in the collective bargaining agreements of fire departments. Employees who are confined to quarters for 24-hours unless called out to handle an emergency are in a class by themselves and cannot be compared to other public employees who work shorter shifts allowing them to eat meals in the customary manner. Although police officers are somewhat similar in the sense that eating comes second when their services are needed the comparison falls short because their shifts are shorter. Not surprisingly, none of the members in other City bargaining units have a food allowance. Hazel Park firefighters receive an annual food allowance of \$900. Highland Park, as a holdover from its prior experience as a public safety department, continues to pay its firefighters who are also certified police officers a gun allowance of either \$300 or \$500 depending on years of service. The Union president testified that the bargaining unit had previously negotiated a food allowance into the collective bargaining agreement, which was generally seen as an item to offset the police patrol unit's gun allowance in a parity analysis. While the patrol unit has maintained its gun allowance, the members of the Union bargaining unit have lost the food allowance. The annual cost to the Employer if this demand is granted is approximately \$20,000.

Speaking for himself and not the panel, I found the Union's justification for this demand persuasive. Act 312 is considered an extension of collective bargaining and in any negotiation some issues predominate. As a result a substantial improvement in one area is often at the expense of something else. The Union sought to achieve equal status for tier 2 firefighters as tier 2 police officers in health care coverage. In view of that significant accomplishment, – and the associated cost to the City – a majority of the panel concludes this demand should not be accepted at this time.


The majority of the panel concludes that the City's last best offer of settlement concerning a food allowance more closely corresponds to the applicable Section 9 criteria.

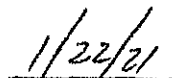
  
Micheal J. Falvo, Chairperson

  
Date

  
Charles S. Rudy, City Panelist  
☒ Concurs ☐ Dissents

  
Date

  
Michael L. O'Hearon, Union Panelist  
☐ Concurs ☒ Dissents

  
Date

**D. Elimination of Fire Marshal Position (Employer Proposal) (Economic)**

This issue involves the City's proposed elimination of the Fire Marshal from the collective bargaining agreement. The Union believes the position should not be eliminated and its last offer of settlement is status quo.

The City's last offer of settlement on this issue is the following.

The City proposes to eliminate the position of Fire Marshall and the reassign the duties currently performed by the Fire Marshall's to the City's vendor for the inspection of buildings and to the Fire Chief for investigation of fires of unknown origin. This position elimination would be accomplished through attrition



if the current incumbent retires upon eligibility in September 2020 or earlier. If the current incumbent does not retire in or before September 2020, this position elimination will be accomplished by putting the current incumbent back to the rank of Captain and bumping down to the least senior firefighter, who would be laid off. This requires modification of the Prior CBA, Article 16, Sections 3, 5, 6 and 7 and Firefighters Salary Schedule, p. 49.

The City proposes that Article 16, Sections 3, 5, 6 and 7 and Firefighters Salary Schedule, p. 49, of the Prior CBA be modified as follows:

**ARTICLE 16**  
**POSITION VACANCIES, SENIORITY AND PROMOTION PROCEDURE**

\* \* \*

**Section 3 – Table of Organization and Promotion**

- a. Promotions to the rank of Fire Motor Engineer, Fire Lieutenant, and Fire Captain ~~and Fire Marshall~~ shall follow the promotional process identified in this section.
- b. Any candidate conditionally promoted to the rank of Fire Motor Engineer, Fire Lieutenant, or Fire Captain ~~Fire Marshall~~ must successfully complete the applicable course (identified below) within one (1) year of the effective date of this conditional promotion. The City shall annually budget three thousand (\$3000.00) dollars for the educational purpose for the positions of Fire Motor Engineer, Fire Lieutenant and Fire Captain. ~~As necessary, the City shall fund any certification course required by the City or State for the Fire Marshall and Master Mechanic; such funding shall not be included in the \$3,000 annual limit.~~ The Chief shall permit, in writing, no more than two (2) employees, one from each unit, to attend courses simultaneously. Time off work to attend courses shall be granted on a seniority basis. Provided the employee receives prior written permission of the Chief, the employee shall pay for the course and books and the City shall reimburse the employee for the course and books upon receiving proof of successful completion and the written authorization of the Chief.

\* \* \*

- ~~g. Fire Lieutenants and Fire Captains with enrollment and successful completion of next available required course with one year in the Fire Officer I and II program offered by the Michigan Firefighter Training Council course, shall be eligible for promotion to Fire Marshall. Failure to successfully complete the next available required course within one year of each promotion identified above shall result in the return of the employee to his previous rank before his conditional promotion (i.e., a promotion made prior to successful completion of the required course) is made permanent.~~
- g. (formerly paragraph h) Fire Lieutenant and Acting Fire Lieutenant positions will be filled only by employees who obtain certification as Fire Officer II in the training program offered by the Michigan Firefighters Training Council.
- h. (formerly paragraph i) The Fire Captain and Fire Marshall positions shall be filled only by employees who obtain certification as Fire Officers I, II, and III in the training program offered by the Michigan Firefighters Training Council.
- i. (formerly paragraph j) Among those who are eligible for a promotion by meeting the rank, seniority in-grade and enrollment requirements set forth in this section, the promotion shall be offered in the order of greatest in-grade seniority. At any time a person is offered a promotion, that person has the right of refusal. If the right of refusal is exercised, the next eligible person on the list shall be offered the promotion, and the person who refused the promotion shall remain at the top of the appropriate list.
- j. (formerly paragraph k) Any person promoted to a higher rank shall undergo a probation period for the length of six (6) months. The employee's superior officers will evaluate promoted employee on

a monthly basis. Any promoted employee failing to meet the standards of the promotion shall be returned to previous rank. At any point in time, a promoted employee has the option to voluntarily bump back to their previously held position.

- k. (formerly paragraph l) Any person covered under the terms of this agreement who is promoted to a higher rank must hold that rank for one hundred eighty (180) calendar days prior to retirement or that employee shall not be entitled to the pension benefits available to persons holding said rank or payoff or unused sick, vacation, ATO or any other time at said rank. If such person leaves before the 180-calendar day requirement, then that person shall be paid off their time at the ~~rank~~ rate of the former rank.

\* \* \*

## Section 5 – CHAIN OF COMMAND AND PROMOTIONAL FLOW CHART

### FIRE CHIEF (1)

#### NON SUPPRESSION DIVISION

~~FIRE MARSHALL (1)~~

#### SUPPRESSION DIVISION

FIRE CAPTAIN (2)

FIRE LIEUTENANT (4)

MOTOR ENGINEER (6)

FIREFIGHTER (~~18~~ 12)

\* \* \*

## Section 7 -- Chief out of Bargaining Unit

\* \* \*

- b. The City may hire a Fire Chief from outside the Hamtramck Fire Department and, if it does, the City will be the sole judge of his or her qualification. If, however, the City elects to promote from within the Department, the existing provisions regarding promotion to Fire Chief to remain as stated in Section 4 *[sic]* [6].<sup>7</sup>
- c. Effective on [Date of the Act 312 Award], the position of Fire Marshal has been eliminated and the duties previously performed by the Fire Marshal will be performed by the Fire Chief or his designee or by a City vendor.

The Union's last offer of settlement on this issue is the following.

**Elimination of Fire Marshall Position (Economic).** The Union proposes to maintain the *status quo* and make no changes to Article 16, Sections 3, 6 and 7. The Union's proposed modifications to Article 16, Section 5 are reflected in the Union's last offer of settlement on Petitioner's Issue E.

**E. Reduction of Staffing Levels (Economic).** The Union proposes the following modifications to Article 16, Section 5:

## ARTICLE 16

<sup>7</sup> The portion of the City's last offer of settlement that is not underlined correctly reprints Article 16, Section 7, Subsection (b) in the expired collective bargaining agreement. The parties acknowledge that the reference to Section 4 is a typographical error and the sentence should state: "The existing provisions regarding promotion to Fire Chief to remain as stated in Section 6." Section 4 concerns "Mechanic Position Duties." The title to Section 6 is: "Promotion to Fire Chief."

## POSITION VACANCIES, SENIORITY AND PROMOTION PROCEDURE

\* \* \*

### Section 5 - CHAIN OF COMMAND AND PROMOTIONAL FLOW CHART

FIRE CHIEF (1)

#### NON-SUPPRESSION DIVISION

FIRE MARSHAL (1)

#### SUPPRESSION DIVISION

FIRE CAPTAIN (2)

FIRE LIEUTENANT (4)

MOTOR ENGINEER (6)

FIRE FIGHTER ~~(48)~~ (12) through attrition

The numbers of employees specified in each classification are minimum specific compliments of employees in any classification.

\* \* \*

When he testified at the hearing William Diamond served as Hamtramck's Fire Marshal. After the hearings concluded the panel was informed that he has submitted a letter advising Fire Chief Hagan of his intent to retire on January 2, 2021. The letter also indicates that he reserves the right to rescind the letter prior to his retirement.

The City points out that the Fire Marshal is the highest paid and most senior member of the bargaining unit. His current base wage is \$91,892. If the Union's last best offer on wages is adopted the expenditure over the term of the collective bargaining agreement, without considering overtime and including estimated healthcare and pension contribution, will be \$371,491; if the City's last offer of settlement on wages is adopted the amount without overtime, would be \$355,083. Based on the amount of overtime worked in 2019, the City estimates that \$13,170 would be added to those amounts. I agree with the City that the salary of Detroit's Fire Marshal should not be considered because the responsibilities are too dissimilar. The current salary of the Hazel Park Fire Marshal is \$7,595 less, and the Inkster Fire Marshal is \$21,892 less, than the salary of the Hamtramck Fire Marshal. Highland Park does not have a Fire Marshal.

City Manager Angerer testified that when a firefighter is promoted under the existing seniority system to Fire Marshal the City pays for training necessary to do the significantly different job. Because of their seniority in the past Fire Marshals have retired soon after being appointed creating a "revolving door." She explained that McKenna, the company that currently performs building code inspections, is qualified to conduct fire code inspections of buildings and businesses. She testified that the investigation of suspicious fires could be performed by the Fire Chief or subcontracted to the Detroit Fire Department, which has an entire unit devoted to this function. The City asserts that the outsourcing of building inspections should be considered a proper internal comparable.

The Union offered extensive testimony in support of its position that the Fire Marshal position should not be eliminated. Before discussion of the substantive merits, however, the panel must resolve a threshold issue raised by the Union concerning what it considers a change from the existing agreement concerning the Fire Chief contained in the proposal to eliminate the Fire Marshal position. The challenged provision is Article 16, Section 7( b).

As it appears in the expired agreement, Section 7 states:

Section 7 – Chief Out of Bargaining Unit

- a. Effective upon ratification of this agreement, the Fire Chief shall not be part of the bargaining unit; the Fire Chief will be offered an individual contract with the City.
- b. The existing provisions regarding promotion to Fire Chief to remain as stated in Section 4 *[sic]* [6].

If the City's proposal to eliminate the Fire Marshal position is adopted by the panel, Section 7 in the new agreement would state:

Section 7 – Chief Out of Bargaining Unit

- a. Effective upon ratification of this agreement, the Fire Chief shall not be part of the bargaining unit; the Fire Chief will be offered an individual contract with the City.
- b. The City may hire a Fire Chief from outside the Hamtramck Fire Department and, if it does, the City will be the sole judge of his or her qualification. If, however, the City elects to promote from within the Department, the existing provisions regarding promotion to Fire Chief to remain as stated in Section 4 *[sic]* [6].

- c. Effective on [Date of Act 312 Award] the position of Fire Marshal has been eliminated and the duties previously performed by the Fire Marshal will be performed by the Fire Chief or his designee or by a City vendor.

The Union asserts the City's last offer of settlement concerning the elimination of the Fire Marshal position "is fundamentally flawed and must be rejected by the panel." The Union provides seven reasons that it contends compel that conclusion.

1. The issue has been presented and put forth as the elimination of the Fire Marshal position; however, the Employer's proposed modifications to Article 16, Section 7(b) do not address the Fire Marshal position in any way and instead convert the Fire Chief classification from a mandatory internal promotion into a classification filled completely at the discretion of the Employer.
2. While the City's proposed language changes to Section 7(b) do appear in its position statement, there is no mention of a modification to the Fire Chief classification in any of its description of the proposal, nor was it brought to the panel's attention during the City's lengthy opening statement.
3. There is no record evidence that this element of the proposal was ever discussed by the parties, during negotiations: because it was not. As such, technically it is not appropriately before the panel.
4. The City presented no evidence at the hearing to explain its motivation for this element of the proposal. Absent any showing of need for a change to the *status quo*, the panel should not grant a modification that removes a promotional opportunity from members of the bargaining unit.
5. The first sentence of Article 16, Section 6 is: "For purposes of clarification, the procedures identified in this section shall be used for the selection of Fire Chief *and supersede any procedures not identified in this section.*" (Emphasis by Union). There is no modification to Section 6 in the City's last offer of settlement or in its position paper. Without a reference to Section 7(b) being added to Section 6 in the new collective bargaining agreement, the proposed language in Section 7(b) is a nullity. The first sentence of Section 6 explicitly requires that its procedures will supersede the added language in Section 7 as it relates to the selection of a Fire Chief.
6. On June 6, 2020, the chairperson issued a ruling that a proposal by the City to modify Article 2 of the collective bargaining agreement was not appropriately before the panel. Article 2 states:

This agreement shall be applicable to all employees of the Fire Department except civilian employees and the Fire Chief.

The parties agree and hereby recognize the members of the bargaining unit as the exclusive providers of fire suppression, fire rescue, and fire prevention in the City of Hamtramck. All such services and any other services historically performed exclusively, without subcontracting or assigning non-bargaining unit employees, shall continue to be provided exclusively by bargaining unit members.

Nothing in the City's last offer of settlement indicates that the reassignment of the current Fire Marshal duties is to be done notwithstanding the provisions in Article 2. There is no doubt that the language of Article 2 prohibits Fire Marshal duties from being done by anyone but bargaining unit members. Fire prevention services are specifically referenced as the exclusive domain.

7. The Employer proposed language in new Section 7(c) is troubling in another manner. By making room for the Fire Marshal duties to be done in the future by a "designee" of the Fire Chief, the Chief would arguably have the authority to designate a bargaining unit member he chose to perform the former duties of the Fire Marshal. Under the proposed language the City could eliminate the Fire Marshal classification, delete its duly negotiated compensation from the salary schedule, and then transfer those duties to other bargaining unit members without any additional compensation. Naturally, this would result in the Union making a demand to bargain and likely more acrimonious litigation. Act 312 arbitration is intended to resolve disputes between the parties, not create new ones.

After careful consideration, I am persuaded by one of the Union's arguments that is dispositive of the outcome.

There is abundant testimony from both sides on the merits and demerits of keeping or deleting the position of Fire Marshal in the successor collective bargaining agreement, likely covering several hundred pages of the transcript. I was impressed by the thoroughness and cogency of the City's and the Union's presentations. However, there was no testimony from either side directly addressing the capacity of the City to hire a Fire Chief who is not a member of the Hamtramck Fire Department.

The City's position is that Section 7(b) confers no new authority beyond the authority that it already had in the expired collective bargaining agreement. In its opinion the removal of the position of Fire Chief from the bargaining unit concurrently gave it the sole discretion to hire an individual from outside the Hamtramck Fire Department or to promote a bargaining unit member to that position. It maintains that the criteria for promotion to Fire Chief specified in Article 16, Sections 6(a)-(h) are pertinent only if it makes the decision not to select a candidate from outside the department. Consequently, the panel should reject the Union's contention that the City was obliged to offer testimony to justify the new language in Article 7(b) because the expired agreement allowed it to hire someone outside the bargaining unit if it chose to do so.

The Union insists that the removal of the Fire Chief position from the expired collective bargaining agreement did not, inferentially, or otherwise, confer the City the discretion to hire an individual outside of the bargaining unit as Fire Chief.

The panel cannot resolve the issue without determining which party is correct on precisely what the City gained, and the Union lost, concerning the selection of a Fire Chief in the expired collective bargaining agreement.

In construing the meaning of any collective bargaining agreement an arbitrator attempts to ascertain the intent of the parties by determining what the chosen words would convey to a rational cautious reader. Parties to a dispute frequently have irreconcilable perspectives on what a contractual provision means. In order to make neutral, objective, and principled decisions, arbitrators rely on canons of interpretation. A contract should be interpreted as a whole document and, if possible, every word and provision is to be given effect. An interpretation of one clause that would render another clause meaningless is to be avoided. In other words, provisions in a contract should be understood as being interrelated and compatible, not irreconcilable. Finally, especially when sophisticated parties are involved, the interpreter should not change meaning by adding words that the authors left out.

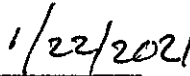
Perhaps in a different context the words "the Fire Chief shall not be a part of the bargaining unit" would signify that the Employer can select anyone for the job, whether or not a part of the bargaining unit. But not in the expired contract. It does not follow that because the parties agreed that the Fire Chief will not be a part of the bargaining unit that they also impliedly agreed to wipe out the two pages of detailed procedures on how an interested bargaining unit member can attempt to be promoted to the position. Moreover, two provisions flatly contradict the City's argument. First, Section 6(a) states: "For purposes of clarification, the procedure identified in this section shall be used for the selection of Fire Chief and *supersede any procedures not identified in this section.*" (Emphasis added). The provision that takes the Fire Chief out of the bargaining unit is in Section 7, not Section 6. Second, the first clause of Section 7 removes the Fire Chief

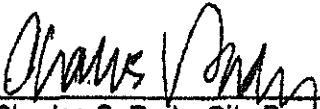
from the bargaining unit but the second clause clarifies that "[t]he existing provisions regarding promotion to Fire Chief remain as stated in Section 4 [sic] [6]." Clearly, the "existing provisions regarding promotion to Fire Chief" that predated Section 7(a) was negotiated did not contemplate the selection of an individual outside the bargaining unit to be the Fire Chief.

By accepting the City's position on the Fire Marshal issue the panel would also be ordering a significant disadvantageous change concerning the eligibility of bargaining unit members to become Fire Chief. Section 9(1)(i) of Act 312 instructs the panel to take account of factors that are normally considered in collective bargaining. Perhaps the most prominent principle in that regard is that the party proposing change should demonstrate the need for the change. On this record there is not competent, material, and substantial evidence supporting the City's proposed change to Article 16, Section 7(b).


The majority of the panel concludes that the Union's last best offer of settlement concerning elimination of the Fire Marshal position more closely corresponds to the applicable Section 9 criteria.

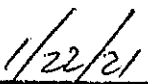
  
Micheal J. Falvo, Chairperson

  
Date

  
Charles S. Rudy, City Panelist  
☐ Concurs ☒ Dissents

  
Date

  
Michael L. O'Hearon, Union Panelist  
☒ Concurs ☐ Dissents

  
Date

**E. Two Person and Family Health Insurance for Tier 2 employees** (Union Proposal)  
(Economic)

Article 7, Section 8 of the expired collective bargaining agreement as it pertains to this issue states:



**Section 8.** The City agrees to provide full time employees (hired prior to November 1, 2013) and their eligible spouses and dependents health care coverage subject to the terms below, subject to modification as required by the Patient Protection and Affordable Care Act ("PPACA") as amended beginning in 2013. *Employees hired after November 1, 2013 shall be entitled to employee's only health insurance, however, may purchase spousal and dependent coverage for the difference in premium costs.* All employees are subject to the terms and conditions set forth below. (Emphasis added).

- A. The City shall not provide health care coverage for the employee's spouse if the spouse is eligible to receive paid health coverage through an employer or former employer of the spouse. "Paid" health coverage is defined as eighty percent (80%) of the annual premiums. As a condition of spousal health care coverage under this section, the City may require that the employee file and affidavit and/or other documentation each year or upon request attesting that the spouse is not eligible for other employer-paid health coverage.

The Union's Last Best Offer states:

**Article 7**  
**EMPLOYMENT AND WORKING CONDITIONS**

\* \* \*

**Section 8 - Medical, Prescription, Dental, Life Insurance, and Optical Plan**

The City agrees to provide full time employees (~~hired prior to November 1, 2013~~) and their eligible spouses and dependents health coverage subject to the terms below, subject to modification as may be required by the Patient Protection and Affordable Care Act ("PPACA") as amended beginning in 2014. ~~Employees hired after November 1, 2013, shall be entitled to employee's only health insurance coverage however, may purchase spousal or dependent coverage for the difference in premium costs.~~ All employees are, subject to the terms and conditions set forth below.

The City's Last Best Offer is that Article 7, Section 8 remain unchanged from the prior CBA.

A Tier 2 employee (*i.e.*, hired after November 1, 2013) has the option to obtain two-person or family coverage but must pay the amount of the premium above single coverage. This increased cost can vary depending on the plan selected. Employees are responsible for 80% of the premium for single, 2-person, or family coverage.

Cathy Square was appointed by the Governor in June 2013 pursuant to Public Act 436 of 2012 as the City's Emergency Manager and served in that capacity until December 2014 at which time the Governor appointed a Receiver Transition Advisory Board ("RTAB"). Katrina Powell was appointed as City Manager and served in that capacity from November 24, 2014 to June 30, 2017. Ms. Powell testified at the hearing. She explained that when she assumed her duties, as a result

of an earlier decision by Emergency Manager Squares, employees hired before November 1, 2013 (tier 1) were eligible for city paid 2-person and family health insurance but those hired after that date (tier 2) received city paid coverage for themselves but no city paid coverage for 2-person or family coverage. Her recollection that the upgrade to family coverage was approximately \$400 per pay period. Notwithstanding what the contracts allowed, she made the decision to restore two-person and family coverage for all tier two city employees. "And if they're only bringing home, you know, 1200, that's, you know, a big chunk of their check." On cross-examination, Ms. Powell testified that in her opinion as City Manager she had the authority to do what she did.

When the current administration became aware of the "extra-contractual" health insurance coverage for tier 2 Local 750 bargaining unit members, as well as employees represented by AFSCME, it was discontinued. **TABLE 21** shows the current coverage for active Local 750 employees and **TABLE 22** shows current coverage for HPOA employees.

**TABLE 21**  
**Health Insurance Coverage for Fire Department Employees**

- Tier 1 City pays the cost of a high-deductible "core" medical insurance plan for the *employee, 2-person, and family coverage*. The employee has an option to select a "buy-up" plan having lower deductibles and is responsible for the additional cost above the "core" plan.
- Tier 2 City pays the cost of a high deductible "core" medical insurance plan for the *employee only*. The employee has an option to select a buy-up single coverage plan and is responsible for the additional cost. In addition, the employee has the option to select 2-person and family coverage and is responsible for 100% of the cost difference from single person coverage. Both the "core" plan and "buy up" plan is available for two-person or family coverage for 100% of the cost difference from single person coverage.

**TABLE 22**  
**Health Insurance Coverage for Police Department Employees**

- Tier 1 City paid "core" insurance for employee, 2-person, and family coverage. The employee has an option to select a "buy-up" plan and is responsible for the additional cost.
- Tier 2 Same as tier 1.

The unequal treatment of the two bargaining units representing public safety employees is the result of a Memorandum of Understanding signed by City Manager Angerer and the President of the Hamtramck Police Officers Association dated January 17, 2020. A Memorandum of Understanding with the same provisions was also signed by the City Manager and the President of the Hamtramck Command Officers Association. The documents state:

**MEMORANDUM OF UNDERSTANDING**

City of Hamtramck ("City") and Hamtramck Police Officers Association ("Union") (the City and Union shall collectively be referred to as "the Parties") through their undersigned representatives agree as follows.

1. In 2017, the Parties entered into a collective bargaining agreement which did not provide for the medical insurance of certain members' dependents.
2. The City has, however, continued to provide dependent medical insurance coverage to all bargaining unit members that have elected to participate in the City's group medical plans.
3. The Parties to this Memorandum of Understanding ("MOU") recognize that the City of Hamtramck, like many local units of government in the region, has had difficulty retaining trained and experienced law enforcement officers in what is a competitive market for their services.
4. The loss of officers to other departments and professions has had a detrimental impact that the Parties wish to rectify and avoid in the future.
5. The Parties agree through this MOU to formalize the policy initiated by the former city manager of providing all bargaining unit members electing to participate in the City's group health insurance programs dependent coverage for their eligible spouses and dependents in accordance with existing cost/premium sharing arrangements as set forth in the Parties' current collective bargaining agreement.
6. This MOU is entered on a non-precedential basis and waives any and all disputes between the Parties for payments/overpayments of prior insurance benefits.

As indicated in the Memorandum of Understanding, City Manager Angerer testified that the City has had problems retaining police officers. She explained that Hamtramck has become a training ground for officers who leave to join other police departments. She made the recommendation that tier 2 police officers receive two-person and family medical insurance because of the difficulty recruiting and retaining officers. **TABLE 23** shows the number of officers for the years 2016 to 2020 that resigned and the mean months (rounded to nearest month) employed before resigning. The record does not contain statistics for resignations prior to 2016.

**TABLE 23**  
**Voluntary Resignations from the Hamtramck Police Department**  
**2016 to 2020**

<u>Year</u>	<u>Number of officers Resigned</u>	<u>Average Time Before Resigning</u>	<u>Shortest Time Before Resigning</u>	<u>Longest Time Before Resigning</u>
2016	8	2 years 2 months	3 months	6 years
2017	7	3 years 6 months	5 months	13 years 7 months
2018	0	n/a	n/a	n/a
2019	6	4 years 7 months	3 months	19 years
2020	0	n/a	n/a	n/a

During the same period 3 fire fighters resigned. The time on the job before retiring was: 4 years 2months; 2 years 3 months; and 11 months; averaging 2 years 8 months.

On cross-examination, Ms. Angerer said that she did not know how many of the officers who resigned were hired by other law enforcement agencies but she spoke to “an officer or two” who informed her that they were taking law enforcement jobs elsewhere.

James Allen has served as the City Attorney for a number of years. He agreed that there is a significant retention problem in the police department. He explained that new officers are more likely to make mistakes leading to civil liability because of their inexperience. Because of high attrition rates some supervisors had less than five years on the department. He explained that the Fire Department did not experience a similar attrition problem caused by low seniority fire fighters quitting.

Currently the Employer offers three health insurance plan options to all City employees: Priority Health H.S.A. 2000; Priority Health HOM 500; and Total Health Care 1000. Tier 1 fire department personnel were hired before November 1, 2013 and tier 2 employees were hired after that date. A tier 1 fire fighter receives city-paid single, two-person, and family coverage. A tier 2 fire fighter receives single coverage only. A tier 1 police officer and, consistent with the June 17,

2020 Memorandum of Understanding, a tier 2 police officer both receive single, 2-person and family coverage. **TABLE 24** compares the cost differential paid by the employee per pay period for same tier police officers and fire fighters for Priority Health H.S.A. 2000 medical insurance.

**TABLE 24**  
**Biweekly Employee Medical Insurance**

	<u><b>POLICE</b></u>	<u><b>FIRE</b></u>
<b>Tier 1 – Single</b>	\$45.96	\$45.96
<b>Tier 1 – 2-person</b>	\$105.70	\$105.70
<b>Tier 1 – Family</b>	\$119.49	\$119.49
<b>Tier 2 – Single</b>	\$45.96	\$45.96
<b>Tier 2 – 2-person</b>	\$105.70	\$416.26
<b>Tier 2 – Family</b>	\$119.49	\$501.72
<b>Tier 1 – Single (annual)</b>	\$1,194.96	\$1,194.76
<b>Tier 1 – 2-person (annual)</b>	\$2,748.20	\$2,748.20
<b>Tier 1 – Family (annual)</b>	\$3,106.74	\$3,106.74
<b>Tier 2 – Single (annual)</b>	\$1,194.96	\$1,194.96
<b>Tier 2 – 2-person (annual)</b>	\$2,748.20	\$10,822.76
<b>Tier 2 – Family (annual)</b>	\$3,106.74	\$13,044.72

There are two high deductible family coverage policies at lesser rate for tier 2 fire fighters ranging in cost from \$182.83 to \$383.95 per pay period. The panel is not aware of the number of tier 2 police officers who are married, who have children or other qualified dependents, or who are unmarried with qualified dependents.

No explanation is required to recognize the real life implications of the dichotomy between a tier 2 police officer and a tier 2 fire fighter – roughly \$10,000 per year. The panel heard testimony from a tier 2 firefighter with a nine-month-old son who could not afford to provide him with health insurance. On the day of his testimony his son was being covered by “state care”; however, he expected that coverage to eventually be cancelled because his wages as a Firefighter III disqualified the infant for coverage. When asked how he felt about the disparity between bargaining units he answered:

It makes me feel horrible. It makes me feel not as a valued employee. It makes me feel like you're the waste of a dog on the bottom of somebody's shoe that you can't scrape off and get rid of.

The comparable communities support the Union's position. Hazel Park, Inkster and Detroit provide 2-person and family coverage to all fire department employees.

AFSCME employees hired before April 7, 2005 receive health insurance coverage for their spouse and dependents. Persons hired after that date receive employee only coverage. The statute requires the panel to give the City's financial ability to pay the most significance, it also requires that the panel consider wages, hours, and conditions of employment for persons performing similar work in comparable communities as well as other Hamtramck employees. The record does not enlighten the panel whether police officers nationally or locally experience more injuries and deaths than firefighters. It will suffice to note that both professions entail danger, but in different ways.

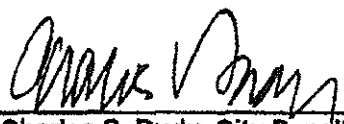
The justification made to City Council for providing tier 2 police officers the same health insurance as tier 1 police officers was retention of police officers. (A conclusion unsurprisingly supported by the two unions representing police officers and supervisors.) Neither Ms. Angerer nor Mr. Allen cited a specific instance of a Hamtramck police officer who said the reason for resigning was the cost of health care, as opposed to poor pay or myriad other reasons why people change jobs or careers.

Based on a careful review of the entire record, a majority of the panel concludes that the City has failed to present convincing reasons for providing tier 2 police officers two-person and family health insurance but not tier 2 firefighters. Any questions that may arise concerning the interpretation of the panel's award on this issue shall be resolved by treating tier 2 members of the Hamtramck Fire Department the same as tier 2 members of the Hamtramck Police Department.

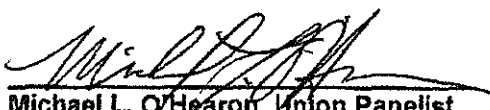
The majority of the panel concludes that the Union's last best offer of settlement on health care for tier 2 bargaining unit members more closely corresponds to the applicable Section 9 criteria.

  
\_\_\_\_\_  
Michael J. Falvo, Chairperson

1/22/2021  
Date

  
\_\_\_\_\_  
Charles S. Rudy, City Panelist  
[     ]Concurs     [ ☒ ]Dissents

1/22/2021  
Date

  
\_\_\_\_\_  
Michael L. O'Hearon, Union Panelist  
[ ☒ ]Concurs     [     ]Dissents

1/22/21  
Date

#### **F. Acting Rank Eligibility (Union Proposal) (Economic)**

The Union withdrew this issue.

## G. Acting Rank Compensation (Union Proposal) (Economic)

This issue proposed by the Union involves a proposed increase in compensation when a bargaining unit member is temporarily assigned to act in a higher rank or perform the duties of a Motor Engineer. Section 6 (a) – (b) of the expired collective bargaining agreement provides:

### Section 6 – Pay for Acting Rank

- a. Any member of the Fire Department who is assigned to perform all of the duties of a Lieutenant by a superior shall receive thirty dollars (\$30) per day (24 hours) for performing the assigned duties of such a higher rank for the entire assigned period.
- b. Any member of the Fire Department who is assigned to perform all of the duties of a Motor Engineer shall receive twenty-five dollars (\$25) for performing the duties of such a higher rank for performing the duties of such a higher rank for the entire assigned period.

The Union's last offer of settlement on this issue states:

### Article 7 EMPLOYMENT AND WORKING CONDITIONS

\* \* \*

#### Section 6 – Pay for Acting Rank

\* \* \*

- a. Any member of the Fire Department who is assigned to perform all of the duties of a Lieutenant by a superior shall receive thirty dollars (\$30) per day (24 hours) for performing the duties to act in the capacity of a rank above that to which he is normally assigned, shall receive the contractual hourly rate of pay of such a higher rank for the entire assigned period.
- b. Any member of the Fire Department who is assigned to perform all of the duties of a Motor Engineer by a superior shall receive the sum of twenty-five dollars (\$25) per day (24 hours) the contractual hourly rate of pay for the Motor Engineer classification for performing the duties of such a higher rank for the entire assigned period.

\* \* \*

The City's last offer of settlement on this issue states:

The City proposes that Article 7, Section 6 (a & b) be modified as follows:

#### Section 6 - Pay for Acting Rank

\* \* \*

- a. Any member of the Fire Department who is assigned by a superior to perform all of the duties of a Lieutenant by a superior for an entire shift shall receive thirty dollars (\$30) per day (24 hours), provided, however, the member works three consecutive shifts for performing the duties of such a higher rank for the assigned period.
- b. Any member of the Fire Department who is assigned by a superior to perform all of the duties of a Motor Engineer by a superior for an entire shift shall receive



twenty-five dollars (\$25) per day (24 hours) ~~for performing the duties of such a higher rank for the entire assigned period.~~

\* \* \*

It is a given that one individual alone must direct operations at a fire scene. Fire Departments designate the rank of personnel because, as is true in the military or a police department, there is a chain-of-command and the failure of a lower ranking member to obey a higher ranking member, especially at a fire scene, is so serious that the insubordination will most likely end a career. Testimony established that dwelling fires spiral out of control quickly. If a Lieutenant or acting Lieutenant makes the wrong decision firefighters and citizens can die. And split-second decisions are often second-guessed. All of this is to say that it is reasonable to provide some extra compensation when a lower ranking member is temporarily assigned to assume responsibilities linked to a higher rank. It is also relevant that selection is not made by seniority but rather on a judgment of the member's ability to make good decisions or drive a fire apparatus proficiently.

The panel was not informed when the \$30 and \$25 compensation was first included in the collective bargaining agreement. Speaking for himself and not the panel, the chairperson would agree that it is not unreasonable to consider an increase that more realistically reflects the cost of living. **TABLE 25** shows the additional compensation a bargaining unit member who is designated as an acting Lieutenant would receive if the Union's demand is adopted. The table does not list Fire Fighter I-III ranks on the assumption that less experienced individuals would not be assigned as acting Lieutenants. Computations are based on a Lieutenant's current hourly (\$28.79 ) and 24-hour daily rate of pay (\$690.85).

**TABLE 25**  
**Compensation for Designation as Acting Lieutenant**

	<u>Regular Daily Pay</u>	<u>Lieutenant. Daily Pay</u>	<u>Current Extra Pay</u>	<u>Proposed Extra Pay</u>	<u>Difference</u>
Fire Fighter III	\$471.60	\$690.85	\$30.00	\$219.25	\$189.25
Fire Fighter IV	\$518.64	\$690.85	\$30.00	\$172.71	\$142.41
Motor Engineer	\$627.60	\$690.85	\$30.00	\$63.25	\$33.25

The record does not inform the panel the frequency of a Motor Engineer, as opposed to another rank, temporarily filling a Lieutenant's spot. An increase of \$33.25 for that rank seems in the ballpark depending on how long the \$30 had been the remuneration. The proposed six and seven-fold increases in the two other ranks seem less defensible. Increases in public employment are usually incremental. Speaking for himself and not the panel, the chairperson would unhesitatingly reject the Union's demand as asking too much if the alternative was maintaining the status quo.

But the City has not afforded the panel the choice to reject the Union's arguably excessive demand in favor of the status quo, or close to the status quo. If the City's proposal is adopted, an acting Lieutenant would not be entitled to even \$30 unless he filled the position for three *consecutive* days. As far as the panel has been enlightened the City would never be required to pay anything to anyone even if an employee is regularly and repeatedly selected as long as there is an intervening shift.

The City points out that a member of the Police Department who is assigned all the regular duties of a higher rank is not entitled to receive the higher salary unless assigned for two weeks or more. Without more information concerning the increased responsibility of a police supervisor the panel is unable to determine whether the comparison is apt. The Union points out that Detroit and Hazel Park have a minimum period of time for which the employee must act before becoming

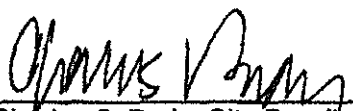
eligible. The period in Hazel Park is three hours and in Detroit eight hours. Once the threshold is met, employees in both cities receive the pay of the higher rank for the entire time of the acting assignment. Inkster does not have an acting pay provision in its collective bargaining agreement.

On occasion an Act 312 panel must select between two demands that are, in its judgment, both unwarranted and would each be rejected if the panel had that option. The chairperson concludes that the Union's proposal is less unreasonable than the City's proposal and the Union's panelist concurs in the result but not the chairperson's reasoning.

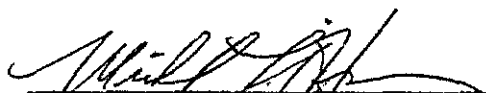
The majority of the panel concludes that the Union's last best offer of settlement on acting rank compensation more closely corresponds to the applicable Section 9 criteria.

  
Micheal J. Falvo, Chairperson

1/22/2021  
Date

  
Charles S. Rudy, City Panelist  
[ ] Concurs [ ☒ ] Dissents

1/22/2021  
Date

  
Michael L. O'Hearon, Union Panelist  
☒ Concurs [ ] Dissents

1/22/21  
Date

#### H. Reduction of Staffing Levels (City Proposal) (Economic)

The City's last offer of settlement on this issue states:

The City proposes Reduction of the fire suppression census from its current level of 26 to a total of 24. This proposal includes the modification of Article 16, Section 5 of the Prior CBA.

The City proposes that Article 16, Section 5 of the Prior CBA be modified as follows:

**ARTICLE 16**

\* \* \*

**Section 5 – CHAIN OF COMMAND AND PROMOTIONAL FLOW CHART**

**FIRE CHIEF (1)**

~~NON-SUPPRESSION DIVISION~~

~~FIRE MARSHALL (1)~~

**SUPPRESSION DIVISION**

**FIRE CAPTAIN (2)**

**FIRE LIEUTENANT (4)**

**MOTOR ENGINEER (6)**

**FIREFIGHTER (18 12)**

The numbers of employees specified in each classification are guidelines and do not create a duty on the part of the City to maintain any minimum specific complement of employees in any classification.

The City's last offer of settlement contains an explanatory footnote: "The complement of Firefighters in the prior collective bargaining agreement was reduced in the Memorandum of Agreement between the parties ratified by City Council on August 14, 2018. The City is proposing a further reduction to 12 Firefighters."

The Union's last offer of settlement states:

The Union proposes the following modifications to Article 16, Section 5:

**ARTICLE 16**

**POSITION VACANCIES, SENIORITY AND PROMOTION PROCEDURE**

\* \* \*

**Section 5- CHAIN OF COMMAND AND PROMOTIONAL FLOW CHART**

**FIRE CHIEF (1)**

NON-SUPPRESSION DIVISION

FIRE MARSHAL (1)

SUPPRESSION DIVISION

FIRE CAPTAIN (2)

FIRE LIEUTENANT (4)

MOTOR ENGINEER (6)

FIREFIGHTER (18) (12) through attrition

The numbers of employees specified in each classification are minimum specific compliments of employees in any classification.

There are two differences between the proposals. Both reduce the number of Firefighters to 12. If the City's proposal is granted the reduction will be achieved through a layoff. If the Union's proposal is granted the reduction will be achieved through attrition. At the time of the hearing the panel was advised that there were 14 Firefighters. The panel was more recently

advised that a Firefighter had resigned reducing the current number to 13. The second difference is that the City's proposal states that the staffing levels in Article 16, Section 5 are guidelines and do not create a duty to maintain a specific complement of employees in any classification. The Union proposal specifies that the number of employees in each classification are the minimum specific complement of employees in any classification.<sup>8</sup>

As the City noted in its last offer of settlement the wording in the expired agreement is inaccurate because it was subsequently modified by a Memorandum of Agreement. The original contract language in Article 16, Section 5 stated:

FIRE CHIEF (1)	
<u>NON-SUPPRESSION DIVISION</u>	<u>SUPPRESSION DIVISION</u>
FIRE MARSHAL (1)	FIRE CAPTAIN (2)
	FIRE LIEUTENANT (2)
	FIRE ENGINEER (6)
	FIRE FIGHTER (18)

The numbers of employees specified in each classification  
are minimum compliments *[sic]* of employees in any classification.

Katrina Powell was the City Manager and served as the City's representative in the negotiations leading to the July 1, 2017 to January 1, 2020 collective bargaining agreement. She testified that the City agreed to the minimum staffing clause, and waived the City's discretion to set staffing levels, after considering the advice from fire chiefs, firefighters, and consultants.

As a part of the settlement of an Unfair Labor Practice charge, the parties agreed in a Memorandum of Agreement dated August 10, 2018 to amend Article 16, Section A as follows:

---

<sup>8</sup> The last sentence in the Union's proposal is taken verbatim from the expired collective bargaining agreement. As noted in the August 18, 2018 Memorandum of Agreement the word "compliments" is a typographical error for the word "complements."

FIRE CHIEF (1)

NON-SUPPRESSION DIVISION

SUPPRESSION DIVISION

FIRE MARSHAL (1)

FIRE CAPTAIN (2)

FIRE LIEUTENANT (4)

FIRE ENGINEER (6)

FIRE FIGHTER (14)

The numbers of employees specified in each classification are minimum complements [SIC: complements] of employees in any classification. (Brackets in original).

The agreement also contained the following stipulations:

5. The parties agree that Article 16, Section 5 of the CBA is a minimum staffing requirement, and the effect of the foregoing change is to reduce the City's minimum staffing obligation for Firefighters from eighteen (18) to fourteen (14).

6. The City will use all reasonable means, including aggressive recruitment of a least state-wide scope, to hire sufficient new Firefighters to meet the new minimum staffing level of fourteen (14) on or before January 1, 2019. Local 750 will aid the City's recruitment efforts by accessing communication opportunities through the Michigan Professional Fire Fighters Union.

7. In exchange for Local 750's agreement to modify Article 16, Section 5, as described above, the City agrees to an across-the-board increase of three percent (3%) to the salaries set forth in the City of Hamtramck Firefighters Salary schedule on page 48 of the CBA. This salary will be effective when this MOA is executed by the Parties and ratified by Local 750 membership and Hamtramck City Council.

The City's post-hearing brief contains a lengthy and articulate discussion of Michigan law concerning a Union's right to bargain, and an Act 312 panel's capacity to decide minimum staffing issues. In a nutshell, as already discussed, minimum staffing demands are not a mandatory subject of bargaining unless the demand is "inextricably intertwined with safety." Consequently, the Employer asserts in its post-hearing brief that the panel is without authority to adopt the Union's minimum staffing language.

The City has and will continue to discuss staffing issues with the Union and will negotiate the impact of any layoffs. However, the City will not agree to surrender its managerial prerogative to determine the size of its workforce. As discussed in detail above, minimum staffing provisions are permissive subjects of bargaining which are beyond the authority of an Act 312 Panel, unless the union demonstrates by competent evidence that the provision is so "inextricably intertwined with safety such that it would have a significant impact on safety." (See, Section IV of this brief, *supra*). At the hearing, Local 750 offered no evidence that this provision will have any impact on safety. In fact, the evidence at the hearing demonstrated exactly the opposite.

The chairperson respectfully disagrees with the City's position. Each of the cases cited by the City involved a demand by the Union. Because minimum staffing provisions are not a mandatory subject of bargaining unless inextricably intertwined with safety, the public employer cannot be *forced* to bargain with the Union without the requisite showing concerning safety. By definition, a permissive subject of bargaining means that the employer has the option to bargain with the Union, or not bargain with the Union, to empower an Act 312 panel to make a decision, or to not confer that authority on the panel. The petition filed by the City on March 6, 2020 requested the Commission to appoint an Act 312 panel to decide, among other issues, the "[r]eduction of the fire suppression census from its current level of 26 to a total of 22." By doing so the City authorized the panel to decide the issue.

The chairperson appreciates the reasoning behind the refusal to "surrender its managerial prerogative to determine the size of its workforce." But that is precisely the consequence of signing the expired agreement that contained a negotiated minimum staffing requirement. In the City's view, "it seems clear that the former City Manager did not know what she was doing." In that regard it seems relevant that the City reiterated the criticized language in 2018 and to make the understanding more explicit stipulated that "Article 16, Section 5 of the CBA is a minimum staffing requirement." The Hamtramck Police Officers Association collective bargaining agreement has minimum staffing provisions that are not described as "guidelines."

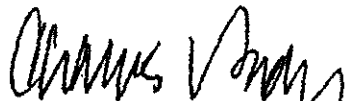
For these reasons, a majority of the panel decides that, contrary to the City's position, it has the authority to consider and resolve the minimum staffing issue.

Section 9(1)(i) of Act 312 instructs the panel to take account of factors that are normally or taken into consideration in collective bargaining. Perhaps the most prominent principle in that regard is that the party proposing change should demonstrate the need for the change. The City presented no evidence satisfying that criterion.

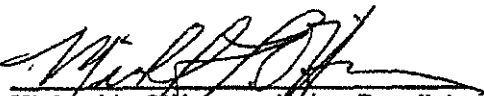
The majority of the panel concludes that the Union's last best offer of settlement on reduction of staffing levels more closely corresponds to the applicable Section 9 criteria.

  
Micheal J. Falvo, Chairperson

1/22/2021  
Date

  
Charles S. Rudy, City Panelist  
☐ Concurs ☒ Dissents

1/22/2021  
Date

  
Michael L. O'Neaon, Union Panelist  
☒ Concurs ☐ Dissents

1/22/21  
Date

**I. Reduction of Paid Leave Time Accrual to Police Union Levels (City Proposal) (Economic)**

**J. Sick Leave – Accrual Process (Union Issue) (Economic)**

**K. Vacation – Tier 2 Maximum Bank Accrual (Union Issue) (Economic)**

The parties have taken quite different approaches concerning these issues. The City proposes a reduction of paid leave for firefighters to levels consistent with paid leave provided to police officers under the HPOA and HCOA collective bargaining agreements. To do so requires modification of three articles in the expired collective bargaining agreement: Article 8 (Vacations), Article 9 (Sick Leave), and Article 10 (Personal Leave).

The Union's last offer of settlement proposes maintaining the status quo regarding the specific changes proposed by the City. However, the Union proposes its own issues regarding sick leave accruals, proposing that each bargaining unit member accrue one 24-hour sick day for every month worked and proposing a concession: to reduce Tier 1 maximum sick leave accumulation from 125 days to 100 days. Additionally, in its last offer of settlement on a third issue, the Union proposes to increase the second-tier maximum bank accrual of vacation time



from 11 days for 24-hour employees and 25 days for eight-hour employees to the Tier 1 levels of 22 days and 50 days, respectively.

The City's last offer of settlement for paid time is shown below. The proposal indicates the proposed changes to vacation, sick leave, and personal leave. The City has grouped its paid time proposal as a single issue numbered 20 in its last offers of settlement.

The City proposes that Article 8, Section 1, Article 9, Section 1 and Article 10, Section 1 of the Prior CBA be modified as follows:

## **ARTICLE 8 VACATIONS**

### **Section 1 – Amount**

The following paid vacation days shall be granted:

- a. The Fire Chief shall have discretion in the scheduling of vacation leave time.
- b. On date of hire, employees shall receive ~~two (2) vacation days~~ sixty-four (64) hours of vacation. Probationary period employees are allowed use of vacation with the Chief's approval only due to extenuating circumstances.
- c. After one (1) year of service, employees shall ~~receive five (5) vacation days, three (3) in the summer and two (2) in the winter~~ begin accruing vacation at the rate of 5.333 hours/month (64 hours/year).
- d. After two (2) years of service, the employee shall ~~receive eight (8) vacation days, four (4) in the summer and two (2) in the winter~~ begin accruing vacation at the rate of 9.333 hours/month (112 hours/year).
- e. After four (4) years of service, the employee shall ~~receive eight (8) vacation days, four (4) in the summer and four (4) in the winter~~ begin accruing vacation at the rate of 12 hours/month (144 hours/year).
- f. After five (5) years of service, the employee shall ~~receive ten (10) vacation days per year, four (4) vacation days in the summer and six (6) vacation days in the winter months~~ begin accruing vacation at the rate of 14.666 hours/month (176 hours/year).
- g. (former paragraph f.) If a vacation day falls on a Super Kelly Day, it will not count as a vacation day.
- h. (former paragraph g.) Employees working an 8-hour day receive ten (10) days of vacation in winter and fifteen (15) days of vacation in summer.
- i. (former paragraph h.) Annual leave may be accumulated for a total not to exceed 22 days for fire suppression, or 50 days for 8 hour employees. Vacation banks for employees hire after November 1, 2013 may not exceed 11 days for 24-hour employees and 25 days for 8-hour employees.
- j. (former paragraph i.) Retirement Payment

Upon retirement, twenty-four (24) hour employees are entitled to up to 22 vacation days at 75% of then-current level of compensation 24-hour pay. Upon retirement eight (8) hour employees are entitled to up to 50 vacation days pay at 75% of then-current level of compensation. 8 hours.

## ARTICLE 9 SICK LEAVE

### Section 1 – Amount

Employees shall accumulate sick leave at the following rates:

Year 1 (of employment): 2 days  
Year 2 & 3: 2 days per year  
Year 4 & 5: 4 days per year  
Year 6 & 7: 6 days per year  
Year 8 & 9: 8 days per year  
Year 10 & 11: 10 days per year  
Year 12 and above: 12 days per year

~~Sick leave will be credited to employee banks on date of hire and on every anniversary thereafter. In the event that a member separates from employment prior to the accrual of the accrued leave, he or she shall repay to the City any un-accrued used sick leave. The City shall have the right to deduct said amount from the member's final paycheck.~~

For the period July 1, 2017 through December 31, 2018, the parties agreed in a Memorandum of Agreement dated April 29, 2019 ("4/29/19 MOA") that each member's sick leave entitlement was properly calculated and the correct balance of each member's sick leave bank as of December 31, 2018 is set forth on the Spreadsheet dated January 23, 2019, a copy of which was attached to the 4/29/19 MOA and incorporated herein ("Spreadsheet"). Pursuant to the 4/29/19 MOA, starting on January 1, 2019, each member's sick leave bank was adjusted and will continue to be adjusted in accordance with the Spreadsheet. Going forward from January 1, 2019, the parties agreed that members will accrue sick leave as they work and their sick banks will be credited accordingly each pay period with the number of hours in each member's sick leave bank indicated on the member's paycheck. New hires shall be credited with four days (96 hours) of sick leave on their date of hire and begin accruing additional sick leave on their first anniversary. The following accruals shall apply:

Years 2 & all subsequent years 8 hours/month (96 hours/year)

The foregoing sick leave accrual rate applies to fire suppression division employees, all of whom work 24-hour shifts. For 8-hour employees (i.e., the Fire Marshall), the sick leave accrual rate shall be 8 hours per month.

For employees hired prior to November 1, 2013, the current maximum banks as set forth in the parties' CBA shall apply. Sick leave banks may not exceed 60 days for employees hired after November 1, 2013. Sick leave accrued in excess of 60 days will be paid out at 75% of the employee's then current rate of pay.

Employees shall only be charged sick days on days they are scheduled to work. For employees hired prior to November 1, 2013, sick days shall accumulate to a maximum one hundred twenty-five (125) days by June 30<sup>th</sup> shall be paid on or before July 16<sup>th</sup> at 75 % of the June 30<sup>th</sup> rate. Upon retirement, payment for one hundred twenty-five (125) accumulated sick leave shall be paid at 75% of the in full at the employee's existing wage rate at the time of his/her retirement. In the event of death, money due an employee is to be paid to his/her legal beneficiary.

## ARTICLE 10 LEAVES

### Section 1 – Personal Leave

~~A 24-hour~~ An employee shall be entitled to ~~forty-eight (48) seventy-two (72)~~ personal leave hours annually, July 1 – June 30 for personal business subject to approval of the officer in charge. ~~An 8-hour employee (i.e., the Fire Marshall) shall be entitled to sixteen (16) personal leave hours annually, July 1 – June 30 for personal business subject to approval of the officer in charge.~~ Personal days shall not be deductible from sick bank. Personal leave days shall be granted provided minimum manning is maintained and no overtime is created. ~~Effective upon ratification, all personal leave banks (E-day) shall be converted to ATO time.~~ All further Personal leave time shall be deposited into the employee's ATO bank.

The Union's last offer of settlement concerning sick leave states:

The Union proposes the following modifications to Article 9, Section 1:

## ARTICLE 9 SICK LEAVE

### Section 1 - Amount

~~Employees shall accumulate sick leave at the following rates:~~

Year 1 (of employment):	<del>2 days</del>
Year 2 & 3:	<del>2 days per year</del>
Year 4 & 5:	<del>4 days per year</del>
Year 6 & 7:	<del>6 days per year</del>
Year 8 & 9:	<del>8 days per year</del>
Year 10 & 11:	<del>10 days per year</del>
Year 12 and above:	<del>12 days per year</del>

~~Sick leave will be credited to employee banks on date of hire and on every anniversary thereafter. In the event that a member separates from employment prior to the accrual of the accredited leave, he or she shall repay to the City any un-accrued used sick leave. The City shall have the right to deduct said amount from the member's final paycheck.~~

All employees in the bargaining unit shall accrue sick leave at the rate of 24 hours per month or part thereof of employment beginning with their date of hire.

For employees hired prior to November 1, 2013, the current maximum banks as set forth in the parties' CBA shall apply. Sick leave banks may not exceed 60 days for employees hired after November 1, 2013.

Employees shall only be charged sick days on days they are scheduled to work. For employees hired prior to November 1, 2013, sick days shall accumulate to a maximum ~~of one hundred twenty-five (125) (100)~~ days by June 30 ~~of any given year.~~ All sick leave time in excess of one hundred (100) days on June 30 of each year shall be paid on or before July 16 of the same year at 100% of the employee's June 30 wage rate. Upon retirement, payment for ~~up to one hundred twenty-five (125) (100)~~ accumulated sick leave ~~days~~ shall be paid in full at the employee's existing wage rate at the time of his/her retirement. In the event of death, money due an employee is to be paid to his/her legal beneficiary.

\* \* \*

The Union's last offer of settlement concerning vacations states:

The Union proposes that Article 8, Section 1(h) be modified as follows:

**ARTICLE 8  
VACATIONS**

Section 1 – Amount

\* \* \*

h. Annual leave may be accumulated for a total not to exceed 22 days for fire suppression,  
Or 50 days for 8 hour employees. ~~Vacation banks for employees hired after November 1,  
2013 may not exceed 11 days for 24 hour employees and 25 days for 8 hour employees.~~

The City believes the real cost driver of paid leave is sick leave. Under the expired contract, bargaining unit members accrued sick leave on a sliding scale topping out at 288 hours per year after 11 years, with a payout of 100% of the member's hourly rate at time of payout. Sick leave is paid out by the hour. The current policy has resulted in huge payments at retirement in excess of \$100,000, in effect becoming a second retirement plan. As of October 7, 2019, the City calculated the value of accrued vacation, sick leave, and ATO at then-current rates as \$675,601.

Regarding these internal comparables, under current contracts which run until 2022, members of the police unions and AFSCME accrue sick leave at the rate of 96 hours per year regardless of seniority, with a payout of 75% of salary. Highland Park firefighters accrue 96 hours per year; Inkster firefighters accrue 144 hours per year; Hazel Park firefighters accrue 144 hours per year; Detroit firefighters accrue 120 hours per year.

The Union urges the panel not to overlook that the concessions being sought in this proceeding were obtained from the HPOA in 2018 and their members received substantial financial incentives to accept the concessions in leave accruals. When the HPOA agreed to a reduction in the cap on sick time banks and vacation banks employees received an immediate payout of all bank time above the new cap at 100% pay. Furthermore, tier 2 employees, who were working for 90% of their base pay received a 10% increase to restore them to full pay and tier 1 employees received a 6% pay raise with an additional across-the-board 3% raise for all

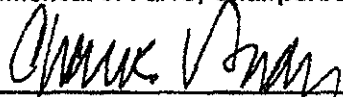
employees the following year, in addition to step increases. The City's last offer of settlement to Local 759 does not include a 100% payout

The City's goal of reducing the amount of sick time payouts is reasonable and the Union's proposal contains a significant concession in that regard. However, the majority of the panel is not persuaded that the measurement that is reasonable for employees who work eight hours is reasonable for employees on 24-hour shifts. To use a trite phrase, the comparison is apples to oranges. A police officer's salary on a working day is earned after working 8 hours. A firefighter's salary is earned after working 24 hours. The work days are not comparable. Everyday illnesses, like the flu or a bad cold, do not typically come in hours, but days. Compare the situation of a police officer and a firefighter who wakes up with the same temporarily debilitating medical malady that lasts one day. The police officer will have 11 more sick days in a year in the event of more illness, a fire fighter would have only 3. In the view of the majority of the panel, the reality is that the two employees are not being treated equally in terms of being excused when they are ill. Employees who are ill should not come to work and risk getting co-workers sick, especially in the close quarters of a fire house. The panel must accept the City's new global leave proposal in full or not at all.

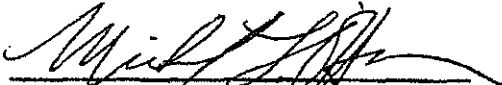
The majority of the panel concludes that the Union's last best offer of settlement on sick leave and pay more closely corresponds to the applicable Section 9 criteria.

  
\_\_\_\_\_  
Michael J. Falvo, Chairperson

1/22/2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Charles S. Rudy, City Panelist  
[ ] Concurs [ ☒ ] Dissents

1/22/2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michael L. O'Hearon, Union Panelist  
☒ Concurs [ ] Dissents

1/22/21  
\_\_\_\_\_  
Date

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

Michael J. Falvo  
Michael J. Falvo, Chairperson

1/22/2021  
Date

Charles S. Rudy  
Charles S. Rudy, City Panelist  
[ ] Concurs [X] Dissents

1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
[X] Concurs [ ] Dissents

1/22/21  
Date

Because the panel has accepted the Union's last offers of settlement on sick leave and vacation leave, the majority of the panel concludes that the City's last offer of settlement on reduction of paid leave time accrual to police union levels does not more closely correspond to the applicable Section 9 criteria than the Union's sick leave and vacation last offers of settlement and for that reason the City's proposed issue is not adopted.

Michael J. Falvo  
Michael J. Falvo, Chairperson

1/22/2021  
Date

Charles S. Rudy  
Charles S. Rudy, City Panelist  
[ ] Concurs [X] Dissents

1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
[X] Concurs [ ] Dissents

1/22/21  
Date

## **L. Retiree Medical Savings Account Contribution (Union Issue) (Economic)**

The Union's last offer of settlement on this issue states:

### **Article 7 EMPLOYMENT AND WORKING CONDITIONS \* \* \***

#### **Section 8 - Medical, Prescription, Dental, Life Insurance, and Optical Plan \* \* \***

##### Future Retiree Health Coverage

##### A. Non-Vested Employees, New Employees, Deferred Retirements

Full-time employees hired on or after November 1, 2013, are not eligible for City-Paid retiree health coverage. Instead, the City shall establish a Retiree Medical Savings Account (RMSA) or other IRS qualifying savings plan for each affected employee. The accounts may be used by the employee, their spouse, or their dependents to offset the cost of healthcare after the employee retires or separates from service. MERS shall administer the RMSA program as described herein. The MERS Plan document, policies and procedures of MERS. Shall control the administration of the program. ~~Similar to the provisions set forth in sub-section (B) above, the City will devolve a plan for employers and employee contributions to an employee's RMSA. The City shall have no obligation to make any contributions to such account.~~  
Effective on [Date of Act 312 Award] the City shall match all employee contributions to the RMSA up to a maximum of 3% of an employee's gross pay.

The City's last offer of settlement is to maintain the status quo.

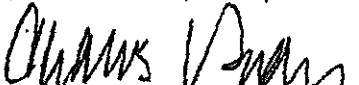
This issue proposed by the Union concerns members of the bargaining unit who were hired on or before November 1, 2013. They are not in the defined benefit plan. Instead they have access to a funded Retiree Medical Savings Account. There is no employer match. The Union estimated that members funding the RMSA on their own after working for 25 years would at most be likely to have no more than \$70,000 in the account, an amount that would be unlikely to cover the cost of medical insurance until the employee is eligible for Medicare. The Union believes that a 3% employer match is not unreasonable or an undue burden on the Employer, especially given the significant savings it has garnered from eliminating current retirees' health insurance. Employers in Hazel Park and Inkster contribute to retirement accounts.

Although the Union's demand is far from outlandish, the panel must consider the total financial impact of its awards. Considering the City's ability to pay as the most significant factor the panel must consider, in light of the substantial total cost of its awards, the majority of the panel concludes that the Union's proposal should not be adopted.

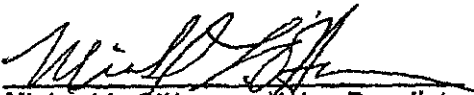
The majority of the panel concludes that the City's last best offer of settlement on RSMA contribution more closely corresponds to the applicable Section 9 criteria.

  
Michael J. Falvo, Chairperson

1/22/2021  
Date

  
Charles S. Rudy, City Panelist  
☒ ]Concurs      [      ]Dissents

1/22/2021  
Date

  
Michael L. O'Hearon, Union Panelist  
[      ]Concurs      ☒ ]Dissents

1/22/21  
Date

#### **M. Retiree Health Care (Union Issue) (Economic)**

The Union's last offer of settlement on this issue states:

The Union proposes modifying Article 7, Section 8, "Future Retiree Health Coverage," Subsection B, by adding new numbered Paragraph 5 as follows:

5. Notwithstanding the expiration date of this collective bargaining agreement, for employees who retire on or after (Date of Act 312 Award) and are entitled to retiree medical benefits (including prescription drug coverage, if so provided) pursuant to this Article and Section (Article 7, Section 8), the medical coverage provided for the retirees, their spouses and families following retirement comprises a vested, fixed and unalterable right as set forth in this Article. The retired employees, their spouses and families, as applicable, are entitled to said medical coverage through the retiree's lifetime and that of his/her eligible spouse, as provided herein. The medical coverage upon retirement established in this Section may not be impaired in any way by a collective bargaining agreement entered into after the eligible employee's retirement, nor, to the full extent legally feasible by any other mechanism.

The City's last offer of settlement states:

The City proposes that Article 7, Section 8, "Future Retiree Healthcare Coverage," Subsection B provide, in its entirety, as follows:



B. Employees Vested for Regular Retirement

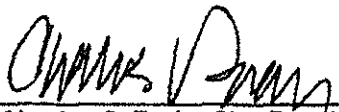
1. ~~The City shall not provide healthcare coverage. An Employee who is hired before November 1, 2013, may, Upon retirement, elect health care benefits for the employee, the employee's spouse, and the employee's dependents in existence at the time of retirement, on the same terms (including required contributions to premiums) and with the same benefit levels as offered to current regular employees, until the retiree becomes eligible for Medicare due to age, disability, or end stage renal disease. However, effective January 1, 2014, the City's contribution for health care coverage for retirees not eligible for Medicare will be limited to the amount contributed for the lowest cost medical portion of the Medicare Supplemental or Medicare Advantage plans provided to retirees pursuant to Section 2.b (5) plus the Employer's cost of prescription drug coverage provided to eligible employees and retirees pursuant to this section. The retiree shall pay any premium contribution that exceeds the amount contributed by the city through automatic deduction from their monthly pension check.~~
2. ~~The City shall not provide retiree health care coverage for the retiree if the retiree is eligible to receive "paid" (as defined above) Health care coverage through another employer or former employer. As a condition of continued retiree health care coverage under this section, the City may require that a retiree file an affidavit or other documentation each year or upon request attesting that the retiree is eligible for no other Employer-paid health coverage.~~
3. ~~The City shall not provide retiree health coverage for the retiree's spouse if the retiree's spouse is eligible to receive "paid" (as defined above) health coverage through an employer or former employer of retiree's spouse. As a condition of continued spousal health care coverage under this section, the City may require that a retiree file an affidavit or other documentation each year or upon request attesting that the spouse is eligible for no other employer-paid health coverage.~~
  - a. ~~A City of Hamtramck retiree who becomes eligible for Medicare due to age, disability, or end stage renal disease will be covered by a Medicare Supplemental plan (or Medicare Advantage Plan) at the employer's expense, subject to the contribution limits provided in Section 3 of the Publicly Funded Health Insurance Contribution Act, 2011 PA 152, and the retiree must enroll in Part A and Part B and pay for Part B. The eligible spouse or dependent child of a City of Hamtramck retiree who becomes eligible for Medicare due to age, disability, or end stage renal disease will be covered by a Medicare Supplemental Plan (or Medicare Advantage Plan) at the Employer's expense, subject to the contribution limits provided in Section 3 of the Publicly Funded Health Insurance Contribution Act, 2011 PA 152, but the spouse or dependent child must enroll in Part A and Part B and pay for Medicare Part B.~~

It would be difficult to overstate the importance of the retiree healthcare issues to the City and to the members of the bargaining unit. The City admonishes the panel to be careful not to plunge it into state receivership for a third time. The question is not whether bargaining unit members were promised health care benefits in retirement. Nobody could deny otherwise. Nor could anyone dispute, as the Union puts it, "that every principle of equity and fairness favors the adoption of the Union's last offer of settlement." Bargaining unit members undoubtedly planned on health care insurance in retirement and it is likely that some considered that benefit as a reason to join the Hamtramck Fire Department. It would be unrealistic to believe that granting the demand for this bargaining unit would not have a domino effect and demands for equal treatment for other City employees. The statute requires that the panel give overriding weight to the City's ability to pay. The chairperson has reluctantly reached the conclusion that granting this proposal would probably result in the appointment of another Emergency Manager, a result that would not be in anyone's best interest.

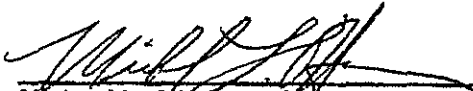
The majority of the panel concludes that the City's last best offer of settlement on retiree healthcare more closely corresponds to the applicable Section 9 criteria.

  
Michael J. Falvo, Chairperson

1/22/2021  
Date

  
Charles S. Rudy, City Panelist  
☒ ]Concurs      [      ]Dissents

1/22/2021  
Date

  
Michael L. O'Hearon, Union Panelist  
[      ]Concurs      ☒ ]Dissents

1/22/21  
Date

## **N. Wages**

The last offers of settlement from both parties is a zero percent wage increase for the first year of the agreement. The City's last offer of settlement is zero for the second and zero for the third year. The Union proposes a wage increase of 4% in the second year of the agreement, and 4% in the third year of the agreement.

The record contains voluminous information concerning cost of living, salary information concerning the comparable cities identified, and the other bargaining units in the City of Hamtramck.

In reviewing this data the panel has kept in mind that comparisons must be made cautiously. Ildiko Knott explained the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners. (MERC Case No. L92 F-0095, July 5, 1983).

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

For example, in 2020 the base pay of a Lieutenant in the Hazel Park Fire Department with 15 years seniority was \$72,855 compared to \$75,944 in Hamtramck. Considered alone one would reach the conclusion that the Hamtramck Lieutenant earns about \$3,000 more. The Lieutenant's pension contribution in the Hazel Park defined contribution plan is 7.5% (\$5,464) and 15% in Hamtramck (\$11,391). Adjusting for required pension contribution, the Hazel Park Lieutenant's annual wage becomes \$67,391 and the Hamtramck Lieutenant's annual wage becomes \$64,553. The double contribution is not because the Hamtramck Lieutenant will have a more lucrative pension. The Hazel Park Lieutenant's pension is calculated with 2.8% multiplier and in Hamtramck the multiplier is 2.0% for wages earned after December 1, 2013. In addition, in Hazel

Park employees hired before July 1, 2006 receive 8% longevity pay after 14 years. Employees hired after that date receive 1% longevity after 10 years. Also, Hazel Park firefighters receive a \$950 food allowance. Hamtramck firefighters receive a \$750 uniform and cleaning allowance and there is no uniform and cleaning allowance in Hazel Park. A Hazel Park firefighter with two years seniority is paid \$43,525. After a 2.25% raise in the fiscal year beginning 7/1/2021 the amount will be \$44,539. A Hamtramck firefighter 2 currently receives annual base compensation of \$47,155, \$2,360 more than his counterpart in Hazel Park. Hazel Park provides healthcare coverage for all active employees and families but with substantial deductibles and co-pays.

The importance of taking differences into account applies equally to internal comparables. For example, in addition to base salary officers in the Hamtramck Police Department are permitted to work up to 16 hours at overtime rate each pay period in the traffic safety/enforcement program. As Arbitrator Knott observed, the negotiation process must be flexible enough to recognize similarities and differences. Depending on the preferences of its members negotiators may settle for a lesser base pay in order to achieve a more lucrative benefit. In 2019, the 24 police officers who received pay for the program averaged more than \$5,000, with the highest earnings \$36,836 and \$22,304. The point is that comparisons must be made cautiously.

The City made a convincing argument that police salaries needed to be raised to be competitive with other police departments in order to recruit and retain qualified candidates. Under the 2011-2014 collective bargaining agreement police officers hired after 7/1/2014 received only 90% of the then-effective wage rate for the first five years of employment. In December 2013, Emergency Manager Kathy Square imposed a 5% across-the-board cut in wages. Effective 7/1/2017, officers received a 1% wage increase. Under the current 2018-2020 agreement, officers who were receiving only 90% of wages were restored to 100% of the wage rate. Officers already receiving 100% of the base wage rate received a 6% raise. On 7/1/2019, all officers received a 3% raise. Step increases were improved.

It is correct that sworn officers and sworn firefighters are paid substantially higher wages than most civilian employees. That is true in all cities. The AFSCME Local 666 collective bargaining agreement expires on 6/30/2022. After a 6% raise in 2019, a 3% raise in 2020, and a 1% raise in 2021, the highest paid employee in that bargaining unit will receive \$43,105, an amount less than the starting pay of a Hamtramck firefighter.

In a 2014 concessionary agreement with the emergency manager, the Union took a 4% wage reduction which placed bargaining unit members one percent below their 2012 base pay. In the resolution of an unfair labor practice charge members received a 3% raise, the first increase since 2013. To this day, and continuing at least until January 2021, firefighters in the bargaining unit make less than they made seven years ago.

The Union asks that the panel take into consideration that it agreed to reduce four firefighter positions in the expired agreement and two positions in the successor agreement.

After considering all relevant information and keeping in mind the requirement that the City's ability to pay, based on both last offers of settlement the panel award is 0% for the first year. The panel awards the Union's last offer of settlement of 4% wage increase for the second year. The panel awards the City's last offer of settlement of 0% in the third year.

Each party's last offer of settlement for the first year is no increase. The panel awards a 0% wage increase effective January 2, 2020 through December 31, 2020.

Michael J. Falvo  
Michael J. Falvo, Chairperson

1/22/2021  
Date

Charles S. Rudy  
Charles S. Rudy, City Panelist  
☒ Concurs ☐ Dissents

1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
☒ Concurs ☐ Dissents

1/22/21  
Date

The majority of the panel concludes that the Union's last offer of a 4% wage increase effective January 1, 2021 through December 31, 2021 more closely corresponds to the applicable Section 9 criteria.

Michael J. Falvo  
Micheal J. Falvo, Chairperson  
Charles S. Rudy  
Charles S. Rudy, City Panelist  
☐ Concurs ☒ Dissents

1/22/2021  
Date  
1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
☒ Concurs ☐ Dissents

1/22/21  
Date

The majority of the panel concludes that the City's last best offer of settlement of 0% wage increase effective January 1, 2022 through December 31, 2022 more closely corresponds to the applicable Section 9 criteria.

Michael J. Falvo  
Micheal J. Falvo, Chairperson  
Charles S. Rudy  
Charles S. Rudy, City Panelist  
☒ Concurs ☐ Dissents

1/22/2021  
Date  
1/22/2021  
Date

Michael L. O'Hearon  
Michael L. O'Hearon, Union Panelist  
☐ Concurs ☒ Dissents

1/22/21  
Date

**ISSUE 1 – BEREAVEMENT LEAVE.** The panel awards the City's last offer of settlement on this issue.

**ISSUE 2 – HEALTH CARE "OPT-OUT" PAYMENT.** The panel awards the City's last offer of settlement on this issue.

**ISSUE 3 – FOOD ALLOWANCE.** The panel awards the City's last offer of settlement on this issue.

**ISSUE 4 – ELIMINATION OF FIRE MARSHAL POSITION.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 5 – TWO PERSON AND FAMILY HEALTH INSURANCE FOR TIER 2 EMPLOYEES.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 6 – ACTING RANK ELIGIBILITY.** The Union withdrew this issue.

**ISSUE 7 – ACTING RANK COMPENSATION.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 8 – REDUCTION OF STAFFING LEVELS.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 9 – REDUCTION OF PAID LEAVE TIME TO POLICE DEPARTMENT LEVELS.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 10 – SICK LEAVE ACCRUAL PROCESS.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 11 – VACATION –TIER 2 MAXIMUM ACCRUAL.** The panel awards the Union's last offer of settlement on this issue.

**ISSUE 12 – RETIREE MEDICAL SAVINGS ACCOUNT.** The panel awards the City's last offer of settlement on this issue.

**ISSUE 13 – RETIREE HEALTH CARE.** The panel awards the City's last offer of settlement on this issue.

**ISSUE 14 – WAGES.** The parties stipulated to a 0% wage increase for year 1. The panel awards the Union's wage increase of 4% for year 2. The panel awards the City's wage increase of 0% for year 3.