

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

The Police Officers Association of Michigan

and

RESPONDING PARTY:

The City of Fraser

MERC CASE NO. 20-A-0237-CB



COMPULSORY ARBITRATION

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

Arbitration Panel

Chair: Edward F. Hartfield

Employer Delegate: Marc Thompson

Union Delegate: James Tignanelli

Advocates

Employer Advocate: Ryan J.L. Fantuzzi, Esq.

Union Advocate: Kevin Loftis

PETITION(S) FILED: April 29, 2020

PANEL CHAIR APPOINTED: May 6, 2016

SCHEDULING CONFERENCE HELD: May 19, 2020

HEARING DATE(S) HELD: October 15, 2020

AWARD ISSUED: January 20, 2021

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INTRODUCTION AND BACKGROUND

Background to this Arbitration

This interest arbitration case arises pursuant to a petition filed by the Police Officers Association of Michigan (POAM) with the Michigan Employment Relations Commission (MERC) on April 29, 2020, under Act 312, PA of 1969, as amended, being MCL 423.231, *et seq.* The Chairman of the Arbitration Panel was appointed by MERC on May 19 2020. The City of Fraser (Employer) is represented by Mr. Ryan J.L. Fantuzzi of Kirk, Huth, Lange, and Badalamenti, PLC., and the City has appointed Mr. Mark Thompson, Interim City Manager, as its Panel Delegate. The Union is represented by Kevin Loftis and has appointed James Tignanelli, President of the Police Officers Association of Michigan, as its Panel Delegate.

During a pre-hearing telephone conference on June 15, 2020 the parties jointly agreed on the following deadlines:

July 13, 2020: Submission of briefs regarding comparables to be used

September 17, 2020: Deadline for Exchange of Exhibits

September 24, 2020: Deadline for Rebuttal of Exhibits

October 1, 2020: Deadline for Submission of Last Best Offers

October 15, 2020: Hearing date at Fraser City Hall

The Panel Chair notes with appreciation the fact that the parties met these deadlines on a timely basis. These agreements were reflected in a Scheduling Order sent to the parties on June 15, 2020.

In addition, the parties also agreed to the following during the Pre-Hearing Conference Call:

Type of Hearing: Both parties expressed a preference for an in-person hearing as opposed to an electronic proceeding such as on "Zoom" or similar platform. Both parties also agreed that in the event that the current Covid-19 cases were to spike and the public health situation deteriorate, they would have to consider using an electronic proceeding.

Hearing Site: Fraser City Council Chambers

Issue: Wages. Parties expressed a preference for a 2-year agreement, and following an opportunity for Counsel to confer with the City, the parties agreed to submit both remaining years of the re-opener to this arbitration proceeding.

With respect to the issue of the **specific comparables** to be used, the parties reported on the pre-hearing conference call that they were unable to reach agreement and requested that I review briefs to be submitted by July 13 and render a decision. My Decision on Comparables was transmitted to the parties on August 6, 2020 and is included herein as an Appendix.

The arbitration hearing was held on October 15, 2020 and was concluded in one day. The initial deadline for submission of post hearing briefs--- December 4, 2020---was amended by mutual agreement of the parties to December 11, 2020 and the record was closed on that date.

STATUTORY CRITERIA

The basis for an Arbitration Panel's Findings, Opinion, and Orders are contained in Section 9 of Act 312, which provides:

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

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

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

(ii) The interests and welfare of the public.

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

(iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

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

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

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

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

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

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

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

The Panel must consider each of these criteria, and must adopt the last offer which "more nearly complies with the applicable factors prescribed in section 9."¹

STIPULATIONS and PRELIMINARY RULINGS

Other than the handful of exhibits that the parties stipulated to submit jointly, there were no other preliminary rulings or stipulations. As noted above, the parties agreed to submit separate last best offers for each year of the agreement, 2019-20, 2020-21.

COMPARABLES

At the time of the Scheduling Conference, the parties indicated that they were unable to agree to the comparable units of government that would be used in this arbitration. They did agree to submit briefs on the issue and to be bound by the Panel Chair's decision. The decision on comparables was issued to the parties on August 6, 2020. In that award, I indicated that the following communities would serve as the appropriate comparables that the parties would use for the purpose of this proceeding:

¹ MCL 423.238.

1. Center Line
2. City of Farmington
3. Grosse Pointe Park
4. Roseville

5. ISSUES BEFORE THE PANEL

Wages (Economic)

The parties are in agreement that the sole issue in dispute in this proceeding is wages for the years 2020 and 2021 for two job classifications in the bargaining unit: (1) public safety officers, and (2) full-time paramedics.² The paramedics are alternatively called paramedic/firefighter.

Wages for 2020: City's LBO: \$1250 lump sum bonus for all members of the bargaining unit.

Note: This offer not included in final average compensation for pension purposes

Union's LBO: public safety officers	3.25%
Paramedics	5.0%

Note: This offer includes full retroactivity to January 1, 2020.

Wages for 2021: City's LBO: \$1250 lump sum bonus for all members of the bargaining unit.

Note: This offer not included in final average compensation for pension purposes

Union's LBO: public safety officers	2.5%
Paramedics	5.0%

Note: This offer includes full retroactivity to January 1, 2021.

² Ex. 1, Collective Bargaining Agreement, p. 2.

Position of the City re: Ability to Pay

The City's position that they are financial unable to pay what the Union is asking for is based on four principal arguments. First, pension and other post-employment retirement benefits are creating significant financial difficulties for them. Second, that they have maxed out the option of gaining more revenue through property taxes due to the Headlee Amendment. Third, that they are receiving less and less revenue from the State. Fourth, they are facing a structural deficit, exacerbating their financial difficulties

Legacy Costs for the City of Fraser

The central argument that the City's advances to explain its inability to pay position revolves around the great burden placed on its financial health by its pension and other post-employment retirement benefits:

The City has a \$32 million unfunded pension liability and a \$41 million OPEB liability. These legacy costs eat up 30% of the City's general fund expenditures—nearly as much as wages to current employees, which makes up 37%. These legacy costs crowd out the ability to pay for current services.

City Controller Walters maintains that the City of Fraser has the highest OPEB liability. Walters testified that Fraser's total OPEB liability is \$42,193,163,³ its total governmental assets are \$37,521,270. In other words, Walters testified that the total OPEB liability is greater than the total assets of the City.⁴

The City's brief elaborates on the significance of the legacy cost argument when it introduces the concept of net worth: that is that the City's long-term pension and OPEB liabilities are greater than the value of the City's assets.

The City lacks the ability to pay because it has a negative net worth. Even though Walters testified that the ability to pay should not be limited strictly to what is in the annual financial audit, the

³ C. Ex. 21. The figure Walter gleaned from the financial audit, \$42,193,163, (C. Ex. 25) is slightly different than the number from the OPEB Valuation (C. Ex. 27) \$41,313,595 (C. Ex. 29).

⁴ Tr. 127.

audit still shows that the City has a negative net worth.⁵ Walters testified that the Statement of Net Position in the Fiscal Year 2019 Annual Financial Audit lists the City's total assets as \$33,050,476, and the City's liabilities are \$67,339,774.⁷ In other words, the City's liabilities *exceed* its assets by \$37,438,695.⁸

Limitations on Revenue through Property Taxes

The City argues that it is overly dependent on property taxes with 71% of its revenue being derived from property taxes.⁹ This, according to the City, is in stark contrast to the national average of 30%. This City further argues that their ability to increase their property tax revenue is severely limited by the Headlee Amendment and Proposal A. As their brief states,

The Headlee Amendment requires a local unit of government's tax rate to be adjusted downward when existing property in a jurisdiction increases faster than the rate of inflation, unless the voters decide to keep the tax rate from decreasing.¹⁰

In addition, the City argues that annual increases in the taxable value of individual parcels of existing property are limited to the lesser of either five percent or the rate of inflation.¹¹ Although one can argue that the Headlee Amendment and Prop A were originally designed with the intention to protect homeowners, especially senior citizens, from rising property tax bills, the City has not fully recovered from the substantial decline in property values which occurred during the recession of 2008-2013, and due to the limitations of State law, properties may not recover their previous value for 15 or more years.⁶ Since Fraser, like many of the other communities in Southeast Michigan is fully developed, its ability to gain additional revenue through new construction and development is very limited.

⁵ Tr. 112-113. Walters testified that the City's ability to pay should not be limited strictly to what is in the audit because an audit is a "snapshot in time of the finances of the City at the end of 2019" and nothing more.

⁶ C. Ex. 25, p. 16.

⁷ C. Ex. 25, p. 16.

⁸ C. Ex. 25, p. 16.

⁹ Tr. 72; Exhibit 22 (John Walters' Presentation).

¹⁰ C. Ex. 30, p. 2.

¹¹ C. Ex. 30, p. 2.

Reductions in State Funding

The third cornerstone of the City's argument that it is financially unable to meet the Union's wage demands is that **the amount of revenue that they receive from the State of Michigan has been steadily declining over time.** Traditionally, State funding comprises about 14% of the City's revenue, and is the second largest source of revenue behind property taxes. In many of the years since 1998, State revenue funding to the City of Fraser has declined. And while recent years are showing a rebounding of State funding, in 2020, the City experienced a 2% decline. The City's brief cites this loss of State funding as one of the major reasons for the City's inability to pay.

City of Fraser has a Structural Deficit

The City maintains that the third reason that explains their inability to pay the Union's wage demands is that **they suffer from an inherent structural deficit.** They define structural deficit as one in which recurring expenditures are greater than recurring revenues on an annual basis.¹² They further explain that the City must use its unassigned fund balance to make up the deficit caused by expenditures exceeding revenues in order to comply with a State statute requiring the City to create and maintain a balanced budget annually. The City maintains that the only option available is to use its Fund Balance to eliminate the annual deficit and provide a balanced budget as required by State law.⁷

The City maintains that it lacks the tools necessary---either restructuring government or restructuring taxes to increase revenue--- to address the structural deficit. The City also maintains that it has utilized both of these tools in an attempt to fix the problem.

With respect to restructuring government, the City states that it has done this in two ways: first, by eliminating its dispatch service and transferring operations to the South East Regional Emergency Services Authority ("SERESA"),¹³ and secondly, by reducing the number of positions within the Public Safety Department.

¹² See Tr. 76-77.

¹³ Tr. 54;

The City points to its decision to levy a Public Act 33 millage to capture revenue as an example of another method to address the structural deficit by changing the existing tax structure.

The City points to the budgets for fiscal years 2020 and 2021 to demonstrate its point about the structural deficit in the general fund.¹⁴ In FY 2020, total revenue received was \$17,210,241.86,¹⁵ and total expenditures amounted to \$15,675,999.38.¹⁶ The fund balance increased by \$1,534,242.48 in fiscal year 2020 because the City collected \$3,803,941.95 from PA 33.¹⁷ Without the PA 33 funds, the City would run a deficit of \$2,269,699.47.¹⁸

In FY 2021, the City will receive \$1,977,500 in PA 33 revenue if PA 33 is levied at 4.5 mills (it levied 9 mills in fiscal year 2020). The City maintains that at even at 4.5 mills, the City will have to borrow from the fund balance, and that even then, the City will lose \$79,635 due to the structural deficit.¹⁹ The fund balance at the end of fiscal year 2021 will be about \$5,589,372, which is about \$2.7 million less than the fund balance the prior year.

A Fund Balance of \$5.5 million is somewhere between 25% and 40% as a percentage of yearly operating costs. The fund balance is currently 44%, which is more than the 25% recommended by the industry standard for small cities.²⁰ But the City maintains that it needs a larger fund balance "in case the census comes in where there's over 15,000 people" and the fund balance will decrease at about \$2.3 million per year.

¹⁴ The emphasis of this brief is the City's largest fund—the general fund. John Walters provided some testimony on the ambulance fund, which is separate from the general fund. He testified that though the ambulance fund can pay for paramedic expenses, including wages, it does not change the overall economic outlook the City. He testified, "This is just a special revenue fund. There's an ambulance service. . . . There's property taxes coming in and there's revenue coming in to cover the ambulance fund. [The activity of this fund] doesn't have any impact on the general health of the City . . . it's just like anything else. You have money coming in for streets that pay for street construction, but it doesn't necessarily change the health of the City." Tr. 102-103.

¹⁵ C. Ex. 24, p. 2; Tr. 96.

¹⁶ C. Ex. 24, p. 15.

¹⁷ C. Ex. 24, p. 1, 15.

¹⁸ C. Ex. 24 p. 1, p. 15. This figure is calculated by removing the \$3.8 million collected from PA 33 from the 1.5 million net revenues and expenditures.

¹⁹ 1,606,338 minus \$1,526,703 is \$79,635.

²⁰ Tr. 83-84.

The City points out that although the City anticipates that it will have an estimated \$5.5 million fund balance at the end of fiscal year 2021, the Union is mistaken in believing it can afford the \$761,200 wage increases. If it wanted, the City could drain its fund balance to zero by writing a check for \$5.5 million to its unfunded OPEB liability (\$41 million) or its unfunded pension liability (\$30 million). Instead, given the uncertainties with PA 33, the structural deficit, the pandemic, etc. , the City is prudently sitting on slightly more money than the industry norm and that it should not be punished for being fiscally responsible.

The City's Ability to Pay: Position of the Union

The essence of the Union's argument is five-fold: 1) That there is significant evidence to demonstrate that the City is financially healthy; 2) that the City's unfunded long-term liabilities are, in fact, long term: they are not due for another 35 years, thereby making the City's financial position seem worse than it actually is; 3) The City has ignored the concessions made by the police in economic issues such as wages, pension, and other Post-Employment Benefits; 4) That among comparables, other municipalities have managed to provide their public safety employees with across-the-board wage increases despite having worse financial positions than the City of Fraser; 5) The City is actually contributing to its own revenue problems by choosing to not levy a 9-mill increase which will substantially improve their operating deficit. In essence, the Union strongly disagrees with the City's core argument that the City has an inability to pay. In support of the Union's position, they point to a set of largely positive financial indicators:

I. Health of the General Fund

Based upon the testimony of Controller Walters and the Union's review of the 2019 Audit, the Union's first argument in rebuttal of the City's inability to pay premise is that the General Fund is strong. Among the items that they presented include:

- A. The City's unassigned General Fund Balance is \$6,555,308 which is available for spending at the government's discretion. (pg.5). This is an increase of \$3,192,253 from the previous year. (pgs. 5 & 20)
- B. General Fund Revenues exceeded expenditures by \$3,149,552. (pg. 20)
- C. The City's unassigned General Fund Balance equates to a 43.6% General Fund balance. (pg. 5), even after the City paid an additional \$800,000 payment to MERS.
- D. The City's Total Governmental Funds has a fund balance of \$12,115,564 which is an increase of \$4,481,348 from the previous year. (pgs. 5 & 20) and equates to a 54.1% Total Governmental Funds balance. (pg. 5)
- E. The official audit shows an unassigned General Fund Balance of \$6,555,308 which equals 43.61% of total expenditures, as opposed to the State of Michigan Treasury Department for a General Fund Balance in the range of 10-15%.

II. Increase in Property Tax Revenues

Despite the City's concern about the future of property taxes in the highly developed city of Fraser, the Union's second argument about the financial health of the City is that Property taxes, the largest portion of the City's revenues, increased by \$3,229,650 from the previous year. (pg. 10)

III. Observations on the City Budget

The Union advanced a number of observations about the City Budget as part of its argument to rebut the City's position that it is unable to pay the wage increases sought by the Union. The parties did agree that budgets are, in fact, projections, and should be regarded as such. Nevertheless, what follows is a summary of the highlights that the Union covers in its brief:

First, the Union noted that the Department of Public Safety has also reduced expenditures by \$1,003,950 less than the Original Budget amount. (pg. 58)

The second disconnect for the Union lies in the fact that several of the City's budgets forecasted wage increases for the Department of Public Safety:

- A. The 5-year forecast budgeted 3.0% wage increases per year for the fiscal years 2019-2020 through 2023-2024 (Un. ex. 56). Employer exhibit 23, the 2020-2021 Budget (Final) budgeted a 12.4% wage increase for the 2019-2020 fiscal year from the 2018-2019 Activity.
- B. The 2019-2020 Original and Amended Budgets indicated a 12.4% wage increase from the 2018-2019 Activity. (2,400,000 / 2,134,705) (Tr. pgs. 142 -143)
- C. Staying on the subject of budgets, the Union also points out that the 2019-2020 Original and Amended Budgets indicated a 27.3% wage increase from the 2018-2019 Activity, and that the ending Fund Balance for the 2019-20 Amended Budget is \$997,886. The 2020-2021 Final Budget shows that the revenues are expected to exceed expenditures by \$173,958 and the Ending Fund Balance increases to \$1,171,844.

Finally, the Union points out that the City is proposing only a lump sum increase of a \$1,250 lump sum payment, despite the fact that they budgeted a 12.4% wage increase for the fiscal year beginning July 1, 2019.

Pension and Unfunded Liabilities

Since a critical component of the City's inability to pay position is based on the unfunded pension and OPEB liabilities, the Union spends a significant amount of effort addressing that position. The Union's counter argument in this area consists of the following:

First, documentation submitted by the City shows that the entire system is relatively well-funded. The Union asserts that the funding level for both Divisions of the bargaining unit are in compliance with the recommended levels in PA 202 for funding levels and that the funding levels for this bargaining unit Divisions far exceed the entire system funding level.

Second, the Union places on the record the fact that they have already made concessions to the City in the area of Pension benefits. One concession moves back the age that members with 25 years of service are eligible to retire from 50 to 55. A second pension concession changes the pension multiplier from 2.5 % for all years of service to a

1.5% pension multiplier for their first ten (10) years of service and then receive a 2.0% multiplier for the remaining years of service.

A third pension benefit concession made by the Union has to do with a change to Article 33.3 which now limits contributions to the pension to not more than 100% of their base pay. Public Safety Officer McLaughlin testified that since he normally works a large amount of overtime, in past years his contributions might have exceeded his base pay amount. This change results in the fact that for him and anyone else in this category working a lot of overtime, not all of their earned overtime is totally calculated into his/their pension (Tr. pgs. 190-193).

The aforementioned savings in contributions for the City and in reduced benefits for the bargaining unit takes on additional significance when one takes a closer look at the current composition of the unit. Employer Exhibit 27 shows eleven (11) members of this bargaining unit were hired after July 1, 2016 (on December 31, 2019), and receive the lower pension benefits as a result of the Union's concessions. In addition, according to Union testimony, there will be at least two (2) additional retirements from the bargaining unit in the near future who will receive lower pension and retiree healthcare benefits than the members hired prior to July 1, 2016. At that point, the majority of the members of the bargaining unit will have been hired after July 1, 2016 and therefore, will receive the lower pension benefits discussed above.

A final note related to the impact of the concessions made by the Union in this area has to do with the decision by MERS to unilaterally reduce its assumed rate of return from 7.75% to 7.35%. Lowering the assumed rate of return causes the funding level to decrease by increasing the liability payments. Therefore, the Union maintains that decreases in the funding levels are the result of MERS requirements and not a result of increased pension benefits for the bargaining unit, and more importantly, the unfunded liability stays the same.

OPEB and Unfunded Liabilities

In a parallel approach to rebutting the City's argument about the weight that should be attached to the unfunded OPEB liabilities, the Union addressed the following highlights:

- 1) Article 19.10 shows that employees hired after July 1, 2009 shall not be eligible for retiree medical coverage. Also, Article 19.11 shows that members hired prior to July 1, 2009 but retire after August 1, 2016 shall be responsible for 10% of the retiree health care premium up to \$1,500.00 per year.
- 2) The Union maintains that in a further effort to assist the City, the membership also gave up a benefit that in the past members who selected a deferred retirement would receive a 4% retiree health insurance premium credit per year of service, when the deferred retiree reached fifty-five (55) years of age.

In conclusion, the Union maintains that the majority of the bargaining unit members will not receive retiree medical coverage due to the concessions of this bargaining unit.

Sources of Revenue

As noted above, the City has already established that its sources of revenues are limited:

1) the City is already highly developed, so opportunities for new residential and commercial construction are limited; 2) that same limitation impacts the City's ability to expect more revenue from property taxes; and 3) State-provided revenues have been steadily declining over the past years.

In spite of these inherent limitations on revenue, the Union raises the following questions, "Why did the Fraser City Council decline to levy the full 9 mills tax that they are entitled to raise under PA 33?" A second question raised by the Union is "Why did the City Council reject the recommendation of Mr. Walters, their controller, to levy the entire 9 mills, and instead, choose to levy only half of the amount that they are allowed to under the law?" As noted by the Union, PA 33 authorizes qualified cities to levy special assessments to pay for the costs and expenses of Police and Fire protection. The City controller acknowledged in his testimony that the City did levy the full 9 mills in 2019 and could have done the same in 2020, but City Council changed their minds. The Union asks how a City that is facing the kind of financial crisis its brief portrays choose not to maximize their already limited sources of revenue?

The Union brief notes that the PA 33 Special Assessment levied at 9 mills in fiscal year 2019-2020 generated \$3,821,715 in total revenues. If that same amount were levied

for FY 2020-21, the Union points out that the General Fund budget projects P.A. 33 generating \$3,955,000 in total revenues.

ANALYSIS and DISCUSSION

At the outset, I would agree with the fact that the City may well have maxed out the possibility of increasing revenue through property taxes due to the Headlee Amendment. At the same time, one cannot help but wonder if in the current economic environment in Michigan, the Headlee Amendment has outlived its usefulness and municipalities like Fraser may have to lobby to advocate for a less restrictive approach to raising property taxes.

Second, it is true that Fraser, like many municipalities, have been receiving less revenue from the State for a long period of time. This is a problem that is true for many states across the country and will undoubtedly continue until a true recovery at the micro-economic level occurs. In the interim, many municipalities will experience the need to prioritize potential expenditures in order to maintain a balanced budget.

These two challenges, seen together with the notion advanced by the City of an inherent structural deficit, call into question the recent decision made by the City to levy only half of the millage that it is allowed to under PA 33. If the surplus of its annual expenses is so strong, if the City is indeed suffering from the reduced revenue it has been receiving from the State of Michigan, then why would it turn its back on one of the only options it has available to it to increase revenue, that is by levying the full 9 mill tax on its residents? How does one explain the concern of City leadership about its urgent financial condition in light of this decision?

The City argues that it is constrained by the Headlee Amendment from increasing property taxes. The City further argues that it is a developed entity with little room for

new residential or commercial construction. Yet it rejects one of the few tools at its disposal for maintaining a healthy level of revenue? And now it asks this Panel Chair to penalize its group of first responders by instructing the Arbitrator to rule on behalf of the City's last best offer to minimize the wages that they are being paid for risking their lives on behalf of the City. Moreover, there is little, if any mention of the financial concessions that this same group of employees has already made towards maintaining the City's economic health. Are those concessions acknowledged and appreciated? Are they to be restored?

In essence, the heart of this interest arbitration dispute centers around the differences in the parties' view of the City's ability to pay. Since the Legislature changed the Act 312 criteria to make the ability to pay the most significant factor in 312 cases, arbitrators are required to focus on the financial viability of the municipality---the ability to pay--- over all other factors. While comparables are still included in the list of factors, the City's ability to pay is the most significant factor for the Panel to consider, and should be the Panel's primary consideration.

In essence, the City argues that it has a negative net worth, largely due to its long-term liabilities in the pension and other post-employment benefits. While other factors--limited sources of revenue and reduced funding from the State enter into the equation, the core of the City's argument rests with the total amount of long-term liabilities that it faces in the next 30+ years. The Union's argues that the City is financially stable with a significant fund balance, a very positive SEMCOG rating, and a favorable comparison to other municipalities. The Union also points out that it has already provided substantial

relief in the form of concessions in both wage, pension, and other post-employment benefits.

The City points out the danger in the Union relying on the current strength of the Fund Balance, because it ignores the City's negative worth valuation. It is the opinion of this Arbitrator that it is, in fact, the very concept of the negative net worth which itself is inherently defective in its over emphasis on liabilities which are more than 30 years away.

I am troubled by the City's position regarding their inability to pay in that it relies so heavily on its long-term liabilities. Since these liabilities are being paid off over a 30+ year period, the urgency of the City's position appears weakened. Would the City maintain that its long-term liabilities render it unable to provide a general wage increase to its employees for the next 35 years---the majority of the time that it currently has liabilities in pension and other post-employment benefit payments? Would the City expect its public safety employees to work for that period of time without any increases to base wages or compensation that will increase their retirement benefits?

The discussion raises the question of what amount of progress in the City's view towards changing the ratio of its long-term liabilities to assets needs to occur before the question above is considered? The City has noted the importance of local construction projects and setting aside funds for asset depreciation. Where in the City's deliberation is the plan to restore funds received from this bargaining unit of first responders in the form of concessions which were contributed to help the City in what was then considered a time of great need? If the foreseeable vision of the future includes no base wage increases and no money earned from salary being included into retirement plans, how does the City intend to retain the quality employees that it has hired for the

Department of Public Safety or to recruit equally quality employees over the next few years?

The parties are in agreement that every other comparable community has unfunded liabilities, and at this point in time, unfunded or under-funded liabilities is a condition faced by many Michigan municipalities. While PA 202 recommends specific funding levels for both pension and OPEB plans, the Michigan Department of Treasury realizes that this is a long-term problem which could take up to twenty (20) years to bring communities into compliance with those guidelines.

The City maintains that even though their fund balance currently sits at 44%, exceeding the 25% standard recommended for small cities, it requires an even larger fund balance to prepare for the event that the census shows that Fraser's population exceeds 15,000 people. Such a development would render the City unable to increase revenue through a PA 33 millage as it has done in the past. But the City does not explain how likely a development this is in light of its own description that it is a highly developed city with little room for new housing. Again, it is difficult to attach a great deal of weight to this argument when one reflects on the above referenced decision not to seek the full amount of a PA 33 levy that could have been assessed.

COMPARABLES

Internal Comparables

The City maintains that the LBO's that it has proposed for the POAM unit in 2020-2021 are consistent with the changes negotiated with other bargaining units. An examination of their Exhibit *** entitled "Percentage Wage Increase Internal Comparables By Contract Year" appears to bear this out:

- Four other units received 0 % wage increases in 2019

- The 2 IBT units continued those 0 increases in 2020
- The Sergeants unit (COAM) is slated to receive a \$1250 bonus in 2020 and 2021.
- The Lieutenants unit (POLC) has parallel reopeners slated for January 1, 2020 & 2021.

This arbitrator notes that the consistency does exist as the City maintains. However, I also note that in doing so, the COAM tacitly accepted the City's inability to pay argument when they accepted the \$1250 lump sum bonuses. Their acceptance is noted, but it has nothing to do with the merit of the argument.

As to the issue of external comparables, the City's argument that Fraser compares well to the agreed upon comparables is also confirmed. That the City has generously provided for its Police Officers resulting in their ranking of first among the comparables in overall compensation is applauded and noted. Fraser Police are rated number 2, but all of the other police units are within \$2000 or less of Fraser officers' base pay. Fraser is rated number 1 in holiday pay with Centerline about \$300 behind. Fraser is rated number 1 in the "Other Compensation" category with their payment for education credits and EMT certification moving them ahead of their counterparts.

But the comparison should not end here. What this comparison does not consider is the benefits that the Fraser POAM unit has given up in concessions, detailed above on pages 14-16. I refer to these concessions because I am troubled when an employer has no trouble asking for help, but seems to forget that they received that assistance when a subsequent opportunity to address compensation occurs. As stated above, this forgetfulness is especially troublesome when one considers that this is a unit of first responders who face life-saving situations on a regular basis.

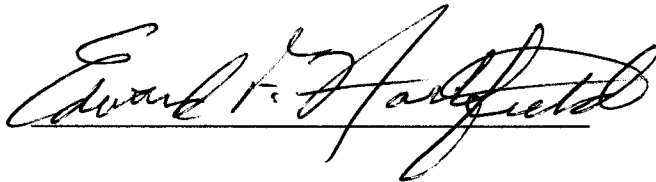
In the Union's a 1:1 comparison between Fraser and Roseville, Fraser ends up comparing positively in the criteria of General Fund Balance, Total Governmental Fund Balance, percentage of the total Public Safety costs versus overall expenditures. Governmental debt, and available cash. Although Roseville's financial situation is not as favorable as Fraser's in the above criteria, the Union points out that Roseville was able to provide a 2% wage increase to the police and fire fighters in the years between 2019-2022.

The final basis for my analysis of the parties' last best offers rests on the actual offers themselves. If the City is in fact, proposing lump sum payments of \$1250 per year for both bargaining units and for both years, it seems that those offers confirm an ability to pay. According to my calculations, the average wage of Fraser's Public Safety Officer in 2019 was \$72,517. The City offer of \$1250 lump sum payment is equal to 1.75% increase. The average wage of Fraser's Paramedics in 2019 was \$54,767. The City offer of \$1250 lump sum payment is equal to 2.25% increase.

The City is putting money on the table; it is choosing to put the amounts in the form of lump sum payments, rather than general wage increases which will add to the employees' base rates and be included in their pension calculations. I find it very difficult to accept the City's inability to pay argument in the face of the evidence presented and their own last best offers. If the City has the money to pay these increases now, it should.

Out of respect to the impact of the loss of State funding in an era of COVID complications to the local economy, I will honor the City's request for a lump sum payment for FY 2020 for both components of the bargaining unit to assist the City in continuing to get their financial house in order. However, because I find that the case made by the City suggesting that it lacks an ability to pay is not borne out in the evidence and presentations made, I am ordering the adoption of the Union's last best offers for

both the police officers and the paramedics in the second year of this re-opener. On balance, a review of the City's financial condition as measured against a number of economic indicators suggests that the City is doing well, helped in no small measure, by the concessions made by the POAM.

A handwritten signature in cursive script, reading "Edward F. Hartfield". The signature is written in dark ink and is positioned above the printed name.

Edward F. Hartfield

February 10, 2021

Panel Chair

St. Clair Shores, Michigan

| AWARD:

WAGES (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

Wages for 2020,

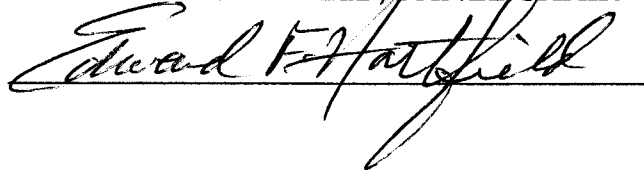
A majority of the Panel is of the opinion that this dispute should be resolved by treating the two years of the re-openers as separate offers for two different employee groups, the Police Officers and the Paramedics.

For the 2020 Fiscal Year, the Arbitration Panel selects the Employer's wage offer of a \$1250 lump sum increase.

Police Officers: a \$1250 lump sum increase

Paramedics: a \$1250 lump sum increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE

☐ Agree ☐ Disagree

MARK THOMPSON, EMPLOYER DELEGATE

☐ Agree ☐ Disagree

| AWARD:

WAGES (Economic)

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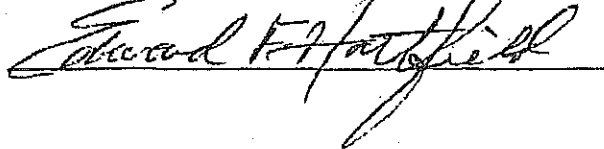
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Police Officers: a \$1250 lump sum increase

Paramedics: a \$1250 lump sum increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE

☐ Agree ☐ Disagree

MARK THOMPSON, EMPLOYER DELEGATE



☒ Agree ☐ Disagree

| AWARD:

WAGES (Economic)

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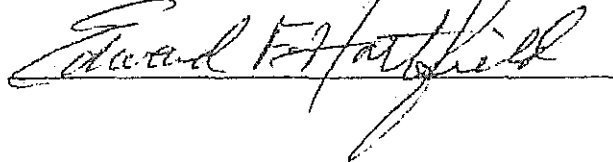
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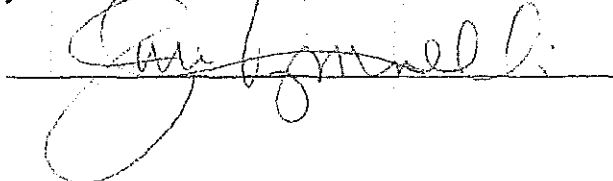
Paramedics: a \$1250 lump sum increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE



☐ Agree ☒ Disagree

MARK THOMPSON, EMPLOYER DELEGATE

☐ Agree ☐ Disagree

| AWARD:
WAGES (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

Wages for 2021,

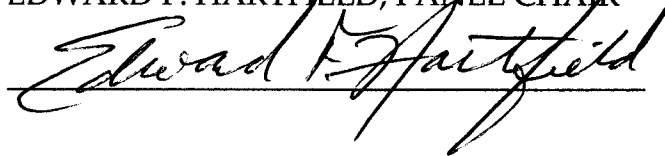
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For the 2021 Fiscal Year, the Arbitration Panel selects the Union's wage offer, which includes full retroactivity to January 1, 2021:

Police Officers: a 2.5% base wage increase

Paramedics: a 5% base wage increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE

☐ Agree ☐ Disagree

MARK THOMPSON, EMPLOYER DELEGATE

☐ Agree ☐ Disagree

| AWARD:
WAGES (Economic)

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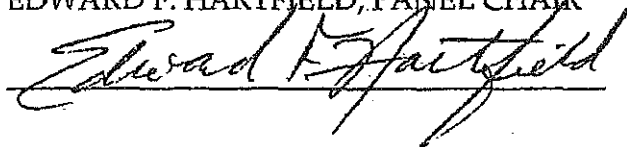
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EDWARD F. HARTFIELD, PANEL CHAIR

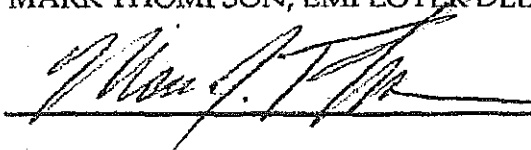


X Agree Disagree

JAMES TIGNANELLI, UNION DELEGATE

 Agree Disagree

MARK THOMPSON, EMPLOYER DELEGATE



 Agree ✓ Disagree

| AWARD:
WAGES (Economic)

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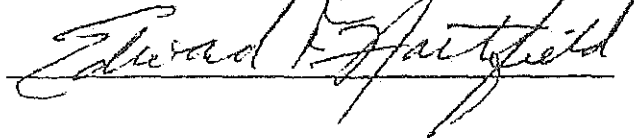
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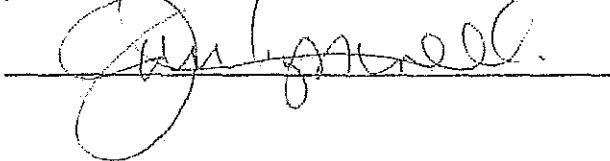
Paramedics: a 5% base wage increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE



☒ Agree ☐ Disagree

MARK THOMPSON, EMPLOYER DELEGATE

☐ Agree ☐ Disagree

WITNESS LIST

City of Fraser

David Bisby Lieutenant, Patrol Division Commander

John Walters Interim Finance Director, Controller for City of Roseville

Police Officers Association of Michigan

Mackenzie McCarthy Firefighter/Paramedic

James Tignanelli President, Business Agent

Alan Brzys Research, Business Agent

Gary McClaughlin Police Officer

In the Matter of

POLICE OFFICERS ASSOCIATION OF
MICHIGAN

And

CITY OF FRASER

Selection of Comparables
MERC CASE NO. 20-A-0237-CB

PETITIONING PARTY:

Police Officers Association of Michigan

and

RESPONDING PARTY:

City of Fraser

INTEREST ARBITRATION

Panel Chair

Edward F. Hartfield

Delegates

Employer Delegate: Ryan J.L. Fantuzzi, Esq.

19500 Hall Rd., Suite 100

Clinton Township, MI 48038

586-412-4900

Union Delegate: James Tiganelli

27056 Joy Rd.

Redford, MI. 48239

313-937-9000

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ARBITRATOR'S INTERIM OPINION AND DECISION on COMPARABLES

INTRODUCTION

This matter is before the Panel for an Interim Opinion and Award on the comparables to be used to evaluate the economic issues. The Union, representing a group of about 25 public safety officers and paramedics, petitioned MERC for interest arbitration for a wage re-opener on April 29, 2020. The undersigned was appointed Chair of the Panel on May 19, 2020, and convened a pre-hearing conference call with the parties on June 15. In that call, the parties agreed to submit briefs on the selection of comparables by July 13, the basis of this Interim Opinion.

BACKGROUND

The parties are operating under a collective bargaining agreement that expires on December 31, 2022. Their request for interest arbitration is to address a wage re-opener. During the pre-hearing call, the Union expressed a hope that the parties could agree on a two-year reopener to be addressed during the current process. Counsel for the City acknowledged their request and reported that he would provide a formal response following his meeting with City leadership. Subsequently, Counsel for the City indicated the City's willingness to submit two years to the current re-opener in a written communication dated June 16.

The legal basis for this proceeding is found in MCL 423.239 (d) which specifies that one of the factors that the decision must be based on is comparability, which is defined therein as:

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

- (i) In public employment in comparable communities.
- (ii) In private employment in comparable communities.

ISSUE

The sole issue in front of the Panel at this juncture of the proceeding is what comparables shall the parties use as a basis for presenting their economic positions during this proceeding? The parties have been able to mutually agree to only one comparable, the City of Center Line.

POSITIONS OF THE PARTIES

Position of the Union

The Union carefully describes the rich arbitration history of the parties on the issue of selecting comparables dating back to the award of Arbitrator Vernava in 1989. The Union's position on the issue of comparables is essentially four-fold:

- 1) There is no justification for the parties to ignore the previous Act 312 awards on this issue which have essentially confirmed the Union's proposed comparables.
- 2) The City has only proposed three comparables which the Union maintains is an insufficient number.
- 3) The Union's proposed comparables all are adjacent communities and have a functional relationship with Fraser.

- 4) The City is "comparable shopping" because it has only selected three of the 13 municipalities that have public safety departments and those three are "near the lower end of the wage scale".

Position of the Employer

The position of the Employer places a great deal of weight on language contained in the award of Arbitrator Donald Sugerman in *Oakland County and Oakland County Deputy Sheriff's Association*, MERC Case No. DO5-A-0055. In that award, Arbitrator Sugerman notes that while the Statute does not provide specific guidance to help determine comparability, the specific criteria most often relied upon are:

"Population, area, tax value, and size of law enforcement unit". The Employer's case revolves, therefore, around their application of these specific criteria.

In addition, the City's brief on this matter is based on the following points:

- 1) All of the comparables should be based on public safety departments that combine both police and fire services.
- 2) Cities should only be compared with cities.
- 3) The POAM relies too heavily on geographic proximity to the exclusion of other objective factors.
- 4) History, reflected in the precedent value of other cases, is not binding on parties where one party consistently objects.
- 5) Changing conditions over the last 30 years necessitate new comparables.

ANALYSIS and DISCUSSION

The Union adopts a very broad view in stating that their proposed comparables all are adjacent communities and have a functional relationship with Fraser. This viewpoint, by definition, ends up placing a heavy emphasis on geographic proximity. To the degree that adjacent communities end up competing for essentially the same pool of labor, their argument has merit. To the degree that this argument ignores the consideration of other factors, I find it deficient.

The POAM states that identifying only three comparables as the City has done is insufficient for purposes of comparison. This arbitrator agrees with the Union's assertion on this point.

The Union also states that the City is "comparable shopping" because it has only selected three of the 13 municipalities that have public safety departments and those three are "near the lower end of the wage scale". In making this point, the Union notes that the Employer has not considered any of the other 13 public safety departments in the tri-county area. The Arbitrator takes note of the fact that the Union's proposed comparables do not include any of the other public safety departments in that list as well.

Perhaps the heart of the Union's case is reflected in their statement that "There is no justification for the parties to ignore the previous Act 312 awards on this issue which have essentially confirmed the Union's proposed comparables." Their argument is that their comparables arise from a series of arbitration awards on comparability over the years and that, absent a well-reasoned argument to the contrary, the parties should continue to rely upon those core municipalities which have prevailed over time.

The Arbitrator finds the Employer's argument on this point to be more compelling: that is, "that changing conditions over the last 30 years necessitate new comparables." To ignore the degree of change which has occurred between Fraser and communities like Warren and Sterling Heights is equivalent to the proverbial ostrich with its head stuck in the sand. While it is indisputable that each of these communities may have shared similar qualities at some point in the past, it is clear that substantial change over the last 3 decades render these similarities less relevant today.

Given the specificity of the statutory language that governs determination of economic issues in Michigan interest arbitrations, this arbitrator is inclined to evaluate the proposed comparables via specific, objective factors. The Statute states, "The financial ability of the unit of government to pay all of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

- (i) The financial impact on the community of any award made by the arbitration panel.
 - (ii) The interest and welfare of the public.
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
 - (iv) Any law of this state or any directive issued under the local Government and School District Fiscal Accountability Act., 2011, PA4. MCL 141-1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (a) The lawful authority of the employer.
 - (b) Stipulation of the parties.

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

Looking first at population, the community of Fraser had a population of a little over 14,000 as of 2018. The cities of Warren (134,587), Sterling Heights (133,000), and Clinton Township (101,000) all are in excess of 100,000, or more than 9 times larger than Fraser. Roseville's population is listed as a little over 47,000 residents, as of 2018.

In the category of land area, Sterling Heights and Warren both have in excess of 30 square miles compared to Fraser's land area which measure 4.2 square miles. Clinton Township is listed as having over 28 square miles. While the City of Farmington and Grosse Pointe Park are somewhat smaller at 2.7 and 2.2 square miles respectively, they are clearly closer in size to Fraser. Roseville's land area is just over twice that of Fraser, but is the closest in size of any of the POAM's proposed comparables.

A similar parallel exists in the criteria of State Equalized Value or SEV. Fraser's SEV is "listed as \$456.3 million, while Sterling Heights is listed as \$4500 million and Clinton Township as just under \$3000 million at \$2980. Again, the Arbitrator notes that Roseville's SEV is shown as \$900 million, a little more than twice the size of Fraser.

Based upon the above analysis, I make the following observations. The parties have already agreed to **Center Line** as a comparable. The employer has proposed the **City of Farmington and Grosse Pointe Park** which have clear similarities in a number of the specific criteria. Despite their geographic proximity, the Panel Chair cannot agree to Warren, Sterling Heights, or Clinton Township, due to their obvious differences from Fraser. In my view, the differences overwhelm the Union's argument that they have a geographic and functional relationship with Fraser.

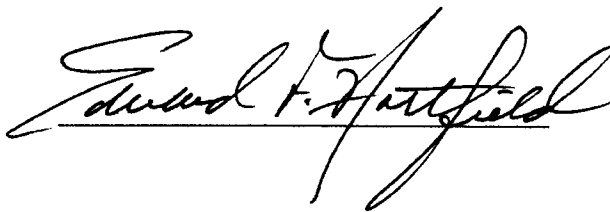
But as I suggest above, the one other proposed comparable from the POAM list that I can in good conscience, add to the list of comparables is that of **Roseville**. Even though Roseville

does not operate a public safety department combining police and fire services, based on the lists that the parties submitted for consideration, Roseville strikes me as the most appropriate unit for adding to the list. While I recognize that this does not meet the Employer's interest of comparing only municipalities with public safety departments, the Employer chose to submit only 3 municipalities, bypassing a number of the other public safety departments. Moreover, despite Roseville not having a public safety department, it has ample criteria for comparison that will prove useful. Finally, Roseville appears as a comparable in several of the previous arbitration awards that are part of the parties' collective bargaining history.

CONCLUSION

For all of the above reasons, I find that the following are the appropriate comparable communities in this case:

1. Center Line
2. City of Farmington
3. Grosse Pointe Park
4. Roseville

A handwritten signature in cursive script, reading "Edward F. Hartfield", written in dark ink. The signature is fluid and stylized, with a horizontal line drawn beneath the name.

August 6, 2020

Edward F. Hartfield, Panel Chair

AWARD:
WAGES (Comparables)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

The following communities shall serve as the appropriate comparables for use in the 2020 -21 economic re-opener that will be heard in interest arbitration on October 15, 2020:

1. Center Line
2. City of Farmington
3. Grosse Pointe Park
4. Roseville

EDWARD F. HARTFIELD, PANEL CHAIR

☒ Agree ☐ Disagree

Edward F. Hartfield 9.6.20

KEVIN LOFTIS, UNION DELEGATE

☐ Agree ☒ Disagree

Kevin Loftis

RYAN J.L. FANTUZZI, EMPLOYER DELEGATE

☒ Agree ☐ Disagree

Ryan J.L. Fantuzzi

| AWARD:

WAGES (Economic)

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Wages for 2020,

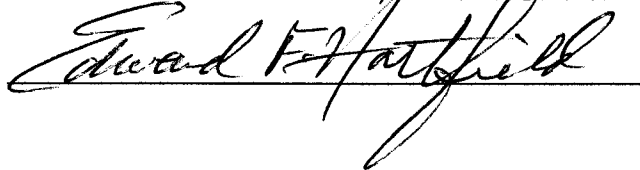
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For the 2020 Fiscal Year, the Arbitration Panel selects the Employer's wage offer of a \$1250 lump sum increase.

Police Officers: a \$1250 lump sum increase

Paramedics: a \$1250 lump sum increase

EDWARD F. HARTFIELD, PANEL CHAIR



☒ Agree ☐ Disagree

JAMES TIGNANELLI, UNION DELEGATE

☐ Agree ☐ Disagree

MARK THOMPSON, EMPLOYER DELEGATE

☐ Agree ☐ Disagree

| AWARD:
WAGES (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

Wages for 2021,

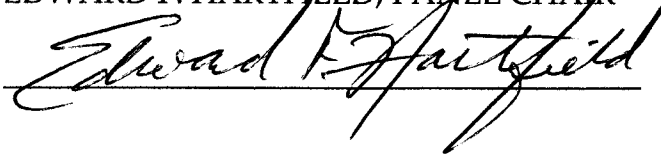
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Police Officers: a 2.5% base wage increase

Paramedics: a 5% base wage increase

EDWARD F. HARTFIELD, PANEL CHAIR



X Agree Disagree

JAMES TIGNANELLI, UNION DELEGATE

Agree Disagree

MARK THOMPSON, EMPLOYER DELEGATE

Agree Disagree
