

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
BUREAU OF EMPLOYMENT RELATIONS

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**MERC CASE NO: 19-A-0046-CB**

**CITY OF FLAT ROCK,**

Employer & Responding Party

**POLICE OFFICERS LABOR COUNCIL,**

Union & Petitioning Party

RECEIVED  
STATE OF MICHIGAN  
Oct. 6, 2021  
Employment Relations  
Commission  
Detroit Office

**COMPULSORY ARBITRATION**

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

**Arbitration Panel**

Chair: Elaine Frost

Employer Delegate: Matthew Zick

Union Delegate: Michael J. Atkins

**Advocates**

Employer Advocate: Matthew Zick

Union Advocate: Michael Atkins

PETITION(S) FILED: February 11, 2021

PANEL CHAIR APPOINTED: February 23, 2021

SCHEDULING CONFERENCE HELD: March 18, 2021

HEARING DATE(S) HELD: July 26 and July 29, 2021

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## WITNESS LIST

### For the City:

Joanne Beard, Flat Rock Treasurer  
Glen Hoffman, Retired Police Chief

### For the Union:

Nancy Ciccone, POLC Research Analyst  
Sue Feinberg, MERS Regional Manager (by Video)  
John Wieneke, Detective Lieutenant

### Also Present:

POLC Representative Duane Smith  
Police Chief Jerry Park

## 1. INTRODUCTION AND BACKGROUND

The City of Flat Rock (City) has approximately 10,000 residents which is roughly 4,000 residents more than in 1995. (T 286). It operates under the Home Rule Cities Act, 1909 PA 279, MCL 117.1 et seq., and its City Charter allows it to levy property taxes not to exceed 20 mills of assessed value of the real and personal property. The City has levied 19 mills of which 16 mills goes to general operating expense, 1.75 mills to police and fire, .25 mills to historical and 1.0 mill for roads. (TR 73).

There are five collective bargaining units in the City. (T 10-11). Of those, only the DPS and Clerical units have settled contracts. Within the Flat Rock Police Department, there are two bargaining units, patrol and command. Neither group currently has a collective bargaining agreement (CBA) in effect. The police patrol two-year contract expired June 30, 2021. Fire Department CBA is unsettled.

Taxable Valuation/Revenue. For Fiscal Year (FY) 2018-2019, the taxable valuation for the City totaled \$295,281,220 (U-19A p 4-19) and that increased to \$317,075,375 in 2019-2020 (U-19B p 4-19).<sup>1</sup> Generally, taxable valuation has increased since 2015 (T 131; U-D p 105). As with many cities in Michigan, however, the City of Flat Rock continues to be hurt by the loss of the personal property tax,<sup>2</sup> and even more by the continuing impact of the 2008 economic recession.<sup>3</sup>

Most of the City's revenue is raised through taxes. It also receives revenue from grants, revenue sharing, reimbursements/cost recovery, fines, usage fees, and license/permit fees from the Police and Fire Departments and the Court. (T 74-77, 118-119, 129, 137).<sup>4</sup> Many of these fees have decreased due to the pandemic, such as with the Court closing. Another revenue source is the American Rescue Plan Act (ARPA) enacted in March, 2021, amending Title VI of the Social Security Act. City Treasurer Joanne Beard said the City of Flat Rock had to apply under that Act, but it was approved for \$1,047,000 in Fiscal Recovery Funds, half to be paid now, half later. (TR 51-52). She explained that ARPA funds have not been included in the City's 2020-2021 Budget. (TR 120). She continued that there are restrictions on use of these funds to offset losses from the pandemic but these funds can clearly offset revenue losses at the Community Center and, with respect to the Police Department, they can buying equipment and safety items. But, Treasurer Beard explained, her understanding is that they cannot go for salaries. (TR 52-53).

The City has been handed significant setbacks by the Michigan Tax Tribunal (MTT). Thus, the City lost approximately \$3.7 million in taxable value from one ruling on a single piece of property. (T 44, 61, 78; E-V.a). And the MTT decisions in favor of IBM Credit, LLC/Ford Data Center resulted in the City's having to payback about \$112,000. There are also potential

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<sup>1</sup> General revenues increased by approximately \$437,000 between FY 2019 and 2020 (U-A&B p 4-7), since the City saw increases in state shared revenue and taxes. But substantial losses in Community Center revenue, non-major governmental tax funds, and other state grants, resulted in the total revenue decreased of approximately \$414,000. (Id).

<sup>2</sup> Treasurer Beard explained that Flat Rock is one of the communities that receives payments from the State under the Local Community Stabilization Act to offset loss of property tax, with payments of \$2.5 million. (TR 129).

<sup>3</sup> Treasurer Beard explained that prior to the 2008 economic crash and application of Headlee, we were at 20 mills. (TR 72). She said it's going to take up a long time to get back up to where it was. (TR 132, 137).

<sup>4</sup> From the Police Department, Treasurer Beard explained, fees are raised by gun permits, auctions of property, fingerprinting, and the housing prisoners for other cities. (TR 74).

reductions in the tax revenue from the Meijer store (T 46; E Ex V.a) and a Rite Aid pharmacy and the City has already budgeted \$100,000 in anticipation of the Meijer decision. Other losses are also expected, Beard said, from MTT petitions from other businesses injured by the pandemic.

General Fund Balance. According to the audited Financial statements, FY 2018-2019 revealed a general fund balance of \$1,179,120 which was 13.2% of general fund expenditures. (U-19A p 3-6). And FY 2019-2020 gave a general fund balance of \$1,199,287 and 13.7%. (U-19B p 3-6).

According to City Treasurer Joanne Beard, the City's General Fund for Fiscal Year (FY) 2021-22 is \$9.8 million and it had a Fund Balance of under 12% in July, 2021.<sup>5</sup> In FY 2019-20, Beard testified that the General Fund Balance was 10% (TR 13, II. 5-8) which, she explained, is where the City Council has by Resolution required the minimum fund balance to be. (TR 13; E-V.i.c). Beard explained the importance of not going below 10% because the City has filed three deficit elimination plans with the State and it wants to guard against an emergency manager. (TR 13-14). Beard also explained she anticipates that requiring the fund balance ratio not to drop below 10%, or \$992,470 is essential to the City's ability to issue bonds at reasonable, affordable interest rates. (T 29-30; E-V.i.i).<sup>6</sup> The bonds the City contemplates issuing are a 1.1 million TIFA bond (which includes \$300,000 for new roof for the Community center) (TR 21); Water Department/system bond \$6M (TR 15); and the DDD bond \$1.75 million including some road and bridge work (TR 20). Beard also gave her view that the general fund balance will drop below 10% for this year if retroactive wage increases are awarded by this Act 312 Panel to the command officers. (TR 28).

#### Community Center

Treasurer Beard testified that for FY 2019-2020 the City failed to appropriate sufficient funds in the amount of \$860,447. (U-19B, pp 4-24). In largest part this shortfall was due to the Community Center which closed due to Covid-19 in March, 2020.

The Community Center brings in revenue through fees for use of its swimming pool, gym, fitness center and banquet facility. (TR 21-23). Typically, Beard explained, the City budgets around \$175,000 - \$200,000 for the Community Center which also houses the City's Recreation Department.<sup>7</sup> She said this is done so the Center does not end up in deficit. But, due the Covid pandemic, the Community Center had to close and the City had to refund deposits on weddings and other planned events at the banquet center and covering expenses of the building. In FY 2019-2020, Beard continued, the Community Center cost the City \$700,000 of which only \$250,000 had been budgeted. (TR 19-20, 32, 126-127). So the City was required by the State to submit the third and largest deficit elimination plan in a row for the Community Center. (U-19D p 43; E-V.i.iii; TR 23, 29). Beard added that the City was able to offset some of the operating losses by cutting down to one the full-time and some part-time Community Center employees. (TR 54, 67). And, starting earlier this year, the Community Center was able to open its pool in January, bringing in some revenue (T 56), as did the first wedding which was held in June, 2021.

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<sup>5</sup> Beard explained that her budget (2020-2021) still had outstanding revenues and expenditures for the month of June, 2021 at the time of her testimony at the Act 312 hearing on July 26, 2021. (TR 9; II. 3-23).

<sup>6</sup> Beard explained that bond counsel would like the general fund balance to be 15% to improve the City's rating on its upcoming bonds, but in her 17 years with the City (as Assistant Treasurer, now as Treasurer), that has never happened. (TR 80-81).

<sup>7</sup> Treasurer Beard explained before the Community Center opened the City budgeted \$200,000 each year to support the recreation program. (TR 126).

(T 24, 32). Further, Beard explained, the County has been paying the City around \$38,000 per month for use of the facility for COVID vaccinations. (T 24, 69, 71). For a time, the City was also receiving additional funds to have a police officer on-hand to supervise the vaccination site. (T 71). So, she said, the situation is improving. But Beard also explained that the Community Center has lost money every year (TR 22) and the City has tried to sell it or consider other options for the Center, with no luck. (TR 67). Moreover, the City is still paying off the 1.1 million bond on the Center. (TR 133). And, under the TIFA bond the City will be issuing, \$300,000 is included for a much needed new roof on the Community Center.

### City Pension & OPEB Liabilities

Pension plans for the command unit are administered by the Municipal Employees' Retirement System (MERS). The City is underfunded by about \$26 million and has entered into an agreement to pay an additional \$300,000 over its required annual contribution. (TR 39-40, 86). With the additional payment the City is expected to be fully funded in 18 years. (TR 211).

The current MERS contributions rate for the fiscal year ending 2022, which is the current year in which the 312 Panel will issue its award, the City's contribution rate is 112.77%. (TR 134, 249- 251). Therefore, wages, including retroactive wages, awarded by the Act 312 Panel will have to be paid by the City together with another, greater amount to MERS.<sup>8</sup>

The City's OPEB liability is for retiree health care for longer serving officers who qualify. The City's liability is about \$28 million and it has entered into a Corrective Action Plan, approved by the State, under which the City will pay \$170,000 annually. That account is expected to reach 40% funded by 2039. (TR 40-41)(E-V.G.p2). (82; E-V.c).<sup>9</sup>

### Police Department Command

Current command staffing at the Flat Rock Police Department (FRPD of Department) includes the chief of police,<sup>10</sup> three lieutenants, two sergeants, and approximately a dozen police officers. (T 259-261, 279-280).<sup>11</sup> One lieutenant is a detective who is not uniformed and does not typically perform supervisory duties.<sup>12</sup> The remaining lieutenants and sergeants are uniformed and they are assigned to four 12-hour shifts.<sup>13</sup> When one is off for any reason it means more overtime to fill

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<sup>8</sup> MERS Regional Manager Feinberg explained that the earlier funds are deposited into the plan, the sooner the money can start earning interest. (T 208). Therefore, paying a higher percentage during the current fiscal year, on any amount of wages, including retroactive payments, will very likely have a significant impact on overall funding levels in a year or two. (TR 244; E-III.c).

<sup>9</sup> Treasurer Beard explained that the \$470,000 for the additional MERS payments and for the OPEB payments was made possible because the City recently paid off its ballfield and ice rink bond. (TR 80).

<sup>10</sup> Police Chief Glen Hoffman recently retired on June 28, 2021 (TR 258) and Lt. Jerry Page took over as Chief in July, 2021. Treasurer Beard testified that she would need to budget for one new patrol officer to replace the temporary sergeant because of Chief Page being promoted out of the command bargaining unit to Chief. (TR 54, 88 ).

<sup>11</sup> Two of the lieutenants have over 26 years experience, the 3<sup>rd</sup> over 20 and the two sergeants are at six years experience. After that we have a very, very young staff as among the patrol a lot of them have only two or three years experience. (TR 294).

<sup>12</sup> The detective lieutenant will sometimes work overtime shifts to fill-in for absent uniformed supervisors. Nobody covers for the detective lieutenant when he is out on vacation or otherwise away from work. (TR 297).

<sup>13</sup> Supervising a shift means the command officer covers the desk handling scheduling, overseeing and providing guidance to patrol officers on road duties; responding to scenes when a dispatcher is present; reviewing reports; handling the phones, the radio, and the lobby when there is no dispatcher; taking responsibility for security, safety and support of any prisoners in the Department's jail. (T 283); and managing traffic and towing issues that arise. (Updating MCOLES information and handling FOIA requests are assigned to specific command officers for consistency's sake).(TR 283). (The Department employs two dispatchers who work both the day and night shifts, at least one of whom is working in a full-time capacity). (TR 303).

the four shifts. (TR 265).<sup>14</sup> Due to Step-Up pay under the contract, when sergeants work as shift supervisors they are paid as lieutenants. This results in sergeants earning about 80% of their wages from overtime and step-up pay. (TR 263).<sup>15</sup> Given all the overtime, command officers earned over \$100,000 in 2020-2021 (E-IVa & b), although the Detective Lieutenant earned slightly less that year. In his testimony, Retired Chief Glen Hoffman testified that it was cheaper to pay the overtime than hire someone else full-time. (TR 271).

Detective Lt John Wieneke explained that the Department moved to the four-shifts schedule in 1995, when there were four lieutenants and four sergeants. (TR 279).<sup>16</sup> But in 2008 with the economic collapse people left for fear of layoffs and we didn't recoup. By attrition we ended up at our current staffing levels with only a single command officer per shift. (TR 280).<sup>17</sup>

When Chief Hoffman was asked if he would put a corporal on the desk, since promotion to that rank in the patrol unit is five years. and a five-year minimum applies for promotion to sergeant, Hoffman said he never put a corporal on the desk "because we didn't have a reason to do it." (TR 272).<sup>18</sup> Hoffman was also asked about having two command officers on vacation at the same time. He responded that it is a staffing on-hand issue but not an overtime issue or a cost issue when two are on vacation. (TR 273). He also said there was never a time when we could not cover, although they would just take in a couple extra hours to be sure we were covered for the next shift. (TR 273).

Ability to Pay. The City does not claim inability to pay all or any particular Union Last Best Offers of Settlement (LBO) in this case. And, the Chair's review of City finances compared to Union LBOs does not demonstrate an inability to pay under the preference granted in Section 9(2) of Act 312, MCL 423.329 for consideration of "financial ability of the unit of government to pay." But, the City certainly does claim it should not be required to pay the amounts sought by the Union, claiming they are excessive and not comparable to what the City should pay. The Chair concludes that the reasonableness, fairness, comparability and cost of the respective positions will be evaluated in this case by the Panel under all statutory criteria of Section 9(a) of Act 312, including Section 9(a)(i) which requires consideration of "the financial ability of the unit of government to pay."

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<sup>14</sup> Detective Lieutenant John Wieneke explained that the bargaining unit saw a spike in overtime in 2019, as the result of a 5-month medical leave taken by one of the command officers. (TR 291-292).

<sup>15</sup> Retired Police Chief Hoffman, when asked if 80% of sergeant wages was paid out due to Step-up pay, answered, "pretty close" although he did not know the exact numbers. (TR 263).

<sup>16</sup> D/Lt Wieneke said that, "In the original setup for 12 hour shifts when we had a lieutenant, a sergeant, and three patrolmen. If the lieutenant took off, the sergeant would then come off the road and work the desk therefore assuming the duties of the lieutenant during that time period, whatever it was. Therefore, he would receive that step-up pay to that of a lieutenant." (TR 295-296).

<sup>17</sup> D/Lt Wieneke said that, "Because of attrition and because of the way it's structured now, and the way the city has dwindled down our numbers... there's only one supervisor per shift so you can only earn a lieutenant's wage. There is no time in a position outside of vacation, sick, personal, and special detail where a sergeant earns sergeant money.... So they're always doing the job of a lieutenant." (TR 295-296).

<sup>18</sup> Hoffman further explained that, "We've had enough staffing to keep the ball rolling with lieutenants and sergeants and that's a contractual issue, so I put a corporal on the desk to try to save money for the day, then we go through the union and arbitration or whatever. It's not going to save me any money." (272-273).

## 2. STATUTORY CRITERIA

Pursuant to Public Act 312, as amended,<sup>19</sup> the arbitrator panel must consider the statutory factors set forth under its Section 9:

Sec. 9. (1) If 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.

Sec. 9 (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.

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<sup>19</sup> Act 312 of 1969, as amended [MCL 423.231 *et seq.*]. History: 1969, Act 312, Eff. Oct. 1, 1969; Am 2011, Act 116, Imd Eff. July 20, 2011; Am 2014, Act 189, Imd. Eff. June 20, 2014.

### 3. STIPULATIONS

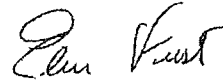
1. After resolution of issues by the Panel in this Act 312 proceeding, and with inclusion of the stipulations of the parties, the remaining contract terms of the new July 1, 2019 to June 30, 2023 contract will be those set forth in the parties' expired contract dated July 1, 2017 through June 30, 2019.
2. Each year of wages for the July 1, 2019 to June 30, 2023 contract before this 312 Panel shall be treated as separate issues.
3. The Tentative Agreement dated 4/09/2021 on Article 4-dues Deduction and Agency Shop will be added to the July 1, 2019 to June 30, 2023 contract.
4. The new July 1, 2019 to June 30, 2023 will establish a 457 Retirement Plan for bargaining unit members hired after May 15, 2014. The parties agreed to add the following Article 30.4 to the contract:

Article 30.4: In addition to 30.2, all employees in the bargaining unit hired after May 15, 2014, shall be provided the following retirement benefit, to be administered by a company chosen by the City, and to be established as soon as possible:

1. The plan shall be a 457 plan.
2. The City shall contribute up to a five percent (5%) matching contribution by a command officer. The City's pre-tax contribution shall be a dollar for dollar match with the command officer's contribution to the plan, but not to exceed five percent (5%) of the command officer's base salary.
3. The command officer shall vest in the City's contribution after five (5) years after the command officer's enrollment date. The command officer shall be immediately vested in the command officer's contributions.
4. The command officer's portfolio shall be completely portable upon separation of employment from the City if vested at the time of separation and in accordance with plan requirements."

Dated: 9-25-2021

Elaine Frost, Chair



Dated: 10/4/2021

Matthew Zick, Employer Delegate

☐ Concur

Michael J. Atkins

☒ Concur

Dated: 10/4/21



#### 4. COMPARABLES

Comparables stipulated to by the parties are:

1. Melvindale
2. Riverview
3. South Lyon
4. Trenton
5. Woodhaven

#### 5. ISSUES BEFORE THE PANEL

<b>ISSUE a. 1<sup>st</sup> Year Wages (Economic-Both Parties)</b>	
<u>City LBO:</u>	
1 <sup>st</sup> Year: 2019-2020:	0%
<u>Union LBO:</u>	
1 <sup>st</sup> Year: 2019-2020:	Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers. Sergeants shall receive base pay is 8% greater than the highest available wage rate/step/classification for Patrol Officers.

#### Background on FRPD Patrol Contract.

The 2019-2021 Flat Rock Patrol Unit contract expired on June 30, 2021. Wage increases and a new higher step were incorporated into that contract as follows:

2019-2020: 2% - 4<sup>th</sup> Step: \$64,559  
5<sup>th</sup> Step: \$68,500

2020-2021 2% - 4<sup>th</sup> Step: \$65,847  
5<sup>th</sup> Step: \$69,844

The new, 5<sup>th</sup> wage step was added by the City to the patrol unit as an effort to encourage officer retention. The first patrol officers will reach the 5<sup>th</sup> step in 2021-2022, which is the third year of the Command Officers contract that is pending before this Act 312 Panel.

#### **DISCUSSION: 1<sup>st</sup> Year Wages 2019-2020**

Union's Discussion on 1<sup>st</sup> Year Wages: The Union seeks to maintain the relative advantage of command officers over the subordinate patrol officers they supervise. Because of the significant bump in base wages for Patrol Officers at the top step during their two-year CBA, the Union maintains that promotion into command, and taking on those responsibilities, will be undesirable based on lack of command unit compensation.

Under the Union's proposed wage hike the lieutenants would receive a 6.02% increase in base wages starting the first year of the CBA. (U-10, p 33). The differential between the lieutenants and the highest wage level for the patrol unit would drop in year one of the Agreement from 17.36% to 15%. (U-10, p 35). That amount of differential would be 4.18% below the average of the comparable communities. For the sergeants, the Union has proposed a 5.54% increase in base wages for the first year. (U-10, p 14). The differential for the sergeants in year one of the Agreement would be reduced from 10.72% to 8%. (U-10, p 15-16). That is slightly above the average differential for the comparable communities.

The Union's LBOs also permits the bargaining unit to keep pace with economic trends and to maintain its overall position amongst the comparable communities. For example, between 2010-2018, the sergeants fell behind the increases in applicable Consumer Price Indexes by

4.05%, 1.49%, and 2%, respectively. (U-10, p 2).<sup>20</sup> Under the Union's proposal, the sergeants would actually see themselves pull even. Under the Employer's wage proposals, their wage increases for 2010-2019 would remain below the percentage increase by 6.15%, 3.13%, and 3.55%, respectively. (U-10, p 4). For the period between 2010-2020, the Employer's offer of a 2% raise in year two of the Agreement keeps the total increases for the sergeants below the CPI-U increases by 5.09%, 1.71%, and 3.37%. (U-10, p 6). Basically the same holds true with respect to the Employer's proposals for the lieutenants. (U-10, p 22-26).

The Employer has proposed that the lieutenants reduce their differential from 17.36% to 8.47% in the first year of the Agreement, which is 10.71% below the average differential for the comparable communities. (U-10, p 34-36). With the Employer's current offers, the differential between the sergeants and the highest available wage step for the patrol unit would be only 2.33% for the first year. (U-10, p 16-17).

For sergeants with 6 years experience, minus overtime pay, the City ranked 5th out of the six comparable communities for 2018. (U-10, p 18). The reason overtime is not included in this graph is that it is an unknown variable. Moreover, because most of the comparable communities pay a higher hourly rate than does the Employer, the sergeants in those communities, by and large, make more per hour of overtime worked than do the Employer's sergeants. In any event, the Union's wage proposals for 2019 would improve the sergeants' ranking to 3rd, while increasing their overall compensation to \$727 above the average.

The Employer's offers would ensure that the sergeants continue to be ranked 5th among the comparable communities, and that their overall compensation would drop further below the average for a total of \$3,155. In 2020, the Employer's proposal would bring the sergeants compensation closer to the average, at \$2,794 below it, and the sergeants would maintain their 5th place ranking. By contrast, the Union's proposal would see the sergeants move up to 2nd overall, with compensation more than \$1,000 above the average of the comparable communities.

Both parties' wage offers would leave the lieutenants' base hourly rates below the average of the comparable communities. (U-10, p 32). However, with the Union's proposals, the lieutenants would improve from \$3.35 below the average in 2018, to \$2.10 below the average for 2019. For 2020, the Union's proposal would see the lieutenants drop further below the average by \$.06 to \$2.16. With respect to the Employer's offers, the lieutenants would fall to \$4.15 and then \$4.24 below the average for the first two years of the Agreement.

With both the Union's and the Employer's wage proposals, the sergeants would remain below average in base hourly wages. (U-10, p 12). For 2018, the sergeants were ranked 5th out of the 6 comparable communities and their base wage sat \$1.88 below the average. With the Union's proposals, the sergeants would move up one ranking to 4th and would remain below the average but only by \$.67 and \$.80 respectively. Under the Employer's offers, the sergeants would remain in the 5th spot in the rankings, and would fall further below the average to \$2.44 for 2019 and \$2.60 for 2020.

No matter which parties' proposals are adopted, for the first two years of the CBA, as with 2018, the lieutenants will remain ranked 5th out of the 6 comparable communities. With respect to the Union's offers, the lieutenants would improve their position relative to the average overall compensation among the comparables by seeing their amount below the average improve from \$4,973 to \$2,187 and then to \$2,116. With the Employer's proposals, the lieutenants will fall further below the average in year one to \$6,658 and in year two to \$6,647.

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<sup>20</sup> The indices the Union uses are CPI-U All Cities from 2010-2019, and move ahead of the percentage increases for CPI-U Midwest Urban and CPI-U Detroit-Warren-Dearborn during that period. (U-10, p 3).

#### City's Discussion on 1<sup>st</sup> Year Wages:

In FY 2018-2019 (the second and final year of the existing Police Command Contract), Lieutenants were 17.36% over top-paid Patrol Officers (TR 159) and Sergeants were 10.72% over top-paid Patrol Officers (TR. 153). The top-paid patrol officer base rate in FY 2019-2020 (what will be year one of the new Command Contract) was \$64,559.04 - Step 4. No patrol officer reached step 5 that fiscal year. (TR 267-268). The two current senior patrol officers will reach the 5th step this Fiscal Year (FY 2021-22). Despite the fact that no patrol officer has yet reached the 5th step, the Union is arguing for an increase in "differential" over a pay classification which no officer has received.

The point of establishing a differential between the Command Officers base annual rate versus the top paid Patrol Officers base annual rate is to avoid compression of wages between the units. No compression has occurred in FY 2019-20 because the highest paid Patrol Officer base rate was at \$64,559.04 (Step 4). The Union is seeking a windfall by requesting a differential over an empty step. Under the Union's LBO, the Lieutenants base rate would increase to \$78,775.02 which is 22% over the top paid Patrol Officer base rate of \$64,559.04. Likewise, Sergeants base rate would increase to \$73,981.86 which is 14.6% over the top-paid Patrol Officer base rate. Pursuant to the Employer's LBO, the Lieutenants would be 15.1% over the top-paid patrol officer base rate in year one (FY 2019-20) and the Sergeants would be 8.5% over the top-paid Patrol Officer base rate.

#### Chair's Analysis on 1<sup>st</sup> year of Wages:

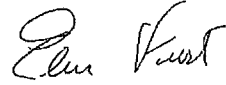
The Chair finds the Union's position for the 1<sup>st</sup> year wages too aggressive as it relies on the 5<sup>th</sup> step under the patrol contract for 2019-2020 which has no incumbents and has never had an incumbent. The Chair recognizes the Union's effort to move the City's command officers closer in line with the base rates of lieutenants and sergeants in the five comparable communities. But, it is undisputed that the year before that 5<sup>th</sup> step was added, in 2018-2019, which was the last year of the Command old contract, the differential between Sergeants and the highest (4<sup>th</sup> step) patrol was 17.36%; and the Sergeants differential to the same patrol step was 10.72%. Moreover, the Chair finds reliable the City's calculation that the first year wages with the Union's LBO would result in Lieutenants having a base rate of 22% over the top paid Patrol Officer base rate of \$64,559.04 (4<sup>th</sup> step), and Sergeants' base rate would increase to \$73,981.86 which is 14.6% over the top-paid Patrol Officer base rate at patrol 4<sup>th</sup> step. The result under the Union's LBO is, therefore, not justified to guard against compression of wages between patrol and command. And, given the demands of FRPD scheduling, total income of command officers is high. Thus, except for the Detective Lieutenant, compensation for the two lieutenants and two sergeants is over \$100,000, and in even over \$110,000. (E-IV a&b). This situation of the FRPD is not easily compared with the comparable communities.

Further, in 2019-2020, effective July 1, 2019, the Union's LBO would required the City to pay a 6.01% increase in base wages for lieutenants and a 5.54% increase in base wages for sergeants, together with an additional 112.77% MERS contribution. The Chair thinks the expense of the Union's LBO, under circumstances note above, is not consistent with the criteria of Section 9(1)(a). The Chair concludes that the Section 9(a) criteria of Act 312 favor adoption of the City's LBO for the 1<sup>st</sup> year of the command contract.

**Issue a. 1<sup>st</sup> Year Wages: 2019-2020**  
**AWARD: City LBO**

Dated: 9-25-2021

Elaine Frost, Chair



Dated: 10/4/2021

Matthew Zick, Employer Delegate

☒ Concur

☐ Dissent

Dated: 10/4/21

Michael J. Atkins, Union Delegate

☐ Concur

☒ Dissent

**ISSUE b. 2<sup>nd</sup> Year Wages (Economic-Both Parties)**

**City LBO:**

2<sup>nd</sup> Year: 2020-2021: Two (2%) percent increase across the board with retroactivity to July 1, 2020

**Union LBO:**

2<sup>nd</sup> Year: 2020-2021:

Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers.

Sergeants shall receive base pay is 8% greater than the highest available wage rate/step/classification for Patrol Officers.

**DISCUSSION: 2<sup>nd</sup> Year Wages 2020-2021**

**Union's Discussion on 2<sup>nd</sup> Year Wages:**

The Union seeks to maintain the relative advantage of command officers over the subordinate patrol officers they supervise. Under its proposed wage hikes for the second year, there is an additional 1.96% in the second year. (U-10, p 33). The differential would remain at 15% generated the first year. For the second year of the Agreement, the lieutenant differential would remain below the average of the comparables by 3.94%. (U-10, p 36). And, the 8% differential for sergeants would then drop slightly below the average in the second year. (U-10, p 17).

With respect to the Union's offers, the lieutenants would improve their position relative to the average overall compensation, without overtime data, among the comparables by seeing their amount below the average improve from \$4,973 to \$2,187 and then to \$2,116. With the Employer's proposals, the lieutenants will fall further below the average in year one to \$6,658 and in year two to \$6,647. But the Employer's current offers shrinks the differential between the sergeants and the highest available wage step for the patrol unit. Thus, even with the 2.0% across-the-board the City's LBO would only increase that differential 2.37% over the highest step for the second year. (U-10, p 16-17). That is 5.29% and 5.84% below the averages, respectively. And no matter which parties' proposals are adopted, for the first two years of the CBA, as with 2018, the lieutenants will remain ranked 5th out of the 6 comparable communities.

The Union's position is that the City can and should meet its reasonable requests with respect to wages. The City cannot be permitted to "buy" the labor of its command officers for less

than the going rate. Wages that permit command unit employees to maintain their relative buying power, to maintain their relative position amongst the comparable communities, to realize an economic advantage over their subordinates based on their many years of taking on added responsibility and performing supervisory duties, support the Union's reasonable positions.

City's Discussion on 2<sup>nd</sup> Year Wages:

Despite the fact that no patrol officer has yet reached the 5th step, the Union is again arguing for an increase in "differential" over a pay classification which no patrol officer has received. And the Union's witness acknowledged that the 5<sup>th</sup> step under the Patrol is empty for the first and second years of the command contract.

The Employer's LBO is for a 2% wage increase (FY 2020-21) which will put Lieutenants at \$75,784.80 annual base rate and Sergeants at 71,504.16 annual base rate. This contract year two puts Lieutenants at 15.43% over the top paid patrol officer base rate (\$65,647.60) and Sergeants at 8.92% over the top paid patrol officer base rate for year two (FY 2020-21), using the Patrol 4<sup>th</sup> Step. As in year one, the Union's LBO once again provides for a 15% and 8% differential over an empty 5th step.

Chair's Analysis on 2<sup>nd</sup> year of Wages:

The Union's LBO is based on a differential to a patrol 5<sup>th</sup> step that has no incumbent and has never had an incumbent. Calculation of percentages on that basis are not persuasive. Moreover, 2% is seen as a reasonable wage increase. It was the wage increase received by patrol in the last 2020-2021 year of their contract. So issues of compression of wages appears addressed. Further, the Union's calculation of total compensation with the five comparable communities did not take into account the unique overtime situation in the FRPD for command officers.

The Chair concludes under all the circumstances that the Section 9(a) criteria of Act 312 favor adoption of the City's LBO for the 2<sup>nd</sup> year of the command contract.

<b>Issue: b. 2<sup>nd</sup> Year Wages -2020--2021</b> <b>AWARD: City LBO</b>
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Dated: 9-25-2021

Elaine Frost, Chair

Dated: 10/4/2021

Matthew Zick, Employer Delegate

[ x ] Concur [ ] Dissent

Dated: 10/4/21

Michael J. Atkins, Union Delegate

[ ] Concur [ x ] Dissent

<b>ISSUE c. 3<sup>rd</sup> Year Wages (Economic-Both Parties)</b>	
<u>City LBO:</u>	
3 <sup>rd</sup> Year: 2021-2022:	Sergeants receive 4% "bump"/increase to set a 6.5% differential over FRPD patrol officer top base rate as of 6/20/2021. Lieutenants receive 5% "bump"/increase to set a 7.0% differential over Sergeants base rate.
<u>Union LBO:</u>	
3 <sup>rd</sup> Year: 2021-2022:	Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers. Sergeants shall receive base pay that is 8% greater than the highest available wage rate/step/classification for Patrol Officers.

### **DISCUSSION: 3<sup>rd</sup> Year Wages 2021-2022**

#### Union's Discussion on 3<sup>rd</sup> year of Wages:

The Union seeks to maintain the relative advantage of command officers over the subordinate patrol officers they supervise. Therefore, it seeks a differential formula that Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers; and Sergeants shall receive base pay is 8% greater than the highest available wage rate/step/classification for Patrol Officers. Therefore, starting in year three and thereafter, base wages of lieutenants and sergeants would be determined by what the patrol unit receives through negotiations for their next CBA.

For the third year, starting July 1, 2021, the Employer proposes that the differential for the lieutenants be set 7.0% above the sergeants' base wage, and therefore 13.5% greater than the highest wage under the patrol contract. For year three of the Agreement, with respect to wages, the proposed differentials are only 1.5% apart. That means that, assuming everything is equal up to that point, the costs to the Employer for the third year of the new CBA would be similar under either proposal.

The Union's position is that the City can and should meet its reasonable requests with respect to wages as set forth in its LBOs for all years of the new contract. The City cannot be permitted to "buy" the labor of its command officers for less than the going rate. Wages that permit command unit employees to maintain their relative buying power, to maintain their relative position amongst the comparable communities, to realize an economic advantage over their subordinates based on their many years of taking on added responsibility and performing supervisory duties, support the Union's reasonable positions and should be adopted by this Panel.

#### City's Discussion of 3<sup>rd</sup> Year Wages:

During Year three of the new Command Contract (FY 2021-22), the two most senior Patrol Officers will move up to Step 5 (60 plus months of service with FRPD). Step 5 provides that the Patrol Officers would increase to an annual base rate of \$69,844.32. To avoid compression of the wages between the members of the Command Unit vs. the Patrol Officers, that Employer's LBO provides for a "bump" in pay to maintain a significant differential. Thus, under the Employer's third year LBO Sergeants receive 4% "bump"/increase to set a 6.5% differential over FRPD patrol officer top base rate as of 06/30/2021. Lieutenants receive 5% "bump" to set a 7.0% differential over Sergeants base rate. Specifically, the sergeants would receive a 4% bump/raise to \$74,384.20 /yr. and Lieutenants a 5% bump/raise to \$79,591.09/yr.. This establishes Sergeants at 6.5% over Patrol and Lieutenants at 7% over Sergeants. It should be noted that the 7% differential between Lieutenants and Sergeants is consistent with the traditional differential in pay between the Command ranks and is also the same percentage difference between the Command

ranks requested by the Union. One key difference in the two LBOs is that the Employer's offer has Sergeants 6.5% above Patrol while the Union is shooting for 8% for the Sergeants base rate over the top paid Patrol Officer's base rate.

Chair's Analysis on 3<sup>rd</sup> year of Wages:

It is undisputed that traditionally the command and patrol units have received the same or similar wage increases, although the command CBA does not contain a codified differential with patrol. The result has been a running, consistent quasi-differential. (TR 307-308). Both parties agree that avoiding compression of the wages between the supervisors and those they supervise is essential. What the Union seeks is to guard against compression of wages through a contractual differential for command. This is an entirely new contractual structure. There is no internal or external comparable for the change in contractual structure that the Union's LBO sets forth. (TR 167-168). Clearly, in the Chair's view, the Union will "pin its star" to the patrol unit. Thus, in the third year of the command contract there will be patrol incumbents in the 5<sup>th</sup> step of their CBA, for which wages have not been settled for 2021-2022 and beyond. That 5<sup>th</sup> step the year before, in 2020-2021, could have paid patrol officers \$69,844 per year if anyone in the patrol unit had then reached five years seniority to qualify. The Chair could suppose that the City has clear cause to take steps to retain its young staff in patrol. (TR 294). Thus, only lieutenants in the Department have over 20 years experience, and certain of them might presently or might soon, choose to retire, leaving the FRPD with top seniority among the two sergeants who now have six years of seniority.

For the 3<sup>rd</sup> and 4<sup>th</sup> years of the contract, the arbitrator is persuaded the Union's LBO provides a logical and reasonable way forward to guard against wage compression between the patrol and command ranks. Also, it strikes the arbitrator that the City's LBO for the third year, with its percentage wage increases and its differential percentages, present a complicated way to set wages. Thus, it strikes the Chair that using a bump and a stated differential between command and patrol might develop into a conflict between the two stated percentages. In any event, this hybrid approach has less to offer in the Chair's view than the straight-forward differential offered by the Union's LBO. The Chair concludes under all the circumstances that the Section 9(a) criteria of Act 312 favor adoption of the Union's LBO for the 3<sup>rd</sup> year of the command contract.

**Issue c. 3<sup>rd</sup> Year Wages -2021-2022**

**AWARD: Union LBO**

Dated: 9-25-2021

Elaine Frost, Chair



Dated: 10/4/21

Michael J. Atkins, Union Delegate

☒ Concur ☐ Dissent



Matthew Zick, Employer Delegate

☐ Concur ☒ Dissent

Dated: 10/4/2021

<b>ISSUE d. 4<sup>th</sup> Year Wages (Economic-Both Parties)</b>	
<b>City LBO:</b>	
4 <sup>th</sup> Year: 2022-2023:	2% across the board while maintaining the 6.5% and 7% differentials established as of June 30, 2021.
<b>Union LBO:</b>	
4 <sup>th</sup> Year: 2022-2023:	Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers. Sergeants shall receive base pay is 8% greater than the highest available wage rate/step/classification for Patrol Officers.

#### DISCUSSION: 4<sup>th</sup> Year Wages 2021-2022

##### Union's Discussion on 4<sup>th</sup> year of Wages:

Turning to the fourth year the Union repeats its contention of the need for adoption of the differential set forth in each of its LBOs. It stresses that under the Union's LBOs, the only raise the unit could receive for the 3<sup>rd</sup> and 4<sup>th</sup> years of the command contract would depend entirely on the patrol unit's contract. Put another way, it is entirely possible that, despite the slightly higher differential, the Union's proposal winds up costing the City less in the last year of the Agreement. And, the Union points out that the financial records show that the City has acquired sufficiently healthy fund balance reserves to pay down deficits, increase pension and OPEB funding ratios and cover the costs of its position. Further, with the addition of significant ARPA Funds available to the City, there should be zero concern about the fiscal impact of any of the Union's proposals.

The Union's position is that the City can and should meet its reasonable requests with respect to wages, including that for the fourth year of the contract.

##### City's Discussion on 4<sup>th</sup> year of Wages:

During Year 4 (FY 2022-23) of the new Command Contract the Employer's LBO is for a 2% across the board wage increase to Command Officers that will maintain or increase the differential between them and Patrol Officers who are currently negotiating their successor contract. Compared to the Union's LBO for year four of the new Command contract, which is the same as for the three preceding years, the Employer's LBO guarantees a 2% wage increase across the board. And, the Union's LBO potentially freezes the wages of Command Officers depending on whether the Employer and the Patrol Officers negotiate an increase to the top paid classification rate.

The City also points out that the significant "bump" the City proposed for the third year of the Command contract, which gave lieutenants a 5% pay raise and sergeants a 4% pay raise, was not factored into the comparison charts prepared by the Union. (See Union book, tab 10).

##### Chair's Analysis on 4<sup>th</sup> year of Wages:

For the reasons set forth as to the 3<sup>rd</sup> year on Wages, the Chair is persuaded to adopt the wage differential for command officers as a means of determining base wages going forward. Clearly this is the primary interest of the Union which has turned down 2% assurances in years two and four, and turned down sizable "bumps" and differential standards in year three. The Chair concludes under all the circumstances that the Section 9(a) criteria of Act 312 favor adoption of the Union's LBO for the 4<sup>th</sup> year of the command contract.



**Issue d. 4<sup>th</sup> Year Wages -2022-2023**  
**AWARD: Union LBO**

Dated: 9-25-2021

Elaine Frost, Chair



Dated: 10/4/21



Michael J. Atkins, Union Delegate

☒ Concur [ ] Dissent



Matthew Zick, Employer Delegate

[ ] Concur [ x] Dissent

Dated: 10/4/2021

**ISSUE e. Retroactivity for wage increases (Economic- Both parties)**

Union LBO: The Union proposes that any awarded wage increases be retroactive to July 1, 2019.

City LBO: Wages to be retroactive to July 1, 2020 (Contract year 2) as the Employer's wage proposal is 0% in year one.

Analysis of the Chair:

Due to the Panel's conclusion on Wages for the 1<sup>st</sup> year of 0%, and the conclusion for 2% in the second year where that LBO specified it would be retroactive to July 1, 2020, wage retroactivity has been determined.

**ISSUE e. Retroactivity for wage increases (Economic)**

**AWARD: Wages in the 2<sup>nd</sup> year will be retroactive to July 1, 2020.**

Dated: 9-25-2021

Elaine Frost, Chair



Matthew Zick, Employer Delegate

☒ Concur [ ] Dissent

Dated: 10/4/2021



Michael J. Atkins

[ ] Concur ☒ Dissent

Dated: 10/4/21

<b>ISSUE f. Signing Bonus (Economic - Union Issue)</b>
<p>Union LBO: Modify Appendix A, Wages to add the following:  Each member of the bargaining unit as of the execution of this Agreement shall receive a one-time, lump-sum, taxable "signing bonus" of five hundred dollars (\$500) payable the first full pay period following the effective date of this Agreement.</p>
<p>City LBO: No signing bonus.</p>

Union's Discussion on Signing Bonus:

The patrol unit received the same amount of signing bonus that the command unit is asking for. (T 291). It is immaterial that the Command unit was forced to defend its bargaining rights through Act 312 because the fact that the parties to these proceedings bargained to impasse is not solely the Union's responsibility. From the Union's perspective, had the Employer put forth more reasonable proposals on some or all of the issues in dispute, the parties likely would have reached an agreement. In the end, there is just no basis for treating the command unit differently from the patrol unit with respect to a one-time, lump-sum bonus upon execution of the new Agreement.

City's Discussion on Signing Bonus:

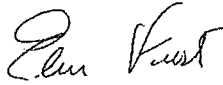
The Employer proposes no signing bonus be awarded to the Command Officers as did not sign a contract and the case had to be submitted to Act 312 Arbitration. It is elementary that in order to receive a "signing bonus" a negotiated Agreement has to be reached and signed. Even the wording of the Union's LBO that "as of the execution of this Agreement," indicates that if there is no Agreement there is no signing bonus. Moreover, when Ms. Ciccone was asked at the hearing for an example when a signing bonus was paid on a case that went to Act 312 arbitration, she responded that she did not know the answer. (TR 177).

Chair's Analysis of Signing Bonus:

The Chair finds no indication on the record that lack of resolution on for the four-year Command contract was a lopsided responsibility of either party. Rather, it appears that both parties were unable to resolve their contract without the Act 312 process. In fairness, therefore, compared to the patrol signing bonus, and in consideration of the 0% awarded for wages in the first year of the contract, the Chair concludes that the circumstances support adoption of the Union's LBO.

<p><b>Issue: f. Signing Bonus (Economic- Union Issue)</b>  <b>AWARD Union LBO: \$500 signing bonus</b></p>
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Dated: 9-25-2021

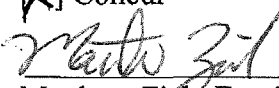
Elaine Frost, Chair 

Dated: 10/4/21

  
Michael J. Atkins

☒ Concur ☐ Dissent

Dated: 10/4/2021

  
Matthew Zick, Employer Delegate  
☐ Concur ☒ Dissent

## **ISSUE g. Health Insurance Opt-Out (Economic - Union Issue)**

### Union LBO:

Modify Article 33, Section 33.5(B) to read as follows:

33.5(B): An employee may elect to be excluded from the medical and hospital group coverage insurance plan as described in the contract if the employee has duplicate coverage and is a beneficiary under another medical and hospital group insurance plan through a different source. Prior to making an election to be excluded, the employee must provide evidence of coverage under the other medical and hospital group insurance.

Such election shall be made in writing to the City, specifying the first day of the month in which the employee shall be excluded from the group insurance plan. The employee will not be excluded from the group insurance plan earlier than the date allowable by the insurance carrier.

The City shall pay to the employee three hundred (\$300.00) dollars per month as a result of the employee's exclusion from the group. Payment shall be made with the first compensation check due the employee, following the month in which the employee is excluded from the plan.

The employee may elect to re-enter the group insurance plan at any time as permitted by the rules and regulations of the group health insurer. It shall be the sole obligations and responsibility of the employee to weigh and evaluate his or her decision to be excluded from the medical and hospital coverage under the contract. Neither the employer nor the union shall be liable for damages or reimbursement for medical and hospitalization expenses incurred by the employee in the event the insurance coverage is not sufficient or is not a duplication of the coverage available under the contract to the employee. The employee shall sign a waiver of liability form acceptable to the employer and the union when the election to be excluded from the medical and hospital group insurance plan is made by the employee. This Article pertains to medical and hospitalization group insurance only. Opting out of this plan does not require a member to opt out or dental and optical insurance as well.

### City LBO:

Maintain Status Quo. (No provision in contract)

### Union's Discussion on Health Insurance Opt-Out:

The Union proposes to add to an opt-out provision to the Command contract to allow the decline of the health insurance coverage in exchange for a \$300 monthly payments. The Union's modest monetary incentive to opt-out of the Employer's insurance plan represents a potential "savings" for the City and the unit employees. (TR 293). Thus, a family plan through the City's health insurance costs \$2,160 per month (U-19D, p 27), with the City paying 80% and the participating employee paying the other 20%. (TR 123). So if the Employer were to permit an employee to opt-out of family coverage, the City would save over \$1,800 per month for that employee. The Union's proposal is reasonable and it provides for cost-savings without increasing the City's financial liability. Moreover, each and every external comparable community provides for some type of opt-out benefit. (U-13, p 2).

### City's Discussion on Health Insurance Opt-Out:

The City argues that not one of the City's other four bargaining units has a Health Insurance Opt-Out as a benefit of employment (E-I.(1)-(4) , which was confirmed by City Treasurer Beard. (TR 136).

Chair's Analysis on Insurance Opt-Out: The Union's LBO requests new language and a structural change to add a new benefit to the Command contract that allows unit members to opt-out of health insurance in exchange for \$300 monthly payments. This benefit does not entail further cost to the City and instead brings the City a savings on health care that exceeds by about six-fold the benefit to the bargaining unit member. And, all five of command units contract for the external comparable communities offer

some opt-out provision on health insurance which further supports the Union's LBO. (TR 177-178). Under the circumstances the Chair concludes that the Union LBO on Opt-Out should be adopted.

**ISSUE g. Health Insurance Opt-Out (Economic)**  
**AWARD: Union's LBO on Opt-Out**

Dated: 9-25-2021

Chair

Elaine

Frost,



Dated: 10/4/21



Michael J. Atkins

☒ Concur

☐ Dissent

Dated: 10/4/2021



Matthew Zick, Employer Delegate

☐ Concur

☒ Dissent

<b>ISSUE h. Shift Supervisor Requirements (Economic-City Issue)</b>
City LBO: Shift Supervisor Requirements - Delete Article 26.1, which states: "“There shall be a shift supervisor on duty at all times of the rank of sergeant or above.”"
Union LBO: ART. 26.1: Maintain status quo

City Discussion on Shift Supervisor Requirements:

The provision for having a shift supervisor of the rank of sergeant or above is an archaic holdover from many years ago when the FRPD was much larger. (TR 279). The current Command unit now consists of two Lieutenants, each with 26+ years experience (TR 294), two Sergeants, each with 5-6 yrs. experience (TR 269), and an Acting Sergeant appointed when Chief Page was promoted from Lieutenant to Police Chief in July, 2021. Chief Hoffman (Ret) noted that, "any time a lieutenant or sergeant takes the day off, it's overtime. There's no way to backfill it." (TR 265). And he recognized that when "people are on vacation" other command officers are "ticked off" because they have to work all the extra hours, and that "happens all the time." (TR 274).

Thus, deleting Article 26.1 from the contract creates an ability to backfill for missing command officers without creating massive amounts of overtime and without compensation of over \$100,000.00 (TR 34-35, 95-96; E-4.b) for uniformed sergeants and lieutenants.

The Employer seeks to backfill/ supplement the Command only with senior patrol officers (Corporals) who are, at the Chief's discretion, deemed qualified to supervise a shift. The Employer also points out that the two existing Sergeants currently have 5-6 years experience (TR 269) and they were promoted from Patrol Officer to Sergeant in January, 2020 (TR 305) when they were at 4-5 years experience. And as to their promotions, D/Lt. Wieneke said, "I believe.... [they] lower[ed] the number of years simply to have anyone eligible to make the rank of sergeant because of the young age of our [Department]." (TR 307). And, Chief Hoffman testified about experience requirements, saying that to be a sergeant the number of years "Doesn't matter right now." (TR 269). So, it now takes five years total law enforcement experience to be eligible for promotion to sergeant (TR 306) and the classification of Corporal also requires at least five years experience. (TR 276). So using corporals, the City argues, is as acceptable as are using the two sergeants as shift commanders. And deletion of Article 26.1 will make this use of Corporals possible. And, their use will alleviate the Command staffing issues and the horrific overtime costs associated them.

Union's Discussion on Shift Supervisor Requirements:

The Union proposes status quo on Article 26.1 because allowing patrol officers to perform supervisory duties has never happened (T 294-295) and to do so would give exclusive Command bargaining unit work to employees outside the bargaining unit, thereby destroying the unit's core function of supervising members of the patrol unit on each platoon/shift. And, there are important concerns for safety, liability, and efficiency over permitting patrol officers with less experience and no supervisory experience, to oversee shift operations and make crucial decisions that could impact the Department, officers, and public. (T 270, 277, 294-295). As Retired Chief Hoffman noted, "[t]he more experience, the better" (T 270), meaning that command officers with years of experience are more prepared to handle the responsibility of directing the workforce. (TR 270). Although permitting a member of the patrol unit to act as a shift supervisor could save the City a significant amount of money (T 265-267), even cost savings could change if the patrol officers received overtime wages or step-up pay for working as a shift commander.

Further, with the Employer's concept of benefit to younger officers to work the desk in order to "move them up" (TR 266-267), ignores that nothing in the command unit's CBA prevents the City from providing such training to members of the patrol unit, so long as the patrol officers are not permitted to work as full-fledged shift supervisors without an accompanying member of the command unit as part of the training.

Chair's Analysis on Shift Supervisor Requirements:

To the extent that the City's LBO presents a contract issue to be resolved by the Act 312 Panel, the Chair finds the record insufficient to educate the Chair on the impact of the change the City seeks.<sup>21</sup> The only evidence that is clear and well-documented is that command officers work and are paid for a great deal of overtime, and command officers earn compensation of over \$100,000 a year.<sup>22</sup> Clearly, the factors of the amount of overtime and the total compensation for command officers arise out of just four command officers covering the four 12-hour shifts for the FRPD. The questions not answered by the record are how much will the overtime and income of the four command officers decline? Meaning how much less will they make if the City's LBO is adopted? How much will "corporals" earn for performing as shift commanders? (Assuming they may do so through deletion of Article 26.1). How can Corporals supervise members of their own bargaining unit?<sup>23</sup> It also strikes the Chair that the City argument that a five-year Corporal is equivalent to a five-year Sergeant, is not supported by the record. Thus, no questions were asked of Retired Chief Hoffman as to why he promoted the two sergeants he did in January, 2020. Was it due to characteristics he thought would make a good sergeant, or simply a decision dictated by longevity. Nor did Chief Page testify at the 312 proceeding. So we don't know if he contemplates promotions of patrol to sergeant, or what criteria he would use to evaluate a candidate for promotion. And does he think that Corporals should be placed in command of a shift?

It appears to the Chair that the City aims to slash its overtime expense for command, and thereby to lower the compensation for those officers, yet it expects them to continue to work shift command with one or more corporals added to the command mix, without those corporals being promoted to the command unit. It strikes the arbitrator that such a formulation could cause a number of dissatisfied employees.

Unlike the detail the parties provide as to exhibits and testimony on the wages for the four years of the new Command contract, the questions posed by the City's LBO to eliminate Article 26.1. provide no such detail, even though the financial impact on command officers could be far more severe than the four years of wages.

It strikes the Chair that the tangled web of issues surrounding modification of Article 26.1 needs to be addressed by the parties through bargaining. Under the circumstances the Chair concludes that the Union's LBO on status quo under Article 26.1 should be adopted.

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<sup>21</sup> Clearly questions of alleged erosion or encroachment on bargaining unit work below in a forum other than Act 312.

<sup>22</sup> And to the extent that "80% of Sergeants pay is due to "Step-up" that issue is covered in another issue of this Act 312 case/

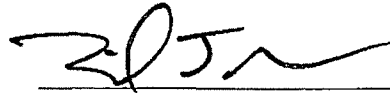
<sup>23</sup> This also brings up questions that cannot be resolved under Act 312.

**ISSUE: h. Shift Supervisor Requirements**  
**AWARD: Union's LBO: Status Quo on Article 26.1**


Dated: 9-25-2021

  
Elaine Frost, Chair

Dated: 10/4/21

  
Michael J. Atkins  
☒ Concur ☐ Dissent

Dated: 10/4/2021

  
Matthew Zick, Employer Delegate  
☐ Concur ☒ Dissent

**ISSUE i. Shift Supervisor Rate/Step-Up Rate (Economic-City Issue)**

**City LBO:**

Delete Article 26.2: Sergeants assigned to perform the duties of a shift supervisor shall receive pay for time worked... the entire twelve (12) hour shift as a shift supervisor...

**Union LBO: Status Quo on Article 26.2**

**City's Discussion of Shift Supervisor Rate/Step-Up Rate:**

Employer maintains that deletion of Article 26.2 is essential because it needs relief from the unsustainable rate of overtime paid to Command Sergeants because they receive Step-Up Pay under Article 26.2. (TR 34-35; in part U-9 p. 13). As noted by Chief Hoffman (ret.) in his testimony, approximately 80% of a Sergeant's wages are earned at Lieutenant's pay. (Tr., p. 263, II. 13-2). Furthermore, D/Lt. Wieneke testified regarding the impact of Article 26.2 that "There is no time in a position outside of vacation, sick, personal, and special detail where a sergeant earns sergeant money. There's no buffer." [TR pp 295-296). D/Lt. Wieneke also testified about the relative experience of the two Lieutenants at 26 years compared to the two Sergeants at 5-6 years experience. (TR 294). Nevertheless, because of Article 26.2, Sergeants are being paid at the same rate as Lieutenants. (TR 263). When a Sergeant works overtime, they are getting paid \$51.03/hr. the same as the 26+ year Lieutenants. (TR 264-265). FY 2020-21 was the first full FY for each of the two Sergeants was FY 2020-21. In that year Sergeant #1 earned \$112,217.72 (with \$24,348.78 of that being OT) (E-IV.B p. 2-31) and Sergeant #2 earned \$102,345.59 (with \$23,028.01 being OT). (E-IV.b). The deletion of Article 26.2 will create a buffer/differential in pay rates between the two Lieutenants and the two junior Command Officers and it will help address the issue of overtime costs which are currently being paid by the Employer at an unsustainable rate.

Union's Discussion of Shift Supervisor Rate/Step-Up Rate:

The Union proposes maintaining status quo with respect to Article 26.2. Per Article 26.2, whenever a sergeant acts as shift supervisor for a shift, the sergeant is paid for that time at a lieutenant's rate of pay. (TR 262-265, 269-271, 295-296). Due to the current staffing levels determined by the City, sergeants act as shift supervisor and are paid as lieutenants. As it stands, they only receive sergeants' wages when they undergo training, when they use sick, personal, or vacation leave, or if they work "a special detail and work the road . . ." and are not "in charge of a shift." (T 264). The City seeks to force sergeants to continue to work above their grade without compensation for the added duties and responsibility.

Chair's Analysis of Shift Supervisor Rate/Step-Up Rate :

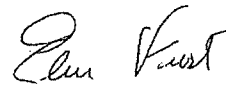
As with the City's LBO to delete the other provision of Article 26, much of the discussion to delete Step-Up pay under Article 26.2 is based only on the City's view it is paying too much for a command officer with only five-six years experience. The language the City's LBO seeks to overturn is clear and many years old, and the City simply suggests it is "archaic" and so should no longer be followed. The record does not however demonstrate why it is "archaic" and why its elimination is now justified. Further, the record indicates that the City wants the sergeants to continue in the role of shift commanders, even though they are to do so for far lower compensation than they have been receiving for that work. Further, Retired Police Chief Hoffman, who left the Department in June, 2021 testified that it was cheaper to pay the overtime than to add another full-time command officer to the ranks. (TR 271). This the Chair takes to mean that the Step-Up system the City now wishes to eliminate has been accepted since the current 4-shift system of scheduling command has been in use, and with only four uniformed command officers.

It is not the role of Act 312 to take away compensation from employees paid out under clear contract language which has been in the contract for many years unless there is a clear record for doing so. Simply that it costs too much, strikes the Chair as insufficient. Moreover, there was testimony that a 5-month illness of a command officer in 2019 caused a spike in the command overtime expense. (TR 291-292). Under the circumstances the Chair concludes that the Union's LBO on status quo under Article 26.2 should be adopted.

**ISSUE: i. Shift Supervisor Rate/Step-Up Rate (Economic-city Issue)**  
**AWARD Union LBO: Status Quo on Article 26.2**

Dated: 9-25-2021

Elaine Frost,



Chair

Dated: 10/4/21



Michael J. Atkins, Union Delegate

☒ Concur

☐ Dissent

Dated: 10/4/2021



Matthew Zick, Employer Delegate

☐ Concur

☒ Dissent



**ISSUE i. Definition of Uniformed Officer (Economic- Both Parties Issue)**

**Union LBO:**

Modify Article 31(VACATIONS), Section 31.3 to remove language about "January 1, 2016" but not otherwise change that provision.

**City LBO: Definition of Uniformed officer re: vacation time - Art. 31.3 (Economic Issue -)**

Modify Article 31.3 to delete the word "uniformed" from the paragraph. This paragraph would be modified to read as follows:

"31.3: All vacation shall be converted to hours. Commencing January 1, 2016, at such time as the Bargaining Unit of the Police Command Officers is at five (5) persons or less, only one (1) uniformed member of the bargaining unit will be allowed on vacation or personal leave without the specific approval of the Chief of Police. The Chief of Police will make every reasonable accommodation to approve a request taking into consideration whether adequate personnel in the bargaining Unit exists and whether the efficient operation of the Department would be curtailed. At such time as the Bargaining Unit is six (6) persons or greater, two (2) uniformed members of the Command Officer Group will be allowed to be on vacation or personal leave at any one time with the stipulation that any one (1) command officer from each squad will be allowed on vacation or personal leave at any one time."

**Union's Discussion of Definition of Uniformed Officer:**

With respect to Article 31, Section 31.3 of the Agreement, the Employer proposes that the term "uniformed" be removed. Only the detective lieutenant is not a uniformed command officer. (T 262). Pursuant to the current language and the current staffing levels, when the detective lieutenant takes vacation, a uniformed member of the command unit can also take a vacation. (T 297). With the Employer's proposed change, that would no longer be the case, to the sole detriment of the command staff that might wish to take vacations during the most popular vacations times of the year. According to Retired Chief Hoffman, making the Employer's proposed changes to Section 31.3 will not affect the amount of overtime required to run the Department at the current staffing levels. The proposed change is ostensibly intended to ensure that more personnel are on-hand but there is no evidence that the current arrangement has ever left the command staff shorthanded. (T 273, 297-298).

The Employer has not put forth any evidence that its proposed change is in any way necessary to effectively run the Department. It is unclear from the record exactly when the language of Section 31.3 was added to the CBA. It appears that the arrangement has been ongoing for many years, without issue. Nobody could point to a single instance where the Department was left shorthanded as a result. The Union did not propose the change to the Agreement, as the command unit has had no issue, nor does it foresee an issue, covering the shifts during the vacation periods in question. Furthermore, it is undisputed that the Employer's position would have no effect on the amount of overtime needed to cover command shifts. In short, allowing more than one member of the command unit to take vacation at the same time is a non-issue for which no material change to the current contractual language, such as what the City is proposing, is warranted.

**City's Discussion of Definition of Uniformed Officer:**

As Chief Hoffman (ret.) testified, under Article 31.3 to have two command officers off at the same time on vacation is a staffing on-hand issue. (TR 273). As Chief Hoffman (ret.) testified, what Article 31.3 does is "It takes one more person out of the mix." (TR 273). The issue is that if

the Detective/Lieutenant is deemed non-uniformed then the D/Lt. and a desk Command Officer can be off at the same time leaving only three (3) command officers available to cover four (4) twelve-hour shifts. (TR 262). Currently, because of Article 26.1, the desk shift must be filled by an officer with the rank of Sergeant or above. (U-9 p13). If the Detective/Lieutenant decides to take time off at the same time as one of the desk Command Officers, then the FRPD is scrambling to fill the four Command shifts with only three Command Officers, which creates an undue hardship on the "available" Command Officers. The word "uniformed" must, therefore, be deleted from Article 31.3 or Article 26.1 must be deleted in its entirety.

Chair's Analysis of Definition of Uniform Officer:

The City presents a case base on Chief Hoffman testimony that it is "a staffing on-hand issue" (TR 273) because "It takes one more person out of the mix." (TR 273) when two Lieutenants are out on vacation at the same time. The Chair recognizes that command consists of five officers with four uniformed command officers who normally work shift command and the non-uniformed Det/Lt who only occasionally does. That would change if the City's LBO is adopted so only one of the five Lieutenants can be off on vacation at a time. Per Hoffmann when three lieutenants cover four 12-hour shift with two out on vacation, it is a hardship and there is some grouching. The Chair thinks with two command officers out at the same time on vacation, which amounts to 40% of the command staff being off duty, that this situation must impair redundancy at the department. So even though the City can staff the four shifts with three people on overtime, and even if a specific lack of staff is not shown due to command vacations, the Chair thinks it is not a great burden for five officers to work among themselves to select their vacation times. Under all the circumstances the Chair concludes that the City's LBO on Article 31.3 (Vacations). will be adopted.

**ISSUE j. Definition of Uniformed Officer**

**AWARD: City's LBO removing "uniformed" from Article 31.3 is granted  
Union's LBO removing reference to language about "January 1, 2016"**



Dated: 9-25-2021

Elaine Frost, Chair

Dated: 10/4/2021

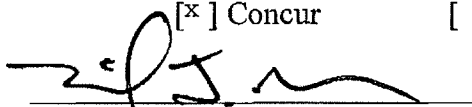


Matthew Zick, Employer Delegate

☒ Concur

☐ Dissent

Dated: 10/4/21



Michael J. Atkins

☐ Concur

☒ Dissent

<b>ISSUE k. Retroactivity of 457 Plan (Economic- Union Issue) +</b>
Union LBO: The 457 Plan matching contributions be retroactive to the date eligible bargaining unit members joined the bargaining unit after July 1, 2019, to the extent allowable under the Plan documents and IRS regulations.
City LBO: The effective date of the 457 Plan matching contributions be the implementation of the new contract.

Union's Discussion of Retroactivity of 457 Plan:

The Union proposes that 457 Plan matching contributions be retroactive to the date the eligible sergeants joined the command unit after July 1, 2019, but it is unclear under the Plan documents and IRS regulations whether retroactive 457 Plan matching contributions are allowable, or to what extent.

Whichever party's offers on wages are adopted, it is crucial that, to the extent allowable, that members of the bargaining unit promoted since July 1, 2019, receive retroactive contributions of 5% to their respective 457 Plan accounts so that any wage increases relative to the highest paid members of the patrol unit are not effectively nullified. The patrol unit has been getting a 5% match on their 457 Plan contributions during that time. That is 5% additional pre-tax earnings that the sergeants would not get.

The total due for its proposal, as determined by the Union's calculations, is insignificant in relation to the City's overall operating expenses, and will have little to no impact on its ratio of General Fund balance to expenditures. For these reasons, the Union's LBO on this issue is more reasonable under the circumstances and should be adopted by this Panel. If the Panel adopts the Union's offer on this issue, that can be sorted out between the parties pursuant to the terms of the CBA.

City's Discussion of Retroactivity of 457 Plan:

The parties agreed to add a 457 Plan for two Sergeants who were hired into Command after May 1, 2014. (TR 143; U-15). The outstanding issue is the effective date of the implementation of the 457 Plan. (TR 180). As the Union's witness acknowledged at the hearing, that "None of the external comparables have a 457 plan." (TR 180). But there are internal comparables as the City's Fire; Police Patrol; DPS; and Clerical all have a 457 Plan. (E-I, Internal Comps). Most applicable is the existing Firefighters Contract (July 1, 2019 - June 30, 2021) where that contract established a 457 Plan for the full-time firefighters at a 3% match. The contract was settled in Spring, 2021 about 20 months after the expiration of the prior contract. And although there was retroactivity on wages to year two of the Agreement (July 1, 2020 - June 30, 2021), there was no retroactivity to match on the 457 Plan. The City adds that retroactivity may not even be permissible under the IRS rules (counsel could not find anything allowing retroactivity in this situation). Furthermore, the Sergeants are still compensated handsomely even without a retroactive 457 match, as approximately 80% of their pay is earned at Lieutenants wages. (Tr., p. 263, II. 13-24).

Chair's Analysis of Retroactivity of 457 Plan:

The Union's LBO amounts to one of fairness for granting retroactive Employer contributions of 5% to the 457 Plans of the two Sergeants. The Union's LBO making that request states, in part, that it is "to the extent allowable under the Plan documents and IRS regulations." Absent such information, and in light of the statement in the City's brief that its counsel could not find anything allowing retroactivity in this situation, the Chair finds this favors the City's position

against retroactivity. Further, the City provided support in the internal comparable of the last Fire Department contract where contributions to that 457 were not made retroactive. And, among comparables, there is no support for the Union's position in its LBO because none of the external communities have an Act 257 Plan. (TR 180). Under all the circumstances, the Chair concludes that the City's LBO on Retroactivity of 457 Plan will be adopted.

**ISSUE: k. Retroactivity of 457 Plan. (Economic - Union Issue)**  
**AWARD: City LBO: Effective Date of 457 is effective date of new contract**

Dated: 9-25-2021

Elaine Frost, Chair

*Elaine Frost*

Dated: 10/4/2021

Matthew Zick, Employer Delegate

☒ Concur

☐ Dissent

Dated: 10/4/21

Michael J. Atkins

☐ Concur

☒ Dissent

## 6. SUMMARY OF AWARD

ISSUE	AWARD
Wages 1 <sup>st</sup> Year 2 <sup>nd</sup> Year	City LBO: 0% City LBO: 2%
Wages 3 <sup>rd</sup> & 4 <sup>th</sup> Year	Union LBO: Lieutenants shall receive base pay that is 15% greater than the highest available wage rate/step/classification for Patrol Officers. Sergeants shall receive base pay is 8% greater than the highest available wage rate/step/classification for Patrol Officers
Retroactivity for wage increases	City LBO: Wages in the 2 <sup>nd</sup> year retroactive to July 1, 2020.
Signing Bonus	Union LBO: \$500 signing bonus
Health Insurance Opt-Out	Union LBO: Insurance Opt-Out permitted; officers get \$300 monthly payment for opting out
Shift Supervisor Requirements - Delete Article 26.1	Union LBO: Statue Quo - no deletion Article 26.1
Shift Supervisor Rate/ Step-Up Rate - Delete Article 26.2	Union LBO: Statue Quo - no deletion Article 26.2
Definition of Uniformed Officer- delete term "uniform" from Article 31.3 (Vacation)	City LBO: Delete term "uniform" from Article Art. 31.3 Union LBO: Delete reference in Article 31.3 to "Commencing January 1, 2016"
Retroactivity of 457 Plan	City LBO: Effective date of 457 match is effective date of the new contract