

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

Independence Professional Fire Fighters Association

and

RESPONDING PARTY:

Independence Charter Township

MERC CASE NO.: D 17 K-1056 (Act 312)

COMPULSORY ARBITRATION AWARD

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

Arbitration Panel

Chair: William E. Long

Employer Delegate: Attorney John Clark

Union Delegate: Nick Wilson

Advocates

Employer Advocate: John Clark, Attorney

Union Advocate: Matthew Clark, Attorney

PETITION FILED: September 5, 2018

PANEL CHAIR APPOINTED: September 24, 2018

SCHEDULING CONFERENCE HELD: October 11, 2018 and November 15, 2018

HEARING DATE HELD: June 7, 2019

BRIEFS & REPLY BRIEFS EXCHANGED, HEARING CLOSED: August 12, 2019

AWARD ISSUED: September 16, 2019.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

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WITNESS LIST

Union Witnesses

1. Sue Feinberg- Municipal Employees Retirement System (MERS) Regional Manager for Southeast Michigan
2. Alan Reinstein - Consultant and Accounting Professor, Wayne State University

Employer Witnesses

1. Mitchell Petterson - Fire Chief, Independence Township Fire Department
2. Patrick Kittle - Independence Township Supervisor
3. David Helisek - Governmental Insurance Partner at Plante Moran

INTRODUCTION AND BACKGROUND

The Independence Professional Fire Fighters Association representing approximately 26 full-time paid employees of the Independence Charter Township Fire Department, except those employees in clerical positions with the Department and the Chief and two non-union Command Officers (referred to as the Union in this Opinion and Award) and Independence Charter Township (referred to as the Employer or Township in this Interim Opinion and Award) entered into negotiations for a Collective Bargaining Agreement (CBA) that would be a successor agreement to an agreement between the parties that expired December 31, 2017. (E-11). The successor agreement is for the period January 1, 2018 - December 31, 2020. (E-12).

The Union and the Employer have been unable to resolve all disputed matters leading to a successor CBA and the Union filed a petition with the Michigan Employment Relations Commission (MERC) for Act 312 Arbitration on April 9, 2018. This impartial Arbitrator was appointed by MERC on September 24, 2018.

Following this Arbitrator's appointment, two pre-hearing conferences were held and the parties were remanded for further collective bargaining. Following the remand the parties indicated a number of issues were tentatively agreed to but the parties were not in agreement on comparable communities. The parties agreed to submit the issue of comparable communities for Arbitrator decision based on briefs submitted by each party. *On February 19, 2019 this Arbitrator issued an Interim Opinion and Award that determined the Comparable Communities to be the following Townships: Brownstown, Chesterfield, Northville, Oxford, Harrison , and the City of Madison Heights.* That Interim Opinion and Award is included as part of the record in this case.

On May 9, 2019 an additional pre-hearing conference call was held and a schedule was established for submission of last offers of settlement (LOS) and a hearing date was established.

The parties agreed that as a result of negotiations and mediation all items had been tentatively agreed to except for Article 24, the pension contribution. The revisions to the CBA that the parties stipulated to was confirmed again at the hearing (Tr. pg. 17, lines 20-23). *Employer Exhibit (E-12) contains the revisions to the following Articles the parties have stipulated and agreed to for the CBA for the period January 1, 2018 - December 31, 2020: Articles 5,15,17,19,20,23,25.A,26.F,27.A,30,31,32,35,37,40,42. Revisions to these Articles contained in (E-12) shall be included as part of this Arbitration Award pursuant to Section 9(1) (c) [MCL 423.239]and Section 10 [MCL 423.240] of Act 312 of 1969.* The only remaining contested issue for the CBA for the period January 1, 2018 - December 31, 2020 (E- 12) was the provisions in Article Twenty-Four: Pension Plan. Last Offers of Settlement were submitted May 23, 2019.

A one day hearing was held June 7, 2019 at the Independence Charter Township offices in Clarkston, MI. Attorney John Clark represented the Employer and Attorney Mathew Clark represented the Union. The hearing record consists of one volume containing 268 pages. Eighty-

Eight (88) exhibits were accepted into the record. Thirty-two (32) Employer exhibits were E-1 through E-29 and E-45 and E-46 and E-88. Twenty-Three (23) Union exhibits were U-30 through U-53 and Thirty-Three (33) Joint Exhibits were J-54 through J-87. Exhibits will be referred to by letter and number and references to testimony in the hearing transcript will be referred to by (Tr. pg. #).

Post-hearing briefs were submitted to and exchanged through the Arbitrator July 30, 2019. Post-hearing reply briefs were submitted to and exchanged through the Arbitrator August 6, 2019. The Panel delegates have placed their signatures on the specific Award in support of or in opposition to the finding and award and have also placed their signatures at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on the issue presented.

2. STATUTORY CRITERIA

When considering the economic issues in this proceeding, Section 8 of Act 312 guided the Panel. The section provides that “As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.” Section 9(1) and (2) states “(1) 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 government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government’s expenditures or revenue collection.*
- (b) *The lawful authority of the employer*
- (c) *Stipulations of the parties.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in both of the following:*

- (i) *In public employment in comparable communities.*
 - (ii) *In 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 during the pendency of the arbitration proceedings.*
 - (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.*
- (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."*

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

3. STIPULATIONS AND PRELIMINARY RULINGS

As noted in the Introduction and Background, *Employer Exhibit (E-12)* contains the revisions to the following Articles the parties have stipulated and agreed to for the CBA for the period January 1, 2018 - December 31, 2020: Articles 5,15,17,19,20,23,25.A,26.F,27.A, 30,31,32,35,37,40,42. Revisions to these Articles contained in (E-12) shall be included as part of this Arbitration Award pursuant to Section 9(1)(c) [MCL 423.239] and Section 10 [MCL 423.240] of Act 312 of 1969. (Tr. pg. 17, Ln 20 - 23).

4. COMPARABLES

On February 19, 2019 this Arbitrator issued an Interim Opinion and Award that determined the Comparable Communities to be the following Townships: Clinton, Brownstown, Chesterfield, Northville, Oxford, Harrison, and the City of Madison Heights. In addition to comparing the wages, hours, and conditions of employment of other employees of Independence Township outside of the bargaining unit required by Sec. 9(1)(e) of Act 312, section 9(1)(d) of Act 312 directs the Panel to consider a comparison of 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 public and private employment in comparable communities. (Act 312, Sec. 9(1)(d)(i). The February 19, 2019 Interim Opinion and Award will be included in the file and made a part of the record.

5. ISSUES BEFORE THE PANEL

Issue #1 (Economic) The financial ability of the unit of government to pay.

Last Offers of Settlement on Issue #1

A. **Employer's Last Offer of Settlement** - The Employer's LOS and position on its ability to pay is that the Employer's financial condition requires the panel to accept the Township's last offer of settlement on Article Twenty-Four: Pension Plan. The Employer position is that maintaining the Employer's annual pension contribution at 12% is supported based on the Employer's submission of competent, material, and substantive evidence that it does not have the ability to pay what MERS has projected toward the pension contribution which, on January 1, 2020, will increase to almost 17%.

B. **Union's Last Offer of Settlement** - The Union's LOS is that the Employer's financial condition permits the Employer to pay for the cost of the Union's last offer of settlement on Article Twenty-Four: Pension Plan without any adverse effect to its existing operations. The Union's position is that its proposal On Article Twenty-Four is less expensive than the Employer projected, that the Township's finances are stronger than it projected, and the Union has identified numerous sources and methods the Township can employ to easily fund the additional costs of the Union's LOS.

Discussion of the parties' positions, evidence, testimony, relevant statutory criteria and findings applied to Issue #1

ABILITY TO PAY

Employer Position

The Employer presented the testimony of Fire Chief Mitchell Petterson, Township Supervisor Patrick Kittle, and David Helisek, a governmental insurance partner employed by Plant Moran providing financial and auditing services to the Township. Chief Petterson testified that he has been employed as a full time fire fighter with the Township since 1999 and was appointed deputy fire chief about 2010 and Fire Chief in 2015. (Tr. pgs 151,152). He described the current staff generally as consisting of two captain positions, two staff lieutenants and the

operations division of three platoons or shifts consisting of nine per day. Additionally there are approximately 10 part-time fire fighters but they are not members of the Union. The Fire Department also provides EMS and life support to the community. (Tr. pgs153,153).

Chief Petterson testified that the Fire Department has always been funded by a dedicated fire millage and has never been supported by the Township's general fund. Employer Exhibit (E-19) is a copy of the official ballots of the primary elections of August 7, 2012 and August 2, 2016 which included the proposed renewal of the millage for the Township fire protection and emergency services including advanced life support. The current millage is 3.5653 mills. Authorization of each of these millages was for four years so the millage renewal will need to be placed on the August 2020 primary election ballot. Chief Petterson's testimony referred to (E-16) which is an estimated budget for the fire services for fiscal years 2020-2025. (E-16) includes all estimated wages, promotions and other financial factors anticipated for the next five years. Chief Petterson's testimony included the general history of the parties' bargaining involving the CBA pension benefits provision. The Employer's post-hearing brief urges the history of the defined benefit pension plan be given significant consideration by the Panel Chair.

The Employer's post-hearing brief points out that page 3 of (E-16) is projecting a reduction of its fund balance in the Fire Fund over the period 2019 - 2023. The fund balance increases slightly from 2019 to 2020 (from \$1,246,873 to \$1,321,056), but then declines each succeeding year to \$313,031.00 in 2023 and deficits thereafter.

Employer exhibit (E-17) contains a Capital Fund line item for each year beginning 2016 through 2039. Chief Petterson explained the Capital Improvement Plan funding which involved dedicating a certain amount of the funds generated by the fire millage each year to the Capital Fund so that the Fire Department would have sufficient funds to purchase vehicles and other equipment and make other capital improvements using cash instead of borrowing money or financing those purchases. (E-17) projects a \$200,000.00 contribution to the Capital Fund each year going forward and maintaining a least a \$3,000,000.00 balance in the Capital Fund during the next ten years.

Township Supervisor Kittle testified that at no time has the Township's general fund, or any other fund, been used to fund the operation of the fire department (Tr. pg. 229) and that at

least since 1999 there has always been a dedicated fire millage (Tr. pg. 231,232) and never any other funding source for fire services. Supervisor Kittle made it clear that if the costs of the Fire Department increased as a result of a ruling in this proceeding, or for any other reason, and the revenue from the Fire Services millage could not support the costs of maintaining the Fire Services, he would not authorize a general fund supplement. He stated that in that event the Fire Services would have to operate with the revenue generated by the Fire Service millage and do whatever needed to be done to stay within that budget. (Tr. pg 247).

The Employer's post-hearing brief notes that both Chief Petterson and Supervisor Kittle testified that the fire department is being strained based on an ever aging population, and also by recent developments and proposed developments for senior living projects. (E-22). The Township anticipates an additional 500 beds will be added in assisted living projects in the next two years that will necessarily increase medical runs. (E-22). Chief Petterson testified that each bed in a senior living facility generates approximately 0.9 medical runs per year. (Tr. pg. 199). The Employer brief also notes that Supervisor Kittle testified regarding his concerns the impact an unfavorable decision in these proceedings would have internally. Specifically, he testified that if the Township contribution towards the firefighters pension is drastically increased, that could potentially require the Township to increase its pension contributions for all Township employees. Supervisor Kittle also testified that he anticipated reductions in cable franchise fees, thereby reducing the General Fund revenues. (Tr. pgs. 241-242).

The Employer's post-hearing brief also challenges the testimony and documents presented by Union witness Reinstein, pointing out that Dr. Reinstein never did an analysis of whether the fire millage funds could support the additional cost to the Employer if the Union's proposal was adopted without having to reduce the fire operating expenditures elsewhere or seek funding from the Township general funds or other funding sources. The Employer says Dr. Reinstein's opinions and testimony is unreliable and therefore should be given little or no consideration.

The Employer's position is that the Township does not have the ability to pay the Union's Last Settlement Offer and the evidence presented and bargaining history relative to pension contributions support the Panel adoption of the Township's Last Settlement Offer.

Union Position

The Union's position is that the Employer enjoys excellent financial health and has numerous funding sources and methods to pay for the Union's proposal without any adverse effect to its existing operations. The Union says its proposal is less expensive than the Township projected, the Township's finances are stronger than the township projected, and the Township has numerous sources and methods to easily fund the additional costs of the Union's proposal.

The Union argues that the Township inflated its operational costs, pointing out that from fiscal year 2017 to 2018 the township budgeted for a 15% increase in employee wages, 25% increase in health insurance costs and 21% increase in life insurance costs and 31% increase in workers compensation costs. (U-32.c). The Union noted that its witness, Wayne State University professor Dr. Alan Reinstein, indicated that in his experience he's never seen municipal employees receive a 15% wage increase. (Tr. pg.82). The Union also referred to (U-53), which is the 2017 Township Comprehensive Annual Financial Report (CAFR) which lists total revenue at \$7,661,771. (U-53, pg. 17). The 2016 CAFR lists total revenue at \$7,274,333. (U-52, pg. 16). However, the Union notes that in its non-CAFR projections prepared for the Act 312 hearing, the Township reduces its projected revenue for 2019 to \$6,538,888 and \$6,527,993 for 2020. (U-35, pg. 1). The Union says the Township offered no reason why it reduced these projected revenues. The Union says it seems likely the Township underestimated its projected revenue in order to make the Union's proposal seem less viable.

The Union notes the Township holds a strong AA+ S&P rating and that the Township's most recent OPEB (Other Post-Employment Benefits) are well funded at 97.8% in December 2017 (U-34, pg 4) with an ending balance December 2017 of \$2,685,161 and an ending balance December 2018 of \$ \$2,812,942. (U-43).

The Union points out that the Township has the authority to levy an additional 0.10 mills it is authorized to levy noting that the voters approved the last fire millage assessment in 2016 which authorized a total millage of 3.5653 however the Township only levies 3.4653 mils leaving additional 0.10 mils for the township to levy at its discretion. (E-45,E-46). Township witness David Helisek testified that the Township could have raised an additional \$145,738 in 2017 by levying the full fire millage approved by the voters. (E-46) (Tr. pg. 262).

Testimony and evidence presented at the hearing revealed that the Township fire department maintains a Fire Capital Projects Fund for use in purchasing necessary equipment. The department uses money from the fire millage to place into the Fire Capital Projects Fund reserve equal to 25% of its annual operating expenditures. (U-36, pg. 2) (E-16, pgs 2,3). The fire department uses these reserve funds to provide a financial cushion that can be used for unexpected costs that may occur throughout the year and to enable it to pay cash for the purchase of replacement equipment, vehicles, upgrading fire stations, etc. (U-36) and (E-16) display the projected reserve funds maintained in the Fire Capital Projects Fund Account for each year going forward. The Union notes that the Township Board of Trustees authorized the fire department to maintain a 20% reserve fund similar to the 20% reserve fund the township maintains but also authorized the Fire Chief, at his discretion, to maintain a larger fund balance if deemed necessary. (U-44). The Union points out in its post-hearing brief that reducing the Fire Capital Projects Fund Account reserve fund balance from 25% to 24% in 2019 would make available approximately \$59,621.57 which, the Union says, could fund the projected \$44,850.00 additional 2019 cost the Employer would have to contribute as its share of the MERS payment if the Union proposal was adopted. The Union notes that (U-41) which displays the Township's Fire Department Capital Improvement Plan Equipment Repair and Replacement Schedule budget, projects a fund balance of \$3,198,055 in 2019 and increasing that fund balance each year through 2023.

The Union's post-hearing brief also refers to testimony by Chief Petterson that the Fire Department was expecting, at the time of the hearing, to soon sell several pieces of equipment for approximately \$160,000.00 and that money would be placed in the Capital Improvement Plan Replacement fund balance. (Tr. pg. 2019).

The Union acknowledges the Township has indicated it is not willing to use Township General Fund revenues to fund the Fire Department but the Union says the Township *could* use general funds without significantly impacting its general fund budget. It notes that the Township Comprehensive Annual Financial Report (CAFR) for fiscal year ending December 31, 2017 reported an end of year fund balance of \$18,748,626, an increase of \$1,266,194 from the

beginning of the year 2017 fund balance. (U-53, pg 8). The Union's position is that the Township has ample capacity to fund the Union's proposal.

Discussion and Findings

Discussion

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria particularly applicable to the ability to pay issue including subsections (1) (a) and subsection (2). The Panel believes it has given Section 9(2) appropriate significance based upon the evidence and testimony presented.

One of the primary items of evidence customarily considered in determining a local government's ability to pay is the most recent Comprehensive Annual Financial Report (CAFR). The most recent CAFR for Independence Charter Township is for the fiscal year ended December 31, 2017. (U-53). Following are pertinent excerpts from the letter of transmittal from the Township included in that Report.

"The table below illustrates the diversity of the Township's current tax base, which were the basis of property tax revenues for the 2017 fiscal year.

<u>By Property Type</u>	<u>Percentage</u>
Real Property	96%
Personal Property	4%
<u>By Property Class</u>	
Residential	84%
Commercial	11%
Industrial	1%
Personal Property	4%

2017 was a very busy year for the Independence Township Building, Planning and Zoning department with an estimated \$35 million investment in three rehabilitation and assisted living projects currently under construction. The Wellbridge Medical Rehabilitation Project, which broke ground in 2016 and is located on the south side of Clarkston Road, east of Sashabaw Road, is nearing completion. The Vista Springs assisted living project, a three-story resort styled facility with a mix of 80 independent and assisted living rooms at Dixie Highway and Maybe road is under construction. The Sienna rehabilitation center located at

Dixie Highway and Foster Road has also started construction in the fall of 2017. Additional commercial development continues to grow with the addition of an approved Tim Horton's, Alex's market and Grill, Poolmart retail store, and a Comfort Inn hotel. In total, 19 projects are either pending approval or under construction in the Township.

Discussions have continued in 2017 with McLaren Healthcare Administration regarding the development of their commercial properties located within the Sashabaw corridor. This has resulted in a Michigan State University Federal Credit Union just being approved.

Commercial development is not the only increased activity in our Township. The residential market continues to produce projects with an estimated 500+ new homes over the next three – five years that are in various stages of construction, project approval, and concepts submitted. These projects include: an approved 92 unit, \$18 million dollar attached condominium site on Dixie highway now under construction; an approved 230 single-family home development to be phased in over the course of the next few years on Maybee Road now under construction; an approved 54 unit detached condominium site on Walden Road now under construction; an approved 25 unit residential site on Maybee Road; and a 75 unit residential condominium development on Clintonville Road. An additional conceptual residential project will soon be coming before the Township Board for an 83 unit condominium development on Sashabaw and Walden Roads.”

“The Charter Township continues to make its annual required contributions for both retiree health (OPEB) and pension. As of the latest actuarial valuation, the Township is 62.9% funded in its retiree healthcare obligation, which is an increase from the 54.0% from the previous actuarial valuation. The increase in funding level can be attributed to certain actions the Township has taken: eliminating retiree healthcare benefits for it's all new hires and full-time elected officials, negotiating the Independence Fire Department contract whereby all new hires will be on a defined-contribution healthcare plan, and moving Medicare age retirees to a group Medicare plan thereby lowering premiums.”

“The Charter Township currently carries a Standard's & Poor Bond Rating of AA+. By maintaining a strong fund balance within its major funds, the Township has been able to reduce or eliminate the need to borrow in order to finance future capital projects and expenditures, unless it makes economic sense to leverage borrowed funds versus paying cash. The Board approved fund balance policy mandates that the funds carry a fund balance that is 20% of its annual operating expenditures.”

“Unrestricted net position is what is available to meet the Townships ongoing obligations. At December 31, 2017, the Townships unrestricted net position in its governmental activities is \$4,484,280, which is net of the net pension liability of approximately \$4,005,400. This is a 16% increase from 2016. Unrestricted funds

available within its business type activities is \$ 16,487,709, which is an 11% increase from 2016.” (U-53, pg. 5).

“Fund balance within the Fire Millage Fund decreased by approximately \$150,000, or 8%. Property tax revenue increased by 2%. Current year expenditures increased by approximately \$174,000, or 4% due to increased labor charges, building and vehicle maintenance, and operating supplies. The transfer to the Fire Capital Projects fund increased by approximately \$418,000, or 56%, in accordance with the Fire Department’s master capital plan.” (U-53, pg. 9).

The Panel recognizes, as evidence and testimony in this proceeding revealed, that the Fire Department is not funded by the Township General Fund but rather by the Fire millage. However, the revenue from the Fire millage will increase or decrease in proportion to the taxes levied on the Township property owners just as the Township General Fund will. The excerpts from the letter of transmittal from the Township and other financial data included in the CAFR reveal that the Township and the Fire milage revenues are likely to increase in the near term foreseeable future as a result of increased residential and commercial property growth and values.

Testimony and evidence presented at hearing revealed that the Township has always been funded by the Fire fund millage. Employer (E-16) which displays the projected budget for the fire department going forward, projects the property tax revenues to increase 4.5% from 2019 to 2020 and 2.7% from 2020 to 2021. (E-16, pg.1). As noted previously, Employer (E-16, pg. 3) also projected a declining fund balance from 2020 to 2025. But its charge for services shows no increase and stays flat at \$3,500.00 each year during that same period. With the increase in senior living projects described in the CAFR Township letter of transmittal and (E-22) the Township estimates an additional 500 senior living beds in the next two years. Fire Chief Petterson acknowledged that in addition to the millage revenue, the department receives revenue from medical transporting services and estimated 3500 medical and fire runs for the current year. (Tr. pg. 154). Chief Petterson was asked to estimate approximately how many dollars would be estimated to be derived from transport fees. His response was “I think we’re budgeted for 600 thousand this year.” (Tr. pg. 155) (Tr. pg.200). With the increase in senior living projects it is likely that ambulance runs, and the revenue from ambulance runs, will increase. Chief Petterson testified that each bed in a senior living facility generates approximately 0.9 medical runs per

year. (Tr. pg. 199). Employer (E-17) which displays the Fire Department's Capital Improvement Plan funding going forward, projects continued annual contributions to that fund of \$200,000.00 which maintains a Capital Reserve fund of over \$3 million each year up to 2029.

The opening statement on behalf of the Employer, I believe, best describes the issue before the Panel and addresses, in part, the question of the Employer's ability to pay.

"You know, the panel Chair, Mr. Arbitrator, you're faced with what I believe is a unique issue, but we believe there's an easy decision to be made. On their side, and what we just heard from Mr. Clark, I characterize as the short term view of the world. And as their opening statement indicated and I presume their witnesses will testify to, that they believe what they're proposing is both reasonable and affordable. On our side of the table, we are looking at things on a long-term perspective. And what we believe that the union is asking for in the long-term is not sustainable and quite frankly, is just a tip of the iceberg. The problem that the union has refused to address and that is the generous pension benefit that they have, and that's really the underlying problem is the pension benefit." (Tr. pgs. 14,15). "And again, you're going to hear about, you know —the witnesses or their testimony is going to be that we can afford it. Maybe— maybe short-term, maybe a year, long term, certainly not." (Tr. pgs. 18,19).

The evidence and testimony presented at the hearing generally supports the position that currently, and in the short term, at least during the period of the current CBA, the Employer does have the ability to pay. But in the long term, it is questionable whether the Union's LOS can be sustained, given the current provisions of the pension plan, without impacting the Employer's ability to maintain fire services at the level necessary to serve its population growth. That issue will be addressed further in this Arbitration Award in the discussion involving issue #2.

Findings

Based on the evidence presented, and giving the financial ability of the unit of government to pay most significance, the Panel finds that the Employer is able to pay the necessary costs ordered in the Opinion and Award without a significant financial impact on the Employer and in the best interests and welfare of the public. The Panel believes the financial impact of the Panel's Award on the amendment of Article 24: Twenty-Four: Pension Plan presented to the Panel for decision in this proceeding will not result in a significant negative fiscal impact on the Employer or the community during the period of the Collective Bargaining Agreement for which it would be applied.

Witness my hand and seal this 15th day of May, 2015.

Employer: Agree

Disagree

Union: Agree

Disagree

Issue # 2 - Proposed Amendment to Article Twenty-Four: Pension Plan

Following is the current language in Article 24 B.

B. "The Township shall contribute an amount equal to 10% of the employee's gross wages in 2015, 11% of the employee's gross wages in 2016, and 12% of the employee's gross wages in 2017 as that term is defined by the Municipal Employees Retirement System or the actual contribution rate as determined by MERS, whichever is less. In no event during the life of this Agreement will the Township be responsible for contributing more than 10% in year 2015, 11% in the year 2016, and 12 % in the year 2017 of the employee's gross wages as that term is defined by the Municipal Employment Retirement System. In the event that the cost of the Michigan Employees' Retirement System plan adopted herein exceeds the Township's contribution of the employees' gross wage per calendar year, as specified herein, the employee shall pay the additional costs by payroll deduction. The time of the above enumerated contributions, if made to the Michigan Municipal Employees Retirement System plan hereunder shall be in accordance with the provisions of said plan." (E-11).

Following is the language the Employer proposes in its Last Settlement Offer:

B. "The Township shall contribute an amount equal to 12% of the employee's gross wages as that term is defined by the Municipal Employees Retirement System or the actual contribution rate as determined by MERS, whichever is less. In no event during the life of this Agreement will the Township be responsible for contributing more than 12% of the employee's gross wages as that term is defined by the Municipal Employment Retirement System. In the event that the cost of the

Michigan Employees' Retirement System plan adopted herein exceeds the Township's contribution of the employees' gross wage per calendar year, as specified herein, the employee shall pay the additional costs by payroll deduction. The time of the above enumerated contributions, if made to the Michigan Municipal Employees Retirement System plan hereunder shall be in accordance with the provisions of said plan."

Following is the language the Union proposes in its Last Settlement Offer:

B. "Each employee shall contribute an amount equal to 10% of the employee's gross wages, as that term is defined by the Municipal Employees Retirement System or the actual contribution rate as determined by MERS, whichever is less. In the event that the cost of the Michigan Employees' Retirement System plan adopted herein exceeds the employees' contribution of the employees' gross wage per calendar year, as specified herein, the Township shall pay the additional costs. The time of the above enumerated contributions, if made to the Michigan Municipal Employees Retirement System plan hereunder shall be in accordance with the provisions of said plan."

"C. Employee overtime counted toward their final average compensation (FAC) shall be capped at 25% of the employee's individual base wage."

[Re- letter the following subsections from C to D, D to E, and E to F]

Discussion of the parties' positions, facts, proofs, relevant statutory criteria and findings applied to Issue #2.

Employer Position

The Employer's post-hearing brief and reply brief urges the Panel to accept the Township's last offer of settlement which commits the Township to continue to pay 12% of the annual pension contributions and reject the Union's LOS which would require the Township to pay what MERS has projected to be a almost 17% contribution for the fiscal year 2020. The Township argues that beyond its inability to pay an uncapped pension contribution, the Township submitted un-refutable evidence that the impact of an unfavorable decision in these proceedings will directly impact firefighting services and necessary capital improvements, which are already strained by insufficient manpower and an ever-growing, aging population.

The Township's view is that the overall health of the Township, including essential firefighting services, must be viewed on a long-term basis, which necessarily includes a decision

that the parties' current contribution obligations towards the provided pension benefit remain the same.

Chief Petterson's testimony included the general history of the parties' bargaining involving the CBA pension benefits provision. The Employer's post-hearing brief urges the history of the defined benefit pension plan be given significant consideration by the Panel Chair. The Township also notes that the Township's contribution to pension plans for all other Township employees, including union and non-union, is only 10% of the employees' base wages. (E-13 and 14).

The Employer notes that the newly negotiated CBA, which the parties agreed to accept on all terms except the annual pension contribution, provided several financial enhancements to Union members including wage increases of 2% effective 01/01/2018; 2.5% effective 01/10/19; and 2.5% effective 01/01/2020. The Employer urges that it is also important to recognize what was not changed in the new CBA. The Employer points out there were no changes to any of the provided insurance benefits, including health insurance, dental insurance, optical insurance, or long-term and/or short-term disability insurance. The Township points out that despite its best efforts, there were no agreed-upon changes to the provided pension benefit. The Township considers this of significant importance, given the fact that the cost of the defined benefit pension plan is increasing on an annual basis and, in the not so distant future, will become unsustainable for either party to afford. It is the Township's opinion that the Union is viewing the situation in the short-term, and appears to have no interest in addressing this core concern, and has thus decided it is best for its membership to simply shift the funding obligations from its members to the Township. The Township says such an approach is not in the best interest of the Fire Department, the Township, or its residents.

The Township also refers to that portion of the Union's proposed LOS that any overtime hours over 25% of an employee's base wage would not be counted toward a pension benefit as nothing more than a facade that will have little or no impact on the annual contribution required to fund the generous pension benefit. The Township points out that Chief Petterson's testimony provided an analysis of overtime hours from 2015 to the present. In 2015, only two employees had more than 25% of their base wage in overtime. For 2016, only one individual had more than

25% of his base wage in overtime. For 2017, again only one employee had more than 25% of his base wage in overtime, and in 2018, there were only three individuals who would be impacted by this proposal. (E-15) (Tr. pgs. 175-178). The Township says this proposal will have little or no impact on the annual contributions required to fund this generous pension benefit.

The Township points out that the Union relied almost exclusively on the reports and testimony of Dr. Alan Reinstein in support of its position that the Township has ample resources available to fund what the Union is proposing. The Township notes that Dr. Reinstein is in academia, has never worked directly for a municipality, nor has he operated a fire department that must service over 37,000 residents. The Township says during cross-examination, his report was based on generalities and misunderstanding of key components.

The Township notes in its Reply Brief that the Union's Brief refers to Dr. Reinstein's questioning the Township's budget estimates of costs from 2017 to 2018 budgeting a 15% increase in employee wages, 25% increase in health insurance costs, 21% increase in life insurance costs, and 31% increase in worker's compensation costs. (U-32). The Township says Dr. Reinstein incorrectly assumed that those figures were calculated on a per-employee basis—namely, that employees received a 15% increase in wages. The Township says the assumption is incorrect. Instead those figures represent total dollars budgeted for the department, which would include salary increases, step increases, and the filling of vacant positions. The Township says for the Union to argue, or even assume, the Township budgeted 15% pay increases for all of its employees is absurd and it is of significant concern if that really was the opinion of Dr. Reinstein, who the Union holds out as an expert in municipal finance.

The Township says, of most significance is that Dr. Reinstein never did an analysis as to the issue at hand; namely, whether the Township, through funds available under the fire millage, is able to afford what the Union is proposing in terms of annual pension contributions. The Township says, instead, Dr. Reinstein simply made reference to the fact that the Township had “capacity,” without any substance or detail. In the Township's view, Dr. Reinstein's opinions and testimony are unreliable; and therefore, they should be given little or no consideration in these proceedings.

The Employer points out in its post-hearing brief that the Union's LOS proposal that any overtime hours over 25% of an employee's base wage not be counted toward the pension benefit is nothing more than a facade and will have little impact on the annual contributions required. The Employer refers to testimony from Chief Petterson showing this would only apply to two or three individuals. (Tr. pgs. 175-178).

With respect to the comparable communities, the Township's post-hearing brief urges the Panel to consider them irrelevant to these proceedings but says, at best, they support the Township's position that the pension contributions should remain status quo. The Township says given the 25 years bargaining history between the parties involving this issue the Union's reliance on the comparable communities is misplaced. The Township does point out certain provisions within the CBA's of some of the comparable communities. Following are excerpts from the Employer's post-hearing brief.

A. Brownstown Township.

Brownstown Township's defined benefit plan is based on base wages, not gross wages. (See, **Joint Ex. 54 at p. 55**). That distinction is critical and directly impacts the annual funding contributions required. Additionally, Brownstown Township's contributions are capped at the lesser of 15% of base wages, or the actuarially determined contribution rate reported by MERS. (See, **Joint Ex. 54 at p. 56**). Also of significance is the fact that Brownstown Township's contributions for employees hired after January 1, 2017, are capped at the lesser of 10% of base wages, or the actuarially determined contribution rate reported by MERS.

B. Chesterfield Township.

The benefit afforded firefighters in Chesterfield Township is a MERS B-2 pension system, which has drastically reduced benefits compared to those provided to Independence Township's firefighters (MERS B-4 Pension Plan).¹ (See, **Joint Ex. 59 at p. 38**). Such a reduced level of benefits necessarily correlates to a reduced cost to fund the pension plan. The Union will presumably argue that the employees' contribution in Chesterfield Township are capped at 2% of base wages. However, according to the latest MERS annual actuarial evaluation, Chesterfield

¹ According to the MERS website, a MERS B-2 pension plan has only a 2.0 multiplier versus a B-4 pension plan that has a 2.5 multiplier.

Township's annual contribution for the firefighters' pension benefit is in the range of between 10% and 11% of its employees' base wages. (*See, Joint Ex. 60 at p. 14 of 30*).

C. Harrison Township.

The defined benefit pension plan provided by Harrison Township is drastically different than the one offered by Independence Township. First, Harrison Township has a Public Act 345 Police and Fire Mileage, which can be utilized to fund the provided pension benefit. In addition, the employee benefit under the Harrison Township defined benefit pension is capped at 70% of final average compensation. Of equal significance is the fact that employees hired after December 19, 2014, have a greatly reduced pension benefit, including only a 2.0 multiplier. (*See, Joint Ex. 65 at p. 71*). It is important to note that the reduced pension benefit offered to those hired after December 19, 2014, will significantly reduce the annual costs and related contribution required to fund the pension plan.

Even with access to Public Act 345 Police and Fire Pension Mileage, the Harrison Township firefighter pension system is funded at an abysmal rate of 44%. (*See, Joint Ex. 66 at p. 12*). It is that terrifyingly low funding level that most likely prompted the parties, through a tentative agreement dated March 8, 2019, to place an eight-year moratorium on all pension modifications. However, the tentative agreement provides an "escape hatch" such that, in the event the funding level dips below 40%, the Township has the right to reopen negotiations to reduce the provided pension benefit and/or increase employee contributions. (*See, Joint Ex. 65 at No. 5*).

D. City of Madison Heights.

The City of Madison Heights, through a tentative agreement dated April 18, 2019, made significant changes to the provided pension benefit, including the elimination of overtime as part of final average compensation (effective June 30, 2021). In addition, the tentative agreement froze the annuity benefit for employees, eliminated interest on any annuity, (effective January 1, 2020), and provided for a moratorium on any changes to the pension plan through June 30, 2021. (*See, Joint Ex. 70 at pp. 3-4*). In addition, pursuant to the relevant CBA, any employee hired by the City of Madison Heights after July 1, 2009, shall have their pension benefit based on base wages, only. (*See, Joint Ex. 72 at p. 38*).

Similar to Harrison Township, the pension system for the City of Madison Heights is currently funded at only 51.84%. That drastically low funding level explains why the parties entered into a tentative agreement that included a reduction of pension benefits and a moratorium on changes to the pension plan through the fiscal year of 2021. (*See, Joint Ex. 70 at pp. 3-4*).

E. Northville Township.

The pension plan provided by Northville Township to its firefighters includes a “bridge” component, which froze the employees’ pension benefit, effective December 31, 2018. According to the relevant CBA, the provided defined benefit pension plan for years of service after January 1, 2019, had a 0% COLA benefit. Additionally, the parties negotiated an eleven-year moratorium, which prohibits any negotiations over the terms of the defined benefit pension plan through December 31, 2029. (*See, Joint Ex. 79 at p. 22*). The pension moratorium, and the reduction in the COLA benefit, can be explained by the fact that the funding ratio of the Northville Township pension plan is only 73%. (*See, Joint Ex. 80 at p. 5 of 39*).

F. Oxford Township.

According to the relevant CBA, the firefighters in Oxford Township have a similar pension benefit to the one provided to the firefighters in Independence Township. (*See, Joint Ex. 82 at p. 35*). However, there is one significant exception, *viz.* firefighters hired on or after January 1, 2011, have a MERS B-3 pension plan that includes only a 2.25% multiplier, with final average compensation being based on the best five of ten years (as opposed to best three of ten years). According to its latest MERS annual actuarial evaluation, the pension system for Oxford Township firefighters is only funded at 65%. (*See, Joint Ex. 85 at p. 5 of 29*). It is also important to note that Oxford Township is only currently contributing 6.15% of the employees’ annual base wages, for a total annual contribution of \$245,000. (*See, Joint Ex. 85 at p. 14 of 29*).

In summary, the comparable communities support the Township’s position on multiple fronts:

- Most of the communities have negotiated a reduced pension benefit for employees hired after a certain date;

- Many of the communities have negotiated a moratorium, which prohibits negotiation over future changes to pension benefits;
- The funding levels of the pension systems for most of the comparable communities are far less than that of Independence Township.”

The Township’s post-hearing response brief takes the position that the comparable communities generally support the Township’s position and notes that the most relevant communities have reduced pension benefits for current employees or have negotiated a two-tier pension system for new hires, thereby reducing costs.

Union Position

The Union's position is that record evidence demonstrates the Union’s last offer of settlement is fair, more reasonable, and better supported by the applicable factors described in section 9 of act 312. The Union views its proposal as extremely accommodating to the Township when viewed alongside the pension contribution structures of comparable communities.

The Union notes that at the arbitration hearing, the parties referenced the 2017 Independence MERS AAV (U-30), the most up-to-date MERS analysis at the time of the hearing, which set the contribution rate currently in effect for 2019. Subsequent to the hearing, MERS issued its 2018 Independence MERS AAV (E-88). Between the 2017 AAV and 2018 AAV many aspects of the MERS analysis remained constant. However, other analytical factors have changed, including a reduction in the investment return assumption from 7.75% in 2019 to 7.35% for 2020. As expected, the 2020 employee contribution rate will increase from 2019, from 12.06% to 14.57%. This, the Union says, bolsters its argument that rising firefighter pension contributions will continue to detract in greater measure from their take-home pay and, therefore, merit a more equal sharing of costs from the township.

The Union says it has shown that the Township is completely financially capable of paying for the cost of the Union’s last offer of settlement without any adverse effect to the Township’s existing operations. It says the Union's proposal is less expensive than the Township projected, the Township’s finances are stronger than the Township projected, and the Union has identified numerous sources and methods the township can employ to fund the additional costs of the proposal. The Union refers to Union exhibit (U-37) which is MERS finance department

calculation describing the Township's 2019 contribution as 13.56% phase in amount if the firefighters only contributed 10% per the Union's proposal. Using MERS calculation, the Township will contribute a total of 345,000 in 2019 at the 12% rate, it can be determined that the total wages for 2019 are \$2,875,000 (12% of \$2,875,000 is the \$345,000 that the Township will contribute). The Union says increasing the Township's contribution by 1.56% percent (the added percentage between 12 and 13.56%) of the \$2,875,000 total wages yields and increased Township payment of \$44,850 for 2019.

In the Union's view, in general, the Township is in excellent financial health. It holds a very strong AA+ S & P rating (U-32, pg.3). As Dr. Reinstein testified, two of the traditionally largest municipal costs -pensions and OPEB (other post-employment benefits) - are extremely well-funded. Freeing up Township revenue for other purposes. Dr. Reinstein noted that the Township's most recent OPEB valuation shows its OPEB benefits are 97.8% funded, a high level compared to many municipalities Dr. Reinstein has analyzed that commonly are 40 or 50% funded. However the Township, in its Reply Brief, notes that the Union failed to indicate that the fire division is only funded at 64.6%. The other Township divisions are overfunded which brings the total funding ratio to 97.8% (E-24). The Township says this clarification is key in that the unfunded portion of the fire departments' OPEB liability must be funded out of the fire millage which would include any available fund balance.

With respect to other Township funding sources, the Union points to testimony from Township witness David Helisek who noted that the Township could have raised an an additional approximate \$145,000 in 2017 by levying the full fire millage approved by voters (E-46) (Tr. pg. 261, 262). The Union says this would have raised more than enough revenue to cover even the highest projected additional cost of the Union's proposal. The Union says in spite of this ready-made source of funding already approved by the voters, the Township refuses to levy additional millage. The Union says this opposition is not based on its financial ability to pay but rather is ideological. The Union characterizes Township Supervisor Patrick Kittle's reluctance to levy the additional 0.10 Mills based on his testimony that "I think what is being taxed is fair. We're living within our means, providing the services that they need." And "I would rather we allow

ourselves the luxury of having an emergency fund when and if we need it.” (Tr. pg. 253) as ideological, not based on the Township’s financial ability to pay.

The Union points to the fire department reserve fund balance as another source of revenue the township could draw upon. It points out that the Township fire department reserve fund maintains a balance of 25% of its annual operating expenditures (U-36, pg. 2). The reserve fund is available for unexpected costs that may occur throughout the year, including upkeep and repair of equipment, vehicles, fire stations or any other expense. The Union notes that the reserve fund has a total of over \$1 million each year from 2016 through 2018 and is expected to have a reserve of \$1,490,539.00 in 2019. The Union says by simply decreasing the fund by 1% - from 25 to 24%, would release \$59,621.00, more than enough to fully fund the projected increase if the Union proposal was adopted for 2019.

The Union argues the Township’s previous bargaining history on this issue should not be considered in determining the outcome of this proceeding. The Union says past bargaining history is not listed as one of the explicit factors which the panel must consider listed in Act 312. The Union says the history of the pension contributions between the parties exceeds the scope of the Panel’s authority. The Employer, in its post hearing reply brief, says the Union’s view on this issue is incorrect. The employer points to Section 9(1)(i) of Act 312 which lists one of the factors the panel may consider which is:

“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.”

The Union’s post hearing brief contains a listing of the comparable communities’ defined benefit pension plans for firefighters, all of which are administered by MERS except for Harrison Township and Madison Heights. Several of those plans are similar to the Independence Township plan and others differ with respect to the multiplier, age of retirement, final average compensation calculation and other factors. The Union’s post hearing brief also listed a comparison of the comparable communities’ 2019 levels of the employer and employee contributions that fund pension plans. The Union notes that of all the comparable fire

departments, Independence firefighters contribute the greatest percentage of their income. And of all comparable municipalities, Independence Township pays the third lowest contribution rate. The Union argues that these charts make it clear that the Union's proposal is both reasonable and accommodating to the employer compared to many of the more favorable contribution ratios among the comparable communities.

The Union acknowledges that the parties have reached agreement relative to wage levels for the CBA for the period January 1, 2018 to December 31, 2019. (E-12). However, the Union points out that Act 312 provides for an analysis of overall compensation, including wages. The Union's post-hearing brief provided a chart comparing the wages paid to Independence Township fire fighters and the firefighters from comparable communities for the calendar year 2017. The comparison reveals that Independence Township firefighters wages are in the middle of the comparable communities' firefighter wages.

The Union urges the Act 312 Panel to adopt the Union's last offer of settlement with respect to article 24 of the CBA; approve the entire CBA, including all of the other provisions the parties have agreed to; order that the Panels' action take retroactive effect to January 1, 2018; and retain jurisdiction for a reasonable period of time in order to resolve any dispute that may arise over implementation of the award.

Discussion

The question before the Panel is – which proposal on Article 24, the sharing of the costs of the pension plan between the Employer and the employees, more nearly complies with the applicable factors in Section 9 of Act 312. Several Section 9 factors will be discussed below relative to the facts and evidence presented in this case, but all of the factors have been considered in reaching a decision on this issue.

Section 9(1)(a) requires the panel to consider the financial ability of the Township to pay and Sec. 9(1)(a)(i) the financial impact on the community; (ii) the interests and welfare of the public; and (iii) all liabilities. First and foremost, it is the opinion of the panel chair, based on the evidence presented, that the Township management is to be commended for its financial management. While a detailed comparison of comparable communities' financial reserves and

policies has not been conducted, based on this panel chair's familiarity with local government financial data in other Act 312 proceedings, Independence Township's financial management and policies are a model that many communities could follow. The reserve policies for both the General fund and the Fire fund give the Township a cushion in the event of a downturn in the economy. This certainly is in the residents' best interests and welfare. Fortunately, the Township has experienced and will likely continue to experience growth in millage revenue for both the General Fund and the Fire Fund as the Township grows.

It is also clear that the Township will have to increase its payments to the current MERS plan over the next several years if it is to meet its future obligations to its retirees. The issue in this case, ie: how best to balance who pays for the cost for the pensions of future firefighter retirees which will not go away with the decision in this Act 312 proceeding. The Employer has urged that the panel consider its decision based on the long view of the financial health of the Township and welfare of its residents. The Employer, in essence, is saying, in the long term, the Township cannot afford to bear the increased cost of the current pension plan alone. Either the current pension plan has to be revised or the employees will have to share a greater percentage of the pension costs.

The Union, on the other hand, emphasizes the Employer's ability to pay relative to its current financial capability and points to the reserve funds in both the Township General Fund Budget and the Fire Fund Budget. The evidence and testimony reveals that the Employer does *currently* have the ability to bear a little more of the increasing costs of the current MERS plan without a significant financial impact on the Township or negative impact on the welfare of its citizens. The Panel is faced with the choice of determining which of the LOS is the best choice given the *current* facts and situation. In other words, what will be the impact on the Township and the Union members by choosing one or the other.

In this case, because the Township has been very good at establishing and maintaining policies that provide reserve funds, it is *currently* better able to absorb the increased share of the increasing costs of the MERS pension fund than the Union members are. A review of what the Union members would have to pay toward the pension fund for 2020 if the Employer's LOS

were adopted reveals that even though the Union members would receive a 2.5% increase in wages beginning January 1, 2020 they would actually receive slightly less take home pay in wages in 2020 than they received in 2019 as a result of the increase in their contribution to the pension fund. The Employer, in its post-hearing reply brief, quotes the following statement of Arbitrator Theodore J. St. Antoine:

“The Chairperson of this panel is on record in a number of interest arbitrations that, to best preserve healthy, voluntary collective-bargaining, the soundest approach for an outsider in resolving Union and Employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful.”

This panel Chairperson shares Arbitrator Antoine’s view. It is hard to believe that the parties involved during the collective bargaining for this CBA would have reached agreement on a CBA that would have reduced the take home wages of the Union members from 2019 to 2020. With respect to wages, Sec. 9(1)(d)(i) requires consideration of comparisons of wages, hours, and conditions of employment with other employees performing similar services in other comparable communities. The Union’s post-hearing brief contained a chart comparing wages from the comparable communities for 2017. A review of the exhibits reveals that only two of the comparable communities (Brownstown Twp. , Harrison Twp.) identify wages for 2019 and only Brownstown Twp. Identifies wages for 2020. It is, therefore, difficult to make an accurate comparison of wages paid to fire personnel in comparable communities. However, based on the exhibits it is possible to conclude that currently at least two of the comparable communities are likely paying more in wages to their fire personnel (Harrison Twp. and Madison Heights) and two communities (Brownstown and Oxford Twp.) are paying less.

With respect to a comparison of wages, hours, and conditions of employment with other employees of Independence Township outside of the bargaining unit, (Sec. 9(1)(e)), the Employer pointed out that it contributes less to the pension for other Township employees than it does for the fire personnel. But the Union notes in its post-hearing brief that the other Township employees do not have a defined benefit plan, but rather a defined contribution plan and the Employer already is contributing a different amount for the defined contribution plan. This Panel chair would concur that it is difficult to rely heavily on this comparison.

When weighing the impact of choosing from the LOS offers, and considering the most recent inflation rate for the 12 months ending July 2019 of 1.8% related to a consideration of the average consumer prices for goods and services (Sec. 9(1)(f)) the impact on the Union members would likely be much more significant by adopting the Employer's LOS than the likely impact on the Township would be by adopting the Union's LOS.

Based on the testimony and evidence presented at hearing it would appear adopting the Union's LOS will result in the Employer having to pay an additional amount to the MERS pension plan for 2019 charges of approximately \$45,000 and an additional amount for 2020 charges of approximately \$108,000. However, by making this Award effective on the date it is issued, rather than retroactive to January 1, 2019, reduces the Employer's additional payment obligation for 2019 to approximately \$15,000.

Based on the testimony and evidence pertaining to the Union's LOS provision to cap the Union's membership's contribution by not counting any overtime hours over 25% of an employee's base wage, the panel chair agrees with the Employer's assessment that this would have minimal impact on annual contributions to the pension fund.

The Union argued that the Employer had several ways to fund the additional costs. It would appear one of those ways that would be least impactful for the Township in the short term would be to slightly reduce the contribution to the fire fund operating fund balance or fire fund Capital Improvement Plan (CIP) Fund balance for 2020. (E-16, pgs. 2,3). This would appear to have minimal impact on the Township for the short term. But, of course that is up to the Township to decide.

Fortunately, or perhaps unfortunately for the parties in this case, the result of the panel's decision in this case need not continue beyond December 31, 2020 when the current CBA expires. (E-12). The parties will have the "opportunity" to address this issue again as they enter negotiations for the CBA beginning 2021. The year 2020 will be a busy and critical time for the parties to address this issue again. With the CBA expiring in December the parties will likely want to engage in negotiations in mid-summer or early fall. Another MERS annual actuarial valuation report should be issued by June 30, 2020. The Township will also be preparing for the

August primary election and the November general election. According to hearing testimony, election of all Township Board members will be on the August primary and November general election ballots. And most importantly the renewal of the Fire and Emergency Services Operating Millage will be on the primary ballot.

The parties will have the opportunity - the responsibility - to review this issue during this period and consider the longer term perspective of how to fairly and appropriately balance the interests of the community involving maintaining fire and emergency services for the health and safety of their residents and maintaining sound fiscal responsibility. Again, the Panel chair views the current policy of depending only upon the Fire millage fund to support fire and emergency services as a sound policy. It appears the residents will support the continuation of the current fire millage level also. And it seems prudent to retain the policy of retaining a small amount of the fire millage, currently 0.10 mills, in reserve in the event the economy weakens. Township Supervisor Kittle's testimony in response to a question of his philosophy about maxing out the available fire millage is noteworthy:

"Trying to look at the overall well-being of the community, rating agencies look at one's ability to spend within one's means, and you are rated favorably if there is an opportunity where you don't see all of the approved millage levied — that's one reason. The second reason is that number will give me a little bit of wiggle room when the auto industry goes through one of its cycles, and it is going to happen because you cannot continue to run at the industry level that we have for so long, and all of these young people buying all of these houses with 3% down. The banks have fallen into that old habit so that if somebody loses their job, somebody doesn't have an equity in the house, they're going to walk. All of a sudden you start to get a lot of houses in your neighborhood you start to see comps fall, you start to see tax revenue. I've got a little emergency escape valve that hopefully will allow us to position ourselves so that if we do have to do something again, we have the ability to put together a plan and make it work." (Tr. pgs. 247-248).

The importance of maintaining the fire millage at its current level, not increasing it or decreasing it, appears to be justified and likely to be supported by the voters. But at the same time, it appears, based on a comparison of the comparable communities' recent experiences in addressing the structure of their pension plan benefits and the projections by MERS of future funding obligations, that the parties would do well to consider what, if any, modifications they

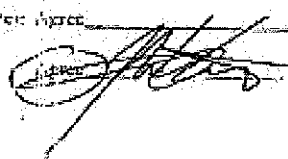
might want to consider that would be acceptable going forward which might result in reducing the costs over time. As noted in the quote from Arbitrator St. Antoine, the process of developing an appropriate pension benefit plan is best left to the parties, rather than an arbitrator who must choose from only two options. This is particularly true for a pension plan CBA issue which design is often times unique to the parties of that particular community. The listing of the recent modifications to some of the comparable communities' plans listed previously in the summary of the Employer's position provide some examples of possible discussion items.

Findings

On Issue #2 (Economic): Whether the parties should amend Article 24: Twenty-Four: Pension Plan, by adopting and incorporating the Employer's Last Settlement Offer or the Union's Last Settlement Offer, the Panel finds the Union's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The Employer will, therefore, beginning the effective date of this order, adjust the payments made by the Employer and Employees to the MERS payment obligations for 2019 and 2020 consistent with the Union's proposed LOS.

Effective Date: September 1, 2019.

Effective Date of the Award.

Employer:  Disagree



Union:  Disagree



6. AWARD

ISSUE	AWARD
<p>Article Twenty-Four: Pension Plan</p>	<p>B. "Each employee shall contribute an amount equal to 10% of the employee's gross wages, as that term is defined by the Municipal Employees Retirement System or the actual contribution rate as determined by MERS, whichever is less. In the event that the cost of the Michigan Employees' Retirement System plan adopted herein exceeds the employees' contribution of the employees' gross wage per calendar year, as specified herein, the Township shall pay the additional costs. The time of the above enumerated contributions, if made to the Michigan Municipal Employees Retirement System plan hereunder shall be in accordance with the provisions of said plan."</p> <p>"C. Employee overtime counted toward their final average compensation (FAC) shall be capped at 25% of the employee's individual annual base wage."</p> <p>[Re- letter the following subsections from C to D, D to E, and E to F]</p> <p>Effective Date: September 1, 2019</p>
<p>Articles 5, 15, 17, 19, 20,23, 25.A, 26.F, 27.A, 30,31,32,35,37,40,42</p>	<p>Revisions to these Articles stipulated to by the parties contained in Employer Exhibit (E-12) .</p> <p>Effective Date: September 1, 2019</p>

SUMMARY

This concludes the award of the Panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award.

Re: Independence Charter Township & Independence Professional Fire Fighters Association
MERC Case No. D 17 K-1056 (Act 312)

Witnessed by:
MERC Case No. D 17 K-1056 (Act 312)

Date: 9-16-19 William E. Long
William E. Long
Arbitrator/Rule

Date: 9-16-19

Arbitrator John Clark
Employee Delegate

Disagree with
the Award

Date: 9-10-19

Jack Wilson
Union Delegate

September 12, 2019

IN THE MATTER OF THE
ARBITRATION BETWEEN:

Independence Charter Township

And

Independence Professional Fire Fighters Association
(Local 2629)

MERC Case No. D 17 K-1056 (Act 312)

RECEIVED
2019 FEB 19 PM 12:33
STATE OF MICHIGAN
EMPLOYMENT OFFICE
DETROIT OFFICE

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Interim Opinion and Award

(Addressing the Issue of External Comparable Communities)

Arbitration Panel

Arbitrator/Chair:
William E. Long

Employer Delegate:
Attorney John Clark

Union Delegate:
Nick Wilson

Appearances

Attorney John Clark
Representing Independence Charter Township

Attorney Matthew Clark
Representing Independence Professional Fire Fighters Association

Date of Award: February 19, 2019

INTRODUCTION

This Interim Opinion and Award addresses the selection of comparable communities for which a comparison of wages, hours and conditions of employment will be made between employees involved in this proceeding with other employees performing similar services in public employment pursuant to Section 9(d) (i) of Act 312.

The Independence Professional Fire Fighters Association representing all full-time paid employees of the Independence Charter Township Fire Department except those employees in clerical positions with the Department and the Chief and two non-union Command Officers (referred to as the Union in this Interim Opinion and Award) and Independence Charter Township (referred to as the Employer in this Interim Opinion and Award) entered into negotiations for a Collective Bargaining Agreement (CBA) that would be a successor agreement to an agreement between the parties that expired December 31, 2017.

The Union and the Employer have been unable to resolve all disputed matters leading to a successor CBA and the Union filed a petition with the Michigan Employment Relations Commission (MERC) for Act 312 Arbitration on April 9, 2018. This impartial Arbitrator was appointed by MERC on September 24, 2018.

Two pre-hearing teleconferences were held. The first pre-hearing conference was held October 11, 2018. Following that pre-hearing conference the parties were remanded for further collective bargaining not to exceed three weeks. A second pre-hearing conference was held November 15, 2018. The parties stated that further collective bargaining resulted in the parties' agreement on a number of issues in dispute and were prepared to identify those issues that were tentatively agreed to during the hearing on the issues not agreed to.

The parties also stated they were not in agreement on a list of comparable communities to be used under sections 9(d)(i) and 9(d)(ii) of Act 312. They agreed that it would be necessary to resolve the issue of which comparable communities would be considered by the panel prior to proceeding with the hearing on the economic issues in dispute. In lieu of a hearing, the parties agreed to the following process to resolve the procedural issue of the comparable communities:

- On or before January 22, 2019 each party will submit to the other party and the independent arbitrator by electronic mail: The external comparable communities they propose be considered by the panel. If the parties are *not able to agree upon all external comparable communities* – each party will submit a list of external comparable communities they have agreed upon and those they propose be included and those they propose be excluded.
- On or before February 11, 2019 each party shall submit to the Independent Arbitrator by electronic mail a brief in support of their positions on the procedural issue of comparable communities along with supportive documents they may choose. Upon receipt of the written arguments and supporting evidence from both parties, the Independent Arbitrator will exchange that information to each party by way of electronic mail.
- On or before February 25, 2019 the Independent Arbitrator will rule on the procedural issues involving the comparable communities and provide that ruling to the parties by electronic mail.

On January 24, 2019 the parties submitted the proposed comparable communities as follows:

<u>Agreed upon by both parties</u>	<u>Additional Proposed By Union</u>	<u>Additional Proposed By Employer</u>
Brownstown Twp	Clinton Twp	Madison Heights City
Chesterfield Twp	Harrison Twp	
Northville Twp	Oxford Twp	
	Redford Twp	
	Roseville City	
	St. Clair Shores City	

Between January 24, 2019 and February 11, 2019 the parties conferred and reached agreement on communities for inclusion and exclusion as comparable communities except for one community. The Employer agreed to include Oxford Twp. and the Union agreed to include Madison Heights City. The Union agreed to not include Clinton Twp., Redford Twp., Roseville City and St Clair Shores City. Therefore, the only community the parties do not agree on for inclusion is Harrison Twp.

<u>Agreed upon by both parties</u>	<u>Additional Proposed By Union</u>	<u>Additional Proposed By Employer</u>
Clinton Twp.	Harrison Twp.	
Brownstown Twp.		
Chesterfield Twp.		
Northville Twp.		
Oxford Twp.		
Madison Heights City		

On or before February 12, 2019 the parties submitted briefs and supporting documentation in support of their positions on the inclusion or exclusion of Harrison Township as a community comparable to Independence Township for purposes of this Act 312 Arbitration.

Employer Position

Re: Including Harrison Charter Township as a comparable community.

The Employer's position is that *Harrison Charter Township should not be included in the comparable communities*. The Employer lists three important reasons in its Brief in support of excluding Harrison Charter Township as one of the comparable communities:

(1) Harrison Township is not comparable both in terms of population and taxable value as compared to Independence Township. The Employer included Exhibit #1 with its brief, which displayed the comparative 2016 populations of each township and the comparative 2018 real and personal taxable value of each township. The Employer noted that the population of Harrison Township is approximately 11,500 (32%) less than that of Independence Township and Harrison Township taxable value is almost \$660 million less (42%) than the taxable value of Independence Township.

(2) Harrison Township is not located in the same county as Independence Township. The Employer argues that by not being a surrounding community to Independence Township, Harrison Township should be excluded as a comparable community.

(3) Harrison Township has a Public Act 345 millage that funds its pension benefits. This differs from Independence Township funding for pension benefits that is from a fire millage to cover the costs of the operation of its fire department, including compensation and pension benefits.

Union Position

Re: Including Harrison Charter Township as a comparable community.

The Union's position is that *Harrison Charter Township should be considered a comparable community for this proceeding*. In support of including Harrison Charter Township as one of the comparable communities the Union points out that this Independent Arbitrator, when addressing the issue of comparable communities in previous arbitration proceedings, has considered and compared such factors as the size

of the community to be served, form of government, SEV and taxing authority, location of the comparable communities as they relate to the local labor market, population and other economic and demographic comparisons.

In its supporting brief, the Union refers to two previous Act 312 proceedings that this Arbitrator served as Independent Arbitrator for and used a comparability framework of either +/- 50% or +/- 45% variability from the subject community for each factor with factors falling within or near the 45% to 50% range more likely to be found as comparable communities than those communities with a majority of factors exceeding the 45% to 50% range. The Union notes that *In the Matter of Arbitration between City of Rochester Hills and Rochester Hills Firefighters Association, IAFF, MERC Case No. D11-G-0791, Final Opinion and Award, March 18, 2013*, this Arbitrator found communities comparable that shared 9 of 12 factors (75 percent) within the +/- 45 percent comparability range.

The Union developed and provided a chart which accompanied its brief that consisted of data on 10 comparability factors for Independence Township and each of the six communities that the parties have agreed are comparable communities plus Harrison Township which the parties have not agreed to. The Union points out that the chart shows that all but two factors for Harrison Township fall within +/- 45% comparability with Independence Township. The Union notes that the two factors outside that range are only barely outside – i.e. population density and geographic size, and exceed that range much less than the City of Madison Heights exceeds those same factors, which was a comparable community agreed to by the parties.

The Union argues that with eight out of ten factors within the comparability range this is still a greater percentage of similar comparable factors than the 9 out of 12 this Arbitrator accepted as comparable in the *Rochester Hills* Arbitration proceeding. The Union says Harrison Township meets any applicable standard for comparability with Independence Township and should be considered a comparable community.

DISCUSSION AND FINDING

Re: Including Harrison Charter Township as a comparable community.

Discussion

The Union correctly stated in its brief that this Arbitrator has compared such factors listed by the Union in its brief and chart when considering comparable

communities in previous Act 312 proceedings. In this case, even prior to receiving the briefs and supporting documents from the parties, I developed a chart comparing Independence Township and all the other potential communities originally proposed by the parties using the following criteria for comparison: 2017 population, 2017 population density per square mile, area in square miles, 2017 revenues, 2017 expenditures, 2017 SEV, 2017 taxable value, median household income 2013-2017, per-capita income, number of full time employees. I used a +/- 45% variability from Independence Township for each factor to determine which factors were either 45% greater or 45% less than that factor for Independence Township.

To their credit, the parties agreed to withdraw several communities from their final submissions of proposed comparable communities, most of which had a number of factors that fell outside the +/- 45% variability from Independence Township. The only one they disagreed upon is Harrison Township.

Using the +/- 45% variability criteria reveals that, as the Union notes, Harrison Township falls within that range in all but two of the ten criteria. And it is noteworthy that for the population density factor, Harrison Township is not the only community falling outside the +/- 45% margin. Northville Township, Chesterfield Township, and the City of Madison Heights, which the parties have agreed to as comparable communities, also fall outside the +/- 45% range for population density. And for the geographic size factor, Northville Township and the City of Madison Heights exceed the +/- 45%.

The Employer, in its brief and supporting documentation, focuses on population, taxable value, location and funding sources as factors that should exclude Harrison Township from being considered as a comparable community. But using the +/- 45% range as general criteria for comparison reveals that Oxford Township, which was agreed to as a comparable community by the parties, has less 2017 population than Harrison Township and lower taxable value than Harrison Township. And Harrison Township taxable value is 42% below that of Independence Township and therefore within the +/- 45% range.

The Employer argues that another reason Harrison Township should be excluded is because of its geographic relationship to Independence Township and that it is not in the same County. It is noteworthy that only one other agreed upon community (Oxford Township) is within Oakland County whereas two others, besides

Harrison Township, are within Macomb County and two others are within Wayne County.

The Employer also argues that another major difference is that funding sources for Harrison Township for Firefighter pensions differs from the funding sources for Independence Township. What is not known at this point is whether funding sources for Firefighter pensions from the other agreed upon comparable communities are similar to or differ from Independence Township. In any event, that is an issue that can be further clarified and considered by the panel during the hearing stage of this proceeding.

Findings

After considering the positions of each party on the issue of the inclusion of Harrison Township as one of the comparable communities, the Arbitrator finds the Union's position is the stronger position based on the applicable factors prescribed in section 9 of Act 312. **Therefore, Harrison Township will be included as a comparable external community.**

SUMMARY

This concludes the Interim Opinion and Award of the Panel.

Re: Independence Charter Township and Independence Professional Fire Fighters Association
MERC Case No. D17 K-1056 (Act 312)

Date: FEBRUARY 19, 2019



William H. Long
Arbitrator/Panel Chair

