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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969 AS AMENDED

*In the Matter of the Act 312
Arbitration Between:*

CITY OF OAK PARK, MICHIGAN

and

MERC Case No. D08 F-1001

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

ARBITRATION PANEL OPINION AND AWARDS

**George T. Roumell, Jr., Chairman
Howard L. Shifman, City Delegate
Kenneth E. Grabowski, Union Delegate**

APPEARANCES:

FOR THE CITY OF OAK PARK:

Howard L. Shifman, Attorney
Roy Srin, Assistant City Manager
John McNeilance, Director of Public Safety

FOR POLICE OFFICERS ASSOCIATION
OF MICHIGAN:

Kenneth E. Grabowski, Business Agent
Kevin Loftis, POAM Research Analyst
Erik Sanders, Local President
Matt Theisen, Local Vice President
Michael Hodailoskz, Union Secretary

Background

A. The City of Oak Park

The City of Oak Park is located in the southeast corner of Oakland County, southeast Michigan. The City's geographical area is approximately 5.5 square miles, with a population of 32,399, which reflects a rather recent annexation of portions of Royal Oak Township to the City

of Oak Park. Oak Park is bounded on the west by Ferndale, on the south by the City of Detroit and Southfield, on the north by the City of Berkley, and on the east by the City of Huntington Woods. (Tr. 9-10; City Budget, pg. 6)¹

The City is basically a residential community, but there are industrial areas, some apartment complexes and at least two high rises. (Tr. 11).

B. The Oak Park Public Safety Department

The City of Oak Park has a Public Safety Department, which means that officers perform both the function of law enforcement officers and fire fighters. The officers are cross-trained. They also furnish first medical response services to citizens. There are a total of 49 Officers in the unit, excluding Command. In 2008, the Officers experienced about 16,000 runs.² Oak Park Officers on an average have five cars on the road with a single officer on each of the two shifts, with the Officers working 12-hour shifts, 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m. The average number of runs per Officer per shift is 15, but this can vary and can go as high as 60. The Officers are in a community that has experienced homicides and robberies. Though a rather small suburban city, the Department has experienced some of the crime associated with large urban communities because of Oak Park's geographical location.

In terms of fire fighting, Oak Park, though being a bedroom community, as already noted, does have industry, businesses and some high rise apartment buildings that present fire fighting

¹ The reference to "Tr." is to the transcript of the arbitration hearing. The reference to UE will be to Union Exhibits. The reference to Book "Bk" and "Tab" will be to the exhibits presented by the City.

² According to a May 21, 2009 report prepared by John McNeilance, Public Safety Director, the Public Safety Department "recorded a total of 17,995 calls for service in calendar year 2008. The calls for service involved the reporting of multiple offenses as part of a single incident. Therefore, actual reported offenses are higher than the number of calls for service."

challenges. (Tr. 6-13; Bk. 1 Tab 4).

C. The Public Safety Bargaining Units

The Police Officers Association of Michigan represents the bargaining unit consisting of the rank and file Public Safety Officers employed by the City of Oak Park. POAM and the City have a Collective Bargaining Agreement effective July 1, 2006, expiring June 30, 2010. The Agreement as to wages provides:

Effective July 1, 2008 (Wage Re-opener)
Effective July 1, 2009 (Wage Re-opener)

The Police Officers Labor Council represents the Command Officers of Oak Park's Public Safety Department. The POLC and the City of Oak Park have a collective bargaining agreement signed on August 4, 2008, covering the period from July 1, 2008 through June 30, 2011.

D. The Procedure

As noted, in the POAM contract there was a wage reopener for the last two years of the contract, namely, beginning July 1, 2008 and July 1, 2009.

The parties entered into negotiations, utilized mediation, and were not able to reach agreement.

As a result, the Association filed a petition pursuant to Act 312 of Public Acts of 1969 under the date of October 9, 2008, with the Petition reading:

The Petitioner has engaged in good faith bargaining and mediation and the parties have not succeeded in resolving the disputed matters. The following is a list of any issues in dispute and the related facts thereto:

1. Wages (7/1/08 wage reopener)

The Undersigned, George T. Roumell, Jr., was appointed Chairman of the Panel.

Kenneth E. Grabowski is the Association's Union Delegate. Howard L. Shifman is the City's Delegate.

Following a pre-trial hearing in this matter, limited to the issue of wages for the July 1, 2008-June 30, 2009 and July 1, 2009-June 30, 2010 period, a hearing was held on May 28, 2009 where testimony was taken and exhibits presented. Subsequently, the City, by letter dated June 4, 2009, moved to reopen the hearing to introduce additional evidence concerning information as to the City's financial condition. Likewise, the POAM, by letter dated August 6, 2009, in effect moved to reopen the hearing to introduce additional information concerning a COPS hiring recovery program announcement dated July 28, 2009. The City responded in a letter dated August 12, 2009. The Union had responded previously to the City's motion to reopen. The Chairman granted both motions and considered the evidence presented as a result of the motions to reopen, including arguments that were made concerning same.

The Criteria

In determining an award, a Panel under Act 312 is required to follow the statutory criteria set forth in Section 9 (MCLA 423.239) of Act 312. Article 9 reads:

Where there is no agreement between the parties, or where there is an agreement but the parties 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, as applicable.

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment

of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

- (i) in public employment in comparable communities
 - (ii) in private employment in comparable communities.
- (e) The average consumer prices for good and services, commonly known as the cost of living.
 - (f) 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.
 - (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (h) Such other factors, not confined to the foregoing, which 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.

There is no question that an Act 312 arbitration panel is expected to consider all of the Section 9 factors in making an award. But as the Michigan Supreme Court has noted in *Detroit v. DPOA*, 408 Mich 410 (1980) at 484:

... Since the § 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all “applicable” factors must be considered. ...

Though the majority as to each year at issue did consider all of the factors, consistent with the Supreme Court’s opinion in *Detroit v. DPOA*, there were certain key criteria, namely, 9(c) “the financial ability of the unit of government to meet those costs,” 9(d) comparability which

would include both internal and external comparables, 9(e) the consumer price index, 9(f) overall compensation, and 9(h) the other factors criteria which would include the bargaining history and the general economic climate.

In the case of Oak Park, the bargaining history has some value, particularly when comparing with the wages negotiated by the Command Officers.

The Last Best Offers

As noted, the wage reopener was for two years covering periods from July 1, 2008 through June 30, 2009 and July 1, 2009 through June 30, 2010, which dates coincide with the July 1-June 30 fiscal year utilized by the City of Oak Park. The Chairman asked the parties to submit Last Best Offers for each of the two years. This, they did.

Pursuant to Section 8 of Act 312 MCL 423.238, the POAM submitted the following Last Best Offer:

FIRST YEAR WAGES - 2008

The Union's last best offer is a one-half percent (0.5%) increase on July 1, 2008 and an additional one-half percent (0.5%) on January 1, 2009 for all steps contained in the collective bargaining agreement.

Wages to be retroactive to July 1, 2008 for all hours compensated.

SECOND YEAR WAGES - 2009

The Union's last best offer is a one and one-half percent (1.5%) increase on July 1, 2009 for all steps contained in the collective bargaining agreement.

Wages to be retroactive to July 1, 2009 for all hours compensated.

The City of Oak Park submitted the following Last Best Offer for each of the two years:

Issue No. 1

The City's position in the Act 312 Arbitration is:

Effective: July 1, 2008 0%

Issue No. 2

The City's position in the Act 312 Arbitration is:

Effective: July 1, 2009 0%

It is these Last Best Offers that are now before the Panel for decision.

The External Comparables

Public safety departments, because of cross-training and cross-responsibilities – fire and police – tend to have higher wages than stand-alone police departments or stand-alone fire departments. The parties recognized this and agreed on the following comparables with communities having public safety departments:

OAK PARK PSOA WAGE COMPARISON - PUBLIC SAFETY OFFICER WAGES AT TOP STEP					
Date Ratified		7-1-06	7-1-07	7-1-08	7-1-09
	Oak Park	67,307	69,327	Expired	
	Percentage Increase	3.00%	3.00%		
12-2-08	Berkley	57,525	58,676	59,849	61,046
	Percentage Increase	2.00%	2.00%	2.00%	2.00%
12-21-07	Beverly Hills	62,541	64,105	65,708	67,351
		(1-1-06)	(1-1-07)	(1-1-08)	(1-1-09)
	Percentage Increase	2.50%	2.50%	2.50%	2.50%
10-15-07	Bloomfield Hills	59,440	61,223	63,060	Expires
	Percentage Increase	3.00%	3.00%	3.00%	
10-13-08	Center Line	55,782	56,340	56,904	Expires
	Percentage Increase	1.00%	1.00%	1.00%	
12-29-08	Farmington	59,090	60,863	62,689	64,570
		(1-1-06)	(1-1-07)	(1-1-08)	(1-1-09)
	Percentage Increase	3.25%	3.00%	3.00%	3.00%

5-28-08	Fraser	60,398	62,210	63,766	Expires
	Percentage Increase	2.00%	3.00%	2.50%	
12-19-06	Grosse Pointe**	56,451	58,427	60,195	Expires
	Percentage Increase	3.50%	3.50%	3.00%	
	Grosse Pointe Farms	58,932	60,700	62,521	Expires
	Percentage Increase	3.00%	3.00%	3.00%	
	Grosse Pointe Park	59,556	61,640	63,490	Expires
	Percentage Increase	3.50%	3.50%	3.00%	
9/16/08	Grosse Pointe Shores	58,790	60,554	62,370	64,241
	Percentage Increase	3.00%	3.00%	3.00%	3.00%
	Grosse Pointe Woods	59,512	61,297	63,136	65,030
	Percentage Increase	3.00%	3.00%	3.00%	3.00%
7/11/07	Huntington Woods	60,136	61,940	63,798	65,712
	Percentage Increase	0%	3.00%	3.00%	3.00%
	Comparables Average	2.48%	2.79%	2.67%	
	Percentage Increase				

***Grosse Pointe City also receives a \$500 lump sum COLA payment each January 1st and July 1st. Officers also receive an additional 80 hours of pay per year as a premium for working 12 hour shifts.*

The above chart was presented as Union Ex. 1 and with some minor exceptions corresponds with a similar chart prepared by the City in Bk.1 Tab 7.

In analyzing the external comparables, the Chairman notes that the Oak Park Public Safety Department non-supervisory officers have been the highest paid in recent years as compared to other comparable public safety departments. And without any increase in wages for 7/01/08 or 7/01/09, based upon the settled contracts for 7/01/09 and any possible trends as to those contracts that have not been settled, Oak Park will continue to have the highest paid department among the comparables, even based upon the 7/01/08 rate not being changed in these proceedings. It is true that as of 7/01/06, in comparison with Beverly Hills, Oak Park was

approximately \$5,000 ahead of Beverly Hills; that if there is no change in the Oak Park wages, Beverly Hills (now at \$67,351) will only be behind Oak Park by approximately \$2,000. Another high paid community is Huntington Woods who as of 7/01/06 was about \$7,000 behind Oak Park. Without a change, after 7/01/07, Huntington Woods at \$65,712 for 7/01/09 would now be about \$3,500 behind Oak Park.

Yet, Oak Park will continue to be the leader in base salary among the comparables. The comparable chart does indicate that the other communities in some cases were attempting to catch up to Oak Park as revealed by their wage patterns. This would be a normal phenomena when there is a leader. But the fact is that Oak Park continues to lead.

The average percentage increase is 2.48 for 7/01/06, 2.79 for 7/01/07, and 2.67 for 7/01/08. For 7/01/06 and 7/01/07, Oak Park was providing 3% wages above the average. A number of communities were providing 3% increases although Berkley was providing 2% increases and Center Line, during the period from 7/01/06 forward, was providing 1% increases. In 7/01/06, Huntington Woods actually had a zero increase.

As the State Budget Notes, a publication of the Citizens Research Council of Michigan, suggested in its January 2009 issue there is a “downturn in the national economy” and a “current economic recession.” Bk. 1 Tab 13. One could take note that most commentators believe that the economic downturn began to accelerate some time in 2008.

This factor has caused this Chairman to make an interesting observation. Of the 13 comparable communities, excluding Oak Park, six do not have contracts beyond 7/01/09, a period in which there is high unemployment in Michigan, difficulties in the auto industry and a continued national recession.

Four of the contracts were ratified in 2007 before the present downturn. Two of the ratified contracts in 2007 – Beverly Hills and Huntington Woods – have wage increases including 7/01/09. The Chairman recognizes that there was one contract that was ratified in September 2008 that did include an agreement for wages for 7/01/09, namely, Grosse Pointe Shores. The same is true for Beverly Hills. But in Beverly Hills' case, the agreement involved 2% wage increases or a total of 8% for four years, whereas Oak Park in the settled contract had 6% for two years.

In other words, Oak Park still is a leader, even if there are no wage increases in 7/01/08 or 7/01/09; that the other communities in some cases were attempting to catch up to the leader; that almost 50% of the contracts do not cover 7/01/09 where the economic recession in Michigan is still prevalent; that at least one of the communities that settled in December 2008 (Berkley) has an increase of 2% suggesting that, even if the Panel adopted one or both of the Union's Last Best Offers, the percentage increases over four years would approximate the percentage increases of at least one community that settled during the height of the recession in Michigan. This cannot be said to be the case for Farmington or Grosse Point Shores that settled in each year in the 3% range. Nevertheless, with the number of contracts not settled, the existence of a recession and Oak Park still leading, although not as much as the officers in Oak Park once did, the external comparables are not as persuasive as they may have been in different times and different circumstances.

The Internal Comparables

There are three other bargaining units in Oak Park, namely, the Oak Park Dispatchers Association, represented by the Police Officers Association of Michigan; general employees

represented by AFSCME Local Union No. 513; and the Public Safety Department Command Officers, represented by the Police Officers Labor Council. The Oak Park Dispatchers Association contract expired June 30, 2008, as did the AFSCME contract. With the exception of the Command Officers, the City has not reached agreement with any other bargaining unit beyond July 1, 2008. The City has “told everybody that we are not giving pay raises.” (Tr. 48). As to the Command Officers, the City has negotiated the contract effective July 1, 2008 through June 30, 2011.

Article IX, “Wage Benefits,” in the Command contract provides in part:

Salaries as of July 1, 2008, which includes a zero increase in base wages
... salaries as of July 1, 2009, which includes a 1.5% increase in base
wages ... salaries as of July 1, 2010, which includes a 2% increase in
base wages.

Article IX also provides, “In the event the Oak Park Patrol Officers should receive a higher percentage wage increase in any single year during the life of this contract than the Oak Park Command Officers, then the higher wage increase shall also apply to the Command Group.”

In summary, the Command contract for 2008 is a zero increase, for 2009 a 1 ½% increase, and goes out to 2010 providing for a 2% increase. The Command contract also provides for a “me too” clause, meaning that if the Patrol Officers receive a higher wage, then this will be passed on to the Command Officers.

What the “me too” clause seems to recognize is that there is a relationship or ratio between the Command Officers and the Public Safety Officers; that the City, when entering into the contact with the Command Officers in August 2008, by agreeing to a “me too” clause, seemed to acknowledge the relationship. The City, with the Command Officers, at least within the Public Safety Department, seemed to have set a wage pattern for 2008-2009, 2009-2010.

As noted, the Command contract was signed on August 4, 2008, about the time that the country was recognizing that the economy was in recession and that the auto industry in Michigan was having financial difficulties.

The Chairman notes that the Last Best Offers of both the POAM and the City are contrary to the Command pattern. The City is now proposing zero increases for each of 2008 and 2009. The Union, though agreeing to a 1 ½% for 2009, seeks a higher wage increase than the Command for 2008. The question raised by this record is what is the reason for both parties seeking to deviate from the pattern set by the Command Officers at the very time that the re-opener was taking place and the recession was beginning to set in?

The City's Ability To Pay (Economic Criteria)

A. Overview

The City's actual revenue for 2007-2008 was \$21,138,818. The City's expenditures for 2007-2008 was \$21,380,683 for an approximate shortfall of \$242,000. The estimated revenues for 2008-2009 are \$21,160,394. The estimated expenditures are \$21,201,463 for a shortfall of approximately \$40,000. This is an estimate. The approved budget for 2009-2010 is for expenditures and revenue to be the same – \$20,921,098. This approved budget included taking \$300,000 from the City's fund balance and included revenue from a recently passed public safety millage. In addition, in order to balance the budget, six full-time positions, including four Public Safety Officers in various programs, were eliminated.

The Chairman is led to believe that both the estimated expenses for 2008-2009 and the approved budget for 2009-2010 included no raises for any employee except the Command Officers contract.

The largest single item for expenditure in the 2009-2010 budget is for public safety, namely, \$9,600,551. Bk. 1 Tab 8 is a statement that the City paid 20% of the general fund budget for retiree costs, leaving 79% for service operations. There is a chart under the same tab that suggests that retiree benefits are 9.1% of the budget. In any event, the public safety wages and fringe benefits account for 43.83% of the budget. Municipal employees' wages and benefits account for 19.41% of the budget. 26.85% of the budget is allotted to utilities and other expenses.

There also was a representation that the payment for health benefits for retirees amounts to \$1,976,724 annually, which is about equal to those for employees working, namely, \$1,977,199.

The point is that the Public Safety Department portion of the City's budget is approaching 45% and, but for the reduction of four employees, may have been a higher percentage. Public Safety is a major portion of Oak Park's expenditures.

B. The City's Revenue Sources and the Recession

Oak Park, as of 2008, had the highest total millage in Oakland County at 24.6704. Huntington Woods by contrast had 21.8038. Farmington Hills had 11.6072. Berkley had 12.4304. Oak Park's actual operating millage has been rolled back from 20 mills to 17.3563 pursuant to applicable statute. Property taxes constitute 62% of the fiscal year 2009-2010 budget. According to the Oak Park Report published in the summer of 2008 by the City, the average market value of a home in Oak Park is \$104,000, with a taxable value of \$52,000. In 2000, there were seven foreclosures in Oak Park. In 2008, there were 395 foreclosures for an increased jump of over 5642%. Because of the drop in taxable value from \$728,574,000 to

\$714,688,000 in 2009, property tax revenues are expected to drop for fiscal year 2009-2010.

In 2002, 25% of the budget came from state shared revenue, namely, \$4,746,910. By 2008, state shared revenue had dropped to \$3,856,290, or 18.8% of the budget. It is recognized that the State of Michigan has financial difficulties and has been cutting back on state shared revenue. The State, as already indicated, has cut back the City of Oak Park's state shared revenue and at the present is leveling off at about 18.20% of the budget unless the State further cuts. Ordinance fines for fiscal year 2009 were about \$1,800,000, but by year's end fiscal year 2008-2009 the amount is estimated to be \$1,600,000 because 882 fewer tickets were written in 2008 than in 2007. Licenses and permits are expected to bring 17.78% less revenue than was budgeted for 2008-2009, or \$57,725. Interest income likewise is expected to be reduced from \$260,360 in 2008 to \$116,000 in 2009.

The above information establishes that the City of Oak Park's sources of revenue are contracting primarily because of the recession which has affected the State of Michigan's revenue sharing and the limitations on the City to raise additional revenue. The City has over the years established a fund balance. At the end of June 30, 2005, this unreserved fund balance was \$2,122,398. The estimated fund balance at the end of June 30, 2009 was \$1,467,058. There is a projected negative fund balance for June 30, 2012 of \$1,762,522 unless the City can cut costs and find new sources of revenue. Presently, the projected fund balance for 2009-2010 will be approximately 7.01% of revenue and expenditures. In 2005, the percentage was approximately 10.83% and in 2005-2006 it dropped 8.91%. In 2007-2008, the fund balance dropped to 7.93%. There is a drop in the fund balance for 2009-2010 because of the transfer of the \$300,000 from the fund balance. The City did present a document, "Elected Official Guide to Fund Balance and

Net Assets”, published by the Government Finance Offices Association that recommended “that general purpose governments maintain an unreserved fund balance at no less than 5-15% of regular general fund operating revenues and 8-17% (*i.e.*, one to two months) of the regular general fund operating expenditures.”

The 2009-2010 budget as proposed to the City Council sustained the statement that the policy of the City was to attempt to have a 10% reserve. As of this point, the reserve fund is still within recommended limits. But unless the City can find new revenue or control its costs, this reserve could very well evaporate. In fact, one of the reasons there was a motion to reopen the record was that the City was to present a letter dated June 1, 2009, signed by Daniel P. Gilmartin, Executive Director and CEO, Michigan Municipal League, addressed to Mayor Gerald E. Naftaly and James Ghedotte, City Manager, which in part read:

June 1, 2009

Hon. Gerald E. Naftaly, Mayor
Mr. James Ghedotte, City Manager
Oak Park
13600 Oak Park Blvd.
Oak Park, MI 48237-2090

Dear Hon. Gerald E. Naftaly and Mr. James Ghedotte,

I am sending this letter to inform you that we have received a list from the Michigan Department of Treasury of communities that they believe are at risk of facing financial distress based on the department’s estimated fund balances for the municipalities. Oak Park is one of the 70 communities on that list. We wanted to pass this information along to you and make you aware that this data is being communicated. This is an updated list from what was released in December based on new projected statewide taxable value declines (3.8 percent decline in 2009 and 6.8 percent decline in 2010).

* * *

One of the reasons that the City is faced with financial problems is that the actuarial

value of the pension assets has decreased from \$77,000,000 in 2002 to \$64,000,000 as of June 2008. Between June 30, 2008 and March 31, 2009, the assets have further decreased by \$14,351,993. The result is that the City's annual pension contribution has increased from 2.9 million in fiscal year 2008 to over 3.3 million in fiscal year 2009. The Employee Retirement System has a funded ratio of 72.8%, whereas in 2002 the funded ratio was 103%.

C. The Public Safety Millage

The City for the first time in history, recognizing the need to have funds for public safety, did go to the citizens for a special Public Safety Dedicated Millage. On August 5, 2008, the city placed two propositions on the ballot – a “partial Headlee override millage increase proposition for public safety proposal.” The first proposition would provide a one mill increase on taxable value of all property for a period of ten years from 2008 through 2017. The second proposition would add a second mill increase beginning fiscal year 2009-2010. Millage 1 was estimated for 2008-2009 to add \$728,574. The 2009-2010 Millage 1 was estimated to increase the millage to \$760,032. If Millage 2 passed, the increase in 2009-2010 for the two millages would be \$1,457,148. Millage 2 did not pass. Millage 1 did pass. However, with decreasing home values, the millage is estimated to now bring in \$714,000. This money has been included in the 2009-2010 budget as part of the attempt to balance the budget.

D. The Cost of the Union's Last Best Offer

In discussing the cost of potential proposals of the Union at the time of the hearing, Kevin Loftis, Research Analyst and Business Agent for POAM, testified:

On August 5, 2008, the voters of the City passed a one mill millage increase dedicated to funding the Public Safety Department. The estimate for the increase to the City was \$728,000.

At the top line, it shows total PSO wages for 2008, that is members of this bargaining unit, and that was obtained from the City records through a Freedom of Information request. It shows that it was just over \$4 million was the total payroll.

The cost of a 1 percent wage increase just for pay would amount to \$40,632. If a 2 percent wage increase was granted, the cost to the City in wages only would be \$81,264, comparing to the \$728,000 that they realized in the millage increase.
(Tr. 26-27).

The City's estimate of the cost of a 1% increase is \$53,223. (Tr. 59-60; Bk 1 Tab 15).

The Chairman believes that the City's estimate is more accurate because the City's exhibit includes base wage, overtime pay, longevity pay, other pay and the cost associated with workers compensation, retirement contributions, contributions for dental, health and life insurance, as well as FICA, Medicare and clothing. These are all costs associated with any increases in wages.

Using the City's approximately \$53,000 figure for a 1% increase, the Union's Last Best Offer for 2008 and 2009 was at a cost of an approximately \$40,000 for 2008 and \$120,000 for 2009, including approximately \$80,000 for the 1 ½% increase and the \$40,000 that would be rolled over into the base from the 2008 increase.

Obviously, with the City's Last Best Offer for 2008 and 2009, respectively, as zero increases, there is no added built in cost in operating the Public Safety Department as far as the Public Safety Officer Unit is concerned. The City supports its position by noting that it is facing difficult financial times with a number of variables including dropping property values affecting tax revenues, dropping state aid, and reduction of income from fines and interest, along with unanticipated pension and retiree costs that are to be funded.

The Union has given recognition to these difficult times by proposing wage increases that are substantially less than the 3% that the Patrol Unit received on 7/01/06 and 7/01/07. Yet,

even with modest proposals, there is a cost of approximately \$160,000 over the two years to the City, including about \$120,000 based on the roll up in 2009-2010 where the City has already moved \$300,000 from its fund balance to balance the budget.

As already noted, the issue of the City's financial ability caused the City to move to reopen the record to introduce the June 1, 2009 letter from Daniel P. Gilmartin, Executive Director and CEO of the Michigan Municipal League, concerning the City being placed on a financial distress list based upon estimated fund balances. Likewise, POAM's motion to reopen was for the purpose of introducing a COPS Hiring Recovery Program Announcement - Summary for Michigan - July 28, 2009. That summary announced federal grants to certain Michigan communities to fund officer positions. This announcement as to Oak Park noted:

<u>Name of Grantee</u>	<u>Grant Amount:\$</u>	<u>Officer Positions</u>
Oak Park Department of Public Safety	\$852,084.00	3

The announcement was assuming that the \$852,084 would fund three officers. The Chairman notes that, in preparing the 2009-2010 budget, the City chose not to fill four positions in the Patrol Unit in the Public Safety Department. In fact, according to Public Safety Officer Erik Sanders, the number of Public Safety Officers "has steadily gone down." (Tr. 14).

There is no question that the COPS Grant, which presumably was as a result of an application from the City, will permit three officers to be employed. The City by its counsel, in response to the motion to reopen, by a letter dated August 12, 2009, noted in part:

As the Arbitrator is I am sure aware, the COPS Grant does not pay the full cost of the 3 additional Officers. The City is pleased to have received the Grant which pays for a significant portion of the 3 additional Officers.

This does not change the fact, however, that the City still must

have the ability to pay for not only part of these additional Officer wages and benefits, but for all of our existing public safety officers as well as the remainder of our City Employees and all of the other functions which are crucial to the City and its residents.

The Chairman was not presented with the terms of the Grant to appraise the comments as to what percentage or whether the Grant would cover the total cost of the three officers. In any event, the Grant does represent additional monies that the City had available in regard to its Public Safety Department.

The Bargaining History

The Section 9(h) factor in Act 312 permits an Act 312 Panel to consider criteria that are sometimes considered by fact finders. Among these criteria is the bargaining history. The bargaining history as to the Public Safety Department in the City of Oak Park is intertwined between bargaining with the Command Unit and bargaining with the Patrol Unit. As already noted, the Command did reach a three year collective bargaining agreement apparently in June 2008, but signed on August 4, 2008 with a wage increase on July 1, 2008 of zero percent, July 1, 2009 of 1.5% and July 1, 2010 of 2%.

The wage re-opener for POAM is for two years – 2008 and 2009 – two years covered by the Command contract. The perplexing question is, with the Command establishing a pattern, just why this pattern was not followed with the Public Safety Officers. There was a suggestion that the City at one time may have well offered the same economic package to the Officers bargaining unit including 2% for 2010. Somehow, the parties were not able to reach agreement.

A nagging question is what was the reason for the parties not being able to settle for at least 2008 and 2009 based upon the Command pattern? Both parties have now made Last Best Offers contrary to the Command Officers pattern with the City offering zero increases for both

2008 and 2009 and POAM, though accepting the Command pattern for 2009 at 1 ½%, is proposing an increase in 2008 which was not agreed to with the Command.

The Command pattern is a nagging issue when compared with three factors. The external comparables as explained do not support a deviation from the Command pattern. The Command pattern, as will be noted below, came at the time of the economic slow down. The Command pattern, even with the start of the economic slow down, came about when the citizens of Oak Park voted a one mill increase which made over \$700,000 available annually for ten years to the Public Safety Department. It is these factors, when viewing the bargaining history, that influenced the Chairman.

Analysis

In an attempt to persuade the Chairman to vote to accept the Last Best Offers of the City for 2008 and 2009, respectively, the City in Bk. 1 Tab 16, in discussing the millage and the reason for the City's Last Best Offers, noted:

The millages were intended to produce revenue based upon figures in June, 2008 the following:

	2008-2009	2009-2010
Millage 1:	728,574	760,032
Millage 2:	728,574	1,457,148

The Patrol Officers were made the same offer and declined. They also chose not to support the millage. Only one mill passed.

Subsequent to the passage of the millage, the following has occurred:

1. The original millage which was anticipated to produce 728,574 in June 2008-09 is now only producing 714,688 this year and that figure will continue to decline.
2. Property values have tumbled and the City will continue

to be losing hundreds of thousands of dollars moving forward due to declining revenues. Beyond that, growth and property tax revenues have generally been in the area of 4% and, instead, not only will it not be increasing, they will actually be declining.

3. The City has an underfunded pension system. That underfunded pension system has now lost approximately 23.9% of its value which is 14,351,993 million.

June 30, 2008 = \$59,826,548
March 31, 2009 - \$45,474,555

4. State Revenue Sharing is clearly at risk. The City's Budget is 18% dependent on State Shared Revenue at this point in time. The two biggest components of its budget – property tax revenue and state shared revenue – are clearly risk. The formula for constitutional revenue sharing will result in a loss and the statutory revenue sharing is at risk due to the continuing economic decline in the State including the loss of jobs in the automotive industries, suppliers, and up and down the retail and service chain. In fact, the week of exhibit exchange Revenue Sharing was cut.

The offer made by the City in June, 2008 did not anticipate any of these dramatic changes in the economy.

There was a statement made that the Public Safety Officers did not support the millage.

There is nothing on this record that suggests this. Furthermore, the statement seemed to confirm that the Public Safety Officers at one point were offered the same increases that the Command received.

The Chairman recognized the economic points made in the above statement. They have not been ignored.

However, the statement ignores the fact that the Command contract offer was made in June 2008 and the contract was signed on August 4, 2008. At the time the FY 2008-2009 estimate of the unreserved fund balance as a percentage of revenue and expenditures was 6.93% (revenue) and 6.92% (expenditures) as contrasted for FY 2007-2008 of 8.02% (revenue) and

7.93% (expenditures). Currently, the FY 2009-2010 projected percentage of revenue and expenditures is 7.01%. True, unless there are some readjustments, the reserved balance can drop dramatically in 2010-2011 and 2011-2012.

In addition, in 2005 there were 118 home foreclosures in Oak Park. This more than doubled in 2006 to 258. By 2007, the home foreclosures had jumped to 318. In 2008, the home foreclosures in Oak Park was 395.

In 2006, the City received \$3,939,130 in state aid for 19.11% of its budget. In 2007, there was a drop in the amount to \$3,821,823 for a drop of 18.07%. In 2008, the same amount was received. There is no question that there is a distinct possibility that state aid will be further reduced.

Nevertheless, the City of Oak Park, when the beginning signs of the recession were appearing, *i.e.*, the home foreclosures in an era where state aid was dropping, and where its fund balance was dropping, the City agreed to a three year package with the Command Officers that included a zero percent for 2008, and a 1 ½% for 2009. Superimposed on signs that there was an economic downturn, the City did pass the millage that, though having less value than anticipated, still brought in over \$700,000 dedicated to public safety.

This Chairman takes seriously the economic factor and cannot ignore it. This is the reason why the Chairman would agree with the City that in 2008 there should be a zero increase for this was the pattern set by the Command for that year when the economic downturn was setting in. The Association has not established any reason, either by the comparables or otherwise, why there should be different treatment in 2008 for the Patrol. There was a suggestion that there are some different economics in the Command contract such as the food allowance.

There were also some claims concerning comp time. But these differences were not sufficient to overcome the pattern, recognizing, to repeat, that the contract at issue will be up for negotiations in 2010 and any alleged differences can be addressed at the time in the give and take of bargaining.

Furthermore, any increase for the Public Safety Officers for July 1, 2008 to June 30, 2009, by virtue of the Command “me too” clause, would add unanticipated cost to a difficult financial situation.

On the other hand, as to 2009, despite the economic downturn, as pointed out, the City of Oak Park was willing to give the Command a 1 ½% increase, even though the economic downturn signs were there and were already affecting the City of Oak Park. The City did take a defensive action by putting the millage on the ballot and having at least one mill pass. When the Chairman balanced what the City did in June-August 2008 with the passage of one mill and the City’s economic situation, the Chairman was not convinced that in these circumstances the City should not continue the pattern. Yes, it will add costs. But the City made that decision in 2008 when this re-opener took place by agreeing to the Command pattern against a background with obvious signs of a financial downturn in Oak Park.

Under the circumstances, the Chairman believes that, considering the factors as discussed, there should be a 1 ½% increase in wages commencing July 1, 2009, retroactive to July 1, 2009.


Thus, the Chairman will vote with the City Delegate in accepting the Last Best Offer of the City of no increase from July 1, 2008 to June 30, 2009 and by doing so will have a majority for the Last Best Offer of the City for 2008.

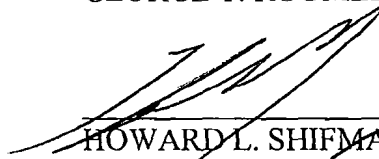
The Chairman will vote with the Union Delegate and adopt the Last Best Offer of the Union of a 1 ½% increase for all steps contained in the Collective Bargaining Agreement effective July 1, 2009 through June 30, 2010, retroactive to July 1, 2009 and by doing so will have a majority for the Last Best Offer of the Union (POAM) for 2009.

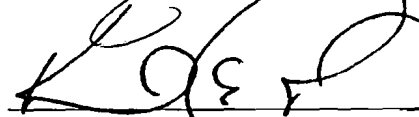
The City Delegate hereby registers his dissent from the Award for July 1, 2009 - June 30, 2010. The POAM/Union Delegate hereby registers his dissent from the adoption of the City's Last Best Offer for July 1, 2008 to June 30, 2009.

AWARD

1. The Last Best Offer of the City of Oak Park of no increase in wages from July 1, 2008 to June 30, 2009 is adopted.


GEORGE T. ROUMELL, JR., Chairman 8-21-09


HOWARD L. SHIFMAN, City Delegate

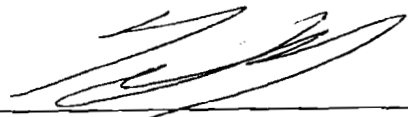

KENNETH E. GRABOWSKI, Union Delegate
Dissenting 8-21-09

2. The Panel adopts the Last Best Offer of POAM for the year 2009 in that there shall be a 1 ½% increase for all steps contained in the Collective Bargaining Agreement effective July 1, 2009 through June 30, 2010, retroactive to July 1, 2009.


GEORGE T. ROUMELL, JR., Chairman 8-21-09

 8-21-09

KENNETH E. GRABOWSKI, Union Delegate



HOWARD L. SHIFMAN, City Delegate

Dissenting

Dissenting

August 21, 2009