STATE OF MICHIGAN

DEPARTMENT OF LABOR and REGULATORY AFFAIRS

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration

Under Act 312 (Public Acts of 1969)

Wayne County Airport Authority,

Employer,

-and-

MERC Case No. D09 G-0830

Detroit Metro Fire Fighters Association,

Local 741

Union.

OPINION AND AWARD

Chairman of the Arbitration Panel:	Kenneth P. Frankland
WCAA Delegate:	Linda L. Richey
Union Delegate:	Ronald R. Helveston
Representing Union:	Ronald R. Helveston
	Michael D. McFerren
Representing WCAA:	Gary R. Danielson
	Kenneth M. Gonko

Pre-Hearing Conference	August 19, 2010
Hearings Held	June 23, June 24, June 28 June 28, July 19, July 20, July 27, October 31, November 1, November 2, 2010
Post-Hearing Briefs Received:	February 27, 2012
Reply Briefs Received	March 5, 2012
Opinion and Award Issued:	March 8, 2012

STATEMENT OF THE CASE

Detroit Metro Airport Fire Fighters Association, Local 741(hereafter Union or FF), filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on June 30, 2010 regarding the collective bargaining agreement with the Wayne County Airport Authority (hereafter Authority or WCAA). On July 30, 2010, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter.

A pre-hearing conference was held on August 19, 2010, and a report was generated by the chair the same day. Because of numerous outstanding issues, the parties agreed to meet and confer and exchange the disputed issues in contract form and prepare exhibits and exchange witness lists. The parties stipulated to a waiver of the time limits in the statute. Original hearing dates were tentatively set for February

2011 but were adjourned to June 2011.

Hearings commenced on June 23, 2011 at Michigan Employment Relations Commission offices and the parties were afforded wide latitude to present any information a party deemed necessary for the Panel's deliberations. On the sixth hearing date, July 20, 2010, the parties settled all but one issue, Retirement, and the stipulations on settled or withdrawn issues were incorporated in Transcript, Vol VI, pp 3-13. (Hereafter, references to the transcripts will be just the Volume number and page, e.g. III, 3) All the resolved issues are set forth in the WCAA Brief, at pp 6-8. The Opinion and Award will incorporate the existing unchanged portions of the old contract as well as all the stipulated settled issues and the remaining unresolved retirement issue.

As indicated, all issues were settled but for Retirement. Four hearings were held on this issue ending November 2, 2011. Thereafter, as required by Section 8 of the Act, for this economic issue, the parties submitted last best offers on December 16, 2011. Briefs on the Retirement issue were submitted on or before February 27, 2012 and Reply Briefs were received on March 5 and this Opinion ensues.

The record does contain extensive witness testimony contained in transcripts of the ten hearing dates as well as documents submitted by the parties – 181 Union Exhibits, 195 Authority Exhibits and one Joint Exhibit, the stipulated resolution of the health insurance issue. (Hereafter, exhibits will be denominated as E. __or U.__) Obviously, not all exhibits are germane to Retirement and only those that are pertinent will be referenced herein.

As provided in Act 312, the panel consists of a delegate chosen by each party and an impartial chair appointed by MERC. The chair of the panel is Kenneth P. Frankland, Linda L. Racey, Human Resource Director is the Authority delegate, and Ronald R. Helveston, is the Union delegate. As required by the Act, on economic issues, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9.

It is noted that Act 312 was significantly amended by Enrolled House Bill 4522, 2011 PA 116, immediately effective July 20, 2011. However, this Petition was filed in 2010, the proceedings commenced prior to the effective date of 2011 PA 116 and the Panel believes that the changes in PA 116 have no effect upon the determination of this case and the Panel will use Section 9 standards as un-amended by PA 116.

STANDARDS OF THE PANEL

Act 312 of 1969, MCL 423.231, specifically §9, contains eight factors upon which the panel is to base its opinion and award. Those are:

a. lawful authority of the employer;

b. stipulation of the parties;

c. interests and welfare of the public and financial ability of the unit of government to meet those costs;

d. 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:

(i) In public employment in comparable communities

(ii) In private employment in comparable communities.

e. the average consumer prices for goods and services commonly known as the cost of living;

f. the overall compensation presently received by the employees, including direct wage compensation, vacations, 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 a determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

The panel may give more weight or less weight, as it deems appropriate, to any one factor. *City of Detroit v Detroit Police Officers Ass'n.,* 408 Mich 410, 483-484 (1980). In the ensuing discussion, the panel will discuss the Section 9 factors which are most pertinent on the pension issue particularly (c) (d) (f) and (h).

It should also be noted to any reader that the use of the word "Panel" in this document always means a majority of the panel.

STATEMENT OF FACTS

WCAA was created via the provisions of 2002 PA 90, the Public Airport Authority Act. The Authority includes the operations at Detroit Metropolitan Wayne County Airport (Metro), Willow Run Airport and a hotel at Metro as well as responsibility for plant maintenance and improvements. WCAA took over management of these functions from Wayne County but Wayne County continues to own the property at Metro and Willow Run. The Authority acceded to the labor contracts of Wayne County employees at the airports.

Prior proceedings determined that indeed, the Wayne County public safety employees, police and fire, who became employees of the Authority were governed by Act 312 and could take unresolved collective bargaining issues to arbitration. While Act 90 would permit other Authorities, WCCA is the only one in Michigan. .

WCAA is governed by a seven person Board, with four appointees by the Wayne County Executive, two by the Governor and on by the Wayne County Commissioners. WCAA is supervised and operated on a daily basis by a Chief Executive Officer; currently the acting CEO is Thomas Naughton. Mr. Naughton, a CPA, was the Wayne County Chief Financial Officer from 1995 with supervisory jurisdiction for Metro and when the Authority was created in 2002 he became the Chief Financial Officer and Executive Vice President of the Authority.

Although a public entity, Act 90 envisions an Authority that is operated more like a business as opposed to a traditional governmental structure. To that end, as contrasted with governmental entities that have taxing power, the Authority has no taxing power.

In lieu of taxing ability, the Authority derives revenue primarily from three sources: use and lease agreements with the airlines, landing fees, and non-airline services such as parking, car rental, concessions, ground transportation, shuttle bus, utility service fees and rents. The Authority is a "residual airport" that is, for operating purposes, the airlines have agreed to assume the financial risk of paying the expenses by way of rates and charges to the airlines. Twelve airlines are signatories to the Airport Lease and Use Agreement (E-8) with Delta the largest carrier by far. While a complicated process, the intent is to have a balanced break-even budget primarily financed by the airlines.

The Fiscal Year is October 1 – September 30 and the Authority uses the accrual basis of accounting. The budget process starts in April and ends with a Board approved budget usually in late September. The proposed budget must be presented to Signatory airlines by August 1 each year.

There are three cost centers, McNamara (South Terminal), North Terminal and Airport Center for purposes of calculating airline rates and costs. WCCA must allocate between the North and South Terminals all annual terminal-related O&M expenses and all annual McNamara Terminal bond debt service and North Terminal bond debt service net of the debt service to be paid from Passenger Facility Charges (PFC).

The following information is gleaned from E-8, FY2010 Budget overview, U-72, Financial Report for year ending 9/30/2010, U-73, Approved Budget FY 2011 and U-74, Approved Budget FY 2010

WCAA defines a balanced budget as current revenues equal to current expenditures plus available fund balance and with the residual funding structure the airlines agree to fund the expenses and therefore the operating fund is guaranteed to be balanced. Metro houses the two major terminals and represents 90 percent of the budget. The operating budget for 2011 is $308,519, 000, an increase of $13, 527,000 or 4.6% from FY 2010. This includes first year expenses of a five-year capital asset maintenance and replacement plan of $8.9 million. (the total first year cost is $14.6 million but $5.7 million has alternative funding sources). Revenue is set at $307,131,000.

Enplanements for FY 2011 are 16.1 million, a one percent growth from a low of 15.9 in 2009 and 2010 and compared with a high of 18.3 in 2005. Metro is the 16th busiest airport in North America in terms of total passengers. As a large connecting hub for Delta, 80.6 percent of all enplanements in FY 2010 were Delta passengers.

COMPARABILITY

Act 312 requires a Panel's Award to consider all factors enumerated in Section 9 including (d) "a consideration of the employees involved in the particular case with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in "comparable communities" and in private employment in "comparable communities". However, the Act contains no definition of "comparable community". Comparability is not an exercise in computer analysis but rather a matter of judgment, the best assessment of the most relevant factors in a specific case.

Experience has demonstrated that several criteria are commonly asserted as indicia of comparability. These include: type of political subdivision; location (proximity to the subject political jurisdiction): size, (square miles, population); economic considerations such as ability to raise revenue as measured by State Equalized Value, fund balance of the entity in terms of percentage of budget, history of percentage of budget allocated to this unit vs other units in the entity as compared to suggested comparables; composition of the unit; bargaining history of the unit including any prior 312's with stipulated comparables and any prior panel awards on comparability. Very little of this traditional information was presented in this case and the analysis on comparability is more narrowly focused on the pensions in the suggested comparables.

In this case, the parties submitted their respective lists on January 21, 2011 in the infancy of this case. WCAA submitted Detroit, Dearborn, Livonia, Taylor, Oakland County and State of Michigan and assert they were picked by the panel in the Kerner 2007 Award (See, E- 2) and were stipulated in the WCAA and command officers Act 312 case. (See, Chiesa Award, E-96).

The Union originally proposed 19 comparables on January 21, 2011 but amended that list to 9 on February 4, 2011 including Detroit, Dearborn, Livonia and Taylor, thus being consistent with the Authority on those cities. Additionally, the Union offered Dearborn Heights, Southfield, Westland, Canton Township and Wayne County.

The Union submission is based upon the labor market theory – you have to compete in the local area for firefighter services and only firefighters not internal bargaining units. WCAA contends that comparability is not the most relevant factor in this case because the funding mechanisms are different – all the externals have taxing powers while the Authority does not and that internal comparables are more relevant among other arguments. The Union contends that internal comparables are not germane - not mentioned in Section 9 - and only firefighters can be compared with firefighters.

This panel favors a balanced approach and does give considerable weight to communities deemed comparable in past 312's with WCAA (albeit not with the firefighters) and thus Oakland County and State of Michigan can be considered and those entities do supervise airports and have firefighters trained to respond to airport fire suppression and related duties. The four commonly selected cities should be included as the parties deem them as such.

The panel is less inclined to include Wayne County since it has no fire department. If the Union premise is correct that for external consideration one should focus on firefighters then perforce Wayne County does not qualify. While the airport is in Wayne County and was formerly run by the County those factors do not lend to consideration as a comparable in the Section 9 context.

Of the remaining Union suggestions, the panel can err on the side of inclusion as a few more does not adversely affect the matter. All do have fire departments and do provide fire suppression and related services.

WCAA offers the Roumell decision in *City of Romulus and POAM* (E-84) as a way of emphasizing its argument to favor externals over internal comparables and to exclude the Union suggested communities that are geographically proximate to Metro. In that decision, Arbitrator Roumell stated, "the external comparables are helpful but can only be considered in light of the City of Romulus' financial condition" (E-84, at 8) The Union counters that the Roumell decision is not evidence of a trend toward favoring internals and is limited by the express rationale in the Opinion. The panel agrees with the Union on this point. The *Romulus* Opinion was based upon that panel's determination that ability to pay was the most important Section 9 factor as Romulus was on the brink of a financial manager appointment. Thus, the panel commented that external comparabilty was only "helpful" in light of the dire financial circumstances and essentially Romulus had no ability to pay and that would override all other factors.

While the panel can include all the suggested communities except Wayne County when performing the statutory responsibility to examine each Section 9 factor that might be germane, this examination of Section 9(d) is done considering external comparables in a traditional Act 312 sense to include or exclude suggested communities . Whether Section 9(d) is the more or most important factor in the comprehensive Section 9 analysis of this case will become evident later.

ABILITY TO PAY DISCUSSION

Section 9(c) requires a panel to consider the interests and welfare of the public **and** financial ability of the unit of government to meet those costs; better know as "ability to pay" or as some have suggested "the inability to pay". The panel views this subsection as having two parts, the second being ability to pay. Unions typically paint the picture that the public body has "the ability to pay" while the employer more often than not argues "inability to pay" But this case is different as the Union has not made a big issue of the factor and has taken as a given that with an alleged "cost neutral" LBO the Panel should have no difficulty concluding ability to pay is a non-starter.

While not arguing that WCAA has an inability to pay per se, WCAA offered several days of testimony and numerous exhibits that in its view painted a story of finite resources that should be used judiciously and that the Union LBO when applied to all employees of the Authority would not be judicious.

WCAA used Mr. Thomas Naughton and Geoffrey Wheeler to present the Authority information on this topic. The following is a summery.

When the WCAA was created by Public Act 90, the intent was to operate the Airport more like a business and less like a government. Metro is referred to as a "residual airport" which means that the airlines are ultimately responsible to pay the net operating costs of the operation. For operating purposes, the airlines have agreed under their operating agreements to take the financial risk, to pay the expenses of the Authority and those expenses are included in the rates and charges to the airlines and the airlines are obligated to pay that amount. Metro does not carry over any reserves, any fund balance, any retained earnings. If the Authority is able to collect more revenue than anticipated in the budget, the airlines share directly in the benefit and the excess is refunded to them.

WCAA has no taxing authority nor does it receive subsidies or other monies from Wayne County.

The airport industry is highly competitive. Airport costs are typically 7-10% of an airlines total cost. Thus, WCAA argues it is concerned about the cost per enplaned passenger (CPE) that is passed on to a carrier and tries to keep costs to the signatory carriers as low as possible.CPE is a figure obtained by dividing all of the revenue derived from all of the airlines by the number of passengers who board airlines at that airport in a year. The CPE is the benchmark of the industry. In FY 2007, the cost per enplanement was $5.13; in FY 2008, the CPE increased to $6.56 and in FY 2009 it increased to $7.92. (See, E-8) In FY 2010, the CPE was $9.18 and was $9.91 in 2011 and is projected to be $11.81 by 2014. (See, E-6) While these costs were going up, WCAA used discretionary revenue in 2006, 2007 and 2008 to further reduce debt service and imposed a workplace reduction in 2010 from a high of 750 employees in 2008 to 627 employees in 2011. (E-8)

Mr. Naughton identified several factors that impacted how it was more difficult to minimize the costs passed onto the carriers including the accelerated depletion of the passenger facility charges ("PFC") reserve account that helps offset operating expenses and debt service. The depletion of the PFC reserves resulted in net debt service increase of $6.9 million in fiscal year 2011; a 10.6% increase compared to fiscal year 2010. The total revenue requirements, consisting of operations and maintenance expenses, bond debt service, capital acquisition and interest expense, were $261.7 million in 2010, $278.9 million in 2011 and projected $313 million in 2012, $319 million in 2013 and $326 million in 2014. Bond debt service was $70 million in 2010 and $116 million by 2012. There is a capital asset maintenance need of $4.8 million and replacement needs of $9.8 million for capital asset maintenance principally in roads, bridges and roofs.

WCAA projects continued stagnation in passenger traffic and landed weights. The Authority projected a growth in enplanements in 2011 (16.1 million enplanements), but that is less than a high of 3 million enplanements in 2005. Landing weights are down from 25.9 million pounds landed weight in 2005 to 21 million pounds for 2011.

Geoffrey Wheeler is an executive with Ricondo and Associates, an airport consulting firm. Mr. Wheeler testified that the airlines are extraordinarily cost conscious with respect to fees charged to them by the various airports they use. He stated that airlines look at the costs charged by an airline and try to determine if those costs can be reduced. He testified there are recent examples where an airline either discontinued its use of an airport altogether, reduced the number of flights in and out of an airport, or changed its hub location to a different airport, all primarily due to the high cost structure of a given airport.

Mr. Wheeler testified that it is extremely easy for an airline to replace a hub airport like Metro if it senses that its cost per enplanement is getting too high. Hub consolidation is not an unusual occurrence. Over 80% of Metro's operations involve hub traffic related exclusively to Delta Airlines. If WCAA chose to ignore rising costs it could be shut down by a Delta decision to abandon Metro. He concluded that unwarranted and excessive cost increases could, and probably would, lead to a reduction in the amount of airline services in and out of Metro.

In stark contrast to the Authority presentation on this issue, the Union argues that available revenue is a non-starter. The Union offered the testimony of Professor Howard

Bunsis, accounting professor at Eastern Michigan University. While the Authority asserts that Professor Bunis is a union activist and thus has less credibility, the Panel believes that characterization is harsh and accepts his testimony at face value.

Bunsis prepared a 53 page report (U-76) that in his view shows the financial soundness of the Authority.

Mr. Bunsis asserted that the Authority had expendable net assets equal to ten months of expenses - a very strong number in his view. The Airport's cash flows were solid and rising. Bunsis explained that Moody's gave the Airport its 6th highest bond rating out of 24. Professor Bunsis concluded that the Authority had earned very high bond ratings from both Fitch and Moody's. His professional conclusion was that the Airport was "in solid financial condition. Revenue growth is important, solid cash flows, manageable levels of debt, and solid reserves suggest to me that the Authority is in solid financial condition." Vol 5 at 97.

Union Exhibit 76, p. 32 collects revenue figures for the Authority from the Consolidated Annual Financial Statements. In 2010, the Authority's total revenues were approximately $392,748,000. The one year cost of the Firefighter's LBO was calculated by actuary Charles Monroe to be $47,100 about 0.00012 of the Authority's 2010 revenues.

What is the panel to do with this plethora of information, numbing statistics and witnesses' punches and counterpunches? We simply do the analysis required by the Act.

Because WCAA is a residual airport that fact is a two-edged sword. It truly is unique and does not fall into the normal Act 312 analysis. WCAA argues it cannot raise money by taxation and thus is not comparable to any other community. But says the Union, so what, you have it better than other public entities because your budget is always guaranteed!

The Union also questions whether WCAA is really raising inability to pay. The panel finds that WCAA has not demonstrated that it has the inability to pay the requested enhancements in the pension formula. Rather, WCAA has only shown that although it has guaranteed resources, its expenditures must be closely watched and used prudently. The fact that the bottom line is always filled by the airlines makes it almost impossible to argue an inability to pay. How the Authority gets to the bottom line and tries to keep the CPE in line with other airports is the real concern of the Authority. It is evident on this record that the Authority has endeavored to do that by recent staff reductions and policies that seem to apply to all bargaining units and un-represented employees alike as to wages and fringe benefits. The Union has not argued that WCAA is a bottomless pit of money but rather has shown that the cost of its pension improvement is well within the capacity of the Authority to absorb.

The panel concludes that inability to pay is not a major concern in this case. The first phrase of subsection "consider the interests and welfare of the public" will be discussed in the analysis of the pension issue.

RETIREMENT/PENSION ISSUE

The sole issue for this panel involves enhancement to the existing pension for firefighters. The Union urges adoption of its LBO, "Modified Plan 5" (attached as Ex. 1) while the Authority urges adoption of its LBO an upgrade of the DB portion of the current plan 5. (Attached as Ex. 2)

A Short Primer on Pension Fundamentals

It may be helpful to the reader and certainly to the chair to have a basic understanding of the nuances of pension plans and terminology.

Defined Benefit

It is a traditional pension plan that rewards longevity by providing employees with a lifetime retirement benefit. Upon retirement, an employee receives a monthly benefit based upon a formula of AFC x service credit x benefit multiplier. An actuary prepares an evaluation each year to determine the employer contribution to accumulate assets to pay the promised benefit and it may change from year to year. Employees may make a contribution, some percentage of their compensation. The employer bears the investment and longevity risk of the plan.

Defined Contribution

Benefits are based on the total amount of money in a member's account at the time of retirement. Contributions are made either fixed dollar, percentage or a matched percentage to employees' contributions. Employee contributions are pre-tax and employees are not taxed on earnings until assets are withdrawn. Employees bear the investment and longevity risks.

Hybrid

This concept combines the stability and security of the DB plan with the flexibility and investment choice of the DC plan. A typical hybrid will have a lower benefit multiplier, generally a higher retirement age and may or may not have member contribution on the DB side. The DC side will generally have contributions from both the employer and the employee. Each shares some of the risks of the final benefit.

Actuarial Evaluations

This is a mathematical process that estimates plan liabilities and employer contributions for a particular year for DB plans. Any new rate for the employer contribution typically takes effect the next fiscal year. The annual evaluation updates funding levels, history of plan provision and tracks employee retirements and usually follows GASB standards. **The annual evaluation does not determine the ultimate cost of the benefits, only the pattern of employer contributions.** Supplemental evaluations update the last annual evaluation for proposed changes to the plans terms or conditions and provide a snapshot of changes to the employer contributions for those proposed changes for that year only.

Actuarial Terms

The actuarial required contribution (ARC) comprises two parts. Normal cost is the present value of benefits as of the valuation date for the current plan year. Unfunded accrued liability (UAAL) is the amount of benefits that has accrued to current and former employees that has not been funded by contributions and investment income. Actuaries typically use a smoothing mechanism regarding value of assets to account for the volatility of the market. UAAL is usually amortized over a period of years similar to a mortgage. ARC changes from year to the next are from experience of the plan differing from the assumptions, and changes in benefits.

Current Retirement Formula

The expired collective bargaining agreement, Article 48 outlines various plan options all within the Wayne County Retirement System. For this bargaining unit, four members are in a DC Plan 4 and the remaining members, 51, are in a Plan referred to as "Hybrid Plan" – that is it has both a DC and DB component. (See 48.03, U-83). Additionally, the Union members are all eligible for Social Security Old Age benefits and that is the third element of the total retirement package (that is DB, DC, and SS)

The Plan 5 DB side has

. 1.25% multiplier of AFC for first 20 years and 1.5% for years over 20

. AFC equal to the monthly average of the last five years of service but does not include pay-outs of excess sick or annual leave.

. normal retirement is 25 years of credited service at age 55, 20 years of service at age 60 and 8 years of service at age 65.

The Plan 5 DC side has a 3% contribution from each member and a 3% match from the Authority. Members may elect to contribute more to the plan. Employees vest immediately in their share and 100% vested in the employer's share in three years. All Plan 5 members are eligible for retiree medical insurance if they retire with 30 or more years of service or with 15 or more years of service at age 60.

The Parties' Positions Before and During Hearings.

Before and during the hearings, WCAA maintained a status quo position on this issue. Post-hearing via its LBO, WCAA provides changes to the DB side of Plan 5.

The Union position in the Act 312 process and up to the seventh day of hearing was to replace Plan 5 and adopt Plan 6. (See, U-128, Union issue #12, Actuarial costing, U-133, 134)) As an aside, the panel is guided by the record – what the bargaining table positions and discussions between the parties may have been are not part of the record - and the rhetoric and sometimes diatribes, in the main Briefs and Reply Briefs on this point serves no useful purpose.

Plan 6 offers normal retirement after 35 years of service at any age or 20 years of service at age 60. Employees would contribute 4% but new hires after January 1, 2010 would contribute 5%. The multiplier would be 2.5% of AFC that would be calculated on the four highest years of service. Unused sick and annul leave, overtime and holiday reserve time would be included in AFC. Plan 5 enrollees could transfer to Plan 6 by purchasing prior years of service at $500.00 per year and purchase two years of service at a cost not to exceed $30,000.

The DC plan would be eliminated.

As stated above, the Union replaced the Plan 6 proposal and advocated and presented testimony and exhibits (U-174) on "Modified Plan 5", which is identical to the Union LBO with perhaps a slight change in retiree health component.(Ex. 1).

Union Modified Plan 5.

The main thrust of the proposal is to maintain DC side but with no employer match of any employee contribution and have an enriched DB plan. (See, U-174)The principles features of the "new" DB are:

1. A 2.5% multiplier for all years of credited service with a 75% cap
2. Normal retirement age of 50 and 25 years of service, age 60 and 20 years or 30 years regardless of age.
3. AFC is best five of previous seven years with current Plan 5 add-ons.
4. 8% employee contribution until the Retirement System is fully funded and 6% thereafter
5. Members transferring from current Plan 5 to Modified Plan 5 would pay $3,500 per year for 2.5% of past years of service.
6. Members transferring from Plan 4 would pay the full actuarial cost of the transfer and purchase past service at 2.5% for $3,500 per year.
7. Person retiring at age 50 with 25 years would pay 20% of retiree health insurance

at COBRA rates. Retirees with 25 years at age 55 or at age 60 with 20 years would pay 10% premium share or the then-active employee premium not to exceed 20%.

WCAA LBO

Under the WCAA LBO, existing Plan 4 and Plan 5 in Article 48 would remain in place. However, an additional option, "Pension Plan 5A" would be available with the following features.

1. The current defined benefit Plan 5 multiplier would be increased from 1.25% to 1.5% for the first 20 years of credited service. The Plan 5 multiplier of 1.5% for all years of service over 20 years would be increased to 1.75%. The increased percentages apply to all years of credited service.

2. AFC based upon the best 5 years out of the last 7 years of credited service.

3. Plan 5A members would contribute 3% of pension eligible compensation until the plan is 100% funded and 2% thereafter.

4. All new hires after the date of the Award would be placed into Plan 5A.

5. Current Plan 4 members have 4 months to transfer into Plan 5 by paying 100% of the actuarially computed cost of such a transfer. All current Plan 5 members (and those who transfer from Plan 4 to Plan 5) would have 6 months from the date of the Award to transfer into Plan 5A. Employees who transfer into Plan 5A would contribute $1,000 per year of prior credited service to transfer.

6. The DC component would stay unchanged.

DISCUSSION

This case is most difficult as the parties have diametrically opposite views of which is the more or most important Section 9 factor(s) for the Panel to consider. During the hearing and in the Briefs, the parties were very aggressive in their advocacy as would be expected. What is not expected is the varying degrees of vitriol by both sides.

The Union argues that the heart of Act 312 and Section 9 is the notion of comparability – that external comparables reflect the relevant labor market for the employees in question, here firefighters. Firefighters should be compared with firefighters. The best evidence of what wage and benefit package a community would offer in an open market is the wage and benefit package offered by external comparables. Since a 312 Panel is supposed to strike the bargain the parties would have completed for covered employees, the Panel should pay the most attention to external comparables according to the Union.

Conversely, WCAA argues that external comparables may be appropriate in some cases, but they have little value here. The most appropriate are the seven unionized bargaining units plus non-union employees – the internal comparables. This is so because of the extensive collective bargaining history among the internal units and the public policy considerations that the Authority has uniformly adopted and applied on the only issue here retirement. The unique statutory creation and funding mechanism makes WCAA different from all other public entities and thus comparison with other communities is much less relevant.

Since the parties have resolved all other issues it is disquieting that common ground could not be found here even after the chairperson encouraged the delegates on several occasions to forge a compromise. Thus the panel must and will do its duty to accept one LBO to the chagrin of the other.

The Panel's View of Act 312 Factors

Act 312 panels are guided by the comments of the Michigan Supreme Court in *Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980) particularly at page 484:

> The legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in §9 be accorded equal weight, Instead the legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in §§ 8 and 9. In effect then the §9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. **Since the § 9 factors are not intrinsically weighted, they cannot of themselves provide 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.** [Emphasis Added.]

The panel has reviewed all the Section 9 factors and believes that (c), (d), (f) and (h) are relevant to the pension issue. Using the discretion empowered by the above citation, the panel has considered all aspects of these factors and concludes that (h) and the "the interest and welfare of the public" in (d) are the more important factors to decide this case.

In particular (h) states, "such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in a determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment." Many parties do not raise any objection to internal comparables and prepare exhibits comparing internal and external comparables. Arbitration panels have historically used this section to consider internal comparables assuming that internals are not per se apart of subsection (d). The Chair has on numerous occasions utilized this subsection. The panel finds that (h) is relevant here and in fact is the most relevant factor in its deliberations. The public interest and welfare factor is also more important than other factors.

ARGUMENTS FOR EACH LBO

The Panel wishes to summarize and distill the vast amount of information in the record as well as the very able arguments advanced in the Briefs and highlight some of the arguments for each LBO.

Arguments in Favor of WCAA Proposal

- While firefighters perform a valuable service and are highly trained and skilled professionals, WCAA cannot consider this pension proposal different from all other employees at WCAA. The most critical Act 312 factor is internal comparables and to be consistent with other bargained units the concept of a hybrid plan best meets the needs of all employees. No other unit has a plan with a 2.5% multiplier in the DB side. External comparables have little or no value in the context of this case.
- The current hybrid plan was negotiated in the 2000-2004 contract, accepted by the Union, as a marriage of DB and DC concepts and part of a three-pronged stool for retirement benefits. Along with a disability program the hybrid plan has

served the members well and a switch to a DB only plan would be inordinately expensive when applied to the entire WCAA staff.

- The intent of the Union plan is to shift the monetary risk to the Authority from the current shared risk approach. This is not good public policy and inconsistent with section 9(c) the interests and welfare of the public.

- DB plans are inherently expensive since they establish a future fixed benefit and many actuarial assumptions are needed to assess the present and future costs. Since a DB creates an immediate liability it must be booked and recognized and the funding for the benefit must be included in the annual budget.

- Because of cost considerations, the trend in the private sector is to discontinue DB and switch to DC. This trend is also evident in the public sector as new hires are excluded from DB plans and /or a movement to a blend of DB and DC plans. Thus, to adopt a DB only plan at this time is counter to the trend and simply poor public policy.

- The multiplier is a critical component of the net benefit. A 2.5% multiplier unnecessarily exposes the WCAA to financial risk that it cannot afford. Even with the Union member contributions toward the UAAL, the real cost is the future payments not only for this unit but for the inevitable costs when applied to all other employees.

- Mr. Naughton testified that history suggests that it is just a matter of time before all employees get the benefit via Act 312 or through negotiations. This statement is supported by the Ciesa panel comment to the same effect when explaining why the status quo was appropriate for that unit.

- Ability to pay is an issue as the WCAA cannot pass on new cost to the airlines without serious jeopardy to long term fiscal stability. Airlines have the option of leaving if the costs are deemed prohibitive. Recently, Delta the largest carrier by far at WCAA, requested significant budget reductions and WCAA is already implementing reductions. To add further cost to the annual budget to be passed on the airlines and especially if all employees will eventually get this benefit places the Airport in serious jeopardy and indeed raises the specter of inability to pay.

Arguments in Favor of the Union Proposal

- First and foremost firefighters perform a valuable service and are highly trained and skilled professionals and this unit in particular is cross-trained as paramedics. The airport is even more sensitive to risks from high-octane chemical incidents and possible terrorist attacks and the inherent risks of the job argue well for an adequate pension upon retirement.

- As such, section 9 (d) is the most important factor for the panel as firefighters should be compared only with other firefighters and not non-act 312 employees or even other public safety officers. While public safety officers perform some dangerous functions, they are not trained for fire suppression and do not have the expertise of firefighters.

- This case is only about pension benefits and the present hybrid system does not consider the fact that firefighters retire at an earlier age even after 25 or 30 years of service. Given the physical demands of firefighters, it is not good public policy for aging persons to perform the demanding physical requirements of the job later in life. Thus, retirement earlier than the norm and certainly before SS eligibility is a fact of life and firefighters need a DB 2.5% plan to assure a reasonable retirement income flow before receiving SS.

- Given earlier retirement age, and if the public entity wants to encourage a fully competent and skilled job force, then a pension system must provide support for the retiree to live at least as comfortable as possible with between 70% and 85% of the firefighters' normal wages after retirement.

- Since the current DB component only has a 1.25 multiplier for the first 20 years of service and 1.50 after 20 years the DC component must make up the difference to reach the 70-85% goal. Since the DC was introduced in the 2000-2004 contract, member balances have not realized the necessary growth to provide an adequate pension.

- DC plans only work well in a work force that has time on its side, later in life retirement to achieve the time-value of money effectiveness. Firefighters retire earlier than the general population thus the DC plan is ineffective for them

- None of the Union comparables has less than 2.5% multiplier in DB. Only Livonia has a DC plan and only for firefighters hired after 7/1/98. The Union comparables supports a DB 2.5% plan.

- The Union hybrid Plan 5 proposal is not costly to the WCAA, practically cost-neutral and Section 9 (c) is not a factor. WCAA has the ability to pay. First, WCAA has a unique funding scheme and does not rely upon taxes. The residual agreement requires the airlines to fully fund the operating budget and this pension component is miniscule in the total budget. Second, the hybrid plan is designed to minimize costs to less than $50,000 in the first year when amortized over 29 years. Both Gabriel Roeder (after 3% DC is considered) and Mr. Monroe confirm the level of funding necessary is slighter greater than 1% of payroll and even Mr. Naughton concedes the proposal is fairly cost-neutral.

- The Union members have made several concessions to obtain cost-neutrality. First, in order to have all prior service years counted at 2.5%, each member will pay $3500 per service year toward the UAAL. Second, each member will pay 8% of annual compensation until the plan is 80% funded and 6% thereafter. Third, AFC is changed to last 7 years to flatten the total and only wages are considered not other fringes. Fourth, WCAA will save the 3% DC contribution.

- The Union hybrid Plan 5 is different from the proposal in the Ciesa award. Ciesa panel rejected a Plan 6 proposal with a 2.5 multiplier; the hybrid plan 5 is totally different per preceding paragraph. Further, the Ciesa panel had concern for the "me too" clause as well as the exclusion of pension Act 312 arbitration until 2020 and relied on these provisions – that are not in this proceeding – as the primary basis for status quo. Ciesa panel did not say WCAA has an inability to pay and did emphasis the annualized cost was an amount that is very similar to this case.

After Reviewing and Applying all Applicable Factors to the Record in this Case, the Panel Finds the Authority LBO More Closely Conforms to the Section 9 Criteria.

There are never two winners in Act 312 as the panel must select only one LBO. Understandably the Union will be very disappointed in this result. The Union was most aggressive in their approach and advocacy and impressed the panel with their knowledge and forthrightness. The Panel commends the Union members for advancing a proposal that would require economic sacrifice for each member to reach the goal of cost-neutrality. That having been said the major reasons for the panel decision follows.

1. The panel finds that after reviewing the entire record that the WCAA LBO

more closely conforms to subsection (h) and believes this subsection is more important in its analysis than subsection (d) comparability. Applying subsection (h), the panel believes that there is a bargaining history of Retirement/Pension that demonstrates the objective of maintaining a consistent plan for all seven unionized units (See, E-85-91) and the non-union staff across the board. This plan should control this matter as being more consistent with (h). Since its inception in 2002, WCAA has offered to all employees the various Wayne County Retirement System options with the exception of Plan 6. Four members of this unit have opted for Plan 4, a DC plan and all the others have opted for Plan 5. The hybrid plan 5 was obligatory for person hired after October 1, 2001 (U-131(b) at B-6). Many WCAA employees signed up for Plan 5 and/or it was bargained with various units and at least since the 2000-2004 contract this unit agreed to the hybrid plan 5 for all existing members; This plan is the DB, DC, and SS model. Review of all the Annual Evaluation Reports in the record demonstrates that the hybrid plan has been the predominant plan for most of the last decade. Given that Plan 5 has been the consistent policy of WCAA the panel should give considerable weight to that fact as a starting point in subsection (h) consideration and using these internal comparables is the more important criteria in this case. In the panel's view, it is more appropriate to use internal comparables rather than external comparables.

2. WCAA is the only airport authority in Michigan subject Act 312. This unit has never been to arbitration on this or any other issue. President Dennison said the Union accepted the hybrid plan as a reasonable alternative at the

time given the three prongs, DB, DC and SS. The Union was not happy with Plan 4 since it did not provide a duty disability, as plan 5 did. Plan 5 was better as it met the duty disability concerns, it reintroduced a DB multiplier and with SS added, it provided a retirement benefit that the members felt was reasonable. Mr. Dennison thought the DB side would produce 32.5% of the total benefit but he also said the Union wanted to increase the DB multiplier, "chip away" in future years but that effort has been unsuccessful in negotiations and in part why this matter has gone to arbitration. But the fact remains, the current hybrid has been in existence for many years with this unit and with all the other internal units as well. This history cannot be ignored and why departure from plan 5 should not be adopted as significantly affecting the pension equilibrium currently in place at WCAA amongst all employees.

3. Recent Act 312 Awards are also illustrative of the history and consistency of the WCAA policy. The Kerner Award, E-2 did not agree to Union proposals to enhance Plan 5 and seemed to follow the internal comparable approach while maintaining status quo on pensions. The Ciesa Award, E-96 did not adopt the Union proposal to go to plan 6. While there were various reasons advanced in each Award and there may have been record information in those cases different from our record, the bottom line is that an enhanced DB plan with a 2.5% multiplier was not accepted. These decisions are entitled to considerable weight as the panel looks at the history of pensions among WCCA units and how internal units play a role in the bigger picture. These

were police officer units and Act 312 Awards involving police or fire units are often compared and given appropriate deference when the same employer is involved. The panel finds these Awards to be significant in analysis of the pension issues among internal units and especially the Act 312 eligible personnel.

4. There are many intrinsically positive attributes with a public sector DB plan, the main attribute providing employees with an effective, guaranteed retirement benefit without investment or longevity risk to the employees. But DB plans should be considered in the context of the available plans offered by the employer and the individual components of the DB plan. Applying the interest and public welfare of (d), the panel believes that the record amply supports the proposition that high multiplier DB plans are less favorable at this time in the public sector as the primary source of the benefit for new hires and rarely is the multiplier significantly enhanced for tenured employees. Mr. Adams testified at length, and his testimony plus other credible exhibits demonstrates, that DB plans are almost extinct in the private section and that hardly any public entity in Michigan adopts a new DB plan with a high multiplier as its basic plan. The Union noted Ms. Pittman's testimony regarding MERS plans and while the majority are DB's it is also noted that MERS has 15 hybrid plans. Further, MERS will not accept a DB plan that includes SS eligible employees with greater than a 1.5% multiplier. The Union did not offer any community that recently started or stitched to a DB plan with a 2.5% multiplier, but rather all suggested comparables have existing plans of

long duration. The trend in Michigan public sector is to retain DB plans for existing members, have DC plans for news members or have a hybrid plan such as in this case. There is no information in this record demonstrating any public entity going from a hybrid plan to a pure DB with a high multiplier. The panel recognizes that the Union offered many exhibits proclaiming the viability of DB plans and even extolling their merits as superior to DC plans. The issue is not whether a DB plan is good or bad *per se*, rather whether in the context of this case internal comparability overshadows external comparability. The panel does not give as much weight to those exhibits and theories as opposed to the record evidence of a trend away from pure DB plans. The panel does not give much weight to the numerous newspaper articles and other materials that each party offered to prove the veracity of its position on DB trends. The panel has considered the more authoritative exhibits by esteemed authors and scholars on both sides and concludes that pure DB plans covering all members of a unit in the public sector are diminishing and being replaced by mixed DB plans for older vs. newer employees or with hybrid plans. The State of Michigan more than a decade ago created DC plans for new hires and offered DB members a choice of DC or stay in the DB plan. Those who elected to stay in the DB plan have a benefit based upon a 1.5% multiplier. This discussion lends credence to, and aids the panel's application, of the public interest and welfare criteria in favor of the WCAA LBO. There does not appear to be record support to go from a hybrid plan to a pure DB with 2.5% multiplier.

5. Much angst arises as to all WCAA employees entitlement should the

panel adopt the Union LBO. The panel believes that Mr. Haughton's comments that sooner or later all the other employees might receive the same benefit if this panel awards the Union proposal is very persuasive and clearly is a factor that would undermine and jeopardize the current equilibrium. As part of the (h) analysis, and the pattern described above, if there is a departure from plan 5 it is more reasonable than not to assume that indeed the same benefit would be available to others by Act 312 or negotiations. Assuming the Authority wants to treat all employees similarly on pensions, it would be hard pressed to deny this benefit to public safety personnel in Act 312 and in negotiations with all other staff. The Chairs' experience in Act 312 matters mirrors Mr. Haughton's comments. This is an important point in the overall Section 9 analysis as the potential transfer of risk and incurred liability could well be cost prohibitive.

6. As the party initiating a change, the Union has the burden of proof why the current hybrid plan should be modified and while the Union has correctly pointed out some deficiencies in Plan 5 (possible under-performance of DC, how SS is computed) on balance, there is little public policy reasons why a change to the Union plan should occur, To simply argue that we want what other firefighters have ignores the interplay of all the Section 9 factors. External comparability is not the end all for all cases. The Union members believe the plan does not serve their interests as they perceive them because the markets have been sluggish at best and thus the DC has underperformed. They want to be on a par with other firefighters that have

only DB plans. But why throw out the baby with the bath water? Existing plan 5 is an attractive alternative from a public policy perspective because it requires risk sharing amongst all parties and in theory should produce a retirement total package that approximates the firefighter goal of 70% of the employee's AFC. On the DB side, the employer has all of the risk because the liability must be booked annually and the employer must be prepared to fund the risk. The DC risk is on the employee – how the moneys are invested. The SS piece is dependent upon many factors, mostly outside the control of the employer. While the parties presented numbing statistics on whether the hybrid achieves the goal of at least 70% of pay, the fact of the matter is that the record does not demonstrate how the various pieces are materially and specifically deficient to achieve at least the 70% goal, The better public policy is to maintain the trilogy – it would not be good public policy if all Authority personnel would ultimately receive the Union LBO as the shifting of the risk to the employer could well be cost prohibitive and would undermine the Authority equilibrium on pensions for all staff. While the Union LBO could well be cost-neutral in the first year that would hardly be the case if all employees were to receive the benefit. Mr. Naughton testified and used E-65A to illustrate the impact if the Union plan is applied to all employees. The gross liability would be $55.4 million, the additional UAAL would be $28.9 million or an increase of 3.88% using a 29 year amortization, or if the working life amortization is applied, the number is 8.8% of payroll. These are significant numbers and affect the long term fiscal stability of the Authority. Why change now? The answer is the purported underperforming of the DC side of the equation and the desire to shift the risk from employees to the employer. But there is no quantitative evidence how or even if the DC side is not making enough to reach the desired goal. The Union has convincingly rebutted the "mythical retiree benefit" in E-60 as being highly speculative. But, it has not offered substantive proof of the inadequacies of Plan 5. Rather, the Union mantra is, "the meaningful comparison here is between the retirement package that the Airport provides its employees in exchange for their firefighting services, and the retirement packages similarly provided by comparable communities." Union Brief, at 25. The proof of this is the fact the Union is willing to spend a lot of money now for potential first year cost-neutrality to remove their DC risk exposure. But while the Union is trying to minimize the employer risk in the short term, first year, there is no guarantee that will be true in the future. Only the annual evaluations can assess what the employer rate will be in successive years. It may well stay constant but not necessarily. This well-meaning proposal from the Union view has considerable merit but the panel is not persuaded this is either the time or the place for that change when the panel considers (h) and interest and public welfare in (d).

7. The Union argues at Brief, p12 that its LBO must be adopted because the WCAA LBO is illegal,,not in compliance with MCL 38.1140h(3) but without citing any authority for this statement. While it is true that there is no record information that the WCAA LBO was subject to a supplemental actuarial analysis [the Union LBO was so analyzed, E-65A] that fact has no bearing on the panel's authority under Act 312. The panel is required by Act 312 to make

a decision on an economic issue and has only two choices – one or the other LBO. The panel is following that mandate and elects the WCAA LBO. We have no power to make "legal" interpretations. If there is any validity to the Union assertion, it must be raised in another forum.

8. The Union LBO was the subject of a supplemental evaluation by Gabriel Roeder dated September 16, 2011 (E-65A). The bottom line is the Authority would have an increase of 4.21% of payroll but with the elimination of the 3% employer match in the DC plan, the real cost is about 1.21%. This is about the same percentage that Mr. Monroe computed in his report. (U-175) and was the basis of the cost-neutral statement. The purpose of a supplemental evaluation is to update the last annual report and give management an understanding of the new liability and funding requirement. Here, WCAA has not performed such an evaluation for its LBO and the Union claims this is illegal. However, WCAA has presented what appears on the surface to be an enhancement – the multiplier is enhanced and thus the retirement benefit should be enhanced - any increase in cost by assuming the risk would seem to be within tolerable limits or it would never have been proposed. This is consistent with Mr. Naughton's testimony that the Authority had sympathy for the overall morale of its employees and in response to the Union assertion that DC was underperforming, that the Authority could well look at plan changes – but not 2.5%. While the Union argues this is really worse than the status quo, it is very difficult to follow the statistical rationale and the Chair is not comfortable in performing the tasks necessary to validate or invalidate the Union assertion it is worse than the *status quo* or the Authority argument to

the contrary. Rather the Chair takes at face value that an increase in the multiplier should be a better benefit than the status quo. Assumptedly, the enhancement is intended to address the very serious concern that the DC prong was underperforming and will improve the value of the pension over time. This revised LBO also suggests that if WCAA is consist with its pension approach with all units then as contracts expire this would also be made available to other bargaining units.

9. Paragraphs 7 and 8 were drafted after receipt of original Briefs but before the Reply Briefs were received. The Chair is greatly disturbed by the apparent effort of WCAA to supplement the record by Exhibit B to its Reply Brief. The record was closed in the Chair's view on the last day of the hearings. The panel will not consider any information not part of the existing record from either party. Having so stated, the Reply Briefs do not change the analysis in §§ 7 and 8. Act 312 controls and the panel accepts the WCAA LBO for the reasons stated above. It is not necessary to assess the merits of being better or worse than hybrid plan 5. It is noted that plan 5 is not being replaced, rather another option being added. Whether to transfer to the new plan is an individual decision of each member of the bargaining unit and how the plan is funded and if it is better or worse than Hybrid plan 5 will be a part of that decision process.

The Panel has also considered section 9(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 and concludes that the WCAA proposal more closely comports to this section than the Union proposal. The Union has settled all other issues and in some instances has made what it would call concessions. The total overall compensation package of this unit seems reasonable under all the circumstance presented in this record and in the absence of the Union demonstrating why their LBO is necessary to correct deficiencies in the total compensation this factor does not come into play. It is clear that the Authority has attempted to apply uniform polices as to fringe benefits to all employees.

Conclusion

A majority of the Panel believes that the WCAA LBO more closely conforms to the applicable Section 9 factors as noted above and the WCAA LBO is awarded.

AWARD

The panel incorporates in the new contract all existing unchanged provisions, all settled issues as stated on the record VI, pp 3-13 and awards the WCAA LBO attached as Exhibit 2 to this Opinion.

Dated: 4/3/12

Kenneth P. Frankland
Chairperson

Dated: 4/3/12

Linda L.Racey

Delegate for WCAA
☒ Concur
☐ Dissent

Dated: 4/3/12

Ronald R.Helveston
Delegate for the Union
☐ Concur
☒ Dissent

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of Statutory Arbitration between:

Detroit Metro Airport Firefighters, Local 741,
IAFF, AFL-CIO

-and-

MERC Case No. D09 G-0830

Wayne County Airport Authority

_________________________________/

Kenneth Frankland, Chairman
Ronald R. Helveston, Union Delegate
Linda Racey, Employer Delegate

DISSENT OF THE UNION PANEL DELEGATE

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I have reviewed the draft Opinion and Award in this Act 312 arbitration, and I am surprised and disappointed by the analysis that I saw. Because this Opinion so plainly misapprehends and misconstrues the record in this case, and because the Award as a whole is not supported by the evidence presented in this case, I dissent.

The dispute between the Parties in this matter is clear enough. The Metro Airport Firefighters have the same training, perform the same important, life-saving duties, and bear the same risks and burdens as any other city or township firefighter in southeastern Michigan. Indeed, as the record shows, they often perform these duties and bear these burdens side-by-side with other municipal firefighters who participate in the Downriver Mutual Aid Pact and various coordinated disaster response teams. Indeed, the Metro Airport Firefighters have additional training and face additional risks and burdens because they work at a large international airport. *See* Vol. 2 of the Transcript; Firefighter' Post Hearing Brief at 3-4, 6-7. In spite of this indisputable fact, the record is clear that the Firefighters have a retirement plan that is significantly inferior to the plans enjoyed by firefighters in comparable communities. Accordingly, the Firefighters proposed to amend their current pension plan so that it might *approximate* the plans enjoyed by other firefighters who perform similar work. Also, the Firefighters proposed to pay for these pension improvements out of their own pockets, with large up-front payments of $3,500 per year to offset any unfunded accrued liability, and continuing payments totaling 11% of payroll, which would have both paid for all of the normal cost of their requested improvements, and paid off substantially all of the remaining unfunded liability besides. Employer Exhibit 65A at 6. The Airport CEO, Tom Naughton, repeatedly referred to the Firefighters' proposal as "cost neutral" for the Employer. /[1] Firefighters' Post-Hearing Brief

[1]/ Indeed, the Chairman acknowledges at p. 15 of the draft Award that "[t]he panel concludes

at 18-21, 29-30.

The upshot of this proposal is that the Firefighters would have a pension plan that is less favorable than the plans enjoyed by any of their peers, even though the Metro Firefighters would have to contribute double or triple what any of their peers were contributing to fund it. Union Exhibit 156. *Id.*

The case for the Firefighters' proposal is compelling on the factors in Section 9 of Act 312 as it existed at the commencement of this process. Regrettably, the Opinion reaches the opposite conclusion by misapprehending the record, and sometimes by failing to grapple with it at all. I will discuss the central shortcomings *seriatim.*

The Opinion refuses to analyze two extremely important issues in this proceeding: (1) the Employer's LBO is a violation of Michigan law, and (2) the LBO in fact leaves the Firefighters worse off than the *status quo*. Both of these are decisive reasons to reject the Employer's LBO, and the Opinion *refuses to consider* either issue. First, the Employer's LBO on its face violates MCL §38.1140(3). That statute requires in pertinent part that before any public employee retirement system adopts any change in benefits a "supplemental actuarial analysis" must be performed. *Id.* The statute continues: "The supplemental actuarial analysis shall be provided to the board of the particular system and *to the decision making body that will approve the proposed pension benefit change* at least seven days before the change is adopted." *Id.* (emphasis added). In this case, the Act 312 panel is "the decision making body that will approve the proposed pension benefit change." The Opinion correctly notes, consistent with the Chair's order closing the record, that the record contains no such supplemental actuarial analysis. Opinion at 35; *see also* Vol. 10 at 192, 200. Therefore, the Employer's LBO violates Michigan

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that inability to pay is not a major concern in this case."

law. The Opinion, however, ignores this fact, claiming that "[the Panel] has no authority to make 'legal' interpretations." Opinion at 34.

There is no basis for this claimed limitation on the Panel's authority. Act 312 arbitration panels in general, and their Chairs in particular, are charged to make all sorts of legal decisions. They have to decide whether issues are mandatory subjects or not under PERA, whether issues are economic or not, and finally which LBOs comport with the statutory §9 factors. *The entire Act 312 process is an act of legal interpretation* and the Opinion is defective for refusing to decide this issue.

The Opinion also refuses to decide whether the Employer's LBO would leave the Firefighters worse off than the *status quo*. This issue, like the one raised just above, was presented because the Employer submitted an LBO without providing a supplemental actuarial evaluation of the cost of that proposal. However, there was considerable testimony in the record from a professional pension actuary describing how a pension proposal could be 'costed' by using a supplemental evaluation for a related proposal. Actuary Charles Monroe testified twice to these calculations. Vol. 7 at 42-100; Vol. 9 at 42-68. The Firefighters performed them step-by-step in their Post-Hearing Brief. Brief at 14-18. These calculations show that the Employer's LBO promises small enhancements in the Firefighters' pension multiplier that are worth approximately 2% of payroll, but are charging the Firefighters 3% of payroll for the 'enhancement.' The Employer's LBO leaves the Firefighters worse off than the *status quo*.

Plainly, in evaluating an LBO, it matters whether the LBO is a benefit enhancement or a take-away. And the Opinion notes the Firefighters' argument. Opinion at 34. But instead of a reasoned consideration of the evidence, the Opinion provides this: "the Chair is not comfortable in performing the tasks necessary to validate or invalidate the Union assertion [that] it is worse than the *status quo*," but "the Chair takes at face value that an increase in the multiplier should be a better benefit," Opinion at 34-35. In sum, the Opinion refuses to analyze record evidence in favor of adopting an unsupported assumption—one that the record shows to be wrong.

The Opinion also claims in several places that if the Firefighters' LBO were granted in this proceeding, a similar pension change would ultimately be granted to all other employees at the Airport, with potential additional costs. Opinion at 26-27, 31, 32.This claim is highly speculative, and is not supported on the record as a whole.

First, the claim is speculative. In a recent decision involving the City of Livonia and the Livonia Lieutenants and Sergeants Association, the Chair of this proceeding faced the same argument that the Employer makes here; to wit, that a benefit should be denied the LSA because it might flow to other bargaining units as well. The Arbitrator found:

> The City also raised the specter of future unspecified impacts to the GF if this proposal is adopted because it "assumes" the firefighters will get it also. First, the assumption may not come to fruition. Second, this Panel cannot base a decision on speculation but only follow the record developed and the current impact based upon the record.

City of Livonia –and- Livonia LSA, MERC No. D09 B-0220 at 13.

The claim herein that other Airport employees will end up with the same pension plan as the Firefighters should similarly be rejected as "speculation," or worse, because it is rebutted by the evidence in the record taken as a whole. What the evidence shows is that CEO Tom Naughton and his team would *not* willingly extend benefits received by the Firefighters in this proceeding to other employees. Vol. 3 at 53-54; Vol. 10, 93-94. Moreover, few of the Airport's employees have access to Act 312 arbitration or any other form of interest arbitration, and so the Employer would be under no obligation to alter the pensions of other employees regardless of the outcome of these proceedings. Vol. 3 at 53-54. Finally, the evidence in the record reveals that throughout the comparables, non-public safety employees do not receive the same pensions as public safety employees, neither with respect to pension multipliers or age and service requirements. Union Exhibit 156-A. Given the professed desire of the Employer to operate more as a business, there is no reason for the Employer to provide pension benefits to non-public safety employees that are considerably more generous than other similar employers provide. Opinion at 6. Regrettably, the Opinion in this case adopts the very "speculation" that the Livonia Panel rejected, without any analysis of the far weightier contrary evidence cited above.

Worse still, the Opinion claims that if the Firefighters' proposed pension changes were, in defiance of the record, somehow extended to all other employees, then the Firefighters' LBO would not be "cost neutral." Opinion at 32. This claim is false, and is flatly rejected by the record. As Actuary Charles Monroe testified, the most recent Gabriel Roeder report entered into evidence shows that extending the Firefighters' proposed cost-neutral pension changes to all other employees is even *less expensive* than granting them to the Firefighters. Vol .9 at 68-70; Employer Exhibit 65A at 7. /[2] On this point as on others, the Opinion misapprehends unrebutted testimony in the record.

There is similarly no discernible evidentiary basis for the Opinion's extremely unusual decision to favor internal comparability over external comparability. Under Act 312 practice and common sense, there is no support for this position. The best measure of a fair benefit package for firefighters is what other firefighters earn, and not the benefit packages earned by employees who do not have the training or face the dangers and stresses of firefighting. Evidence in the record shows that public safety employees uniformly have pension plans with higher multipliers

[2] / As Monroe explained, the charts on ppg. 6 and 7 of Employer Exhibit 65A have to be corrected by deducting about 3% from each chart's 'bottom line' cost, because the Firefighters' LBO calls for the elimination of the Employer's DC match. *See* Employer Exhibit 65A at 8, note 2. After this correction, the cost of the Firefighters' LBO is 1.3% in the Firefighter bargaining unit, but only about 1% for all other employees. Vol .9 at 68-70

and earlier age and service requirements than non-public safety employees. Union Exhibit 156A. This evidence was unrebutted. The Employer made only one argument for its surprising claim that internal comparability should prevail: that there was an "emerging trend" in Michigan Act 312 arbitrations, as exemplified by a recent decision in Romulus, to favor internal comparability. The Opinion correctly rejects this argument; *Romulus* is limited by its facts and reasoning to a situation of extreme fiscal stress, which is not present here. Opinion at 10.

In his recent *Livonia* decision, the Chair herein sets forth the analysis of comparability that is supported by the record in this case. There, the Panel noted that "[f]or purposes of this case, the better comparison is with people who do the same kind of work in law enforcement. It is better to compare apples to apples." *City of Livonia –and- Livonia LSA*, MERC No. D09 B-0220 at 18. Indeed. The Opinion in this case provides no rationale for departing from the traditional approach.

The Opinion misconstrues the record in other ways too numerous to rebut point by point. Argument 4, which appears at 29-30, is a two page long discussion, without any citation to the record, that makes various claims about 'trends' in pension plans in Michigan's public sector. In fact, the record reveals that just within the MERS system, hundreds of public employers maintain what the Opinion calls "high multiplier" DB plans, and all of the comparable communities in this proceeding do as well. Firefighters' Reply Brief at 8-9. The only reason that public employers are not creating new 'high multiplier" DB plans is that substantially all of them already have one. *Id.* Argument 6 is similar—the Opinion claims that the hybrid plan "in theory should produce a retirement package that approximates the firefighter goal of 70% of the employee's AFC." Opinion at 32. The Opinion does not identify the assumptions on which this "theory" is based, but they do not appear in the record. The Firefighters demonstrated convincingly that the

Employer's claims about what firefighters might expect to receive in retirement from the current plan are absurd. Fire Fighters' Post Hearing Brief at 21-29. The Opinion agrees that the Firefighters have successfully rebutted the Employer's case in this regard. Opinion at 33. Those calculations demonstrate that under reasonable assumptions about firefighter wages and investment returns, the current hybrid plan five will not return anything like 70% of AFC. There are neither citations to the record, or an analysis drawing inferences from the record to show otherwise.

In short, because it routinely misapprehends and misconstrues the record in this case, and in important respects refuses to engage the record at all, I dissent from this Opinion.

Respectfully Submitted,

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Date: April 2, 2012

Exhibit 1

Union Issue 12: Retirement

48.01 Modified Benefit Plan #5

A. This section applies to all employees of the bargaining unit employed by the W.C.A.A. on or after the date of the Frankland Award, MERC Case No. D09-G0830.

B. Normal retirement shall mean twenty-five (25) years of credited service at age fifty (50), or twenty (20) years of credited service at age sixty (60), or thirty (30) years at any age.

C. Normal retirement includes life insurance and health care coverage. However, employees who retire with twenty-five (25) years of service at age fifty (50) will pay 20% of the retiree insurance premium using the applicable COBRA rate, or whatever premium share active employees are paying, whichever is greater, until they reach the age of fifty-five (55). Thereafter, those individuals will pay the same health insurance premium share paid by employees who retire after twenty-five (25) years of service and age fifty-five (55). Employees who retire with twenty-five (25) years of service and age fifty-five (55) or at age sixty (60) with twenty (20) years of service or with thirty (30) years of service at any age will pay the same premium as active employees consistent with Article 47.32.

D. Members of this Modified Benefit Plan #5 shall contribute 8% of their compensation to the Retirement System for any year after the System's actuaries determine that the Airport's portion of the System is less than 80% funded. For any year after the System's actuaries determine that the Airport's portion of the System is 80% or more funded, employees will contribute 6% of their compensation to the Retirement System.

E. Employees who are eligible to retire from the Modified Benefit Plan #5 shall retire with a pension formula of 2.5% of the average compensation (AFC) multiplied by all years of service. AFC under this section shall be the five (5) highest years of compensation out of the previous seven (7) years. Compensation does not include payouts of excess sick or annual leave.

F. Employees in the current Benefit Plan #5 may transfer into the Modified Benefit Plan #5 provided they elect, transfer into, and fully purchase into the Plan at a rate of Three-Thousand-Five-Hundred dollars ($3,500.00) per year for each year of credited service no later than sixty (60) days after the date of the Frankland Award.

G. Current members of Plan #4 who wish to join the modified Benefit Plan #5 must first transfer into Benefit Plan #5 by paying the full actuarial cost of such a transfer within ninety (90) days after the date of the Frankland Award. As used in this section, "full actuarial cost" will be determined by the Retirement System's actuary at the time of transfer, and is not limited to the WCAA service purchase grid currently in place for Benefit Plan #5 buy-ins. Members transferring from Benefit Plan #4 to Benefit Plan #5 would then have another sixty (60) days to complete the requirements for a transfer from Benefit Plan #5 to Modified Benefit Plan #5.

H. The Employer will discontinue its 3% matching contribution for all members of the Modified Benefit Plan #5.

Respectfully Submitted,

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Exhibit 2

ARTICLE 48 - RETIREMENT

The detailed provisions of the Wayne County Employees Retirement System and Ordinance shall control except where changed or amended below.

48.01 **Defined Benefit Plan #1**

NO CHANGE

48.02 **Defined Contribution Plan #4 (DCP #4)**

NO CHANGE

48.04 **The Hybrid Plan (Plan 5)**

A. Defined Benefit Provisions (NO CHANGE)

1. Normal retirement shall mean twenty-five (25) years of credited service at age 55, twenty (20) years of credited service at age 60 or eight (8) years of credited service at 65. An employee retiring with thirty (30) years of service will receive medical benefits as otherwise provided under the terms of this Agreement.

2. The amount of retirement compensation shall equal one and one-quarter percent (1.25%) per year times average final compensation for the first twenty (20) years, and one and one-half percent (1.5%) per year times average final compensation for all years of service over twenty (20) years.

3. Average final compensation shall be equal to the monthly average of the employee's compensation for the last five (5) years of credited service. Compensation does not include payouts of excess sick or annual leave.

4. Regarding deferred retirement, vesting shall occur upon completion of eight (8) years of credited service. The amount of retirement compensation shall be computed as normal retirement, but based on the actual number of years of credited service and average final compensation at the time of termination. The payment of retirement benefits shall begin at age sixty-five (65).

5. Eligible employees shall receive a duty disability retirement benefit. The amount of retirement compensation shall be computed as normal retirement with additional service credit granted from the date of retirement to age sixty (60). Payments of workers' compensation benefits will be used to reduce an employee's retirement compensation. No age or service requirements apply.

6. Employees shall be eligible for a non-duty disability retirement upon completion of (10) years of credited service. The amount of retirement compensation shall

be compensated as normal retirement, but based on the actual number of years of credited service and average final compensation at the time of termination. The Employer reserves the right to limit payments from the Retirement System through the use of proceeds from the Employer's long-term disability policy.

7. In the event of an employee's death prior to retirement, normal retirement shall mean ten (10) or more years of credited service or eight (8) years of credited service at age 65. The amount of retirement compensation paid to the spouse shall be computed as normal retirement, but actuarially reduced in accordance with a one hundred percent (100%) joint and survivor election. If there is no eligible spouse, unmarried children under age eighteen (18) shall receive equal shares of fifty percent (50%) of the normal retirement benefit.

8. Employees in the Hybrid Retirement Plan shall be eligible for post retirement cost-of-living adjustments in the form of distributions from the Reserve for Inflation Equity.

B. Defined Contribution Provisions (NO CHANGE)

1. All employees in the Hybrid Retirement Plan shall contribute three percent (3%) of compensation to the plan. An employee shall be immediately vested in one hundred percent (100%) of his or her contributions.

2. The Employer shall contribute three percent (3%) of the employee's compensation to the Plan. An employee shall be vested in the Employer's contributions as follows:

    a. Fifty percent (50%) vested in the Employer's contribution upon completion of one (1) year of service;

    b. Seventy-five (75%) vested upon completion of two (2) years of service; and

    c. One hundred percent (100%) vested upon completion of three (3) years of service.

3. Upon termination, an employee may select one (1) of the following distribution options:

    a. Lump sum distribution of the vested account balance,

    b. Rollover of the vested account balance into a qualified plan, or

    c. Annuitizing the vested account balance if the employee is also eligible for a defined benefit pension.

C. Transfer Options for Plan 5

A Defined Contribution Plan #4 member may elect to transfer ~~during the window period (see 48.05 K)~~ into the Hybrid Plan #5 for a period of four (4) months from the date of the Frankland 312 Arbitration Award at full actuarial cost. The member may elect to purchase their entire credited service into the Defined Benefit portion of the plan, purchase none of their credited service into the DB Plan or purchase a portion of their credited service. The cost of purchasing credited service shall be determined ~~by utilizing the actuarial tables (Actuarial Cost of Purchases for Transfers form Plan 4~~) by the Plan Actuary. For calculation of purchase costs, the age shall be rounded up to the nearest whole age at time of purchase and the years of service shall be rounded down to the nearest whole year at time of purchase.

Once a transfer election is made it is irrevocable. Payment in full must be made at the time of transfer and funds from the employee's Defined Contribution Plan #4 vested account balance may be utilized to purchase the time. Transfers from the employee's account shall be taken from the taxable and non-taxable funds in the same proportion that they were contributed. Up to three years of military time may be purchased at full actuarial valuation and funds from the employee's vested DC account may be utilized to purchase military time. Any funds remaining in the employee's vested account shall be the basis for establishing the employee's new Defined Contribution Account under the Hybrid Plan.

All credited service still maintained by an employee in any Wayne County Retirement Plan may be utilized by the employee for calculating eligibility for future retirement regardless of which retirement plan the credited service is vested in. However, only time that is credited to the Hybrid Defined Benefit Plan shall be utilized for calculating an actual retirement benefit based on the multiplier factors.

48.05. NEW HYBRID PLAN 5A

A. Defined Benefit Provisions

1. Normal retirement shall mean twenty-five (25) years of credited service at age 55, twenty (20) years of credited service at age 60 or eight (8) years of credited service at 65. An employee retiring with thirty (30) years of service will receive medical benefits as otherwise provided under the terms of this Agreement.

2. The amount of retirement compensation shall equal one and one half percent (1.5%) per year times average final compensation for the first twenty (20) years, and one and three quarters percent (1.75%) per year times average final compensation for all years of service over twenty (20) years.

3. Average final compensation shall be equal to the monthly average of the employee's compensation for the best five (5) years out of the last seven (7) years of credited service. Compensation does not include payouts of excess sick or annual leave.

4. The employee shall contribute three percent (3%) of pension eligible compensation toward the cost of the Plan, to be deducted from the biweekly payroll until the plan year immediately following an Annual Actuarial Valuation Report of the Wayne County Employees' Retirement System that shows the Airport funding ratio is 100%. At that point, employee contributions will be reduced to two percent (2%) of pension eligible compensation.[1] Employee contributions will remain at two percent (2%) of pension eligible compensation until/unless such time as the airport funding ratio is again found to be less than 100% in which case the employee contribution would increase to three (3%) at the start of the next plan year. All contribution adjustments are made prospectively, not retroactively.

5. Regarding deferred retirement, vesting shall occur upon completion of eight (8) years of credited service. The amount of retirement compensation shall be computed as normal retirement, but based on the actual number of years of credited service and average final compensation at the time of termination. The payment of retirement benefits shall begin at age sixty-five (65).

6. Eligible employees shall receive a duty disability retirement benefit. The amount of retirement compensation shall be computed as normal retirement with additional service credit granted from the date of retirement to age sixty (60). Payments of workers' compensation benefits will be used to reduce an employee's retirement compensation. No age or service requirements apply.

7. Employees shall be eligible for a non-duty disability retirement upon completion of (10) years of credited service. The amount of retirement compensation shall be compensated as normal retirement, but based on the actual number of years of credited service and average final compensation at the time of termination. The Employer reserves the right to limit payments from the Retirement System through the use of proceeds from the Employer's long-term disability policy.

8. In the event of an employee's death prior to retirement, normal retirement shall mean ten (10) or more years of credited service or eight (8) years of credited service at age 65. The amount of retirement compensation paid to the spouse shall be computed as normal retirement, but actuarially reduced in accordance with a one hundred percent (100%) joint and survivor election. If there is no eligible spouse, unmarried children under age eighteen (18) shall receive equal shares of fifty percent (50%) of the normal retirement benefit.

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[1] For example, if the actuary report that issues in July 2015 (covering the period October 1, 2013 through September 30, 2014) indicates that the Airport funding ratio was found to be 100%, then employee contributions will be reduced from 3% to 2% effective Ocotber 1, 2015.

9. Employees in the Hybrid Retirement Plan 5A shall be eligible for post retirement cost-of-living adjustments in the form of distributions from the Reserve for Inflation Equity.

B. Defined Contribution Provisions

1. All employees in the Hybrid Retirement Plan 5A shall contribute three Percent (3%) of compensation to the plan. An employee shall be immediately vested in one hundred percent (100%) of his or her contributions.

2. The Employer shall contribute three percent (3%) of the employee's compensation to the Plan. An employee shall be vested in the Employer's contributions as follows:

   a. Fifty percent (50%) vested in the Employer's contribution upon completion of one (1) year of service;

   b. Seventy-five (75%) vested upon completion of two (2) years of service; and

   c. One hundred percent (100%) vested upon completion of three (3) years of service.

3. Upon termination, an employee may select one (1) of the following distribution options:

   a. Lump sum distribution of the vested account balance,

   b. Rollover of the vested account balance into a qualified plan, or

   c. Annuitizing the vested account balance if the employee is also eligible for a defined benefit pension.

C. Transfer Options

For a period of six (6) months from the date of the Arbitration Award, a Hybrid Plan 5 member may elect to transfer into the Hybrid Plan 5A. Employees who elect to transfer from Plan 5 to Plan 5A shall contribute $1,000 per year of prior credited service for the upgrade to Plan 5A. The member may elect to purchase their entire credited service into the Defined Benefit portion of the plan, purchase none of their credited service into the DB Plan or purchase a portion of their credited service. For calculation of service costs, service shall be rounded down to the nearest whole year at time of purchase.

Once a transfer election is made it is irrevocable. Payment in full must be made at the time of transfer. The employee's Hybrid Plan 5 vested defined contribution account balance may be utilized to purchase the time. Transfers from the employee's account shall be taken from the taxable and non-taxable funds in the same proportion that they were contributed. Any funds remaining in the employee's vested account shall be the basis for establishing the employee's new Defined Contribution Account under the Hybrid Plan 5A.

All credited service still maintained by an employee in any Wayne County Retirement Plan may be utilized by the employee for calculating eligibility for future retirement regardless of which retirement plan the credited service is vested in. However, only time that is credited to the Hybrid Defined Benefit Plan shall be utilized for calculating an actual retirement benefit based on the multiplier factors.

48.06 General Provisions

A. Once a member has elected to withdraw from Plan #1, the member cannot return to the Plan again.

B. Once a member selects Plan #4, the member shall remain in that Plan during employment with the Authority, or may transfer to the Hybrid Plan 5 under 48.04 C.

C. Employees hired on or after July 1, 1984 through 11/16/01 shall be eligible for Plan #4.

D. Employees hired on or after the date of the Frankland Arbitration Award shall be placed in Plan 5A.

E. Each employee shall participate in one of the Defined Benefit Plans, Hybrid Plans or the Defined Contribution Plan.

F. Employees must meet all age and service requirements or disability retirement requirement to be eligible for insurance and health care benefits pursuant to the *Wayne County Airport Authority Health and Welfare Benefit Plan.*

G. All employees hired on or after December 1, 1991, through 11/16/01 participating in Plan #4, shall not be eligible for insurance and health care benefits upon retirement unless they retire with 30 or more years of service, or fifteen (15) or more years of service at age sixty (60)), or meet eligibility requirements for a disability retirement.

H. Employees who on or after December 1, 1991, elect to receive a deferred retirement option upon separation from Authority service, shall <u>not</u> be eligible to receive insurance and health care benefits upon satisfying normal age and service requirements for a deferred vested retirement pension

I. This Agreement does not provide for early retirement.

J. All employees retiring who are eligible for medical benefits under the current system, may select a medical plan from among other available plans offered during open enrollment.

K. The Hybrid Plan 5A shall be made mandatory for all new employees hired and former employees re-employed, reinstated or rehired after ~~11/16/01~~ the date of the 312 Arbitration Award

L. ~~Plan #4 Employees hired, re-employed, reinstated or rehired prior to the execution date of this agreement may elect to transfer from their current Retirement Plan to the Hybrid Plan during the window period ending July 1, 2006. Once an employee elects to transfer to the new Hybrid Retirement Plan, that employee may not return to his/her previous Retirement Plan in accordance with 48.04C.~~

48.07 **Purchase of Military Service**

All employees may purchase up to a maximum of two (2) years prior military service at full actuarial cost. Purchase shall be in one (1) month increments with twelve (12) months of purchased credited service needed for one (1) year of credited service. The Retirement Commission shall establish rules for implementation of this section.

48.08

The Director of Personnel shall have the authority to file a written application for disability retirement on behalf of any employee permanently or indefinitely disabled. The provisions of the Wayne County Retirement Ordinance including Section 17.01 shall otherwise continue to apply

48.09

In the event that the WCAA implements its own retirement system separate from Wayne County using the same plan(s) in this agreement, employee participation will be subject to negotiation.