

2443

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION

LIVONIA PROFESSIONAL FIRE  
FIGHTERS UNION, LOCAL 1164,  
I.A.F.F.,

Petitioner,

-and-

MERC Case No. D12 G-0712

CITY OF LIVONIA,

Respondent.

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***Panel of Arbitrators***

Thomas L. Gravelle, Chairperson  
Robert Biga, City Delegate  
Dave Bostater, Union Delegate

GREGORY T. SCHULTZ, ESQ.  
For the City

MICHAEL L. O'HEARON, ESQ.  
For the Union

**OPINION AND AWARD**

## INTRODUCTION

The hearing of this matter was held in Livonia, Michigan on November 8, 2012.

The parties have stipulated that only one issue remains outstanding: Retiree liability for partial payments of health benefit plan premiums.

This issue is economic. Under the law, the Panel is required to accept the last offer of settlement ("LBO") made by one or the other party on this issue. In deciding which LBO to accept, the Panel is to consider the applicable factors set forth in Section 9 of Act 312 PA 1969, as amended. Section 9 as amended stresses ability to pay, and adds internal comparability as an express factor:

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

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
  - (i) The financial impact on the community of any award made by the arbitration panel.
  - (ii) The interests and welfare of the public.
  - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
  - (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.

- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:
  - (i) Public employment in comparable communities.
  - (ii) Private employment in comparable communities.
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
- (i) Other factors that are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.

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

## STIPULATIONS

The parties have stipulated that the new collective bargaining agreement ("CBA") will consist of the following: The parties' previous CBA as modified by the parties' agreements and by this Award.

The parties also have stipulated that the following cities are comparable communities: Dearborn; Southfield; St. Clair Shores; Sterling Heights; and Westland

The Panel adopts the above stipulations.

### **FACTUAL BACKGROUND**

The City of Livonia is the public employer. It is located in Wayne County, Michigan.

Five separate labor organizations represent different bargaining units in the City:

1. The Livonia Fire Fighters Union ("Union") represents "all Employees of the Fire Division of the Department of Public Safety of the Employer and who hold a lesser rank than Assistant Fire Chief." (C-1, p. 2).

2. Michigan AFSCME Local 192 represents non-supervisory DPW employees, clerical employees and library personnel.

3. Michigan AFSCME Local 1917 represents supervisors, inspectors in the Inspection Department, and other technical employees.

4. Police Officers Association of Michigan represents police officers and dispatchers.

5. Livonia Lieutenants and Sergeants Association represents command officers.

The City also has non-union professional, administrative employees.

Article 24 of the parties' 2008-2012 CBA included the following provisions:

3. . . . The entire cost of the [retiree health care] program will be borne by the City. . . .

6. Employees hired on or after April 29, 2009 shall have the same health care benefits as active employees upon retirement, and shall pay all premium sharing as provided in Section A.2, above [e.g., \$40 per month family coverage].

In September 2011, Public Act 152 was enacted, capping public employer contributions to employee health care plans for active employees.

In September 2012, the parties reached a tentative agreement ("TA") which includes numerous changes in Article 24 HOSPITALIZATION - MEDICAL COVERAGE. (C-2, pp. 11-19). The changes include increased employee contributions required by Public Act 152 of 2011. The TA also states that one issue remains outstanding:

For retirements occurring on or after December 1, 2012 [TO BE DETERMINED IN 312 ARBITRATION]

Sections 4-6 of Article 24 of the TA also state:

4. Employees below the age of 65, who retire on or after December 1, 2012, shall be eligible to participate in the Community Blue PPO Option 3, with annual deductibles of \$250.00 per member and \$500.00 per two-person/family in-network waived if services provided in a PPO's physician's office; co-insurance payments (80% City and 20% employee) of \$1,000.00 per member and \$2,000.00 per two-person/family; a \$20.00 office visit co-pay and an emergency room charge of \$100.00 which will be waived if admitted to the hospital; an RX deductible drug prescription rider with a \$10.00 co-pay for generic drugs, a \$25.00 co-pay for formulary brand name drugs and a \$50.00 co-pay for non-formulary brand name drugs. The plan shall also include the retiree, spouse, and dependent children under 19 years of age or the applicable legal age, whichever is greater. In the event of death of the retiree, this coverage shall continue for the surviving spouse until age 65, at which time coverage in paragraph D shall become effective.

5. Employees hired on or after April 29, 2009 shall have the same health care benefits as active employees upon retirement, and shall pay the premium sharing as provided in Section A. 2 above [monthly minimums but also requiring employee payments of amounts by which premiums exceed Act 152 public employer caps].

6. Employees who are hired on or after December 1, 2012 shall not be entitled to retiree health insurance upon retirement. Instead, the City will contribute to a retirement health savings plan (RHSP) for use by the employee following separation from employment . . . .

The December 1, 2012 date in Article 24, Section 4 of the TA appears to have caused concern. Footnote 10 of the City's brief states: "7 firefighters, almost 10% of the Department, retired between November 26 and November 29, 2012."

#### **THE PARTIES' FINAL OFFERS OF SETTLEMENT (LBOs)**

**The Union's LBO** is to add the following sentence to TA Article 24, section 4 after the first sentence ending with the words "*non-formulary brand name drugs*:"

The entire cost of the plan will be borne by the city for employees hired on or before April 28, 2009.

**The City's LBO** is to add the following new language to Article 24 (with ensuing sections renumbered):

A. 3. For all retirements occurring on or after December 1, 2012, including regular, early, deferred or disability-related retirements, retirees shall make contributions toward the cost of employer-provided medical coverage throughout retirement as follows:

a. For employees participating in the base plan, the lesser of the amount the employee was paying at the time of retirement or \$200.00 per month.

b. For employees participating in the alternate plan, the lesser of the amount the employee in the applicable coverage level (single, two-person or family) of the base plan was paying at the time of retirement or \$200.00 per month plus the difference between the illustrative rates of the base plan and the more illustrative rates of the alternate plan, in the event the alternate plan is more expensive as provided in Section B, below. [footnote 4].

[footnote 4 states:] The parties have already agreed that retirees choosing the alternate plan would pay the difference between the base plan and the alternative plan.

A major argument of the Union is that the City's LBO is in conflict with TA Article 24, Section 5 (quoted above). The panel addresses this argument as follows: Section 5 of the TA is identical to Section 6 of the parties' 2008-2012 CBA. In the TA, Section 5 appears to be surplusage, *i.e.*, an employee hired on or after September 29, 2009 is treated the same as an employee hired before September 29, 2009. As such, it does not appear to preclude the City's LBO. Further, as cited above, the parties agreed in their TA to submit the following issue to Act 312 arbitration:

For retirements occurring on or after December 1, 2012 [TO BE DETERMINED IN 312 ARBITRATION]

#### **ABILITY TO PAY**

Act 312 as amended stresses that the following factor be considered: "The financial ability of the unit of government to pay."

Section 9 of Act 312, as amended, states:

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

In addition, subsection 1 of section 9 of Act 312, as amended, includes the following

“ability to pay” factors:

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

- (i) The financial impact on the community of any award made by the arbitration panel.
- (ii) The interests and welfare of the public.
- (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
- (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government’s expenditures or revenue collection.

Act 312 requires panels to review a local unit of government’s financial condition.

The review should include the local unit’s financial history, with an eye to the future, rather than a snap shot at a fixed time. The panel is aware that the parties’ narrow difference regarding the sole outstanding issue – when the difference is considered in isolation – does not pose a major impact on the the City’s financial ability to pay.

The City’s financial condition includes the following:

- ***Total General Fund Revenues.***

In 2008, the City had total general fund revenues of \$53 million; by 2011 the total general fund revenues had been reduced to \$48.3 million. (C-16). (See also, U-5, p. 15). Measured against the \$53 million in 2008, in the ensuing three years total general fund

revenues fell by about \$11.7 million. (*Id.*) Because the City is already almost completely developed, it cannot “grow” itself to increase revenues.

**A. Real estate taxes.** A major source of income for the City is real estate taxes. The City’s 2013 budget projects that residential property taxes will be 37.3% of its 2013 revenues. (C-10). Real estate taxes are assessed on state equalized value (“SEV”). In 2007, the SEV of realty in the City was (in rounded numbers) \$6 million; by 2012, the SEV had sunk to \$3.9 million. (C-12). The City has projected a gradual increase in SEV beginning in 2013 with parity with 2007 not occurring until 2027. (C-13). For the period 2008-2011, the City has lost almost \$6 million in property tax revenue. (U-5, p. 23). By reason of the recent millage increase, property tax revenues are projected to be higher for 2012 and 2013. (*Id.*)

**B. Personal property taxes.** The State of Michigan recently amended the law governing personal property taxes. (See C-20). In 2010, the City collected \$5.7 million in personal property taxes, representing 11.43% of all property taxes it collected. (Sources: Michigan Department of Treasury, compiled by Michigan Municipal League). While the precise outcome of the amendment is unclear at the present time, it likely will be detrimental to local units of government, including the City.

**C. State shared revenues.** Another major source of income for the City is state shared revenues. The City’s 2013 budget projects that state shared revenues will be 15.3% of its 2013 revenues. (C-10). Between 2000 and 2011, the City’s annual receipts of state shared revenues gradually declined from \$11.2 million to \$7.5 million. (C-15). For the period 2000 to 2013, the City has estimated – based on \$11.2 million

in 2000 – a total reduction of state shared revenues of \$27.8 million and a cumulative percentage change of -29%. (*Id*).

- ***Total General Fund Expenditures.***

In 2008, the City had total general fund expenditures of \$53 million; by 2011 the total general fund expenditures were reduced to \$48.2 million. (C-16). Measured against the \$53 million in 2008, in the ensuing three years total general fund expenditures fell by about \$11 million. (*Id*). Director of Finance Michael Slater explained that employee wages and benefits represent 83% of the City's total budget. (Tr. 74). Between 2001 and 2013, the City has reduced its full-time equivalent positions by 18%. (C-23).

**A. Pension contributions.** After several years of no City pension contributions, in 2010 the City contributed from its general fund \$829,000, and in 2011 \$2.3 million. (C-21).

**B. Medical benefit plan contributions.** Beginning on January 1, 2012, MCL 15.563 has capped public employer contributions to medical benefit plans for active employees. On September 18, 2012 the State Treasurer published a memorandum including the following (C-41):

[F]or medical benefit plan coverage years beginning on or after January 1, 2013, the limit on the amount that a public employer may contribute to a medical benefit plan equals the sum of the following:

- \$ 5,692.50 times the number of employees with single person coverage
- \$11,385.00 times the number of employees with individual and spouse coverage
- \$15,525.00 times the number of employees with family coverage.

While providing some relief, the City's contributions under the caps are still very expensive. (C-27).

**C. Retiree medical benefit plan liability.** Section 9(1) (a)(iii) of Act 312 directs panels to consider "[a]ll liabilities, whether or not they appear on the balance sheet of the unit of government." A major liability in the present case not appearing on the City's balance sheet is its liability for retiree health plan benefits. The City's Voluntary Employee Beneficiary Association ("VEBA") is responsible for these benefits.

Sandra Rodwan is an actuary retained by the VEBA. Her actuarial valuation explains that as of November 30, 2011 the VEBA had an unfunded accrued liability of \$93.7 million. (C-25). In other words, it is funded at 40%. Mr. Rodwan explained (Tr. 33):

One way to look at it is for every dollar of accrued liability in the VEBA, there's about 40 cents on hand now to cover the value, the present value of the accrued liability.

Ms. Rodwan also explained that the VEBA uses a 40-year amortization period in setting the amount of annual payments. This reduces payments compared to a 30-year amortization period. (Tr. 39-40).

City auditor Plante and Moran wrote for the period ending November 30, 2011 (C-22, p. 9):

As of November 30, 2011, the VEBA fund has approximately \$60 million set aside for these costs. Despite modifications to this benefit, the liability for retiree health care determined by the actuary has grown from \$115 million in the 2007 valuation to \$153 million in the 2009 valuation. These costs continue to be a very significant part of the City's budget, at approximately \$6.6 million for the year ended November 30, 2011.

For 2011, the City paid 19.59% of employee salaries to fund the VEBA for retiree health care. (C-28). Beginning in 2003 the lowest City annual payment per employee has been 13.91%. (*Id.*) City Human Resources Director Robert Biga explained that the 19.59% does not include the cost to the City for health insurance for active employees. (Tr. 139-140). The City's LBO would have a modest favorable effect on the VEBA whereas the Union's LBO would have an unfavorable effect on the VEBA.

- ***General Fund Balance.***

By reason of significant cost cutting, the City has a total general fund balance of 13.0% and an unrestricted balance of 12.4%. (C-17). These balances are pretty good although some analysts recommend a higher minimum unrestricted fund balance (C-18, p. 2):

GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures.

City Director of Finance Michael Slater explained that two months would entail a fund balance of 16.6%. (Tr. 65-66) .

For the City and the parties' external comparable communities, the average total general fund balance is 23.5% and the unrestricted balance is 16.3%. (C-17). The latter average, with the City excluded, appears to be about 18.3%. (U-5, p. 16).

As explained by the Union, the City enjoys a high bond rating. (U-5, p. 19).

- ***Summary of Financial Ability.***

The City and its employment groups including the Firefighters Union appear to have worked fairly closely in keeping the City's finances in decent (not flush) condition. But there are yellow flags as reviewed above. The watchwords for the City's finances are "caution" and "prudence."

### **THE NARROW ISSUE BEFORE THE PANEL**

In a nutshell, the Union's LBO is that retiree health care be cost free for employees hired on or before April 28, 2009, whereas the City's LBO is that all employees retiring after December 1, 2012 pay a maximum of \$200 a month in perpetuity for health care.

Employees represented by the Fire Fighters Union "who are fifty-two (52) years of age and have ten (10) years of fire fighter service with the City of Livonia, or at any age with 27 years of service with the City of Livonia, may retire at full pension benefits as provided in the City Pension Ordinance." Reduced pensions are also available. (C-1, p. 39).

Shortly before December 1, 2012, seven firefighters retired. (City Brief, n. 10).

Retiree health insurance is very costly. (The City is self-insured; and as people age they tend to need more health care.) City Exhibit 29 is a summary of medical claims paid for the months March 2012 through September 2012. For each of these months, medical claims paid were higher for retirees than for active employees. For example, in 2012, the Community Blue 2 PPO retiree health insurance premium for two-person coverage was \$19,326 (and \$14,839 for two-person active employee coverage). (C-30).

Between 1999 and 2012, retiree health premiums increased 179% (and 114% for active employees). (*Id*).

The City's fire fighters are well compensated. City Exhibit 40 shows the average final compensation ("AFC") for fire, police and general employees who retired voluntarily during the period June 2010 through October 1, 2012:

Fire:	\$101,973
Police:	\$87,493
General:	\$56,934

The City's LBO states that the maximum payments by retirees will be "throughout retirement." This commitment is also made by the City at page 29 of its brief:

Recognizing that in some cases retirement means a fixed income, the City built into the proposal two safeguards to limit the impact its proposal would have on retirees. First, the City's proposal provides that the amount a retiree will pay in retirement will be frozen and will never increase. So, while the cost of the health insurance will continue to go up throughout the retiree's retirement, the City will pay for 100% of those increases. . . .

The City also recognized that there should be some cap on the amount the retiree pays, and therefore it incorporated into its proposal a maximum amount the retiree can be expected to contribute. The proposal provides that the most an employee would pay for health insurance would be \$200 per month.

As time goes by, the City has projected that the monthly maximums will cover a diminishing amount of the cost to the City of the retiree premiums. ( C-31-36). Further, even modest inflation will reduce the "cost" to retirees as time go by. Indeed, based on reasonable projections (C-31-36), in later years the City's LBO will require retiree contributions which will be very small compared to what active employees will be

required to pay (assuming Act 152 is not rescinded and that federal law does not upset the apple cart).

- **Comparability.** Act 312 requires that panels compare the compensation of other employees of the City and of other public employers. The key comparison before the parties involves retiree contributions to health care plans.

**Internals:** As explained by City Human Resources Director Robert Biga, the following obtains within the City:

- Michigan AFSCME Local 192 (179 employees) (in 2011 agreed to City LBO).
- Michigan AFSCME Local 1917 (17 employees) (in 2011 agreed to City LBO).
- Non-union employees (120 employees). (City LBO imposed based on AFSCME agreements).
- Police Officers Association of Michigan ("POAM") (95 employees). (City LBO denied without explanation in recent Act 312 Award). (U-16).
- Livonia Lieutenants and Sergeants Association ("LLSA") (22 employees) (per one-year CBA extension to expire on November 30, 2013, no retiree premium sharing).

Since 2011, 73% of the City's non-firefighters have been covered by the City's LBO.

Mr. Biga also explained that the City will seek its LBO in the present case later this year in negotiations with the POAM and the LSSA. (Tr.121, 133).

**Externals:** Among the five stipulated comparable cities, Dearborn, St. Clair Shores and Sterling Heights do not require retiree premium sharing. (U-11). Southfield requires that after the first \$500 health charge, the employee pays 10% of the cost. In Westland, for employees hired after July 1, 1994, the City pays 4% for each year of service with the retiree paying the difference. (*Id*).

The CBAs on which the above review is based were in place before the September 27, 2011 effective date of Public Act 152 of 2011: Four of the five have beginning dates of 2007 or 2009 and one has a beginning date of July 1, 2011. (U-7). Under Act 152, active firefighters in the comparable cities presumably are adversely affected as to premium sharing. It is an open question whether these cities and their respective unions will maintain the status quo for retirees or instead will agree that retirees – like active employees - should be required to contribute to their health insurance. On this point, the City has cited two recent Act 312 awards directing that retirees pay a 20% contribution rate to match the contribution rate of active employees. *Plymouth Township*, MERC Case No. D11 D-0439 (May 6, 2012); and *City of Ecorse*, MERC Case No. D10 E-0559 (Aug. 6, 2012). Unlike contractual language that retirees “mirror” the premium sharing of active employees, the City’s LBO places permanent caps on retiree premium payments.

## **CONCLUSION**

The panel adopts the City’s LBO.

**PANEL SIGNATURES**

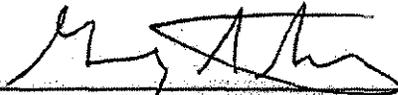
Case No. D12 G-0712

Dated: February 23, 2013

  
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Thomas L. Gravelle, Chairperson

The City *concur*s.

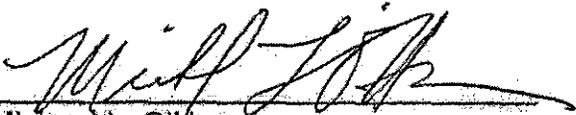
Dated:

  
\_\_\_\_\_  
Gregory T. Schultz,  
In behalf of City Delegate Robert Biga

The Union *dissent*s.

Dated:

3/20/13

  
\_\_\_\_\_  
Michael L. O'Hearon  
In behalf of Union Delegate Dave Bostater