

IN THE MATTER OF THE
ARBITRATION BETWEEN:

City of Highland Park

and

MERC Case No. D 12 G-0695

Highland Park Police and Firefighters Association

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Opinion and Order

Arbitration Panel

Arbitrator/Chair:
William E. Long

Employer Delegate:
Nikkiya Branch

Union Delegate:
Kevin Loftis, Police Officers Association of Michigan Business Agent

Appearances

Todd Perkins, Attorney
City of Highland Park

Kevin Loftis
Police Officers Association of Michigan

Date of Award: May 21, 2013

INTRODUCTION

The Highland Park Police and Firefighters Association (referred to as the Union in this Opinion and Award) and the City of Highland Park (referred to as the Employer or City in this Opinion and Award) entered into a Collective Bargaining Agreement (CBA) for the period November 6, 2006 through June 30, 2010, which recognizes the Union as the exclusive representative for collective bargaining for all full time firefighter employees of the City of Highland Park, excluding the fire chief, auxiliary employees, civilians and all other employees. (J-1)¹ The Union and the Employer were unable to resolve disputed matters leading to a CBA. The Union filed a petition with the Michigan Employment Relations Commission (MERC) for Act 312 Arbitration on October 4, 2012. This impartial Arbitrator was appointed by MERC on October 19, 2012.

A pre-hearing conference was held November 1, 2012. Among the procedures agreed to by the parties at the pre-hearing conference was that all issues before the panel are economic. The parties were unable to agree on comparable communities and the duration of the new CBA. They agreed to submit briefs in support of their positions on comparable communities and the duration of the CBA to the Independent Arbitrator and have the Independent Arbitrator issue an Interim Opinion and Award on those issues before taking testimony on the remaining issues. The Interim Opinion and Award was issued December 20, 2012. A copy of that Interim Opinion and Award which addresses the external comparable communities and the duration of the CBA will be considered as a part of this Opinion and Award and will be contained in the file.

The Interim Opinion and Award addressed the following two issues:

- The duration of the CBA. The Interim Award ruled that **the CBA duration will be for the period from July 1, 2010 through June 30, 2015 unless otherwise agreed to by the parties during the course of this proceeding.**
- The selection of comparable communities for which a comparison of wages, hours and conditions of employment will be made between employees involved in this proceeding with other employees performing similar services in public employment pursuant to section 9(d)(i) of Act 312. The Interim Award ruled that the following communities are comparable to the City of Highland Park in this proceeding: **The Cities of Hazel Park, Inkster, River Rouge, Ecorse, Hamtramck, and Melvindale.**

¹ Throughout this Opinion and Award references will be made to Exhibits as (Exhibit J, U, E -# and Transcripts as (Tr.#, pg #).

The Union chose Police Officers Association of Michigan Business Agent Kevin Loftis to represent the Union and to be the Arbitration Panel Delegate. The Employer chose Attorney Todd Russell Perkins to represent the Employer and Attorney Nikkiya Branch to be the Arbitration Panel Delegate. During the pre-hearing conference the parties agreed that the issue of wages would be addressed separately for each year of the proposed agreement.

A schedule was set for exchange of issues, exhibits, witness lists, and last offers of settlement on the issues to be presented to the panel. Last offers of settlement were submitted by the parties on February 4, 2013 (J-11, J-12). Four days of hearings were held February 11, 14, 20 and 22, 2013 at the MERC offices in Detroit. The record consists of four volumes containing 638 pages. Fifty-two (52) Exhibits were accepted into the record; 12 Joint Exhibits, 23 Employer Exhibits and 17 Union Exhibits. The Employer presented the testimony of 5 witnesses and the Union presented the testimony of 2 witnesses. Post-hearing briefs were submitted to and exchanged through the Arbitrator April 19, 2013. The Union submitted a supplemental Brief on April 29, 2013 and on April 29, 2013 the Employer submitted a response to the Union's supplemental brief. The Panel Delegates have placed their signatures on each specific Award in support of or in opposition to the finding and award on each issue and have also placed their signatures at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on each issue presented.

ORGANIZATION OF OPINION AND ORDER

The Opinion and Order first discusses the procedural issues including an identification of issues that were initially in dispute but were either stipulated to by the parties during the course of this proceeding or determined by this Arbitrator in the Interim Opinion and Award. Next is an identification of the issues presented to the Panel for decision followed by the statutory criteria to be applied. Following the statutory criteria is a reiteration of the comparable communities selected by the Arbitrator in the Interim Opinion and Order and then the ability to pay is addressed under the economic issues heading followed by each of the issues presented to the Panel for decision.

PROCEDURAL ISSUES

Issues that were stipulated to by the parties or were determined by the Arbitrator in the Interim Opinion and Order are:

- CBA Duration (Art 35.1) - determined by the Arbitrator in the Interim Opinion

and Order to be July 1, 2010 through June 30, 2015.

- Layoff (Art 7.2) - stipulated to by the parties (Tr 4, pg 98) "If it becomes necessary for layoff, the following procedure will be followed. Probationary and all civilian and auxiliary personnel who are working in job classifications in the Unit shall be laid off first. Layoff for permanent employees shall be by Unit seniority. The least senior employee(s) in the Unit shall be laid off first."

In addition to the above stipulations, the parties' last best offers (LBO's) on the issue of wages for the period July 1, 2010 – June 30, 2011 and July 1, 2011 – June 30, 2012 were the same (0%). Therefore, the base wages for the period July 1, 2010 – June 30, 2011 and July 1, 2011 through June 30, 2012 will not change from those contained in the current CBA.

In addition to those issues agreed to by the parties during this proceeding and those decided by the Panel, contract provisions not before the Panel for determination that are in the current collective bargaining agreement will be advanced into the new agreement the same as under the old agreement.

At the conclusion of the last hearing day on February 22, 2013 it was agreed that the date for submission of post-hearing briefs would be determined by the date, which the final transcripts were provided to the parties. (Tr 4, pg 102). The date for submission of final post hearing briefs was April 19, 2013. The panel did not discuss whether or not briefs in response to the post hearing briefs would be submitted. As noted above, however, the Union submitted a supplemental brief on April 29. In that brief the Union objects to statements made in the City's April 23, 2013 brief, which refer to a recent jury award verdict. The City's statement in its brief referenced the fiscal year 2011-12 CAFR fund balance showing \$2,991,762 and states:

"Just that quickly the fund balance was all but eliminated by a recent jury verdict awarded against the City of Highland Park for an amount in excess of two million dollars and adjustments that had to be made to the estimated budget for FY 2012-13 due to actual expenditures of the fiscal year. This quick evaporation of the audited surplus lends tremendous support to the City's argument that it is not in a financial position to honor the request of the firefighters because unfortunately at the moment, the City's financial future is just that volatile and uncertain."

The Union also objects to the City's reference in the City's post hearing brief that the State Treasury Department has sent another adviser who has recommended the City reduce its budget for the next fiscal year. The Union says it has the right to respond to these prejudicial claims in the City's post hearing brief because the Union did not have an opportunity to address them during the hearing. The Union's supplemental brief

argues that reference to jury award against the City and what the State Treasury Department adviser may be recommending, both of which occurred after the last hearing date to receive record testimony, was inappropriate and should be rejected by the panel. The Union says it is untimely, unsubstantiated and prejudicial to the Union to receive this because the Union did not have ample time to review it.

The Employer's response to the Union's supplemental brief states that its references to the recent jury verdict and the arrival and recommendation of the adviser from the State Treasury Department were appropriate under Act 312 provisions, specifically Section 9(1)(h) which states one of the factors the panel can consider is "changes in any of the foregoing circumstances while the arbitration proceedings are pending." The City says its statement in the brief referring to the jury award verdict was merely to illustrate the point that the City's financial future is volatile and unpredictable. The City says the Union erroneously asserts the City claimed the jury verdict would diminish the City's general fund by \$2 million or that the entire balance had to be paid out of the general fund. The City says since the jury verdict was just issued in February 2013 it would be malpractice for the City not to appeal. As for the appointment of the new adviser from the State Treasury Department, the City says it was just pointing out a changed circumstance and made no claim that his budget recommendations impacted the City's ability to pay.

My findings and ruling on this procedural issue is as follows. Unfortunately I did not clarify with the panel whether or not they wanted the opportunity to submit replies to post-hearing briefs. I find that because that was not clarified, it was permissible for the Union to submit its "supplemental" brief and for the Employer to submit its response to the Union's supplemental brief. They have been reviewed by me and will be contained in the case file. I find that the City's reference to these matters in its post-hearing brief could be interpreted by the City as classified under "changes in circumstances." But I also find that in the City's response to the Union's supplemental brief, the City basically indicates that reference to the jury award was to illustrate the point that the City's financial future is volatile and unpredictable, not that it had an immediate impact on the City's general fund. And the fact that the State Department of Treasury appointed a new adviser did not mean his budget recommendations had any impact on the City's ability to pay position. Therefore, this additional information adds minimal new evidence to that which is already contained in the record. I will give the information provided in the City's brief on these issues, along with the Union's supplemental brief and the City's response to the Union's supplemental brief, proper

consideration based on the applicable factors prescribed in Section 9 of Act 312.

In the Union's post hearing brief, its position on several of the issues is that the panel lacks a basis to rule for the City on the issue due to the City's failure to provide any evidence on the issue. The Union cites language in Section 10 of Act 312 which states "A majority decision of the arbitration panel, *if supported by competent, material, and substantial evidence on the whole record*, shall be final and binding upon the parties – "(emphasis added). The Union argues that for many of the issues, the City failed to provide any evidence to support its last offer of settlement, let alone competent, material and substantial evidence.

It is the responsibility of each party to present evidence in support of the issues and I recognize that the City has relied primarily on its testimony and evidence relating to its ability to pay to support its position or purpose for presenting many of its last best offers on other issues. In addition to the language in Section 10 referred to by the Union, language in Section 8 of Act 312 states: "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9." It is my opinion that it is appropriate that each of the issues presented in the parties' last offer of settlement be addressed in this opinion and order. Since the result of this decision will be binding on the parties for the next two years, I believe it is incumbent upon the panel, and the panel has an obligation, based on the whole record, to address each issue as best it can based on the evidence presented. That is what this opinion and order has attempted to do.

The time period for issuing this written opinion and order is specified in Section 8 of Act 312. The required time period is "within 30 days of the conclusion of the hearing, or within up to 60 additional days at the discretion of the chair." The hearing was considered concluded upon the filing and exchange of the parties' supplemental brief and response to the supplemental brief; April 29, 2013. This opinion and order is issued within 30 days of the conclusion of the hearing.

IDENTIFICATION OF ISSUES FOR PANEL DECISION

The issues remaining before the Panel for decision, in the order they appear in the CBA, are:

- Issue 1 – (Art 10.1G) Lt. In charge of shift [Employer proposal]
- Issue 2 – (Art 16.2) Shift Differential [Employer proposal]
- Issue 3 – (Art 16.6) Gun Allowance [Employer proposal]
- Issue 4 - (Art 17) Longevity Pay [Employer proposal]

- Issue 5 – (Art 18.1) Holidays [Employer proposal]
- Issue 6 – (Art 19.1) Furloughs [Employer proposal]
- Issue 7 – (Art 22.1) Sick Leave [Employer proposal]
- Issue 8 – (Art 23.1, (Appendix B) Medical Insurance – Plan Design [Employer & Union proposal]
- Issue 9 – (Art 23.1, (Appendix B) Medical Insurance – Premium Sharing [Employer & Union proposal]
- Issue 10 – (Art 23.4) Retiree Medical [Employer proposal]
- Issue 11 – (Art 24, Appendix B) Dental Care Program [Employer proposal]
- Issue 12 – (Art 25, Appendix B) Eye Care Program [Employer proposal]
- Issue 13 – (Art 27.1 Appendix A) Wages 07.01.12-06.30.13 [Union proposal]

- Issue 14 – (Art 27.1 Appendix A) Wages 07.01.13-06.30.14 [Union proposal]
- Issue 15 – (Art 27.1 Appendix A) Wages 07.01.14-06.30.15 [Union proposal]
- Issue 16 – (Art 30.1) Pension System, reduction in multiplier [Employer proposal]
- Issue 17 – (Art 30.1) Pension System, employer payment to defined contribution [Employer proposal]
- Issue 18 – (Art 30.1) Pension System, average final compensation calculation [Employer proposal]
- Issue 19 - (Art 31.1) Educational Bonus [Employer proposal]
- Issue 20 – Appendix D – Firefighter Captain and Fire Engine Officer [Employer proposal]

STATUTORY CRITERIA

When considering the economic issues in this proceeding, the Panel was guided by Section 8 of Act 312. The section provides that “As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.” Section 9(1) and (2) states “(1) the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (a) *The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel’s determination of the ability of the unit of government to pay:*
 - (i) *The financial impact on the community of any award made by the arbitration panel.*
 - (ii) *The interests and welfare of the public*
 - (iii) *All liabilities, whether or not they appear on the balance sheet of the unit of government.*
 - (iv) *Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government’s expenditures or revenue collection.*
- (b) *The lawful authority of the employer*
- (c) *Stipulations of the parties.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in both of the following:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*

- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
 - (f) The average consumer prices for goods and services, commonly known as the cost of living.
 - (g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 - (h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
- (2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence."

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

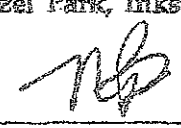
COMPARABLE COMMUNITIES

Section 9(d) of Act 312 directs the Panel to consider a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services, and with other employees generally in public and private employment in comparable communities. As noted in the introduction, the parties agreed to present the issue of comparable communities to the Arbitrator for decision and in the Interim Opinion and Order the Arbitrator determined the following communities as external comparable communities: the cities of Hazel Park, Inkster, River Rouge, Ecorse, Hamtramck, and Melvindale.

Attachment A of the Interim Opinion and Order displayed data, which was considered in selection of the comparable communities. Attachment A data may be referred to in the discussion and findings sections addressing the ability to pay and specific issues when section 9(1) and (2) factors, relate to the issue.

Therefore, the Panel chooses the following communities as comparable to the City of Highland Park in this proceeding: the cities of Hazel Park, Inkster, River Rouge, Ecorse, Hamtramck, and Melvindale.

Employer: Agree _____

Disagree _____ 

Union: Agree  _____

Disagree _____

ECONOMIC ISSUES

ABILITY TO PAY

Employer Position

The Employer provided evidence pertaining to ability to pay through the testimony of City Finance Director Earnestine Williams; Dave Massaron, Principal at the law firm of Miller, Canfield, Paddock and Stone; Brian Lefler, managing director of public finance for Baird and Associates firm to assist the City as a financial adviser; and Gregory Terrell, CPA contracted by the Employer to conduct audits for the City. Employer exhibits C-21 through C-38 and C-46 through C-49 provided data relating to the Employer's economic situation and the ability to pay. A substantial portion of the Employer's post hearing brief referred to that testimony and evidence in support of its position on the ability to pay.

Ms. Williams provided some background leading to the Employer's current financial condition using exhibits C-21 and C-35. Ms. Williams testified that she was originally hired by the City in 2004 as deputy financial director and in 2007 became financial director (Tr. 2, pg 65). She said that when she came to the City in 2004 the City was under a financial manager and "they shut the City down completely. There were no employee's working. People did not get paid for six months" (Tr. 2, pg 65). The background described in C-21 and C-35 revealed the following:

- 1996 – State of Michigan appointed a review team to determine the extent of the City's financial problems
- September 2000 – State of Michigan appointed a second review team
- June 2001 – Emergency Financial Manager appointed
- April 2005 – second Emergency Financial Manager appointed
- April 2009 – Third Emergency Financial Manager appointed
- July 2009 – Emergency Financial Manager removed and City returned back to Mayor and City Council but remained under general supervision of the State pursuant to Act 72, which requires financial reports to the State monthly. (Tr. 2, pg 51).

Evidence revealed that for ten fiscal years ending 2003 to 2012 the City ended with a negative balance six of those years (C-35). The City also borrowed funds during that period to enable it to maintain services. The following loans were obtained:

- June 2005 - \$1,250,000 tax anticipation loan; paid back December 2005
- September 2005 - \$1,000,000 emergency loan from the State

- April 2006 - \$1,250,000 tax anticipation loan; paid back October 2006
- April 2008 - \$3,000,000 emergency loan from the State

The Employer notes that two of the four positive fund balances are associated with the emergency loans received by the State which are due to be repaid.

Other steps the Employer has taken to remain financially solvent have included:

- An agreement with Daimler-Chrysler to forgive debt of \$8.6 million. (C-35)
- An agreement with DTE to eliminate a debt of \$4.7 million. (C-22)
- Reducing contractual employees and bringing most jobs back within the City resulting in annual savings of \$600,000. (C-35)
- Discontinuing a contract with Wayne County for law enforcement and re-activation of the City Police Department for an annual savings of \$1 million. (C-35).

The Employer points out that it has lost 30% of its population in that last 10 years and a high percentage of its current population, 43.7%, have incomes below the poverty level. The Employer presented the comprehensive annual financial reports (CAFR) for the fiscal years ending June 30, 2008(C-30), 2009(C-31), 2010(C-32) 2011(C-33) and 2012(C-34). The Employer, in its post hearing brief, notes that while the 2012 CAFR indicates an increase in property tax revenue, the increase is due to an increase in the mill rates for the voted pension debt. This coupled with the decline in population, means less people are paying higher taxes, much of which is dedicated to pension obligations and not for general fund use. The city also notes that due to population declines, the state shared revenue available for use by the general fund decreased from 2011 to 2012. It is projected to increase only slightly (\$110,000) from 2012 to 2013. (C-28). It also points out the general fund continues to subsidize the water department enterprise fund at a rate of \$275,000 per year. (C-23). The City also notes that payment of \$100,000 on the principal for its emergency loan of \$1 million made in 2003 is due May 19, 2013. (C-28).

Ms. Williams presented (C-23) which displayed a general fund estimated monthly cash flow for the fiscal year ending June 30, 2012. It demonstrated that the City was just barely meeting its expenditure obligations on a month to month basis and actually had to withhold and delay some payment obligations in order to maintain a cash balance.

City Exhibit (C-24) and (C-36) were presented by Ms. Williams. These exhibits described the trends in property tax collections for 2010 through 2012. (C-36) showed the following:

	<u>2010</u>	<u>2011</u>	<u>2012(as of 02/04/13)</u>
taxes due:	\$5,250,834	\$9,071,501	\$7,973,100
taxes paid:	\$3,040,305	\$5,339,904	\$4,370,593
tax unpaid:	\$2,210,529	\$3,731,596	\$3,602,505
% paid	58%	59%	55%

As noted above, the figures for 2012 are not for the full fiscal year. Comparing the 2011-2012 period to the 2012-2013 period, it is quite possible additional tax revenues may be received from pension, pension winter and city operating sources prior to the end of the 2012-2013 fiscal year.

It is also noted, that (C-33) and (C-34) present the CAFR's for the periods ending June 2011 and June 2012 respectively. Those reports indicate that property tax revenues for the 2010-2011 fiscal year was \$3,567,824 and for the 2011-2012 fiscal year \$3,787,002. So there was a slight increase in property tax revenue from the 2010-2011 to the 2011-2012 fiscal year.

Ms. Williams spoke to the current millage rates and referred to (C-25) which describes the current (2012) property tax rates being paid by Highland Park residents. Ms. Williams explained that total annual millage is 51.7758. Within that millage is 26 mills annually which is dedicated to payment of a 30 year \$27 million dollar bond it negotiated with Fifth Third Bank in 2008 to meet its pension obligations to its retired employees. Because of its financial condition, the MERS pension system would no longer serve the City and the City had to go to the market to secure a bond to meet its pension obligations. Ms. Williams testified that the City initially secured the Bond by adding 7 mills to its taxes and dedicating portion of state revenue sharing to pay the bond proceeds obligation to Fifth Third. But the Fifth Third Agreement requires an annual renewal and in the 2012 renewal process, Fifth Third and other creditors indicated revenue sharing was not a secure enough source to assure payment so in order for the City to maintain the loan to pay the bond it had to dedicate 13 mills in summer and 13 mills in winter taxes (26 mills annually) to generate the \$3 million annual debt service on the pension bonds. Ms. Williams indicated the balance remaining on the initial bond to make the pension payments is about \$9 million so the funds will be depleted in about 3 years. The remaining 25.7758 mills is for general operating, special rubbish, court judgment and 3 mills for pension judgment. (C-25). Conditions of the Fifth Third Agreement include a provision that tax collections from the millage must produce the required amount of funds to meet the bond payment obligations, so if tax collections decline from the current millage of 26 mills then the tax

rate on the pension bonds will increase beyond the current 26 mills to meet the payment obligations. Ms. Williams noted that three years from now the \$9 million remaining in the funds from the Bond will be paid to sustain the pension obligations but the obligation to pay the bond indebtedness will remain. The City will have to find another source of funds, perhaps from the general fund or another means of financing, for the payment of the pension obligations. Ms Williams indicated that the City continues to explore options to restructure the debt. (Tr 2, pgs 179-181).

City exhibit (C-26) is part of the monthly financial report to the State and is an invoice status report by vendor as of December 31, 2012. It identifies outstanding financial obligations of the City to various vendors totaling \$14,163,245.23. Ms. Williams indicated that a major portion of this amount was owed to the City of Detroit Water Board because the City of Highland Park has been unable to pay the full bill for water and sewage service from the Detroit Water Board for some time. She stated there is now a court order that requires 65% of the City of Highland Park water and sewer fees it obtains from its residents go directly to the City of Detroit Water Board. But that 65% does not pay for the entire cost of service from the City of Detroit and the City of Highland Park has been unable to pay the additional cost so as of December 31, 2012 there was a current balance owing the water fund of \$545,000 and the Water Sewage of \$11,502,958. Ms. Williams said there were attempts to do payment arrangements but currently those major bills remain outstanding (Tr 2 pg 201). She also indicated the City of Highland Park had shut down its water department and is in the process of making repairs to meet safety requirements. She was uncertain if and when it might again become operational and how that might relate to costs of water and sewer services. (Tr 2 pgs 203-204).

Ms. Williams also pointed out that the City had continuing long term debt obligations (C-27). Total interest expense for long term debt payments for the 2010-2011 fiscal year was \$2,588,000 (C-33, pg 39) and for the 2011-2012 fiscal year was \$2,055,000(C-34, pg 41). City exhibit (C-28) displayed current outstanding debt and priority of liens as of July 1, 2012. It showed \$1,320,190 payment obligations on debt exclusive of the Fifth Third bond and \$2,824,345 for the Fifth Third obligation.

City Witness Dave Massaron testified that in 2008 the City issued financial recovery bonds to be used to fund the City's accrued benefits that it owed its employees because it had been removed from MERS. It had been removed from the MERS pension system because it had failed to make payments for many years at the rate required by MERS and their funding level fell below what MERS would allow. Bonds had been

issued through the Michigan Municipal Bond Authority but were financed through a short term arrangement with Fifth Third Bank to permit the City to continue to pay its pension obligations. In July 2011 the City contracted with Mr. Massaron at the recommendation of the State Treasurer to advise the City regarding an extension of the relationship with Fifth Third. The City was able to get a one year extension with the possibility of further one or more year extensions. He stated that he believed this is the only city in Michigan that has issued bonds in this way to fund pension obligations. He also stated that he felt this arrangement with Fifth-Third, which requires the entire amount of the bond to be paid upon a default was a much different relationship than the typical arrangement, which allows payments over a period of time. As indicated previously, the current arrangement with Fifth-Third established a specific tax millage to pay its pension obligations. That current millage is 30.5 mills and Mr. Massaron noted that is for pension obligations already accrued, not for the continued cost of benefits moving forward, so the millage rate may have to increase under the current arrangement to meet increased pension obligations.

Mr. Massaron testified that because Fifth-Third felt the City did not have a long term plan to address the unfunded liability, i.e. even with the Fifth-Third loan to secure the Bond the City will run out of funds in three or four years, Fifth-Third increased the fees for the loan dramatically.

During direct examination Mr. Massaron was asked whether the ability to create a stable relationship with a credit partner was affected by the general fund balance sheet. His answer in part was that in conversations with different financial institutions they focus on 1) is there a way to create a new bond structure that gives the lender additional protection?, and 2) is there a way the City can continue to operate as a going concern? He said when you have the situation of the City levying 30.5 mills just for the pension obligations and "tapped out" from a borrowing perspective and a general fund not seeming to be able to make the annual required contributions, the question that creditors have is: In three or four years when you have no money, how are you going to operate? He said until there is a successful answer to that question, it becomes very difficult to reach a long term solution. Mr. Massaron stated he felt on a short term basis the City's operational budget had improved but that on a long term basis it has actually gotten worse over the past several years because it has been unable to make payments into a pension system to garner investment earnings (Tr 3, pgs 126-133).

City Witness Brian Lefler testified that in May 2011 he was asked by the Deputy State Treasurer to assist the City as a financial adviser in getting the letter of credit

renewed with Fifth-Third. His testimony with respect to the history of the City obtaining the arrangement with Fifth-Third coincided with the testimony of Mr. Massoron. He noted that with the decline in the tax base over that past few years, a decline from \$180 million to about \$151 million, the annual revenue from the 22.6 mills for general operating purposes (19.37 mills) has declined from about \$3.5 million to about \$2.8 million, a \$700,000 reduction. He also pointed out that the City is under pressure to maintain a balanced budget in order to be able to renew the line of credit for the bond agreement. He indicated he felt some banks that he had approached may be interested in a longer term arrangement than the current arrangement with Fifth-Third but at the date of his testimony no agreements had been reached with any lenders. Mr. Lefler also said a review of the property tax delinquent payment rate of the past four or five years revealed an approximate 40% delinquency rate. He said the City has to take that factor into consideration when it estimates its budget. The timing for collection of these delinquent taxes, some of which may not be paid at all, can be problematic for cash flow and the City has to engage in interfund borrowing. He stated he felt the City had made considerable efforts recently resulting in reducing general fund expenditures and was of the opinion that ensuring that the City was not operating with a general fund deficit was important to improve the chances of obtaining financing to address long term obligations.

The Employer, in its post hearing brief, says that the evidence presented by its witnesses relative to the City's financial situation is such that the panel should adopt the City's position on each of the issues presented in this proceeding.

Union Position

The Union did not present direct testimony or exhibits on the Employer's ability to pay but the Union' position is that the Employer has exaggerated its situation and that its financial ability to pay is not as dire as it presents. The Union points to the 2012 CAFR, which identifies a general fund balance as of June 30, 2012 of \$2,991,762. (C-34, pg 17). It says this level of fund balance is nearly twice as much as that recommended by the Government Finance Officers Association. The Union points out in its post hearing brief that there is inconsistency in some of the Employer's exhibits relating to finances. For example it notes that (C-22) showed a "proposed" budget fund balance of \$1,156,063 for the fiscal year ending June 2013 but the actual audited amount was \$2,991,762 (C-34).

The Union also notes that (C-24) shows an increase in property taxes paid in 2012 compared to 2010 and says (C-24) indicates only 68% of property owners paid property

taxes in 2012. The Union points out that City witness Williams testified that the City has not initiated anything from the Mayor's office to go after people that are not paying their taxes (Tr 2, pg 163). The Union refers to testimony of Ms. Williams that the Mayor and City Council in the current fiscal year chose not to add to the property tax bills the delinquent fees that should have been paid for water service from the water bills and she estimated that payment by the City for water which would have to come from the general fund would likely be \$300,000 to \$500,000. (Tr 3, pgs 61-62). The Union says any money collected from the delinquent water bill payments would increase the general fund balance. The Union says the Employer has made poor business decisions when other less expensive options were available and notes that the City has recently maintained a positive fund balance.

Discussion and Findings

Discussion

The panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue includes subsections (1) (a), (h) (i) and subsection (2). The panel believes it has given Section 9(2) appropriate significance based upon the evidence presented at this hearing.

Section 9(1)(a) of Act 312 requires the panel to consider

- (i) the financial impact on the community of the panel's award
- (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

Section 9(2) states: "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."

This arbitrator recognizes the Employer is faced with a precarious financial situation. Evidence demonstrates that the City is confronted with the following:

- It must retain, restructure or replace the current arrangement it has with Fifth-Third bank to be able to continue to meet its financial obligations to its retirees.
- Within three years it must find a way to continue to meet its pension payment obligations and continue to meet its repayment obligations for previous borrowing
- It must continue to maintain a balanced budget for operational expenses and demonstrate it has a long term plan for maintaining its obligations to current and future retirees. The panel's award has taken these factors into consideration. The evidence

shows the City had a fund balance at the end of fiscal year 2010-2011 of \$1,175,181 (C-33, pg 15) and for fiscal year 2011-2012 of \$2,991,762 (C-34, pg 17). But the evidence also reveals that some of these fund balances were a result of debt forgiveness and that the City continues to have to carefully monitor its cash flow and delay contractual payment obligations to permit it to maintain its operations. The City is to be commended for working over these past several years to reduce expenditures and address long term obligations while attempting to maintain a balanced budget. But when all liabilities are considered, as required by Section 9(1)(a)(iii), it is apparent that the city will continue to be confronted with financial challenges and operational limitations for the foreseeable future in order to achieve a more secure financial future.

- The evidence demonstrates that the citizens of Highland Park are already being asked to pay a significant amount in property taxes to support the ability of the city to maintain basic public safety, water, sewer and power systems and meet its obligations to its employees and retirees. To increase taxes much more may result in reaching a point of diminishing returns. The percentage of delinquent or unpaid taxes is already quite high. The public interest and welfare would not be well served to increase property taxes much more. However, neither would it be in the public interest or welfare to reduce the fire services and other public safety services much more or reduce the wages and benefits of the firefighters to a point where they would no longer be able to support themselves or their families and leave their positions. It is in the interests and welfare of the residents of Highland Park to have experienced reliable firefighter employees to serve them.

- Comparing the City of Highland Park financial situation with those of the comparable communities indicates that other communities are confronted with some of the same problems as Highland Park, but Highland Park is one of the most stressed among the comparables. The interim order determining the comparable communities contained Attachment A displaying data, which was considered in selection of the comparable communities. Some of that data is noteworthy in addressing the question of ability to pay. For example, Highland Park had a 1% population decline from 2000 to 2001 but so did nearly every other comparable community. But Highland Park had the lowest per capita income, median household income, 2011 SEV, 2011 taxable value and the highest percentage of persons below the poverty level among all of the comparable communities.

The CAFR's for the fiscal years ending June 30, 2011(C-33) and June 30, 2012(C-34) contained sections providing Financial Highlights and Going Concerns. Those

provide a good picture of what the Employer's financial situation has been and what it will likely be faced with during the course of this CBA and in the foreseeable future.

Those highlights are:

CAFR ending June 30, 2011 (C-33)

Financial Highlights – pgs 4,5

Financial Highlights

As discussed in further detail in this discussion and analysis, the following represents the most significant financial highlights for the year ended June 30, 2011:

- Property taxes continue to be the City's largest and most secure source of revenue. Property taxes overall increased from prior year by approximately \$1,425,000. The increase is actually a decrease in the 2011 fiscal year of approximately \$369,000 offset by prior year's one-time tax refund of approximately \$1,794,000. The decrease in property taxes was also offset by increases in mill rates for judgments and voted pension debt.
- State-shared revenue is the City's third largest revenue source, behind both property tax revenue and income tax revenue. The City received its final census count, which resulted in a decrease in revenue sharing for the 2011 fiscal year of approximately \$216,000. This loss from the census is a permanent loss that will affect fiscal years 2011 through 2020. State-shared revenue accounts for approximately 24 percent of the City's total General Fund revenue.
- The General Fund receives approximately 13 percent of its annual revenue from fines and fees from police tickets adjudicated through the district court. The fines and fees revenue decreased approximately \$32,000 from the 2009-2010 level.
- The General Fund receives approximately 30 percent of its annual revenue from income taxes. The income tax revenue increased approximately \$1,227,000 from 2009-2010 level.
- The General Fund had a net increase in fund balance of \$1,246,172. During the current year, the City entered into an agreement with Detroit Edison (DTE), which forgave the City \$4,699,592 of outstanding street-light invoices dating back several years. This forgiveness helped to contribute to the General Fund's positive increase in fund balance. In addition to the debt forgiveness, the City experienced an increase in both property tax and income tax revenue. The General Fund had an overall fund balance of \$1,175,181 at June 30, 2011.

Note 18 – Going Concerns – pgs 53, 54

In June 2001, the State of Michigan Department of Treasury (the "State") appointed an emergency financial manager (EFM) to run the City in accordance with Section 12(I) of Public Act 72 of 1990 (superseded by Public Act of 4 of 2011). The EFM was charged with the responsibility of balancing the annual operating budget and eliminating the cumulative General Fund deficit, which totaled approximately \$11,275,000 at June 30, 2001. In addition to the General Fund deficit and many other financial

operating matters, the EFM also had to address the repayment of the Water and Sewer Fund borrowing of approximately \$4,900,000 from the General Fund. The State's original EFM was replaced with a second EFM in April 2005 and in April 2009, a third EFM was appointed. In July 2009, the State removed the interim emergency financial manager from the City and returned control of the City back to the mayor and the City Council. The City continues under state control per Public Act 4 at June 30, 2011.

The mayor and City Council submitted a detailed plan on how the City was going to eliminate all deficits and address all other operating matters. In addition, the EFM submitted an annual deficit elimination plan to the State detailing the action plan for all funds in a deficit position. The General Fund at June 30, 2011 has completely eliminated the deficit and has a cumulative fund balance of \$1,175,181. In addition, the General Fund had an annual operating surplus of \$805,801. The General Fund transferred \$3,874,694 to the Water and Sewer Fund in the current year to help cover operational shortfalls. The Water and Sewer Fund continued to have a significant operating loss of \$1,618,243. The one-time transfer from the General Fund offset the operating loss and resulted in a decrease of net deficit of \$2,256,451 for the year ended June 30, 2011, dropping it to \$4,996,138. The City will continue to follow the approved deficit elimination plan created by the former EFM which calls for substantial rate increases over the next couple of years to eliminate the deficit.

CAFR ending June 30, 2012 (C-34)

Financial Highlights - pg 4

As discussed in further detail in this discussion and analysis, the following represents the most significant financial highlights for the year ended June 30, 2012:

- Property taxes continue to be the City's largest and most secure source of revenue. Property taxes increased from prior year by approximately \$2,050,000. The increase is due to an increase in the mill rates for the voted pension debt.
- State-shared revenue is the City's third largest revenue source, behind both property tax revenue and income tax revenue. The City received its final census count in the previous fiscal year which will result in a permanent loss that will affect fiscal years 2011 through 2020. State-shared revenue decreased by approximately \$640,000 and accounts for approximately 22 percent of the City's General Fund revenue.
- The General Fund received approximately 27 percent of its annual revenue from income taxes. The City utilizes shared services with the City of Hamtramck in an effort to realize greater income tax collection. Since the agreement was signed in fiscal year 2010, income tax revenue has increased substantially.

Note 17- Going Concerns -pg 54

In July 2009, the State removed the interim emergency financial manager from the City and returned control of the City back to the mayor and City Council. The City continues under State control per Public Act 72 at June

30, 2012.

The mayor and City Council have submitted a revised deficit elimination plan detailing how the City plans to address the water and sewer deficit as well as other operating matters. The City is exploring alternative water service delivery methods and long-term solutions for its water plant. Currently, water and sewage services are being provided by the City of Detroit.

In the current fiscal year, the General Fund transferred \$491,161 to the Water and Sewer Fund to help cover operational shortfalls. The Water and Sewer Fund continued to have a significant operating loss of \$910,703 and a net deficit of \$5,522,340.

It is in this context, and based on the facts and evidence presented in this case, that the panel attempts to balance the interests of the Employer and the members of this Union, and the needs of citizens of Highland Park, that they both strive to meet.

Findings

Based on the evidence presented, and giving the financial ability of the unit of government to pay most significance, the Panel finds that the Employer is able to pay the necessary costs ordered in the Opinion and Award without a significant financial impact on the Employer and in the best interests and welfare of the public. The Panel believes the financial impact, when considered in the context of the Panel's Award on the individual issues presented to the Panel for decision in this proceeding, coupled with the agreements made between the parties, will not result in a significant negative fiscal impact on the Employer or the community.

Employer: Agree

Disagree

Union: Agree

Disagree

Issue 1 - (Art 10.16) Lt. in charge of shift [Employer proposal]

Employer Position

The Employer proposes that the following language in Article 10.1 G be deleted:

"A member holding the rank of Lieutenant, or being compensated Lieutenant wages, shall be in charge of each shift."

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the CBA language be maintained.

The Union, in its post hearing brief, noted that there was record evidence describing the duties of a Lieutenant as being in charge of each shift. There was also testimony that Sergeants sometimes have to be in charge of a shift and therefore perform the duties of a Lieutenant. The Union views this proposal as an attempt by the Employer to delete bargaining unit promotional positions and that if this language was removed the Employer would have no requirement to pay Sergeants for performing this work.

The Union says the panel should reject the Employer's proposal because the Employer failed to produce any documentation or testimony demonstrating what savings would occur and any other justification for its proposal.

Discussion and Findings

Discussion

The Act 312, Section 9 factors that are most applicable to this issue, in addition to the ability to pay factors of 9(1)(a) and (2), are factors 9(1)(a)(ii) ,the interests and welfare of the public, and 9(1)(d), the comparison of employment of other employees performing similar services in comparable communities. A review of Exhibits (J-3 through J-8) reveal that the comparable communities have distinguished ranks and pay scales for Lieutenant and Sergeant. Several also refer to qualifications for promotion to Lieutenant, which include completion of training for that position which has been approved by the Michigan Firefighters Training Council. This would infer that there needs to be clear standards for qualifications to be in charge of a shift. The majority also contain language that requires payment of Lieutenant's wages for individuals who are not Lieutenants for time worked performing Lieutenant duties. There was sufficient record evidence to conclude that there currently are two Lieutenants employed in this bargaining unit and that their regular responsibilities are to be in charge of the shift. When they are not available, Sergeants are in charge of the shift. Elimination of this position may result in a reduction in cost to the Employer by way of eliminating these positions and assigning Sergeants to be in charge of the shift. But it appears that staffing pattern would be inconsistent with standard practice for firefighter staffing and could jeopardize the public safety and welfare. Upon considering and weighing the Section 9 factors, I conclude that the Employer's proposal is not supported by the record evidence and testimony.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of (Art 10.1G) Lt. in charge of shift the more reasonable position. Therefore, there will be no change to Article 10.1G.

Employer: Agree _____

Disagree WPS

Union: Agree for letter

Disagree _____

Issue 2 -- (Art 16.2) Shift Differential [Employer proposal]

Employer Position

The Employer proposes that the following language in Article 16.2 be deleted:

"Shift differential. Shift premiums shall be added to the hourly rate of the employee so affected."

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the current language.

The Union did not provide evidence or testimony on this issue but did indicate in its post hearing brief that the panel should reject the proposal because the City did not provide sufficient evidence upon which the panel could make a ruling.

Discussion and Findings

Discussion

Union witness Erwin presented testimony describing the regular work schedule. They are 24 hour shifts. (Tr. 3, pg 239). There was no record testimony or evidence to indicate a Shift differential was applicable to members of this bargaining unit. Exhibit (J-2) is the CBA for the Highland Park police and there was testimony that at one time there was a combined police and fire safety unit under one CBA. A review of the current firefighter CBA (J-1) and the police CBA (J-2) reveals that there are many similarities. The police CBA has Article 16.2 language which states:

"Shift Differential. Police Unit employees assigned to the afternoon shift shall receive a premium of \$.20 cents per hour. Police Unit employees working the midnight shift shall receive a shift premium of \$.30 cents per hour. Shift premiums shall be added to the hourly rate of the employee so affected" (J-2).

It appears the language in Section 16.2 of the firefighters CBA is language that has no current meaning or application to firefighters and is language that was inadvertently carried over into the firefighters CBA when the police and firefighters separated and resumed functioning as different units. There would appear to be no harm in removing the language and there may be some benefit in that it would not confuse future readers. Sometimes less language is better!

Findings

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on the issue of (Art 16.2) Shift Differential the more reasonable position. Therefore, Article 16.2 will be removed from the CBA.

Effective Date: Upon issuance of this Opinion and Order.

Employer: Agree  Disagree _____
Union: Agree  Disagree _____

Issue 3 - (Art 16.6) Gun Allowance (Employer proposal)

Employer Position

The Employer proposes the following language in Article 16.6 be deleted:

"Gun Allowance. Effective with the October, 2004 Act 312 award, all members certified as police officers and qualified to carry a gun shall receive a gun allowance based on years of service after completion of one (1) year of service if working in the police department and approved by the Chief of Police.

\$500.00 gun allowance (10+)
\$300.00 gun allowance (10-)

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the language.

The Union argues in its post hearing brief that the Panel should not support the Employer's proposal because the Employer failed to provide sufficient evidence in support of its proposal. It also notes that there was record testimony that several members of the bargaining unit are certified police officers and do work at the

Highland Park police department on their days off for the same wages that the Employer pays part-time police officers. The parties have agreed to allow members of this bargaining unit who are certified police officers to work at the police department and maintain their police certification. The Union says the Employer proposal would deny these members the same allowance which is received by members of the police department. The Union argues the City failed to produce any evidence to demonstrate how much it would save by the panel adopting this proposal.

Discussion and Findings

Discussion

This issue is somewhat unique to Highland Park in that there is record evidence that Highland Park had a combined police and fire public safety unit at one time and therefore had individuals who were certified and capable of performing both functions. Now they are separate units with separate collective bargaining agreements. There was no evidence that any of the comparable communities had a similar organization structure. The Act 312, Section 9 factor that appears most applicable to this issue, in addition to the ability to pay factors of 9(1)(a) and (2), is 9(1)(i), other factors that are normally or traditionally taken into consideration -- through voluntary collective bargaining, mediation, fact-finding, or otherwise between the parties, in the public service or in private employment.

Union witness Loftis testified, in response to a question of whether other communities allowed firefighters to work as police officers. He stated:

“Under Michigan law, you have to be certified by the Michigan Commission on Law Enforcement Standards to act as a police officer. In the City of Highland Park, prior to about 2006, it was a consolidated public safety where many of the members were cross-trained as police and fire. There were two separate units, but they were cross trained.

And then the City, in 2006, placed some in police and some in fire. Four of the current fire fighters are currently – still hold police certification. On their days off, some of them choose to work to supplement their income as police officers for the City at a straight rate that they pay the part time officers in Highland Park. It's not an overtime rate. It's really no different than a guy on his day off trying to earn extra money mowing lawns or putting up aluminum siding”(Tr, 2, pgs 35,36).

The Highland Park police officers CBA (J-2) contains the same language in Article 16. 6 as the current Article 16.6 language in the firefighters CBA (J-1) with the exception that it does not contain the phrase “ if working in the police department and approved by the Chief of Police.” The addition of this phrase in the firefighters CBA

assures the City that this benefit to the Employee will only be provided if he or she is working in the Highland Park police department.

There are advantages for both the employee and the Employer and it is in the interest and welfare of Highland Park residents to have well trained police officers knowledgeable of the city and its residents. Clearly, firefighters, certified as police officers are well qualified to serve as police officers on a contractual basis for the city.

Applying common sense and fairness, one would conclude that it is in the best interest to continue to have the City pay for the gun allowance to members of the firefighters unit provided they work in the Highland Park police department, (emphasis added) even though they do so on a contractual basis. The City benefits from their knowledge of the city and by paying the straight rate they pay part time officers. The employees benefit by supplementing their firefighter wages.

The record does provide an estimate of the cost to the City of providing this benefit. Based on the testimony that there are currently four firefighters with police certification, the maximum annual cost to the City would range between \$1,200.00 and \$2,000.00 if all four police certified firefighters worked for the city police department. And the Employer has control of that by the requirement that it must have the approval of the Chief of Police. In my opinion, the Employer has not shown, by record evidence, that the cost outweighs the benefit of retaining this language in the CBA.

Findings

Taking all of these factors into consideration the Panel finds the Union's last offer of settlement on the issue of (Art 16.6) Gun Allowance the more reasonable position. Therefore, there will be no change in Article 16.6 of the CBA.

Employer: Agree MS Disagree _____

Union: Agree Eric [Signature] Disagree _____

Issue 4 - (Art 17) Longevity Pay [Employer proposal]

Employer Position

The Employer proposes the following language in Article 17 be deleted:

17.1: Only those members who were on the active payroll as of November 6, 2006 shall be eligible for longevity pay, as follows:

Years	Amount	Years	Amount
9	\$290.00	16	\$530.00
10	\$320.00	17	\$560.00
11	\$350.00	18	\$590.00
12	\$380.00	19	\$620.00
13	\$410.00	20	\$800.00
14	\$440.00	21	\$1,100.00
15	\$470.00		

Payment of new longevity schedule will be based on seniority on December 15th of each year of said payment.

17.2: Upon Retirement. An employee shall be entitled to receive a pro-rated portion of his longevity. All longevity is subject to deduction for income tax purposes.

17.3: Pro-Ration. In the case of employees who have otherwise qualified for longevity pay, according to the provisions of this section, but who fail to retain status by reason of death, the provisions requiring employee to be in service shall be suspended so that one, and only one, longevity payment may be made to the personal representative on a pro-rated basis.

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the language. The Union did not provide evidence or testimony on this issue but stated in its post hearing brief that the panel should reject the proposal because the City did not provide sufficient evidence upon which the panel could make a ruling. It also noted in its post hearing brief that the Employer's proposal is not supported when considering the Section 9(1)(d) factor comparing this issue applicable to firefighters in comparable communities. It notes four of the six comparable communities provide longevity payments to their firefighters. And the Union argues, the only internal comparable evidence, the Highland Park police CBA (J-2), contains the same provision on longevity as in the current firefighters CBA (J-1).

Discussion and Findings

Discussion

The impartial arbitrator and panel majority adopts the Union's LOS. In its post hearing brief, the Employer stated there are currently 12 full time employees in the Fire Department. Exhibit (C-29) also shows funding for 12 positions for FY 2013. A review of Article 17 reveals that longevity payments begin when an employee has 9 years of service starting at \$290.00 and increasing each year by \$30.00 to a maximum of \$1,000.00 for and individual with 21 years service. A key provision in Article 17 states that "only

those members who were on the active payroll as of November 6, 2006 shall be eligible for longevity pay." Therefore, employees hired after November 6, 2006 are not eligible for longevity payments and when all current eligible employees resign or retire this provision will become moot.

A review of the external comparable communities CBA's indicates four of the six provide longevity payments similar to the current payments provided to Highland Park firefighters. Hamtramack and Melvindale provide graduated payments based on seniority up to \$1,000.00. Hazel Park provides graduated payments based on a percent of wages from 2% to 8%. River Rouge provides graduated payments up to \$500.00.

A review of Joint exhibits containing the comparable communities' CBA's, (J-3) through (J-9), on this issue do not support the Employer's proposal. There was no evidence presented involving internal comparables in support of the Employer's proposal other than the overall economic evidence on ability to pay. The proposal may have minimal impact on the Employer's ability to maintain a balanced budget but, because it is phasing out over time, would have no impact on addressing its long term financial obligations. There is little evidence this change would have a significant impact on the City's abilities to manage its finances or obtain loans during the course of this agreement.

Findings

Taking all of these factors into consideration the Panel finds the Union's last offer of settlement on the Issue of (Art 17) Longevity Pay the more reasonable position. Therefore, there will be no change to Article 17, Longevity Pay.

Employer: Agree MS Disagree _____
 Union: Agree Dev. Softis Disagree _____

Issue 5 -- (Art 18.1) Holidays [Employer proposal]

Employer Position

The Employer proposes to amend Article 18.1A which identifies the following days to be celebrated as holidays:

Independence Day	New Years Day
Labor Day	Memorial Day
Thanksgiving Day	Veterans Day
Christmas Day	Easter Sunday
Employee's Birthday	Flag Day
Martin Luther King Day	

The Employer proposes to delete the following days from days celebrated as holidays: Flag Day, New Years Day, Independence Day, Veteran's Day, Employee's

Birthday.

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the language.

The Union argues in its post hearing brief that the Panel should not support the Employer's proposal because the Employer failed to provide sufficient evidence in support of its proposal. It also says the Employer failed to demonstrate its anticipated cost savings if its proposal were to be adopted by the panel.

Discussion and Findings

Discussion

The Act 312, Section 9 factors that are most applicable to this issue, in addition to the ability to pay factors of 9(1)(a) and (2), are factors 9(1)(e), comparison of conditions of employment of other employees employed by the Employer, and 9(1)(d), the comparison of employment of other employees performing similar services in comparable communities. Exhibit (J-2), the police CBA, is the only record evidence to compare other employees working for the Employer. It provides the exact same holidays as the current firefighter CBA. A review of exhibits (J-3 through J-9) reveals that the following comparable communities provide the following number of paid holidays: Ecorse -13, Hamtramack - 13, Hazel Park - 15, Inkster - 8&1/2 to 10&1/2, Melvindale - 13, River Rouge - 14. The Employer's proposal would reduce the number of paid holidays for Highland Park firefighters from the current 11 to 6. Neither the internal or external comparables support this level of reductions, I.e 50% less than those of comparable communities.

As for the cost savings, it is possible to make a general estimate, from the record, what the cost savings might be. Using (C-29) as a reference, regular pay for all firefighters for FY 2012 was \$514,042.00. (C-29) and other record evidence indicates there are currently 12 firefighters. Assuming there are 12 firefighters, that would equal approximately \$42,837.00 per year per firefighter. Article 18.2 of the CBA states if the employee is not required to work on a holiday the employee will receive eight (8) hours of straight time. If we assume the employee works 2620 hours per year, the average pay

per employee would be about \$16.35 per hour. Eight hours of pay would be an average \$130.80 x 6 non paid holidays = \$784.80 savings to the City and loss in pay to each of the 12 employees for the 6 holidays and the City would realize an approximate \$9,417.60 annual savings.

As indicated previously, there is evidence to demonstrate that the City of Highland Park, when compared to the comparable communities, is among the most financially stressed. However, there is also evidence that the members of the bargaining unit are also among the lowest compensated for their services. The Employer's proposal for the number of reduced holiday days, when considering the reduced income that would result to the individual employee, and compared to the comparable communities, is quite extreme. Fifty percent fewer paid holidays compared with the comparable communities, with no evidence to demonstrate other employees of the City are provided only those number of paid holidays is not supported by the record. And the reduction in compensation to the employees that would result from this proposal, given their overall compensation compared to their counterparts in comparable communities, is not supported by the evidence. After considering all of these factors, the impartial arbitrator and the panel majority cannot support the Employer's proposal.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of (Art 18.1) Holidays the more reasonable position. Therefore, there will be no change to Article 18.1 Holidays.

Employer: Agree _____

Disagree *MS*

Union: Agree *[Signature]*

Disagree _____

Issue 6 -- (Art 19.1) Furloughs [Employer proposal]

Employer Position

The Employer proposes to Amend Article 19.1, which identifies the following furlough periods:

19.1: The furlough periods shall be divided into twelve (12) periods. The furlough season shall be January through December. Selection shall be in October for January through June, and April for July through December. Employees shall receive the following hours for their current year furlough:

Years of Seniority	40-hour Fire Marshall, Fire Inspector or similar position	50.4 hour
1 year +	40	48
2-5	80	96
6-10	120	144
11-15	140	168
16-20	160	192
21-25	200	240
25 +	240	288

The Employer proposes to amend the line 11-15 by changing it to 11- + and to delete lines 16-20, 21-25, 25+.

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints. The Employer proposes to amend the furlough time schedule by capping the furlough time at 168 hours for employees who work 50.4 hours per week and 140 hours for employees who work 40 hours per week.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the language.

The Union argues in its post hearing brief that the Panel should not support the Employer's proposal because the Employer failed to provide sufficient evidence in support of its proposal. It also says the Employer failed to demonstrate its anticipated cost savings if its proposal were to be adopted by the panel.

Discussion and Findings

Discussion

The Act 312, Section 9 factors that are most applicable to this issue, in addition to the ability to pay factors of 9(1)(a) and (2), are factors 9(1)(e) ,comparison of conditions of employment of other employees employed by the Employer, and 9(1)(d), the comparison of employment of other employees performing similar services in comparable communities. . Exhibit (J-2), the police CBA, is the only record evidence to compare other employees working for the Employer. It provides the exact same furlough days as the current firefighter CBA. A review of exhibits (J-3 through J-9) reveals that all of the comparable communities provide a graduated number of

furlough days based on seniority comparable to the Highland Park current CBA. The number of days range from 2 to 15.

As for the cost savings, it's difficult to estimate, from the record, what the cost savings might be. With fewer furlough days there would potentially be less cost for overtime but there is no evidence to indicate the annual average number of furlough days taken by members of the bargaining unit. There was no record evidence to identify the years of service of the current personnel in the bargaining unit and their years of service to enable an estimate of the financial impact on the Employer. After considering all of these factors, the impartial arbitrator and the panel majority cannot support the Employer's proposal.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of (Art 19.1) Furloughs the more reasonable position. Therefore, there will be no change to Article 19.1 Furloughs.

Employer: Agree _____

Disagree NA

Union: Agree See left

Disagree _____

Issue 7 - (Art 22.1) Sick Leave [Employer proposal]

Employer Position

The Employer proposes to amend Article 22.1. by adding the following language indicated in Bold:

"Fire unit employees shall earn ninety-six (96) hours sick leave annually with a maximum accumulation of 800 hours. Fire Unit Employees hired after 10/01/12 shall earn ninety-six (96) hours sick leave annually with a maximum accumulation of 160 hours."

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints. Article 22.3 states that upon termination for any reason, retirement, or death, the accumulated paying sick leave bank shall be paid to the employee up to the maximum based on seniority. The maximums based on seniority are: 10-14 years seniority = 200 hrs max; 15-20 years seniority = 266.7 hrs max; 20+ years seniority = 400 hrs max. For fire unit employees hired after 10/01/12 the proposal would reduce the maximum accumulation to 160 hours, so upon leaving employment for any reason for those individuals the most pay out of sick leave they could receive

would be 160 hours.

Union Position

The Union proposes the status quo with no change to the current language.

The Union indicates in its post hearing brief that the Employer failed to produce any record evidence or testimony to demonstrate what savings would result from this proposal. The Union says it expects the savings would be small and if implemented there would be no incentive for the employees to accrue more than 160 hours of sick time. If that were to occur, the Union says the City may not realize any savings because employees would be using more sick time which would require the employer to pay for their replacement. On the other hand, the Union argues, the impact this proposal will have on individual employees who resign or retire will be enormous. The Union notes that all of the external comparable communities have maximum sick leave accumulation amounts far higher than Highland Park does. The Union says the panel should reject the Employer's proposal.

Discussion and Findings

Discussion

The Employer's proposal would not result in a substantial immediate savings to the Employer because evidence indicates there are currently only three firefighters hired after 10/01/12 that it would apply to. Similarly, it would not negatively impact those employees hired prior to 10/01/12. Over time, it could reduce the Employer's cost by limiting the number of accrued sick days necessary to pay out upon termination or retirement.

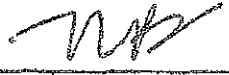
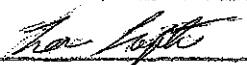
A review of the external comparable community CBA's is revealing. (J-3 thorough J-9) It appears that the various comparable communities authorize accumulated sick day pay outs at time of separation as follows: Ecorse - 40 days, Hamtramack - 125 days, Hazel Park - 500 hours for those hired after 07/01/87, Inkster - 65 days, Melvindale - 45 (24 hour) days, River Rouge - 120 days. Melvindale has a provision that those who terminate employment within 3 years of hire will be paid for no accumulated sick days.

What this information reveals is that the majority of comparable communities provide for a significantly higher number of sick day pay out upon termination than the 160 hours proposed by the Employer. Again, there is no record evidence indicating other employees of the Employer have the maximum number of hours limit on sick leave payout that is proposed by the Employer and the external comparables do not

support the rather extreme limit proposed by the Employer. But based on a review of the other comparable community CBA's, it appears the approach considered by the Employer is not unreasonable. Other communities are attempting to review this also. It may be of value for the Employer to consider other approaches to suggest in future negotiations. But presented with the choice of the Employer's proposal as presented in this proceeding, the impartial arbitrator and the panel majority cannot support the Employer's proposal. The record evidence does not support it and there will be minimum immediate financial impact on the Employer resulting from the panel's rejection.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of (Art 22.1) Sick Leave more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change to Article 22.1, Sick Leave.

Employer: Agree		Disagree	_____
Union: Agree		Disagree	_____

Issue 3 -- (Art 23.1, Appendix B) Medical Insurance - Plan Design [Employer & Union proposal]

Employer Position

The Employer proposes to Amend "Appendix B" which is referred to in Article 23.1. Appendix B currently reads as follows:

APPENDIX B

Medical Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS Community Blue Plan #8, with a \$10/\$40 drug co-pay. The City reserves the right to self-insure, and/or to change carriers. Premium increases in excess of 5% annually shall be shared equally by the employer and the employee.

Dental Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS Option #1, with Type I benefits at 100%, and Type II and Type III benefits at 50%, to a \$600 annual maximum, increasing to \$800 annual maximum effective January 1, 2005. The City reserves the right to self-insure, and/or to change carriers. Premium increased in excess of 5% annually shall be shared equally by the employer and the employee.

Optical Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS VSP Vision Plan "B," with the bi-annual examinations, frames and lenses. The City reserves the right to self-insure, and/or to change carriers.

The Employer proposes the following changes (identified in bold) to paragraph 1 of Appendix B:

“Medical Insurance: For full-time seniority employees only by Total Healthcare HMO Plan (Attached). The City reserves the right to self-insure, and/or change carriers. The employee shall be responsible for premium co-sharing in the amount of 30% of the entire monthly premium and beginning fiscal year 2013-14, the employee shall additionally share equally with the employer all annual premium increases.

The Employer proposes the following changes to paragraph 2 of Appendix B:

Eliminate the entire paragraph – which would discontinue dental insurance

The Employer proposes the following changes to paragraph 3 of Appendix B:

Eliminate the entire paragraph – which would discontinue optical insurance

Addressing the issue of plan design, the Employer presented the testimony of Rishie Modi, an agent contracted by the Employer to help administer health insurance. Mr. Modi testified to his exploration of acquiring different insurance providers to permit adequate coverage but reduced costs to the Employer and Employees from the current insurance provided to members of this bargaining unit. The current insurance is Blue Cross/Blue Shield (BC/BS) Community Blue Plan #8. His testimony supported the Employer's position that the BC/BS plan be replaced by the Total Health Care HMO plan. He stated that in July 2012 the Employer developed the Total Health Care HMO plan that, in his opinion, was a far better plan than the current plan because it would be more comprehensive and less costly. He stated the proposed plan total deductibles would be \$500 for an individual and \$1,300 for a family, which is less than the BC/BS plan. There would be no out-of-pocket maximum, no co-insurance and co-pays for office visits would be \$5 compared to \$20 under the BC/BS plan. He stated that even though the proposed plan would be an HMO instead of the current PPO, employees could go to any specialist in the network without having to go through a primary care physician to get a referral (Tr 4, pgs 40,41). He referred to (C-52) and pointed out that the current monthly blended rate for an employee for single coverage is approximately \$702.23 under the current plan and would be \$395.87 under the Total Healthcare plan; the two person rate would be \$819.86 compared to the current rate of \$1598.21, and the family rate would be \$1,068.06 compared to the current rate of \$2044.00 (Tr 4, pg 42). He indicated nearly all of the Hospitals in southeastern Michigan with the exception of the Henry Ford system were service providers within the Total

Healthcare plan but acknowledged that only emergency services would be available if you were in need of services outside the network. He testified that prescription co-pays are 10/20, \$10 for generics and \$20 for brand name drugs and that Vision is included in the Total Health Care plan (Tr 4, pg 44). He indicated that the rate for the active employees and retirees shown on (C-51) is the same (Tr 4, pg 64), but the prescription rates would vary depending upon utilization. He did state however that the plan would separate active employees from retirees. With respect to internal comparables, in response to a question, he indicated that active employees in the administration and the entire police department is on the Total Health Care plan (Tr. 4, pg 74). Also, in response to a question of why the City has proposed this plan he stated:

"It is a way to mitigate the costs for both the City and employees. The costs are drastically less expensive for both parties. The plan is comprehensive. The deductibles are similar. The co-payments are smaller. And what also helps, it separates the active population from the retiree population completely. Our goal is to put all active population on the True Health Care plan and maintain the retirees on the BC/BS plan, just because there aren't any other options for the retirees at that point." (Tr 4, pgs 75, 76.)

The City, in its post hearing brief, urges adoption of its LOS because it says it needs to contain healthcare costs. It says the BC/BS premium increased by 42% last year and that under the BC/BS plan the Employer heavily subsidizes the deductible for each employee. Employees are responsible for \$500.00 for an individual but the employer is responsible for another \$4,500.00 and the employee is responsible for \$1,000.00 deductible under a family plan but the employer is responsible for an additional \$9,000.00. The Employer urges the panel to adopt its LOS so it can better control healthcare costs, or in the alternative, order the parties back to the bargaining table to allow the Union to receive a presentation from Total Healthcare regarding benefits.

Union Position

The Union proposes the following changes (identified in bold) to paragraph 1 of Appendix B:

"Medical Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS Community Blue Plan #8, with a \$10/\$40 drug co-pay. The City reserves the right to self-insure, and /or to change carriers. **The parties agree to reopen negotiations in January 2014 regarding the medical plan design for the last year of the Collective Bargaining Agreement.**"

The City will provide either the hard cap amount established by P.A. 152 or 80% of the total annual costs for the agreed upon medical benefit

plan.

The City will pay \$250.00 per month incentive to eligible employee(s) who elect to decline the City's medical plan.

Employees will be able to re-enroll in the City's medical plan when the plan they are covered from another source and lose that coverage. When an employee makes a decision to re-enroll in the City's medical plan which is not caused by the loss of health insurance from another source, that employee cannot re-enroll until the next annual open enrollment period."

Effective date – the date of the Act 312 Award

The Union proposes the status quo with no changes to paragraphs 2 and 3 of Appendix B.

The Union's proposal for Plan Design in its Last Offer of Settlement is to maintain the status quo, i.e. keep the current BC/BS plan and add language to Appendix B that would indicate in this CBA that the parties' agree to begin negotiations in January 2014 regarding the medical plan design for potential change for the period July 2014 through June 2015, the last year of the CBA. The Union's proposal also would add language permitting an employee to choose not to participate in the Employer's health insurance plan and if the employee chose not to do so the Employer would pay the employee \$250.00 per month as an incentive not to participate.

The Union presented the testimony of Kevin Loftis relative to plan design and premium sharing. Mr. Loftis described the history of the Union and Employer's discussion on healthcare. He said that because of the rising cost of health care premiums and recent enactment of State law that requires the employees pay the entire cost of annual increases in premiums once a CBA has expired and a new CBA has not been agreed to, the members of this union are currently paying nearly 50% of the premium costs. Exhibits (U-40, 41, 43) indicate that the monthly premium employees pay for current coverage is *approximately* \$350.00 for single, \$775.00 for two person, and \$985.00 for family coverage (U-41). He said that during negotiations the Union offered to try to resolve healthcare with other issues remaining open but the City did not agree and preferred to address all issues in the CBA. (Tr 4, pg 4). He noted that even though the current CBA provision for premium sharing states that employees and employer are to share equally in the cost of any increase in premium beyond a 5% increase, which the employer pays, there was a period of time when the employees were paying nothing. In 2010 the City did require Employees to follow the provision of the CBA and applied it retroactively to 2007. There has been grievance arbitration between the parties

attempting to determine what the actual employee contribution to the premium should be including calculations for retroactive payments and whether the calculations include or exclude retirees (Tr. 4, pgs 5-7).

With respect to plan design, the Union expresses concern about the accessibility to providers under the Total Health Care plan proposed by the Employer. The Union points out that the Total Health Care plan does not provide statewide coverage and the Employer has failed to clarify what "emergency" service would be provided outside of the Total Health Care network. The Union notes that the current plan is a PPO plan and the plan proposed by the Employer is a HMO plan. It says HMO's are generally more restrictive to members attempting to obtain diagnostic tests and have a smaller network of providers.

The Union presented (U-49) which is a comparison of health plans of the external comparable communities as described in (J-3-9). The Union argues that the external comparables support its position to maintain the status quo since four of the six comparable communities have some form of BC/BS plan. The Union also indicates that the Highland Park Police CBA (J-2) has the same language describing its health coverage as does the current CBA for the members of this Union. The Union argues that the City has failed to provide a copy of the Total Health Care Plan to the panel or the Union or a written cost proposal or listing of hospitals and providers in its network. The Union says the Employer has provided insufficient evidence upon which the panel can make a decision and therefore the panel should support the Union's position of status quo.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Employer's LBO. The Impartial Arbitrator has weighed the positives and negatives of each LBO and recognizes that there are positives and negatives in each but has concluded that the Employer's LBO is the better course to follow.

The positives of the Union's LOS is that it gives the parties an opportunity to meet and discuss and perhaps negotiate and agree on a new health care plan design that is less costly for both the employee's and the Employer. It is always better to have the parties design the health care plan if possible rather than have it determined through arbitration. But the negative is that it is not assured that the parties will agree on any change, and if they did the earliest it would be implemented would be July

2014. There was sufficient evidence to demonstrate that the current plan is expensive for both the Employer and the Employee's and the plan proposed by the Employer will reduce financial costs for both the Employer and the Employees. Given the Employer's precarious financial situation, healthcare cost containment will be a factor in assisting the Employer to continue on a path to more financial stability.

During the hearing the Union expressed frustration over the lack of information provided by the Employer describing the content of the Employer's Total Health Care Plan. The Union questioned the scope of coverage and accessibility. The Employer, in its post hearing brief suggested the Arbitrator might order the parties back to the bargaining table to receive a presentation from Total Health Care regarding its benefits. The Arbitrator believes it is too late in this Arbitration proceeding to order the parties to further bargaining. The Employer did, however, after the close of the record, submit to the Independent Arbitrator, a copy of the benefit plan summary for the Total Health Care T500 Plan T521X, which the Employer says is the plan that was testified to by Mr. Modi. A copy of that plan summary will be placed in the file for this case in the event it is needed for future reference. There was sufficient record evidence, particularly through the testimony of Employer witness Modi, describing the provisions of the Total Health Care Plan and financial cost savings for both the Employer and employees, to support the Employer's proposal. However, just to be clear, the Independent Arbitrator is supportive of the Employer's LOS conditioned on the understanding that the Total Healthcare Plan that was described by and testified to by Mr. Modi and which is currently being provided to other City Employees and summarized in the Plan Summary referred to above, in fact be the plan that is provided to members of this bargaining unit. The Arbitrator would encourage the Employer to offer the Union the opportunity to receive a presentation from Total Health Care as soon as possible following issuance of this opinion and order.

A review of the Act 312, section 9 factors reveals that (d)(i), comparing the external comparables favors the Union position in that the majority of the CBA's from the comparable communities currently have some form of BC/BS plan. But it is not certain of the comprehensiveness of those plans and it is noted that all but two of the six CBA's of the comparable communities have expired and apparently are in negotiations for a new CBA. Of the two that have not expired, it is noted that the Melvindale CBA extends through December 31, 2014 and includes a provision in Article 21.A that authorizes the Employer to change insurance carriers so long as substantially equivalent coverage is maintained and Article 21.H states it may offer optional health insurance

coverage through a PPO or an HMO. (J-7). The Section 9(e) factor, comparing other employees of the Employer outside the bargaining unit, favors the Employer's position. There was record testimony that all of the active employees, including the entire police department, are on the Total Health Care plan (Tr. 4, pg 74) and factors 9(a), ability to pay and 9(2) favor the Employer's LOS.

Findings

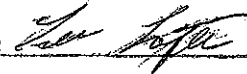
Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement (LOS) on the issue of Medical Insurance - Plan Design, more nearly complies with the applicable factors prescribed in section 9. Therefore, the Employer's language contained in its LOS will be incorporated in a revised Appendix B in the CBA.

Effective Date: As soon as practical following the date of the Award but not later than January 1, 2014. .

Employer: Agree _____ 

Disagree _____

Union: Agree _____

Disagree _____ 

Issue 9 - (Art 23.1, Appendix B) Medical Insurance - Premium Sharing [Employer & Union proposal]

Employer Position

The Employer proposes the following changes (identified in bold) to paragraph 1 of Appendix B:

"Medical Insurance: For full-time seniority employees only by Total Healthcare HMO Plan (Attached). The City reserves the right to self-insure, and/or change carriers. The employee shall be responsible for premium co-sharing in the amount of 30% of the entire monthly premium and beginning fiscal year 2013-14, the employee shall additionally share equally with the employer all annual premium increases.

The Employer proposes the following changes to paragraph 2 of Appendix B:

Eliminate the entire paragraph - which would discontinue dental insurance

The Employer proposes the following changes to paragraph 3 of Appendix B:

Eliminate the entire paragraph - which would discontinue optical insurance

The Employer's position with respect to premium sharing is that the employee be responsible for 30% of the monthly premium beginning fiscal year 2013-14 and share equally with the employer all annual premium increases. The Employer says every other City employee is paying 30% of their healthcare costs and with the savings to the employees associated with the Total Health Care Plan, it is not unreasonable or

financially burdensome for the employee to share 30% of the premium cost and share equally with the Employer the cost of any annual premium increases.

Union Position

The Union proposes the following changes (identified in bold) to paragraph 1 of Appendix B:

“Medical Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS Community Blue Plan #8, with a \$10/\$40 drug co-pay. The City reserves the right to self-insure, and /or to change carriers. The parties agree to reopen negotiations in January 2014 regarding the medical plan design for the last year of the Collective Bargaining Agreement.”

The City will provide either the hard cap amount established by P.A. 152 or 80% of the total annual costs for the agreed upon medical benefit plan.

The City will pay \$250.00 per month incentive to eligible employee(s) who elect to decline the City's medical plan.

Employees will be able to re-enroll in the City's medical plan when the plan they are covered from another source and lose that coverage. When an employee makes a decision to re-enroll in the City's medical plan which is not caused by the loss of health insurance from another source, that employee cannot re-enroll until the next annual open enrollment period.”

The Union proposes the status quo with no changes to paragraphs 2 and 3 of Appendix B.

Effective date – the date of the Act 312 Award

With respect to premium sharing, The Union's LOS would omit the following sentence from the current Appendix B language: “Premium increases in excess of 5% annually shall be shared equally by the employer and the employee.” It would require the City to establish either the hard cap amount established by P.A. 152 or 80% of the annual costs for medical benefits. And it would establish a “opt out” provision to permit an employee to choose not to enroll in the Employer's healthcare plan and require the Employer to pay the Employee \$250.00 per month if the employee chose not to participate in the healthcare plan.

The history of premium sharing, from the Union's perspective, was addressed in the previous issue describing the Union's position on plan design. The Union says the Employer has already realized savings in healthcare costs through legislatively mandated premium sharing. The Union refers to (U-49) which shows that members of

this bargaining unit currently pay higher deductibles than their counterparts in any of the other external comparable communities and none of the comparable communities require employee premium sharing above 20%. The Union notes that (U-50) reveals that five of the six comparable communities provide an employee the option to "opt out" of coverage and each of those provide for some level of payment to the employee who chooses to opt out. The Union says, given the history of the Employer's overcharging employees for their premium share and history of not providing or providing conflicting figures on healthcare costs, the Employer cannot be trusted to accurately determine the premium sharing amounts. The Union says there is insufficient evidence to adopt the City's proposal and ample evidence to adopt the Union's proposal.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Employer's LBO. The Impartial Arbitrator has weighed the positives and negatives of each LBO and recognizes that there are positives and negatives in each but has concluded that the Employer's LBO is the better course to follow.

The Union's proposal to add a provision to permit an employee to "opt out" or decline the City's medical plan is not unreasonable and is supported by the external comparables. (J-3-9). And the external comparables tend to support the 20% employee share of the annual premium (U-49). But the Union's proposal would also omit the current provision that premium increases in excess of 5% annually be shared equally by the employer and employee. This would place a greater financial burden on the Employer and might diminish the incentive for cost containment on the part of employees. The Union's proposal for an Employer contribution to an employee who chooses to decline the City's medical plan also appears quite high when compared to those of comparable communities. Exhibit (U-50) identifies only one comparable community whose Employer annual contribution would exceed the \$3000.00 proposed by the Union. That would be Melvindale at \$3,500.00 and perhaps one other, Hamtramack, that would provide 50% of premium.

The Employer's proposal relative to premium sharing, while somewhat exceeding what the comparable communities' appear to be requiring of employee's, is not unreasonable given the current financial situation faced by the City. And the result, at least for the period of this CBA, given the decision on the healthcare plan, should be that it reduces the actual cost and percentage of premium sharing currently being paid

by employees. Record evidence shows the employees are currently paying about 49.7% of the premium cost on a premium that is significantly higher than the premium required under the Total Health Care plan. The Employer's proposal would require employees to pay 30% of the premium and share equally with the employer all annual premium increases. Calculations based on exhibits in the record, i.e. (U-41)(U-43) indicate the employees would pay significantly less for insurance under the Employer's proposal than they are currently paying. And just as importantly, in the short and long term, the Employer would be paying less also.

A review of the Act 312, section 9 factors reveals that (d)(i), comparing the external comparables favors the Union position in that there is no evidence that any of the CBA's from the comparable communities currently appear to require employees to share more than 20% of the cost of the premium or the hard cap amount established by P.A. 152 and Melvendale specifies that the share will be 20% (J-7). There was no evidence presented on the internal comparables other than the expired CBA for the police employees (J-2). However factors 9(a), ability to pay and 9(2) favor the Employer's LOS. Considering what appears to be a financial benefit to both parties, and the Employer's need to reduce its costs to enable it to maintain its balanced operating budget and meet its long term financial obligations, the extent of weight given the 9(a) and 9(2) factors on this issue result in support for the Employer's LOS.

It is noted that the Employer's proposal specifies that the 30% premium co-sharing would take effect *at the beginning of the 2013-14 fiscal year* and the employee shall additionally share equally with the employer all annual premium increases. As noted in the previous issue of healthcare plan design, the effective date should be as soon as practicable following the date of the Award but not later than January 1, 2014. Given that the effective date for the implementation of the 30% premium is July 1, 2013, which is the beginning of the 2013-14 fiscal year, it is my opinion that it should be in both parties' interest to work together so that implementation of the Total Health Care plan could take effect prior to or simultaneous with the time the employee 30% premium sharing takes effect. I also interpret the Employer's LOS as requiring the employee share equally all annual premium increases that take effect after July 1, 2013. So if the Total Health Care Plan could be implemented prior to or simultaneous with the July 1, 2013 implementation of the premium sharing, the employee annual premium increase sharing would apply to any annual increases from the insurer after the rate established at the time of implementation.

Findings

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement (LOS) on the issue of Medical Insurance - Premium Sharing, more nearly complies with the applicable factors prescribed in section 9. Therefore, the Employer's language contained in its LOS will be incorporated in a revised Appendix B in the CBA.

Effective Date: July 1, 2013

Employer: Agree *[Signature]*

Disagree _____

Union: Agree _____

Disagree *[Signature]*

Issue 10 - (Art 23.4) Retiree medical [Employer proposal]

Employer Position

The Employer proposes to Amend Article 23.4, which states: " Retirement health care coverage will be paid by the City of Highland Park upon retirement of an active employee covered under this agreement as follows" and identifies the following vesting schedule:

Vesting Schedule:

Length of Service	City's Premium Coverage
0-10 years	No eligibility for post-retirement health care
11-14 years	50% Employee (single person) coverage
15-17 years	60% Employee (single person) coverage
18-20 years	70% Employee (single person) coverage
21-24 years	80% Employee (single person) coverage
25-26 years	90% Employee (single person) coverage
27-29 years	95% Employee (single person) coverage
30 or more	100% Employee (single person) coverage

The Employer proposes to amend the line 18-20 length of service line to 18+ and to delete lines 21-24, 25-26, 27-29, 30 or more length of service and City's premium coverage lines. So the Employer's proposal would limit the Employer's percentage of payment for a retiree choosing to be covered under the Employer's healthcare plan to no more than 70% of single coverage cost.

The Employer did not present specific exhibits or testimony on this issue. Nor did it address this issue specifically in its post hearing brief other than to indicate it

proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union's last offer of settlement proposes the status quo with no changes to the language. The Union's position is that the panel lacks a basis to rule for the City because of the City's failure to provide sufficient evidence upon which to rule. The Union says the panel has no documentation to determine what the cost saving would be to the City. The Union also points out that five of the external comparable communities provide full family medical insurance after 25 years of service (J-3-8) and the only internal comparable in evidence is the police officers CBA, which contains the same language as the current CBA for firefighters (J-2).

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Union's LBO. A review of Joint exhibits containing the comparable communities CBA's, (J-3) through (J-8), on this issue reveal that nearly all of the comparable communities provide financial assistance to pay for retiree healthcare coverage and the amount of the Employer payment is not determined by the length of service the employee obtained before retirement. Hazel Park does pay a percentage of health care costs based on the number of years of service but it pays 75% of the costs for retirees who have 20-24 years of service and 100% of the cost for retirees who have 25 or over years of service. (J-5).

Additionally, the Employer's proposal unclear whether it would apply to all current retirees as well as those currently employed. It is questionable whether it could apply to all current retirees. Exhibit (C-34), the CAFR for fiscal year ending June 30, 2012 provides some information on the number of retirees. It notes that the public safety retirement plan consists of 51 retirees and beneficiaries, 16 active employees and 4 inactive participants. There is no evidence to indicate how many current firefighter retirees this proposal would apply to. There was testimony that there are at least four current employees with 20 or more years of service who would be impacted by this proposal upon retirement (Tr 3, pg 236). While it is logical that the Employer seeks to reduce costs not only for the present but for the future, there is also a need to recognize that many current retirees have been relying upon the current level of Employer payment for health insurance and it is unknown how many current retirees this would apply to and what impact this proposal would have on them. Similarly, it could have

some impact on the current employees who have more than 20 years seniority decisions on when to retire. These, along with evidence estimating the cost savings to the Employer are all unknown factors which record evidence did not permit the panel to assess. Due to the lack of record evidence presented, the impartial arbitrator finds it difficult to adequately weigh and assess the Act 312, section 9 factors. Those factors where there is evidence, i.e. Section 9(1)(d) and (e) do not support the Employer's LOS.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of Retiree Medical more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change in the language in Article 23.4.

Employer: Agree _____	Disagree _____ <i>NR</i>
Union: Agree <i>La Jette</i> _____	Disagree _____

Issue 11 – (Art 24, Appendix B) Dental Care Program. [Employer proposal]

Employer Position

The Employer proposes the following changes to paragraph 2 of Appendix B:

Eliminate the entire paragraph. Paragraph 2 currently states:

“Dental Insurance: For full- time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS option #1, with Type I benefits at 100 %, and Type II and Type III benefits at 50%, to a \$600 annual maximum, increasing to \$800 annual maximum effective January 1, 2005. The City reserves the right to self-insure, and/or to change carriers. Premium increases in excess of 5% annually shall be shared equally by the employer and the employee.”

The Employer did not present specific exhibits or testimony on this issue. Nor did it address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union proposes the status quo with no changes to paragraph 2 of Appendix B. The Union's position is that the panel lacks a basis to rule for the City because of the City's failure to provide sufficient evidence upon which to rule. The Union says the panel has no documentation to determine what the cost saving would be to the City. The Union also points out that the external comparable communities CBA's indicate that every comparable community provides dental insurance as a healthcare benefit to

its employees (J-3-8). It also notes that the only internal comparable entered into the record, the police CBA, contained the same provision for dental insurance as provided in the current firefighter CBA (J-2). The Union says the panel should reject the City's proposal and adopt the Union's proposal.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Union's LBO. A review of Joint exhibits containing the comparable communities' CBA's, (J-3) through (J-8), on this issue reveal they all provide some form of dental insurance. Also, there was no evidence presented that indicated other employees of the Employer were not provided employer paid dental insurance. It is noted that the current CBA language permits the employer to change carriers if it chooses so if the Employer found that it was more economical to incorporate dental insurance to be more compatible with the Total Health Care plan it could do so, provided it was generally comparable to the current coverage. There was not record evidence indicating the cost savings associated with this specific proposal.

Due to the lack of record evidence presented, the impartial arbitrator finds it difficult to adequately weigh and assess the Act 312, section 9 factors. Those factors where there is evidence, i.e. Section 9(1)(d) and (e) do not support the Employer's LOS.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of Appendix B - Dental Care Program more nearly complies with the applicable factors prescribed in Section 9. Therefore, there will be no change in the language in Paragraph 2 of Appendix B.

Employer: Agree _____

Disagree MB

Union: Agree [Signature]

Disagree _____

Issue 12 - Art 25, Appendix B) Eye Care Program [Employer proposal]

Employer Position

The Employer proposes the following changes to paragraph 3 of Appendix B:

Eliminate the entire paragraph. Paragraph 3 currently states:

"Optical Insurance: For full-time seniority employees only. To be generally comparable (as to coverage and benefits) as BC/BS VSP Vision Plan "B" with bi-annual examinations, frames, and lenses. The City

reserves the right to self-insure, and/or to change carriers.”

The Employer did not present specific exhibits or testimony on this issue. Nor did it address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints. It is noted that there was record testimony from Employer witness Modi that vision was embedded into the Total Health Care program (Tr. 4, pg 44).

Union Position

The Union proposes the status quo with no changes to paragraph 3 of Appendix B. The Union's position is that the panel lacks a basis to rule for the City because of the City's failure to provide sufficient evidence upon which to rule. The Union says the panel has no documentation to determine what the cost savings would be to the City. The Union also points out that at least four of the six external comparable communities provide optical insurance for their employees (J-3-9). It also notes that the only internal comparable entered into the record, the police CBA, contained the same provision for optical insurance as provided in the current firefighter CBA (J-2). The Union says the panel should reject the City's proposal and adopt the Union's proposal.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Union's LBO. A review of Joint exhibits containing the comparable communities' CBA's, (J-3) through (J-8), on this issue reveal that four of the six comparable communities provide some form of Employer contribution to optical insurance. Also, there was no evidence presented that indicated other employees of the Employer were not provided employer paid optical insurance. As noted above, there was also record testimony that the Employer's proposed Total Health Care plan, adopted by this panel, had vision as a part of that plan and therefore there would be little if any cost savings by omitting vision from health care coverage. Also, there was no specific evidence presented to demonstrate what cost savings would result from the Employer's proposal.

Due to the lack of record evidence presented, the impartial arbitrator finds it difficult to adequately weigh and assess the Act 312, section 9 factors. Those factors where there is evidence, i.e. Section 9(1)(d) and (e) do not support the Employer's LOS.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of Appendix B - Eye Care Program more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change in the language in Paragraph 3 of Appendix B.

Employer: Agree MB Disagree _____
Union: Agree Howe Disagree _____

Issue 13 - (Art 27.1, Appendix A) Wages 07.01.12 to 06.30.13 - Pay Scale Step Increases [Union Proposal]

Union Position

The Union proposes a change in the dollar amounts in the wage steps contained in the CBA effective on the date of the Act 312 Award as follows:

	7/1/2012
Start	\$28,000.00
1 Year	\$30,000.00
2 Years	\$32,000.00
3 Years	\$36,000.00
4 Years	\$40,000.00
Sergeant	\$48,000.00
Lieutenant	\$50,000.00

The position classifications and dollar amounts in the current CBA are:

Firefighter	\$28,000.00
Fire Engine Officer	\$40,000.00
Sergeant	\$46,000.00
Lieutenant	\$48,000.00
Captain	\$55,000.00

Union witness Loftis testified in support of the Union's position and offered exhibits U-13 through 20). These exhibits are a compilation of data from the external comparable community CBA's comparing Highland Park Firefighter wages at the top step to those of firefighters and for Sergeant, Lieutenant and Captain in the comparable communities. They also provide a comparison of the pattern of wages and increases or decreases in wages for each of those positions in the comparable communities for the period 01/01/07 to 07/01/14. Mr. Loftis testified that these exhibits demonstrate that

Highland Park firefighters are the lowest paid among all of the comparable communities. For example (U-14) shows that the average annual wage of a firefighter at the top level within the comparable communities in January 2012 was \$49,240.00 compared to \$28,000.00 for Highland Park Firefighters. The average annual wage for Sergeant among the comparable communities in January 2012 was \$56,088.00 compared to \$46,000.00 for Highland Park Sergeants (U-18), and the average annual wage for Lieutenant among the comparable communities in January 2012 was \$60,439.00 compared to \$48,000.00 for Highland Park Lieutenants (U-18).

Mr. Loftis testified that all of the comparable communities have step increases for firefighters whereas Highland Park currently has the one starting level of \$28,000.00 and it stays at that level until the firefighter is promoted to a higher position (Tr. 1, pg 34,35). He noted that prior to the current CBA the firefighters had a step increase schedule but as a result of the current agreement, when the City was under the financial manager, the Union agreed to take reductions in pay and the single level of \$28,000.00 for firefighter was agreed to at that time. He noted that Appendix A in (J-1), which is the current CBA, contains the wages that were in effect prior to the current CBA (TR 1, pg 40). It shows that previously there was step increases for firefighter positions and a four year firefighter would have taken a \$12,000.00 pay reduction at that time.

The Union's LOS proposes to re-institute the step increases for the firefighter position during the first four years and increase the annual wages for Sergeant and Lieutenant by \$2,000.00. Mr. Loftis testified that the Employer and Union have had ongoing disputes involving the Fire Engine Officer position. He stated the Union's proposal would eliminate the fire engine officer position and just have a wage for a four year step (Tr. 1, pg 37). He indicated that the current rate for the Fire Engine Officer position was \$40,000.00 but this has been an ongoing issue and the Union was trying to avoid further grievances and litigation on when people should be considered an FEO. He said the Union proposal is to eliminate the position but pay the four-year firefighter, who would be doing at that point in time, the FEO duties, the \$40,000.00 (Tr 2, pg 31). He noted that if the Union proposal were adopted, four of the current firefighters would be at the top step. There are three other officers who were hired in the last six to eight months and once they reached a year seniority they would receive an increase (Tr 2, pgs 33,34).

In its post hearing brief the Union acknowledges that the Employer's financial condition has been precarious but says recently the City has made positive financial strides as evidenced by its most recent general fund balances. It notes that some of

these financial strides can be attributed to the wage and benefit sacrifices the firefighters have taken. It notes that the Cities of Ecorse and Hamtramack have also had their financial troubles and been under the authority of a financial manager, but their firefighter wages are higher than Highland Park. Referring to the elimination of the FEO position, the Union says under the current CBA firefighters start at the \$28,000.00 and do not receive another wage increase until they start performing the functions of a FEO and have 4 years of seniority. The Union filed a grievance regarding firefighters performing duties of an FEO but not receiving additional compensation. The Union says the Arbitrator ordered that firefighters with less than 4 years seniority would receive FEO wages for all time they spend performing FEO duties and also indicated that firefighters should receive FEO wages when they reach the 4 year seniority step. The Union says several firefighters have since reached the 4 year seniority level but the City has so far refused to properly compensate those firefighters. The Union says if the panel awards the Union's proposal the matter would be clear and the FEO position would be eliminated.

The Union also refers to (J-2), which is the current Highland Park police officers CBA and points out that the base wage for a police officer is currently \$30,000.00 compared to the firefighter at \$28,000.00. The base wage for police sergeant and firefighter are the same, at \$46,000.00 and the base wage for police Lieutenant is \$55,000.00 compared to Firefighter Lieutenant at \$48,000.00. The Union points out that the police-firefighter wage comparisons are based on a 40 hour work week for police and a 53 hour work week for firefighters. The Union also notes that (U-45) indicates that the Consumer Price Index has increased 18.10% since 2007 and members of this bargaining unit have received no wage increases over that time period. Exhibit (U-43) was presented which is the earnings statement of firefighter Stuart Jackson for the pay period ending 07/08/2012. It shows that Mr. Jackson's gross annual pay, not counting overtime, is about \$46,000.00 (about \$16.70 per hour for a 53 hour work week), but after deductions, the net annual pay, not counting overtime, is approximately \$24,000.00 (about \$8.70 per hour for a 53 hour work week).

The Union says its LOS is supported by the external comparables and the members of this bargaining unit would still be the lowest paid firefighters among the comparable communities even if the panel awards the Union's LOS and its other wage proposals. The Union says there is ample evidence to support this proposal and its other wage proposals for each year.

Employer Position

The Employer proposes the status quo with no changes to Appendix A

In its post hearing brief the Employer points out that the City has been and continues to be in a financial position that has limited its ability to give wage increases since 2007. The Employer other City employees, exclusive of police, have recently, within the past year, taken wage reductions and, have had longevity pay and dental benefits eliminated and began paying 30% of their healthcare costs. The City points out that it's LOS is not to seek wage reductions from members of this bargaining unit but to have wages remain at their current rate to allow the City more time to develop a long term plan to address its dire financial situation.

The Employer points out that the current staff of the fire department consists of 7 firefighters, 3 sergeants and 2 Lieutenants. Currently 3 firefighters have less than 1 year seniority but under the Union's proposal they would have a annual wage increase of \$2,000.00 when they reached one year seniority and another \$2,000.00 the following year. Four firefighters have 4 or more years seniority so they would each receive an annual increase of \$12,000.00; three Sergeants and two Lieutenants would each receive an increase of \$2,000.00. This would increase the annual cost to the City of approximately \$60,000.00, not counting any overtime that might be worked by these members. Those wage levels would all be increased by another 2% each of the remaining two years of the CBA if the panel were to grant those wage increases.

With respect to internal comparables, the Employer says other employees, with the exception of police, make far less than firefighters and have had no recent increases in pay and, in some cases, wage or benefit reductions. It refers to (C-29) as evidence that in fiscal years 2007 and 2008 the overall wages, including overtime, for full time firefighters actually increased each year and it was not until FY 2010, 2011,2012 that overall wages began to decline. The Employer says the City did not begin to realize savings until recently when it began to reduce overtime and bring expenditures within budget. The City says the Union's proposal does not recognize that employee sacrifices have to be equal or at least shared to some degree.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority favors the Employer's LBO. There is no doubt, based on the record evidence, that several of the Act 312, Section 9 factors support the Union's proposal. Factor 9(1)(d), the wages of the firefighters in the external

comparable communities reveal that the wages of Highland Park firefighters are lower than those of their counterparts in other communities. Factor 9(1)(e), the average CPI, reveals that wages for members of this bargaining unit have fallen 18.10% compared to the cost of living since the last wage adjustment. And it is clear that members of this bargaining unit took significant wage decreases in the last CBA to assist the Employer in confronting its financial circumstance at that time and enable it to move from a financial manager operation to a self governance position.

But there are also other Section 9 factors that must be considered when attempting to balance the interests and welfare of the public with those of the employees and the employer. Section 9(1)(a) requires consideration of the ability of the unit of government to pay, the financial impact on the community, and all liabilities, whether or not they appear on the balance sheet. And 9(2) requires the panel to give financial ability to pay the most significance if supported by competent, material and substantial evidence. These factors tend to favor the Employer's position. Also, consideration of factor 9(1)(e), comparison of internal comparables, demonstrates the wages and benefits of other employees of Highland Park have remained the same or been reduced to attempt to address the City's financial situation. And the current wages for Sergeant and Lieutenant positions are not that different from those of Highland Park Police staff.

Weighing these interests is not easy nor is it a precise science. Other Arbitrators have, I think, characterized it correctly as the "art of the possible." Based on the facts in this case, I find it possible to support the Union's position on the two percent across the board increases for the fiscal years beginning July 1, 2013 and 2014, but not practical or possible to support the Union's proposed revisions in the step increases effective the date of this order. Evidence indicates the cost of granting the Union's proposal on this issue would likely increase the Employer's annual wage costs immediately by about \$60,000.00. And the 2% increases following that increase would only add to that cost. The impact of this increase, short term and long term, would further impact the City's attempts to address its long term financial obligations and operational expenses.

On the other hand, I do believe a balancing of the interests justifies panel approval of the Union's position to establish a 2 % increase for all steps in the CBA on July 1, 2013 and July 1, 2014. Based on current staffing and the evidence provided in this hearing, the estimated additional cost to the City of awarding those increases is approximately a little over \$6,000.00 each of those years. I believe the City can accommodate that increase without jeopardizing its goals for achieving better financial

stability. City exhibit (C-29) demonstrates that the City has been able to reduce overall costs in firefighter compensation over the past three years, particularly in overtime, and with the recent hiring of three additional firefighters overtime costs may be able to be reduced even further. Given the increase in CPI and considering the external comparables, it is apparent that granting these 2% increases will still not result in wages for members of this bargaining unit comparable to those in other communities. But the economic data, discussed in the ability to pay section of this Opinion and Order, demonstrates that Highland Park's financial status and its citizens ability to support more cost is also among the lowest among the comparable communities (Attachment A of the Interim Order). I believe the panel's decisions on wages, including on this issue and the following two issues, is supported by record evidence and a result of the proper balancing of the interests and factors listed in Section 9 of Act 312.

There is also one other clarification that may be helpful to the parties on the issue of wages. The Union presented testimony and commented in its post hearing brief on the parties' disagreements and Grievance Arbitration findings relating to the payment for the Fire Engine Officer (FEO) position. It is unclear on this record what the current payment policy is as a result of the Grievance Arbitration Award and perhaps it is still being disputed by the parties and would need clarification after this Award is issued. But what is clear from this Award is that the FEO position remains in the classification and pay schedule in Appendix A. Based on record testimony in this proceeding, it would appear that the Grievance Arbitration Award requires payment for FEO work when a firefighter, regardless of years of service, is performing FEO responsibilities. On the other hand, there was testimony that firefighters need to gradually work into the position and with gradual increased experience, over time can then perform the responsibility full time. The question is, when does that employee achieve the level of competency to be considered a full time FEO and be paid the annual base rate of \$40,000.00? It may be possible for the parties to consider that point being when the individual is regularly performing those functions more than 50% of the time or when the individual's pro-rata pay plus his regular base pay equals or exceeds \$40,000.00. These comments are only intended to recognize that this Opinion and Order did not address this matter directly but recognizes that it may still be a matter that the parties may need to address and encourage them to do so in a cooperative, collaborative way.

Findings

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement (LOS) on the issue of Wages 07.01.12 to 06.30.13- Appendix A - Pay Scale Step Increases - more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change in the employee positions listing or pay scales in Appendix A.

Employer: Agree *NB* Disagree _____
Union: Agree _____ Disagree *Joe Lopez*

Issue 14 - (Art 27.1, Appendix A) Wages 07.01.13 - 06.30.14 [Union proposal]

Union Position

The Union proposes a 2% increase for all steps contained in the CBA.

The discussion addressing the Union's position on this issue is substantially the same as the discussion of the Union's position on issue 13 and will not be repeated here.

Employer Position

The Employer proposes the status quo with no changes to Appendix A.

The discussion addressing the Employer's position on this issue is substantially the same as the discussion of the Employer's position on issue 13 and will not be repeated here.

Discussion and Findings

Discussion

The discussion addressing the Union and Employer position on this issue is substantially the same as the discussion on issue 13 and will not be repeated here.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of (Art 27.1, Appendix A) Wages 07.01.13 - 06.30.14 more nearly complies with the applicable factors prescribed in section 9. Therefore Appendix A will be revised to include a 2% increase for all steps contained in the CBA .

Effective Date: July 1, 2013.

Employer: Agree _____ Disagree *NB*
Union: Agree *Joe Lopez* Disagree _____

Issue 15 – (Art 27.1, Appendix A) Wages 07.01.14 – 06.30.15 [Union proposal]

Union Position

The Union proposes a 2% increase for all steps contained in the CBA.

The discussion addressing the Union's position on this issue is substantially the same as the discussion of the Union's position on issue 13 and will not be repeated here.

Employer Position

The Employer proposes the status quo with no changes to Appendix A.

The discussion addressing the Employer's position on this issue is substantially the same as the discussion of the Employer's position on issue 13 and will not be repeated here.

Discussion and Findings

Discussion

The discussion addressing the Union and Employer position on this issue is substantially the same as the discussion on issue 13 and will not be repeated here.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of (Art 27.1, Appendix A) Wages 07.01.14 - 06.30.15 more nearly complies with the applicable factors prescribed in section 9. Therefore Appendix A will be revised to include a 2% increase for all steps contained in the CBA .

Effective Date: July 1, 2014.

Employer: Agree _____

Disagree WB

Union: Agree for Dept

Disagree _____

Issue 16 – (Art 30.1) Pension System, reduction in multiplier [Employer proposal]

Employer Position

The Employer proposes the employees' accrued benefit be reduced from the current "2.5% x average salary x total service" to "2.25% x Average Salary x Total Service." The maximum accrued benefit and definition of Average Salary to remain unchanged" [The Employer's LOS (J-12) indicated a change to 2.1% of average salary but was corrected during the hearing to 2.25% (Tr. 4, pg 97)].

The City, in its post hearing brief, indicates it makes this proposal because the City's financial future remains uncertain and any efforts to save costs must be taken in order for the City to remain viable. It notes that City witness Lefler testified that

anytime a multiplier is lower the Employer's unfunded liability would be reduced. The lower the multiplier, the lower the obligation going forward (Tr 3, pg 203). The Employer says reducing the multiplier helps reduce its unfunded liability, which makes it look better in the eyes of the creditors.

Union Position

The Union proposes the status quo with no changes to the pension benefit multiplier. In its post hearing brief the Union asserts that the Employer's proposal is defective because there is a statutory requirement that a supplemental actuarial valuation be completed before adoption of pension benefit changes. The Union cites MCL 38.1140h, which states in part:

“The supplemental actuarial analysis shall be provided by the system’s actuary and shall include an analysis of the long-term costs associated with any proposed pension benefit change. 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 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, “proposed pension benefit change” means a proposal to change the amount of pension benefits received by persons entitled to pension benefits under a system.”

The Union says the Employer failed to provide a supplemental actuarial evaluation to the panel during the hearing and deprives the panel from determining what effect a change in the multiplier would have on the pension system.

The Union also notes that only 5 members of the bargaining unit are eligible for the defined benefit pension and refers to the June 2012 CAFR which indicates the public safety retirement plan which includes 5 members of this bargaining unit is 65.8 % funded which the Union says is an acceptable amount (C-34, pg 48). The Union also points out that four of the external comparable communities have higher pension multipliers than Highland Park and 2 have the same multiplier. The Union says the panel should reject the Employer's LOS on this issue.

Discussion and Findings

Discussion

It has been difficult to assess the implications of the Employer's proposal on this issue based on record evidence. Exhibit (C-34), the CAFR for fiscal year ending June 30, 2012 provides some information. It notes that the public safety retirement plan consists of 51 retirees and beneficiaries, 16 active employees and 4 inactive participants. It shows the net pension obligations increasing for the period 2010 to 2012 and the City's annual cost of \$364,637 for the plans was less than the City's required contribution of

\$380,116 (C-34, pgs 46,47). A review of comparable community CBA's reveal that all comparable community employer CBA's where multipliers are identified are 2.5% or higher. It appears Ecorse was 2.35% but by court order in 1988 raised to 2.5%.

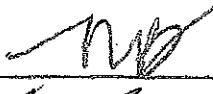

Also, noteworthy is City witness Lefler's response to a question of whether lowering the multiplier has a positive effect on creditors considering investing with the City. He stated: "It depends on how much they have funded. Each time it's a separate analysis by each local unit of government. It's hard to do a comparison" (Tr 3, pg 203).

The Impartial Arbitrator and Panel majority favor the Union's LBO. A review of Joint exhibits containing the comparable communities' CBA's, (J-3) through (J-9), on this issue do not support the Employer's proposal. There was no evidence presented involving internal comparables in support of the Employer's proposal other than the overall economic evidence on ability to pay. It is recognized that over the long term the reduction in the multiplier is likely to have some positive impact on the Employer's long term liabilities. But there is little evidence that this change would have a significant impact on the City's abilities to manage its finances or obtain loans during the course of this agreement. As the Employer's witness stated, it's hard to know without a separate analysis of the particular unit of government situation. Perhaps prior to the expiration of the new CBA the City would be able to obtain a supplemental actuarial analysis to demonstrate to the Union what the long term costs or savings of the proposed change would be and what impact it would have on the amount of benefits received by persons entitled to pension benefits under the system.

There is also record evidence that the City has issued bonds to fund its defined benefit pension obligations and the current financial agreements to secure borrowing to pay the bond obligations requires a separate tax millage levied to meet bond payment obligations. So currently the City has a means to fund the defined benefit pension obligations, whatever that obligation may be, without jeopardizing revenue for general operational expenses. For the above stated reasons, the Panel majority does not believe the Employer has provided sufficient evidence to enable the panel to make a decision in support of its proposal.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of Art 30.1 Pension System, reduction in multiplier more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change in the pension multiplier.

Employer: Agree  Disagree _____
Union: Agree  Disagree _____

Issue 17 - (Art 30.1) Pension System, employer payment to defined contribution [Employer proposal]

Employer Position

The Employer proposes to amend the last sentence of Article 30.1 which currently states: "For employees participating in the City's Defined Contribution Plan, the employee contribution shall be 6% of salary plus overtime and the City contribution shall be 9% of salary plus overtime. The Employer proposes to amend the last sentence of Article 31.1. by changing the City contribution from 9% to 6.25% of salary plus overtime.

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union proposes the status quo with no changes to Article 31.1

The Union's position is that the panel lacks a basis to rule for the City because of the City's failure to provide sufficient evidence upon which to rule. The Union says the panel has no documentation to determine what the cost savings would be to the City. Therefore the panel should reject the Employer's proposal.

Discussion and Findings

Discussion

There is some record evidence to estimate what the financial savings to the Employer would be if its LOS were to be awarded by the panel. Exhibit (C-29) provides information on the total annual payroll for full time firefighters for several fiscal years. The most recent full fiscal year - FY 2012 - indicates total annual payroll cost of salary plus overtime for full time firefighters to be \$564,735.00. Acceptance of the Employer's LOS would reduce the Employer's annual contribution by 2.75% of salary plus overtime

($2.75\% \times \$564,735.00 = \$15,530.00$). The Employer's estimated annual savings would be approximately \$15,000.00. This would be an immediate cost savings for the next two fiscal years. Of course, it would also mean less money going into the individual firefighters pension account and ultimately less funds available upon retirement. How much less is difficult to estimate because it would be based on investment earnings variables.


The only internal comparable evidence to draw upon is the police employees CBA (J-2) and it contains the exact same language as the current CBA for the firefighters, i.e: a 9 % contribution by the Employer. But, of course, that CBA expired 06/30/10 and it is presumed that the parties are either in negotiations or an Act 312 proceeding to achieve a successor CBA. A review of the CBA's of the comparable communities was difficult and it appears several do not have a defined contribution plan. Of the two that do have a defined contribution plan, the City of River Rouge pays 9% and its employees pay 5% of gross wages and the City of Melvendale pays 7% and its employees pay 5% of base wages.

Considering the Act 312, Section 9 factors the Impartial Arbitrator recognizes factors 9(1)(d) and (e) do not support the Employer's proposal but there is some evidence to indicate that the current Employer contribution rate is among the highest of the comparable communities. And on this issue, there is the opportunity for the Employer to realize immediate cost savings to assist it in addressing the immediate financial conditions it must address in order to secure continued financial support from potential lenders. Factors 9(1)(a) and 9(2) favor the Employer's proposal. Factor 9 (i) requires the panel to consider other factors normally taken into consideration during voluntary collective bargaining between the parties. In this case, when considering the normal give and take that occurs through collective bargaining, it is quite likely that this is an issue that the Employer might demand be included in a balancing of the parties' interests, given the current financial situation it faces and in the context of other decisions made by the panel in this proceeding. On this issue, the impartial Arbitrator and the panel majority believe, after giving the unit of government's financial ability to pay the appropriate significance, and based on record evidence, the Employer's proposal should be awarded.

Findings

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement (LOS) on the issue of (Art 30.1) Pension System, employer payment to defined contribution more nearly complies with the applicable factors prescribed in section 9. Therefore Article 30.1 will be revised to include the language contained in the Employer's LOS.

Effective Date: Upon issuance of this Opinion and Order.

Employer: Agree  Disagree _____
Union: Agree _____ Disagree 

Issue 13 - (Art 30.1) Pension System, average final compensation calculation [Employer proposal]
Employer Position

The Employer proposes that accrued financial benefits be calculated as the average of the last three (3) years of compensation and shall not include more than a total of 240 hours of paid leave. Overtime hours shall not be used in computing the final average compensation for an employee.

The Employer did not present specific exhibits or testimony on this issue. It did address it in its post hearing brief, indicating that its proposal is one of the best practices put forth by Governor Snyder that will make a community eligible for increased revenue sharing. The Employer says this is an opportunity for the City to avail itself to increased revenue.

Union Position

The Union proposes the status quo with no changes to Article 30.1.

In its post hearing brief the Union makes the same argument it did in opposition to issue 16, the revision in the multiplier, asserting that the Employer's proposal is defective because there is a statutory requirement that a supplemental actuarial valuation be completed before adoption of pension benefit changes. The Union says the Employer failed to provide a supplemental actuarial evaluation to the panel during the hearing and deprives the panel from determining what effect its proposal would have on the pension system. It also says because the Employer failed to provide testimony or exhibits on the issue the panel lacks a basis upon which to rule on the issue.

Discussion and Findings

Discussion

The Impartial Arbitrator and Panel majority believe the Employer has not

provided sufficient evidence to support its proposed LOS. As with issue 16, it was difficult to glean from the exhibits how other comparable communities addressed this issue. A review of exhibits (J-3 through J-9) reveals that Ecorse calculates final average compensation (FAC) based on total earnings for a 3 year continuous period selected by the member. Hazel Park calculates FAC on base pay and includes holiday pay and up to 271 hours of unused sick time. Inkster calculates FAC as the top 3 consecutive years of base salary within the past 10 years including overtime, holiday pay and unused sick pay. River Rouge calculates FAC based on the highest compensation for three consecutive years within the last ten years Hamtramack and Melvindale just refer to the MERS system.

The Employer provided no evidence describing what it estimated the reduced costs to be as a result of this proposal and in fact there was no evidence provided to indicate how the current FAC is calculated. For the above stated reasons, the Panel majority does not believe the Employer has provided sufficient evidence to enable the panel to make a decision in support of its proposal.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of (Art 30.1) Pension System, average final compensation more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change in the average final compensation.

Employer: Agree _____	Disagree _____ <i>WB</i>
Union: Agree <i>Don Joffe</i> _____	Disagree _____

Issue 19 -- (Art 31.1) Educational Bonus [Employer proposal]

Employer Position

The Employer proposes to delete Article 31.1, which states:
 "Effective 7/1/91 the bargaining unit employees with a four (4) year degree shall receive a three hundred dollar (\$300.00) bonus payable on the first payroll in July."

The Employer did not present specific exhibits or testimony on this issue. It did not address this issue specifically in its post hearing brief other than to indicate it proposed its issues for reductions in costs due to its current and projected future financial constraints.

Union Position

The Union proposes the status quo with no changes to Article 31.1

The Union did not provide evidence or testimony on this issue but did indicate in its post hearing brief that the panel should reject the proposal because the City did not provide sufficient evidence upon which the panel could make a ruling.

Discussion and Findings

Discussion

The only evidence relative to other employees of the Employer specific to this proposal was (J-2), the police units CBA, which contains the same language currently found in the firefighters CBA. A review of the external comparable communities CBA's reveals that only one other community provides for an educational bonus for a college degree unrelated to a degree in fire service. River Rouge provides \$100.00 for an associate's degree, \$200.00 for a bachelor's degree, and \$300.00 for a master's degree. Two other external comparable communities provide bonuses for achieving degrees in fire science. Hazel Park provides \$450.00 for a two-year associates degree in fire science and an additional \$300.00 for a bachelor's degree in social science. Inkster provides \$400.00 for a bachelor's degree in fire science and will reimburse for tuition. Melvindale will reimburse for tuition related to pursuit of the fire science degree.

There was no record evidence to demonstrate how many current employees this provision applied to and therefore no evidence to demonstrate the cost savings to the Employer or how many employees would lose \$300.00 annually. Given the evidence presented, it is unlikely retaining this provision in the CBA will have a major impact on the Employer's overall financial situation. On the other hand, it would seem that for those current employees who may have worked to achieve a 4-year college degree during their employment, it is a small continuing recognition of their achievement and apparent value to the Employer. A review of the external CBA's would indicate the Employer, in future negotiations, may want to consider proposing some relationship to fire service education for this benefit and/or make it prospective in nature. But on this record there is insufficient evidence to support eliminating this provision completely.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of (Art 31.1) Educational Bonus more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change to Article 31.1.

Employer: Agree _____

Disagree WPS

Union: Agree [Signature]

Disagree _____

Issue 20 – Appendix D – Firefighter Captain and Fire Engine Officer

Employer Position

The Employer proposes to eliminate the Firefighter Captain and Fire Engine Officer positions. Sergeants shall be allowed to supervise.

In its LOS the Employer just submitted the following language: "Appendix D: The Firefighter Captain and Fire Engine Officer positions shall be eliminated. Sergeants shall be allowed to supervise." There was no Appendix D provided in (J-1), the CBA for the parties. In its post hearing brief the Employer says the Captain position has not been filled for some time. This, the City says, has allowed the City to save \$55,000.00 per year. The City says that cost savings is still needed to help the City regain control of its finances.

Union Position

The Union proposes the status quo with no changes to Appendix D. The Union indicated in its post hearing brief that the panel should reject the proposal because the City did not provide sufficient evidence upon which the panel could make a ruling. The Union also stated in its post hearing brief that if the panel were to award the Union its FOS on wages, which would eliminate the positions of Captain and Fire Engine Officer, it would not object to the elimination of these positions, but if the Union's FOS on wages was not awarded then the Union's LOS on this issue is to maintain the status quo.

Discussion and Findings

Discussion

The panel majority order with respect to classification of employees and wages did not eliminate the position of Fire Engine Officer. As for the Captain position, it is noted that the position has not been filled for sometime. Article 4.2 of the CBA addresses Management Rights. That provision gives the Employer the authority to "determine methods, means and employees necessary for departmental operations". It would appear it is within the Employer's authority to not fill the Captain's position indefinitely if it chooses. Therefore it may be able to continue the savings it seeks. As for the Fire Engine Officers, those positions will remain as indicated in the discussion on wages.

Findings

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement (LOS) on the issue of Appendix D - Firefighter Captain and Fire Engine Officer more nearly complies with the applicable factors prescribed in section 9. Therefore, there will be no change to Appendix D.

Employer: Agree _____

Disagree WB

Union: Agree Kevin Loftis

Disagree _____

SUMMARY

This concludes the award of the Panel. The signature of the delegates herein and below along with the signature of the impartial Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award. All agreements reached in negotiations during the course of this proceeding and within the submission of last offers of settlement and stipulated to by the parties as noted herein, as well as all mandatory subjects of bargaining contained in the prior contract, will be carried forward into the collective bargaining agreement reached by the Panel.

Re: The City of Highland Park & Police Officers Association of Michigan
MERC Case No. D 12 G-0695 (Act 312)

Date: 5/21/13

William E. Long
William E. Long
Arbitrator/Chair

Date: 5-21-13

Nikkiya Branch
Nikkiya Branch
Employer Delegate

Date: 5-21-13

Kevin Loftis
Kevin Loftis
Union Delegate

Date: May 21, 2013