

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312  
Arbitration Between:

MERC Case No. L13 A-0046

CITY OF BAY CITY

Employer

-and-

BAY CITY FIRE FIGHTERS UNION,  
LOCAL 116, INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS

Union

**ACT 312 OPINION AND AWARD**

Micheal J. Falvo, Chairperson  
Steven H. Schwartz, Employer Delegate  
Michael L. O'Hearon, Union Delegate

APPEARANCES:

FOR THE CITY OF BAY CITY

Steven H. Schwartz  
Steven H. Schwartz & Associates

Michael Cecchini, Public Safety Director  
Jennifer Grigg, Human Resources Generalist  
George Martini, Fiscal Operations Director  
Karey Prieur, Fire Chief

FOR THE BAY CITY FIREFIGHTERS  
UNION, LOCAL 116, I.A.F.F.

Michael L. O'Hearon  
Michael L. O'Hearon, PLC

Chris Reynolds, President, Bay City  
Firefighters Union, Local 116, I.A.F.F.

## **BACKGROUND**

The Bay City Fire Fighters Union, Local 116, International Association of Fire Fighters is the collective bargaining representative for members of the Bay City Fire Department representing all full-time firefighters and fire officers excluding the fire chief and deputy fire chief. The bargaining unit consists of six job titles: Firefighter, Engineer/Driver, Lieutenant, Captain, Assistant Chief/Fire Marshal, and Assistant Chief/Training Officer.<sup>1</sup>

The expired collective bargaining agreement covered the period July 1, 2009 to June 30, 2013.

Bay City is located in Bay County. It covers approximately 10 square miles and the 2010 census counted 34,936. The City employs a "City Commission-Manager" form of government. Municipal operations are managed by the City Manager who is appointed by the City Commission. The Mayor is the presiding officer of the City Commission. The City Commission is comprised of nine Commissioners who serve four-year terms. In addition to the union representing firefighters, seven other bargaining units represent unionized employees. The Bay City Police Officers Association (BCPOA) represents sworn non-supervisory police officers. The Bay City Command Officers Association (BCCOA) represents sworn supervisory police officers, excluding the Chief of Police and Deputy Chief. Locals 482, 541 and 542 of the Utility Workers Union of America (UWUA) represent various classifications of civilian employees and Teamsters State, County & Municipal Workers Local 214 represent other classifications of supervisory and non-supervisory employees in two bargaining units. The collective bargaining agreements with the two police unions and two of the UWUA expire on June 30, 2014. The Teamsters non-supervisory agreement expires in 2015 and the other UMWA agreement and the Teamsters supervisory agreement expire in 2016.

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<sup>1</sup> The job classification of "Battalion Chief" was eliminated in the expired agreement. Because of layoffs there are currently no members holding the rank of Firefighter and the parties have reached an agreement that when recalled those employees will assume the rank of Engineer/Driver after completing additional training. However, because the salary of all ranks is based on a differential of the Firefighter pay scale that position will remain in the Agreement.

This Act 312 proceeding is occurring during a period of significant transition affecting the members of this bargaining unit and those changes are involved in several of the issues. First, the City has implemented a part-time paid-on-call component in the firefighting service. In 2012, the City decided to transition to a public safety structure that combined traditional law enforcement and firefighting responsibilities. The Union agreed to the use of part-time paid-on-call employees but opposed the creation of a public safety department. The City Commission approved the plan despite the objections. The plan called for the layoff of 15 firefighters in July 2013. However, as a result of a negotiated incentive plan for individuals eligible for retirement and a lump sum incentive for others, six bargaining unit members are currently on layoff status. The majority of police officers and police command officers have agreed to be cross-trained which is underway. Fire Union members who choose not to be cross-trained will be retained until retirement. The Union has emphasized that new employees will be hired as public safety officers and that under current plans eventually the fire union will cease to exist.

The hearing commenced on November 12, 2013. The City presented 125 exhibits and the Union presented 106 exhibits. These exhibits as well as other collective bargaining agreements were made a part of the record. Each advocate made an extensive opening statement. After conferring both advocates advised the chairperson on the record that the parties believed that meeting on the four additional scheduled days in order to present testimony that would reiterate the content of self-explanatory exhibits would not materially advance the Panel's ability to reach a determination on the issues. An agreement was reached that the Panel would meet in executive session to review the exhibits and consider the testimony that witnesses would provide in order to determine if testimony on any issue would be helpful. The Panel has met in executive session. The exhibits and testimony that the advocates would elicit from witnesses were fully explored and the chairperson's questions were answered. Other than adding to the expense incurred by the parties and substantially delaying the issuance of an award repetition of that information at a hearing would serve no useful purpose. The parties have stated that it is in their mutual best interests for the award to be issued as soon as possible and in view of that fact

the submission of post-hearing written briefs has been mutually waived. The arguments for both sides on each issue have been discussed in detail.

## **STATUTORY STANDARDS**

Act 312 of 1969, MCL 423.321, as amended by Act 116 of 2011, is intended to implement the public policy of the state to provide an alternate, expeditious, effective and binding procedure for the resolution of labor disputes involving public safety employees. The legislature deemed interest arbitration a requisite to the high morale of public safety employees as well as the efficient delivery of public safety services. Section 9 provides that the Panel's findings, opinion and order shall be based on the following criteria.

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

Public Act 116, which became effective on July 20, 2011, added a significant provision.

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

While Public Act 116 makes financial ability to pay the preeminent factor, this must be understood along side the Michigan Supreme Court's explanation that the Legislature did not intend each Section 9 factor to be afforded equal weight.

The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in § 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word shall in §§ 8 and 9. In effect then, the § 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in § 9. Since the §9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with answers. It is the panel which must make the difficult decision of determining which factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered.<sup>2</sup>

The reader should not conclude that the failure to discuss every factor on each issue means it has not been considered since that is not the case. The most salient factors pertaining to particular issues are highlighted. All pertinent factors have been painstakingly considered. It should be understood that the word "Panel" is used to signify a majority of the Panel. The concurrence of a Panel member in the disposition of a particular issue does not necessarily signify that he agrees with the chairperson's reasoning or statements.

None of the Panel's awards will have retroactive effect. The parties have stipulated that all issues are economic issues. Consequently, Section 8 requires the Panel to adopt the last offer of settlement that more nearly complies with applicable Section 9 factors. The record contains a stipulation that issues other than those considered in this hearing have been settled or waived and that all uncontested provisions of the prior agreement and any tentative agreements reached during negotiations are incorporated into the new agreement.

The parties stipulated to the following comparable communities:

1. Midland

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<sup>2</sup> *City of Detroit v. Detroit Police Officers Association*, 408 Mich. 410, 484 (1980).

2. Muskegon
3. Jackson
4. Saginaw

## **CONTESTED ISSUES AND LAST BEST OFFERS**

The parties initially submitted last best offers on 21 issues. Agreement has been reached on five of those issues. Two of five pension issues have been resolved. Those agreements are detailed on the record. The last offers of settlement for the unresolved issues are shown below.<sup>3</sup>

### ***Issue 1 (Union): Duration***

*The Union proposes the following modifications to Article 21:*

Article 21 – Duration

This Agreement shall be in effect July 1, ~~2009~~ 2013, and shall remain in force and effect through and including June 30, ~~2013~~ 2016. The parties agree to undertake negotiations for a new Agreement for succeeding periods according to the following timetable:

- A. Submission of Union's demands – on or about January 15, ~~2013~~ 2016
- B. Submission of City's demands – on or about January 15, ~~2013~~ 2016
- C. Negotiations to start – on or about February 15, ~~2013~~ 2016
- D. Desired conclusions of negotiations – on or about May 15, ~~2013~~ 2016

In the event that negotiations extend beyond the said expiration date of this Agreement, the terms and provisions of this Agreement shall remain in full force and effect pending agreement upon a new contract. All provisions of the new contract shall be retroactive to the expiration date of the present contract, except where prohibited by P.A. 54 of 2011 or other law.

*The City proposes the following modifications to Article 21:*

Article 21 -Duration

This Agreement shall be in effect July 1, \* \* \* 2013, and shall remain in force and effect through and including December 31, \* \* \* 2017. The parties agree to undertake negotiations for a new Agreement for succeeding periods according to the following timetable:

- A. Submission of Union's demands – on or about July 15, \* \* \* 2017
- B. Submission of City's demands – on or about July 15, \* \* \* 2017
- C. Negotiations to start – on or about August 15, \* \* \* 2017
- D. Desired conclusions of negotiations – on or about November 15, \* \* \* 2017

In the event that negotiations extend beyond the said expiration date of this Agreement, the terms and provisions of this Agreement shall remain in full force and effect pending agreement upon a new contract. All provisions of the new contract shall be retroactive to the expiration date of the present contract, except where prohibited by P.A. 54 of 2011 or other law.

A modification to this Agreement, except for economic items, may be accomplished by mutual consent of both parties hereto during the term of this Agreement.

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<sup>3</sup> The parties submitted Last Offers of Settlement in slightly different styles. The Union indicates deleted language with strikeovers and the City indicates deleted language with asterisks.

## **Issue 2 (Union): Expiration Date**

*The Union proposes the following modifications to Article 21:*

### Article 21 – Duration

This Agreement shall be in effect July 1, ~~2009~~ 2013, and shall remain in force and effect through and including June 30, ~~2013~~ 2016. The parties agree to undertake negotiations for a new Agreement for succeeding periods according to the following timetable:

- A. Submission of Union's demands – on or about January 15, ~~2013~~ 2016
- B. Submission of City's demands – on or about January 15, ~~2013~~ 2016
- C. Negotiations to start – on or about February 15, ~~2013~~ 2016
- D. Desired conclusions of negotiations – on or about May 15, ~~2013~~ 2016

In the event that negotiations extend beyond the said expiration date of this Agreement, the terms and provisions of this Agreement shall remain in full force and effect pending agreement upon a new contract. All provisions of the new contract shall be retroactive to the expiration date of the present contract, except where prohibited by P.A. 54 of 2011 or other law.

A modification to this Agreement, except for economic items, may be accomplished by mutual consent of both parties hereto during the term of this Agreement.

1. This Agreement was ratified by a vote of I.A.F.F. Local #116 at a meeting held for such purpose in accordance with its bylaws, on \_\_\_\_\_, ~~2010~~ 2013.

*The City proposes the following modifications to Article 21:*

### Article 21- Duration

This Agreement shall be in effect July 1, \* \* \* 2013, and shall remain in force and effect through and including December 31, \* \* \* 2017. The parties agree to undertake negotiations for a new Agreement for succeeding periods according to the following timetable:

- A. Submission of Union's demands – on or about July 15, \* \* \* 2017
- B. Submission of City's demands – on or about July 15, \* \* \* 2017
- C. Negotiations to start – on or about August 15, \* \* \* 2017
- D. Desired conclusions of negotiations – on or about November 15, \* \* \* 2017

In the event that negotiations extend beyond the said expiration date of this Agreement, the terms and provisions of this Agreement shall remain in full force and effect pending agreement upon a new contract. All provisions of the new contract shall be retroactive to the expiration date of the present contract, except where prohibited by P.A. 54 of 2011 or other law.

A modification to this Agreement, except for economic items, may be accomplished by mutual consent of both parties hereto during the term of this Agreement.

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## **Issue 3 (Union): Wages<sup>4</sup>**

*The Union proposes the following modifications to Article 3, Section 3:1:\**

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<sup>4</sup> Each year is pled as a separate issue.

Section 3:1 – Wages

Bargaining unit members shall receive the following wage increases (see Appendix A):

- A. Firefighter/EMT:  
Effective July 1, ~~2009~~ 2013, a zero percent (0%) wage increase for beginning rate firefighter/EMT through and including four-year firefighter/EMT.

Effective July 1, ~~2010~~ 2014, a ~~zero percent (0%)~~ one and one half percent (1.5%) wage increase for beginning rate firefighter/EMT through and including four-year firefighter/EMT.

Effective July 1, ~~2014~~ 2015, a ~~zero percent (0%)~~ one and one half percent (1.5%) wage increase for beginning rate firefighter/EMT through and including four-year firefighter/EMT.

Effective July 1, 2016, a one and one half percent (1.5%) wage increase for beginning rate firefighter/EMT through and including four-year firefighter/EMT.

~~Effective July 1, 2012, a zero percent (0%) wage increase for beginning rate firefighter/EMT through and including four-year firefighter/EMT subject to the financial status of the City improving, which is outlined in the language below.~~

- ~~1. On June 30, 2013, IAFF Membership, shall receive a base wage increase of 2% or a portion thereof if:~~

- ~~a. The General Fund experiences an increase, from the previous year's audited financial statement, in the unrestricted fund balance ("available amount"), and  
b. The collective base wage increase and related fringe benefits ("collective cost") for IAFF members and other eligible employees in the General Fund shall not exceed the "available amount."~~

- ~~2. If the "collective cost" exceed the "available amount," IAFF Membership shall have his/their base wage increase reduced by a prorated amount to insure "collective cost" does not exceed "available amount."~~

- ~~3. The "available amount" would be known after the 2012-2013 annual audited financial statements are filed with the State of Michigan.~~

- ~~4. Paragraph (1) above will not proceed if the "available amount" is not in excess of \$10,000.~~

- B. Engineer Wage Differential

Engineer shall be two percent (2%) above four year Firefighter/EMT rate.

- C. Officer Wage Differential

Lieutenant shall be five percent (5%) above Engineer, Captain shall be five percent (5%) above Lieutenant. ~~and Battalion Chief shall be five percent (5%) above Captain.~~

- D. Assistant Chief/Fire Marshall and Assistant Chief/Training Officer ~~Fire Awareness Officer~~

Fire Marshall shall be equal in salary to an Battalion Chief. Training Officer shall be equal in salary to Captain. Five (5) year Fire Awareness Officer shall be equal in salary to an Engineer. Wages are initially established and shall be maintained at \$66,788.80. Future wages for these two positions will not be less than five percent (5%) above a Captain.

- E. Fire Awareness Officer

A five (5) year Fire Awareness Officer shall be equal in salary to an Engineer.

\* The wage schedule referenced in this section and attached to the collective bargaining agreement as Appendix A shall be reconstituted after the issuance of the Award in this matter to reflect the duration and wages awarded by the panel.

*The City proposes the following modifications to Article 3, Section 3:1:*



Section 3:1 – Wages  
 Appendix A  
 Appendix C

Bargaining unit members shall receive the following wage increases (see Appendix A):

- A. Firefighter/EMT:  
 Effective July 1, \* \* \* 2013, a zero percent (0%) wage increase for \* \* \* four-year firefighter/EMT.  
 Effective July 1, \* \* \* 2014, a zero percent (0%) wage increase for \* \* \* four-year firefighter/EMT.  
 Effective July 1, \* \* \* 2015, a zero percent (0%) wage increase for \* \* \* four-year firefighter/EMT.  
 Effective July 1, \* \* \* 2016, a zero percent (0%) wage increase for \* \* \* four-year firefighter/EMT.

\* \* \*

- B. Engineer shall be two percent (2%) above four year Firefighter/EMT rate.  
 C. Lieutenant shall be five percent (5%) above Engineer; Captain shall be five percent (5%) above Lieutenant \* \* \*.  
 D. Assistant Chief/Fire Marshall and Assistant Chief/Training Officer shall be 14.74% in annual salary above Captain.

\* \* \*

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**APPENDIX A**

**WAGE SCHEDULE  
 I.A.F.F. LOCAL #116**

	0% 7/1/2013	0% 7/1/2014	0% 7/1/2015	0% 7/1/2016
* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *
<u>Assistant Fire</u>	<u>\$32.11</u>	<u>\$32.11</u>	<u>\$32.11</u>	<u>\$32.11</u>
<u>Chief/Fire</u>	<u>\$66,788.80</u>	<u>\$66,788.80</u>	<u>\$66,788.80</u>	<u>\$66,788.80</u>
Marshal (40 hour)				
Captain (56 hour)	\$19.99 \$58,210.88	\$19.99 \$58,210.88	\$19.99 \$58,210.88	\$19.99 \$58,210.88
<u>Assistant Fire</u>	<u>\$32.11</u>	<u>\$32.11</u>	<u>\$32.11</u>	<u>\$32.11</u>
<u>Chief/Training</u>	<u>\$66,788.80</u>	<u>\$66,788.80</u>	<u>\$66,788.80</u>	<u>\$66,788.8</u>
Officer (40 hour)				<u>0</u>
Lieutenant (56 hour)	\$19.03 \$55,415.36	\$19.03 \$55,415.36	\$19.03 \$55,415.36	\$19.03 \$55,415.36
Engineer/Driver (56 hour)	\$18.13 \$52,794.56	\$18.13 \$52,794.56	\$18.13 \$52,794.56	\$18.13 \$52,794.56

Firefighter (48 mo) (56 hour)	\$17.78 \$51,775.36	\$17.78 \$51,775.36	\$17.78 \$51,775.36	\$17.78 \$51,775.36
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Note: Appendix C shall be deleted in its entirety.

## **Issue 4 (City): Call-Back procedures**

*The City proposes the following modifications to Article 12, Section 12:1:*

### Section 12:1 – Call Back

All \*\*\* bargaining unit employees off duty shall be required to report for duty “as required by state statute” with their company when notified; provided, however, that the Fire Chief or any other authority shall not order any member to demonstrations such as strikes, riots or other civil disorders for purposes other than firefighting.

In the case of voluntary call back (when the Fire Chief or his assistant determines it necessary to call back a limited number of \*\*\* personnel to \*\*\* operate a spare piece of apparatus or a special need (hazmat, dispatch, etc.), the shift coming on duty next will be called first by using lists generated by administration.

A list will be developed by the \*\*\* Public Safety Department and will be kept at Central Dispatch (911) to facilitate this call back. \*\*\* Call back shall be to replace employees as needed. Personnel reporting for duty shall be paid in accordance with Section 3:4.

Personnel required to \*\*\* operate or staff apparatus for special events shall be determined by the Fire Chief. An Officer or Acting Officer, a Driver or Acting Driver, and one or more Firefighters shall be assigned from the

bargaining unit, Public Safety Officers or Paid on Call. Certain events may require a change to the number of required personnel. This change will be determined by the office of the Fire Chief.

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*The Union proposes the following modifications to Article 12; Section 12:1:*

### Section 12:1 – Call Back

All Fire Department employees off duty shall be required to report for duty as required by state statute with their company when notified; provided, however, that the Fire Chief or any other authority shall not order any member to demonstrations such as strikes, riots or other civil disorders for purposes other than firefighting.

In the case of voluntary call back (when the Fire Chief or his assistant determines it necessary to call back a limited number of ~~men to man~~ bargaining unit personnel to operate a spare piece of apparatus or a special need (hazmat, dispatch, etc.), the shift coming on duty next will be called first by using lists generated by administration.

A list will be developed by the Fire Department and will be kept at Central Dispatch (911) to facilitate this call back. Call back ~~to man a spare rig will usually be for an officer or acting officer, an engineer or firefighter qualified to operate the apparatus being put into service, and three (3) firefighters.~~ Shall be to replace employees as needed. Personnel reporting for duty shall be paid in accordance with Section 3:4(A).

Personnel required to ~~man~~ operate and staff apparatus for special events shall be determined by the Fire Chief. An Officer or Acting Officer, a Driver or Acting Driver, and one or more Firefighters shall be assigned from the bargaining unit. Certain events may require a change to the number of required personnel. This change will be determined by the office of the Fire Chief.

No employee shall be required to respond to any fire alarm or otherwise to another community under any "Mutual Aid Pact" or like agreement between this municipality and such other community if such alarm or requested response is related to a labor dispute in such other community.

## ***Issue 5 (City): Continuation of Working Conditions***

*The City proposes the following modifications to Article 1, Section 1:8:*

Section 1:8: Continuation of Working Conditions

The City and the Union subscribe to the principle that this contract should be the complete Agreement between the parties. The parties, however, recognize that it is most difficult to enumerate in an Agreement practices inherent in a relationship \* \* \*. If any claim, understanding, agreement, past practice or condition of employment comes to the attention of either party which arose during the term of this Agreement, which is not covered by this Agreement, the parties shall meet within five (5) days notice of such to discuss the understanding, agreement, condition of employment, or past practice, and negotiate a mutually satisfactory settlement. If the parties are unable to reach agreement within thirty (30) days of their initial meeting, the dispute may be submitted to arbitration under Step 3 of Article 9 – Grievance and Arbitration Procedure.

The Union shall have the burden of proving the understanding, agreement, past practice, or condition of employment, and shall not prevail if it fails to meet this burden of proof. If it does meet this burden, the City shall prevail only if it can show fair and reasonable justification for the change. The entire dispute under this paragraph shall be heard by the same arbitrator in the same arbitration proceeding.

*The Union proposes the following regarding Article 1: Section 1:8:*

Maintain *status quo*

## ***Issue 6 (City): Management Rights***

*The City proposes the following modification to Article 1, Section 1.7:*

Section 1:7 – Management Rights

Except when limited by the express provisions elsewhere in the Agreement, nothing in this Agreement shall restrict the City in the exercise of its functions of management under which it shall have, among others, the right to hire new employees; assign work and to direct the working force as to operations and related duties; to discipline, suspend, and discharge for cause, transfer or layoff employees; require employees to observe departmental rules and regulations; to determine the location and number of fire stations; to decide the emergency services to be provided the public; to introduce new fire fighting equipment, methods, and processes; to determine the work standards; to determine procedures by which such fire fighting or related work is to be performed. It is agreed that these enumerations of management prerogatives shall not be deemed to exclude other rights not enumerated.

The City shall meet and review with the Union any future changes to current job descriptions fourteen (14) calendar days prior to implementation of these job descriptions.

*The Union proposes the following modification to Article 1, Section 1.7:*

Section 1:7 – Management Rights

Except when limited by the express provisions elsewhere in the Agreement, nothing in this Agreement shall restrict the City in the exercise of its functions of management under which it shall have, among others, the right to hire new employees; assign work and to direct the working force as to fire and rescue operations and related duties; to discipline, suspend, and discharge for cause, transfer or layoff employees; require employees to observe departmental rules and regulations; to determine the location and number of fire stations; to decide the emergency services to be provided the public; to introduce new fire fighting equipment, methods, and processes; to determine the work standards; to determine procedures by which such fire fighting or related work is to be performed. It is agreed that these enumerations of management prerogatives shall not be deemed to exclude other rights not enumerated. The City agrees to negotiate with the Union any future changes to current job descriptions in accordance with Section 12:2.

## **Issue 7 (City): Longevity Pay**

*The City proposes the following modifications to Article 3, Section 3:2:*

Section 3:2 - Longevity

Longevity pay shall be eliminated effective the first complete pay period after the effective date of the 2013 Act 312 Award. Prior to that time, longevity pay shall be paid accordingly to the terms of the 2009-2013 collective bargaining agreement.

*The Union proposes the following regarding Article 3, Section 3:2:*

Maintain *status quo*.

## **Issue 8 (City): Like Work/Like Pay**

*The City proposes the following modifications to Article 3, Section 3:3:*

Section 3:3 – Like Work/Like Pay Provision

Like work/like pay provisions shall be eliminated effective the first complete pay period after the effective date of the 2013 Act 312 Award. Prior to that time, like work/like pay shall be paid according to Section 3.3(A)-(F), inclusive, of the 2009-2013 collective bargaining agreement.

*The Union proposes the following regarding Article 3, Section 3:3:*

Maintain *status quo*.

## **Issue 9 (City): Premium Pay (procedure for calling in for overtime and mandatory overtime)**

*The City proposes the following modifications to Article 3, Section 3:4:*

Section 3:4 – Premium Pay

The Fire Chief may require mandatory or offer voluntary call-back of bargaining unit members under Section 12.1 or may offer that opportunity to part-time firefighters, paid on call firefighters, Public Safety Officers or Public Safety Command Officers.

*The Union proposes the following modifications to Article 3, Section 3:4:*

Section 3:4 – Premium Pay

~~Notwithstanding anything herein to the contrary, for the term of this Agreement Sundays and Holidays shall be paid at one and one half (1 ½). This waiver will only be effective for the period commencing with the ratification of this agreement and ending on June 30, 2013. Article 3:4 Premium Pay (double time for Sundays and Holidays) shall be restored to double time (2x) and in full force and effect 11:59 pm, June 30, 2013.~~

Overtime pay shall be paid at the rate of time and one-half (1-1/2X) ~~for regular days and double time (2X) for Sundays and Holidays.~~ Overtime will be for a minimum of two (2) hours, however, when an employee is needed to stay over directly after normal working hours the two hour minimum may be waived, and the employee paid for actual time worked. Whenever it is determined that additional personnel is required to staff stations and/or apparatus, it shall be offered as overtime, which is to be offered and distributed evenly between bargaining unit members. Overtime scheduling will be negotiated between the Fire Chief and the Union in accordance with Section 12:2.

A premium of one and one-half percent (1.5%) of the employee's base wage shall be paid to all employees in the classification of firefighter who are state licensed emergency medical technicians (EMT). All employees hired after July 1, 1994 shall maintain a State of Michigan Emergency Medical Technician (EMT) license as a condition of continued employment. Also, all employees hired after October 8, 1990, and possessing a current EMT license on July 1, 2002, shall maintain their EMT license as a condition of continued employment. Continuing education credits required to maintain licensure will be provided by the Department, and all costs of such training (to meet the above requirements) shall be paid by the City.

## **Issue 10 (City): Holiday Pay**

*The City proposes the following modification to Article 5, Section 5:2:*

### **Section 5:2 – Holiday Pay**

Effective January 1, 2014, if an employee works a City-recognized holiday (as defined in Section 5.1), he shall be paid time and a half. An employee shall be eligible for holiday pay if his/her twenty-four hour shift begins on that City-recognized holiday. For example, an employee whose shift starts at 7:00 a.m. on the Fourth of July shall be eligible for holiday pay. Prior to January 1, 2014, holiday pay shall be paid according to the terms of the 2009-2013 collective bargaining agreement.

*The Union proposes the following modification to Article 5, Section 5:2:*

### **Section 5:2 – Holiday Pay**

~~Notwithstanding anything herein to the contrary, this provision shall not be in effect for the term of this agreement. In addition, if a member works a holiday then he/she will earn twelve (12) hours of earned Holiday Time (EHT). Up to 12 hours of EHT may be carried over from one fiscal year to the next. This agreement shall only be in effect commencing upon ratification by both parties of this agreement and ending on June 30, 2013. Article 5:2 Holiday Pay/Fire Suppression Personnel shall be restored and in full force and effect 11:59 pm, June 30, 2013.~~

Effective July 1, 2005 and during each fiscal year (July 1 – June 30) a cash bonus of \$1,300 will be paid in lieu of actual paid holidays. Holiday pay is to be paid on the second payday of November of each fiscal year. Holiday pay shall be remitted in a distinct and separate check (automated deposit) run from normal payroll. This amount shall be increased to \$1,400 effective January 1, 2006. This amount shall become \$1,000 effective January 1, 2014.

## **Issue 11 (City): Health Insurance**

*The City proposes the following modification to Article 8, Section 8.1:*

### **Section 8:1 – Health and Dental Insurance**

\*\*\* Effective as soon as can be implemented following the 2013 Act 312 arbitration Award, the City will provide all full-time, bargaining unit members and their eligible dependents with BC/BS Flexible Blue Plan 2 High Deductible health care coverage and Rx 5/30/60, or an equivalent coverage program, with the City of Bay City funding an HSA for the deductible (as identified in the chart below).

BCBS Flexible Blue Plan 2 high deductible health care coverage does not coordinate with Medicare, therefore any participants enrolled in Medicare, both active and pre-65 retirees, will be placed on the BCBS 2+1 Supplemental Plan or equivalent.

#### **1. Employee Premium Contribution**

Full-time bargaining unit employees shall have automatically deducted, from each payroll check, for each biweekly payroll period, an amount established, "pre-tax", \*\*\* in accordance with Public Act 152 of 2011. This amount will be established based on either the "Hard Cap" option, or the "80/20" option.

Regardless of applicable Public Act 152 deductions, employees will be responsible to pay a minimum of twenty percent (20%) of the health care illustrative rates on a "pre-tax", bi-weekly basis.

**2. Employer Contribution**

Additionally, the City shall contribute annually the amount established, which sums shall be deposited into an employee-owned Health Savings Account (HSA) exclusively as follows (if the City Commission elects the "80/20" option under Public Act 152 of 2011, the City shall pay 80% of the total HSA contribution if the employee elects to pay the remaining 20% by payroll deduction:

	<b>Effective 1/1/14</b>
<b>Single</b>	\$1250
<b>2-Person</b>	\$2500
<b>Family</b>	\$2500

In the event that the insurance carrier increases the annual deductible amount from January 1, 2011, forward, it is mutually agreed that the employee and the City will share the cost difference of the increase, with each party contributing half of the deductible increase. The City also agrees to notify all members of any deductible increases at least thirty (30) days prior to the effective date of increase. \* \* \*

A City employee married to another City employee that participates in City-provided health care will both be on one health care contract in the name of the employee who was hired first and they will be subject to the health care costs in accordance with that collective bargaining agreement.

The City may switch to an exchange under the Affordable Care Act (ACA) if benefits are substantially equal or better. The City may gap-fill items not covered by the ACA plan. In the event the ACA is repealed, coverage would revert back to the coverage in effect on December 31, 2013.

Section 7:2 – Subrogation

In the event an employee suffers a non-duty injury as a result of the actions of a third party that results in an absence from work that extends beyond 480 hours or, because of his/her injury elects to receive a non-duty disability retirement or other benefit payable by the retirement system, the City shall be subrogated to the rights of the person against such third party only as to that employee's claim for health care expenses, and limited to the extent of the health benefits to which the City pays or becomes liable to pay.

**B. Health Insurance for Retirees**

**Eligibility**

To be eligible for the City's health care coverage, employees hired prior to 7/1/2010 retire from active employment with twenty (20) or more years of City service. The retiree and/or dependents MUST be enrolled in the City's health plan at the time of retirement. If a retiree cancels coverage for any reason, the retiree and/or dependents will no longer be eligible to re-enroll in the City's retiree health plan. Spouses of deceased retirees remain eligible so long as they are on the City's health plan at the time of the retiree's death. If the deceased former employee's spouse remarries, their new spouse and/or dependents will not be eligible for the City's health plan.

Employees hired after July 1, 2010, are not eligible for City-provided healthcare at retirement, unless retiree health care is available to him/her under another City of Bay City collective bargaining agreement. For employees hired after July 1, 2010, the City will establish a Retirement Health Savings (RHS) Plan. Employees re-hired from lay-off with an original hire date prior to the 7/1/2010 (absent any voluntary break in service) shall remain eligible for retiree healthcare.

**Pre-65 Retirees**

The City will provide BC/BS or equivalent healthcare coverage to eligible Pre-65 retirees (who retire from active employment) and their IRS dependents \* \* \* with Blue Cross/Blue Shield "Flexible Blue Plan 2" high deductible health care coverage and Rx 5/30/60 or an equivalent coverage program with the City of Bay City funding one hundred 100% of an HSA for the deductible (as identified in the chart above). Employees who retire will pay the same premium share as active employees. If the City should no longer offer BCBS Flexible Blue Plan 2 to active employees, the retiree shall continue to pay the last premium share that was in effect for active employees under the Flexible Blue Plan 2.

An employee who receives a duty-disability retirement as the result of an injury or who is killed on-duty while in performance of his/her duties shall be considered to have achieved twenty-five (25) years of service and shall pay the same health insurance co-pays and/or deductibles as active employees.

**Post-65 Retirees**

Post-65 Retirees are required to participate in the Medicare Programs Part A&B. Thereafter, those retirees eligible for the City's health care shall receive the City's NEBCO, or equivalent, retiree health coverage according to the applicable co-insurance percentage listed below. The City's Post-65 health plan shall supplement Medicare coverage and the retiree shall be responsible to participate in and pay for their Medicare "Part B" premium. Post-65 retirees will automatically enroll in the City's Medicare "Part D" plan at no additional charge to the retiree. An employee who receives a duty-disability retirement as the result of an injury or who is killed on-duty while in performance of his/her duties shall be considered to have achieved twenty-five (25) years of service. Regardless of pension eligibility under the Police and Fire Retirement System, an employee retiring shall pay the following premium contributions on a monthly basis (based on illustrative rates provided by the vendor):

Years of City Service	Employer Pays	Retiree Pays
20	75%	25%
25 or more	90%	10%

The subrogation provision is in effect for retirees receiving City health care.

**C. Alternative Health Insurance**

Any active bargaining member or retiree who is eligible, but chooses not to participate in City-provided health care coverage, who can alternatively show proof of insurance from another source, and who signs a waiver with the City, shall receive a payment in lieu of coverage equal to \* \* \* \$150 per month, paid monthly, for each and every month such coverage is waived.

An employee who waives his right to health insurance coverage shall have the opportunity to resume coverage during the calendar year the employee has a qualifying status change event, or at the next "open enrollment" period under any circumstances. In such case, the monthly payment in lieu of coverage will cease and the City's health care coverage will be re-instated effective the first of the month following written notice to the City of the employees desire to re-enroll.

**D. Healthcare Payments**

Retirees shall have health care premiums automatically deducted from pension checks.

**E. Health Insurance Continuation**

Employees "laid off" by the City shall continue to receive the above-described health care coverage benefits for the period of six (6) months following the day of "layoff" for involuntary termination of employment; except where the employee was "fired for cause," in which case the coverage benefits shall be terminated and cease as soon as possible under the City's policy. The City will continue to provide health insurance for employees who are on \* \* \* FMLA leave without pay for a period of three (3) months.

**F. Dental Insurance**

The City shall provide full-time bargaining unit employees, and their eligible dependents with a dental insurance plan which covers one hundred percent (100%) preventative care, seventy-five percent (75%) basic care, fifty percent (50%) major dental care, with a \$1,000 annual maximum and \$50 deductible (waived for preventative care) per person per benefit year.

*The Union proposes the following regarding Article 8, Section 8:1:*

Maintain *status quo*.

**Issue 12 (City): Cleaning Allowance**

*The City proposes the following modification to Article 10, Section 10:4:*

Section 10:4 – Cleaning Allowance.

Cleaning allowance shall be eliminated, effective the first full day after the effective date of the 2013 Act 312 Award. Prior to that date, cleaning allowance shall be paid according to the terms of the 2009-2013 collective bargaining agreement.

*The Union proposes the following modification to Article 10, Section 10:4:*

~~Notwithstanding anything herein to the contrary, this provision shall not be in effect for the term of this agreement. This waiver of Section 10:4 Cleaning Allowance will only be effective for the period commencing with the ratification by both parties of this agreement and ending on June 30, 2013. Section 10:4 Cleaning Allowance shall be restored in full force and effect 11:59 pm, June 30, 2013.~~

Effective July 1, 2005, cleaning allowance shall be \$78.50 per month for forty-hour personnel. Effective July 1, 2007, this amount shall become \$86.50. Effective July 1, 2014 this amount shall become \$72.50 per month.

## ***Issue 13 (City): Pension (Employee Contribution)***

*The City proposes the following modification to Article 11, Section 11:1:*

Section 11.1 – Pension Benefits

The pension benefits for all bargaining unit employees set forth in the City Charter of the City of Bay City, Article 28, shall be incorporated herein by reference including the following changes:

\* \* \*

An employee will become vested in the pension plan after ten (10) continuous years of service.

Effective July 1, 2006, employees may retire after 25 years of service regardless of age, at full pension, to be calculated at the rate of two and eight tenths (2.8) of his final average compensation multiplied by the number of years of credited service and fractions thereof not to exceed seventy percent (70%) of maximum pension base. Effective the first full pay period after the effective date of the Act 312 arbitration award, the employee contribution shall \* \* \* be ten percent (10%) (eight percent (8%) prior to that date).

Effective July 1, 2006, employees may retire upon attaining ten (10) years of service with age fifty-five (55) at a two and one-half percent (2.5%) multiplier.

Section 20 and all other applicable sections of the Bay City Policemen and Firemen Retirement System shall be amended accordingly.

### **Pre-tax Treatment:**

Member contributions picked up shall be treated as City contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up member contributions shall be included in the determination of the members' gross annual salary for all other purposes under federal and state laws. Members' contributions picked up shall continue to be designated member contributions for all purposes of the Retirement System and shall be considered part of the member's salary for purposes of determining the amount of the member's contribution.

*The Union proposes the following regarding Article 11, Section 11:1:*

Maintain *status quo*.

## ***Issue 14 (City): Pension (Post-Retirement Escalator)***

*The City proposes the following modification to Article 11, Section 11:5:*

Section 11:5 – Pension Escalator

Effective July 1, 1997, employees retiring after said date shall receive a post-retirement adjustment to their original pension benefit, (after recalculation due to annuity withdrawal), equal to five percent (5%) of the original benefit beginning on the fifth-year anniversary of retirement; an additional five percent (5%) increase to the original benefit beginning on the tenth-year anniversary of retirement; and finally, an additional increase of five percent (5%) of the original pension benefit amount beginning on the fifteenth-year anniversary of retirement.

This pension escalator shall only be calculated on credited service prior to January 1, 2014 or the effective date of the 2013 Act 312 award, whichever is later.

*The Union proposes the following modification to Article 11, Section 11:5:*



Section 11:5 – Pension Escalator

Effective ~~July 1, 1997~~, on the date of the Act 312 Award in Case No. L13 A-0046, employees retiring after said date shall receive a post-retirement adjustment to their original pension benefit, (after recalculation due to annuity withdrawal), equal to ~~five three and one half percent (5%) (3.5%)~~ of the original benefit beginning on the fifth-year anniversary of retirement; an additional ~~five three and one half percent (5%) (3.5)~~ increase to the original benefit beginning on the tenth-year anniversary of retirement; and finally, an additional increase of ~~five three and one half percent (5%) (3.5)~~ of the original pension benefit amount beginning on the fifteenth-year anniversary of retirement.

## ***Issue 15 (City): Food Allowance***

### ***The City proposes the following modification to Article 15:***

Article 15 – Food Allowance

~~Food allowance shall be eliminated on the effective date of the Act 312 arbitration award. Prior to that date, food allowance shall be paid according to the terms of the 2009-2013 collective bargaining agreement.~~

### ***The Union proposes the following modification to Article 15:***

Article 15 – Food Allowance

~~Notwithstanding anything herein to the contrary, this provision shall not be in effect for the term of this agreement. This waiver of Article 15 Food Allowance will only be effective for the period commencing with the ratification by both parties of this agreement and ending June 30, 2013. Article 15 Food Allowance shall be restored and in full force and effect 11:59 pm, June 30, 2013.~~

Effective July 1, 2005, a food allowance of \$900 per year shall be paid to all fire suppression personnel. Effective July 1, 2007, the allowance shall be \$1,000 per year. Effective July 1, 2014 the allowance shall be \$750. The food allowance shall be paid in September. The sum shall be pro-rated for personnel having worked a fifty-six (56) hour week during the fiscal year and have retired or deceased, in which case the benefit is to be paid to the retiree or beneficiary.

## ***Issue 17 (City): Vacation Selection***

### ***The City proposes the following modification to Article 4, Section 4:1E:***

Section 4.1(E): Method of Selection

Vacations will be selected by seniority per shift and consist of four (4) rounds. The first round pick shall either be a three (3) or six (6) day pick. If six (6) day pick is chosen in the first round then a second round pick will not be allowed. A three (3) day pick shall only be allowed in the second round. The third round shall either be a three (3) or six (6) day pick. If a three (3) day pick is chosen in the third round then a fourth round pick of three (3) shall be granted. All six (6) day selections shall be picked from consecutively numbered vacation periods. Selections are to be made prior to November 10th of the preceding year. \* \* \* Bargaining unit members are to be notified one duty day before the selection process is to begin. When the selection process has begun, each \_ \* \* bargaining unit member shall be afforded up to two (2) business hours to specify his selection after being contacted personally to select a vacation period. If an \* \* \* bargaining unit member fails to select a vacation during this period, his name will be placed at the end of the shift seniority list. No more than \* \* \* one (1) \* \* \* bargaining unit member will be allowed off at any one time during a vacation period.

### ***The Union proposes the following modification to Article 4, Section 4:1E:***

Section 4:1(E) – Method of Selection

Vacations will be selected by seniority per shift and consist of four (4) rounds. The first round pick shall either be a three (3) or six (6) day pick. If six (6) day pick is chosen in the first round then a second round pick will not be allowed. A three (3) day pick shall only be allowed in the second round. The third round shall either be a three (3) or six (6) day pick. If a three (3) day pick is chosen in the third round then a fourth round pick of three (3) shall be granted. All six (6) day selections shall be picked from consecutively numbered vacation periods. Selections are to be made prior to November 10th of the preceding year. Bargaining unit employees are to be notified one duty day before the selection process is to begin. When the selection process has begun, each bargaining unit employee shall be afforded up to two (2) business

hours to specify his selection after being contacted personally to select a vacation period. If a bargaining unit employee fails to select a vacation during this period, his name will be placed at the end of the shift seniority list. No more than two (2) persons bargaining unit employees will be allowed off at any one time during a vacation period.

## **THE CITY'S FINANCIAL CONDITION**

A number of Act 312 arbitrators have noted that the phrase used in Section 9(a) – “the financial ability of the unit of government to pay” – is not self-defining. In one sense it might be said that a unit of government necessarily has the financial ability to pay as long as there exists sufficient cash flow to meet payroll. That is not the intended meaning. Subsections (i) – (iii) require that the Panel take account of additional factors: (1) the financial impact on the community; (2) the interests and welfare of the public; and (3) all other financial liabilities. Exacting consideration of these criteria is imperative since Public Act 116 requires, if supported by substantial evidence, that the financial ability of the local unit of government to pay be accorded the most significance.

General Fund revenue in Bay City is derived for the most part from three main sources: property taxes, state shared revenue, and charges for services. Property taxes generate the greatest portion followed by state revenue sharing followed by charges for services. Residential property taxes comprise 77%, commercial property taxes comprise 18%, and industrial property taxes comprise 5% of the total. Bay City has not escaped the consequences of the national and state decline in property values and the increase in home foreclosures. Since 2009, property values have declined by 18.1% -- a reduction of \$117,148,070. **TABLE 1** shows property tax revenue for the fiscal years 2002 through 2012.

**TABLE 1 – PROPERTY TAX REVENUE**

<u>Fiscal Year</u>	<u>Amount</u>	<u>Dollar Difference</u>	<u>Percentage Difference</u>
2002	\$12,912,724	\$350,046	8.787%
2003	\$13,262,771	\$350,047	2.711%
2004	\$13,142,381	-\$120,390	-0.908%
2005	\$12,933,879	-\$208,502	-1.586%
2006	\$13,591,533	\$657,654	5.085%

2007	\$13,640,017	\$ 48,484	0.357%
2008	\$14,043,854	\$403,837	2.961%
2009	\$14,249,217	\$205,363	1.462%
2010	\$14,012,116	-\$237,101	-1.664%
2011	\$12,728,586	-\$1,283,530	-9.160%
2012	\$12,357,132	-\$371,454	-2.918%
	<b>Change since 2002</b>	<b>-\$555,592</b>	<b>-4.30%</b>

Importantly, a significant number of appeals challenging property assessments are pending before the Michigan Tax Tribunal and if successful would significantly reduce property tax revenue. In addition, reduction in the personal property tax on businesses will result in an estimated revenue loss in 2014 of \$160,000 increasing to \$500,000 in 2016.

State revenue sharing is the second most significant source of the City's operating funds. Revenue sharing funds are in two categories: constitutional and statutory. The first category consists of a proportionate share of state sales and use taxes and is calculated on population. Bay City's population decreased from 36,817 in the 2000 census to 34,932 in the 2010 census. The amount of statutory revenue sharing is determined year-to-year by the Legislature and it can reduce non-constitutional revenue sharing if the state needs the money for its own budget. The amount of non-constitutional revenue sharing is now determined by the achievement of specified benchmarks in the Economic Vitality Incentive Program. **TABLE 2** shows the amount of state revenue sharing over a 10-year period.

**TABLE 2 – STATE REVENUE SHARING FISCAL YEARS 2003-2013**

<u>Fiscal Year</u>	<u>Amount</u>	<u>Dollar Change</u>	<u>Percentage Change</u>
2003	\$5,572,086	-\$659,520	-10.58%
2004	\$5,421,044	-\$151,042	-2.71%
2005	\$5,214,264	-\$206,780	-3.81%
2006	\$5,132,036	-\$82,228	-1.58%
2007	\$5,088,292	-\$43,744	-0.85%
2008	\$4,872,512	-\$215,780	-4.24%
2009	\$5,065,450	\$192,938	3.96%
2010	\$4,236,674	-\$828,776	-16.36%
2011	\$4,225,605	-\$11,069	-0.26%
2012	\$3,841,605	-\$384,000	-9.09%
2013	\$3,971,199	\$129,594	3.37%

The third major revenue category is charges for services. This category has shown moderate increases each year from 2007 to 2012 resulting in a total increase of approximately \$250,000 over a five-year period. However, this modest increase did not offset the reduction in property tax revenue or state shared revenue.

The General Fund balance is a chief financial indicator. In lay terms it is comparable to an individual's checking account. It is the rollover amount available after expenditures are made added to the fund balance from the previous year that may yield a positive or negative number. The General Fund balance in fiscal year 2012 was marginally above the level it was at in fiscal year 2002.

**TABLE 3** shows the General Fund revenues, expenses, and balance for fiscal year 2013 based on preliminary unaudited figures. In considering the significance of the General Fund balance one must keep in mind that there may be legally restricted or contractually earmarked monies. For example, a fire caused significant damage to City Hall and funds are earmarked for its restoration. The COPS program is a federal grant that restricts the use of funding to the designated purpose.

**TABLE 3 – FISCAL YEAR 2013 PRELIMINARY OPERATING RESULTS**

▪ General Fund Revenues	\$17,799,613
▪ General Fund Expenses	\$19,495,660
▪ Decrease in Fund Balance	\$1, 696,047
▪ Total Fund Balance Beginning Year	\$6,263,714
▪ Estimated Fund Balance End Year	\$4,567,667

The proposed budget for fiscal year 2014 projected an additional decrease of approximately \$1.5 million in the General Fund balance because anticipated expenditures exceeded anticipated revenues.

Bay City, as it true of municipalities throughout the state, faces significant “legacy costs” to fund pension obligations and post-retirement health care costs. A significant portion of its annual expenses is attributable to funding these obligations for current and future retirees. The City has three pension plans. The first is a closed defined benefit pension plan for qualifying general city employees. The second is a defined contribution plan for more recently hired general city employees. The Municipal Employees Retirement System of Michigan (MERS) administers both of these plans. Police and fire employees are in a separate defined benefit plan established by City Charter. **TABLE 4** shows the increases in the City's actual contribution levels as well as the funding level of the two defined benefit programs. It should be noted that with the exception of one year (2007) in which the City exceeded the required contribution, the City has made the

required contribution to the Police & Fire fund. On the other hand, in the last six years the City has made an excess contribution to the non-uniformed defined benefit fund in order to decrease the unfunded accrued liability. Despite these substantial increases in the City's contributions, the funded ratio has decreased in the Police & Fire plan from 126% in 2002 to 61% in 2012. The funded ratio in the non-uniformed defined benefit plan has increased from 65% in 2002 to 69% in 2012. The total actual contribution for all three plans increased from \$2,175,541 in 2002 to \$5,452,000 in 2012.

**TABLE 4 – PENSION CONTRIBUTIONS**

Police & Fire Defined Benefit plan	2002 - \$430,767	2012 - \$1,725,255
General Defined Benefit plan	2002 - \$1,301,821	2012 - \$3,275,210
General Defined Contribution plan	2002 - \$442,953	2012 - \$451,935

Healthcare costs have also increased significantly. **TABLE 5** shows the City's total healthcare costs for active and retired employees over a ten-year period.

**TABLE 5 – HEALTHCARE COSTS 2002 TO 2012**

<u>Fiscal Year</u>	<u>Cost</u>	<u>Percentage Change</u>
2002	\$5,453,557	7.16%
2003	\$5,468,419	0.27%
2004	\$6,521,426	16.15%
2005	\$6,921,548	5.78%
2006	\$7,137,234	3.02%
2007	\$7,132,972	-0.06%
2008	\$7,443,679	4.17%
2009	\$7,562,826	1.58%
2010	\$8,262,849	8.47%
2011	\$8,736,472	5.42%
2012	\$8,749,120	0.14%
<b>Increase since 2002</b>	<b>\$3,295,563</b>	<b>60.43%</b>

An important aspect of the City's fiscal stability is the status of funding for retiree healthcare commonly referred to as Other Post Employment Benefits (OPEB). In 2004, the Government Accounting Standards Board adopted Statements Nos. 43 and 45 requiring municipalities to reflect retiree health care on financial statements. **TABLE 6** shows the funded and unfunded liability as of December 31, 2011. **TABLE 7** shows the annual required and actual contribution in the last four years.

**TABLE 5 – POST-RETIREMENT FUNDING STATUS (DECEMBER 31, 2011)**

UNFUNDED

<u>ACTUARIAL VALUE OF ASSETS</u>	<u>ACTUARIAL ACCRUED LIABILITY</u>	<u>ACTUARIAL ACCRUED LIABILITY</u>	<u>FUNDED RATIO</u>
\$6,169,730	\$107,810,721	\$101,640,991	5.70%

**TABLE 6 – POST-RETIREMENT HEALTHCARE EMPLOYER CONTRIBUTIONS**

<u>FISCAL YEAR ENDING</u>	<u>ANNUAL REQUIRED CONTRIBUTION</u>	<u>ANNUAL CITY CONTRIBUTION</u>	<u>PERCENT CONTRIBUTED</u>
2009	\$8,707,010	\$4,745,247	54.50%
2010	\$8,977,922	\$4,888,314	54.33%
2011	\$8,092,665	\$5,253,500	65.92%
2012	\$8,363,912	\$6,376,415	76.24%

The fiscal year 2014 Budget Message to the City Commission from Acting City Manager Dana L. Muscott describes Bay City as remaining “fiscally challenged.” The Union does not dispute this characterization. Dr. Alan Reinstein is a Professor of Accounting in Wayne State University’s School of Business Administration. In his view the City faces potential financial uncertainties but has the financial capacity to provide reasonable additional compensation to bargaining unit members. His report acknowledges that the City has received diminished revenue from real and personal property taxes and state revenue sharing. He also acknowledges that the City has increased expenditures by recognizing pension and health care costs on a more actuarially valid basis. He also notes a number of positive trends including decreased unemployment, increased per capita income, a recovering housing market, and a modest increase in permits for new construction or remodeling. Dr. Reinstein’s assessment credits the City’s fiscal actions to reduce pension and other post-employment benefit expenses such as reducing the number of employees in defined benefit plans. He concludes:

On balance, the City presents a fundamentally strong, underlying economic health and financial results. Analyzing this data shows that while some issues remain regarding Bay City’s financial position, its financial position remains strong for the term of any expected BCFF Contract – allowing its members to receive reasonable compensation increases.

Based on a careful evaluation of the record evidence the Panel concludes that the City has the ability to pay the financial obligations imposed by this Award. In considering each of the Section 9 criteria the Panel has given the employer’s financial ability to pay the most significance.

Consequently, the Panel has adopted the City's position on key points – particularly health care and pensions. The Panel does not minimize the hardship that aspects of this award impose. In the Panel's view the demands on which the Union prevailed are by any measure modest, reasonable, and clearly justified. In the chairperson's estimation, there is no question that members of this bargaining unit – who regularly risk their lives to protect the lives of others – should be more adequately compensated. However, the Panel cannot ignore the hard truth that the City must bring expenditures in line with revenue. This proceeding is much less about what is deserved as what can be realistically accomplished during the term of this agreement.

The Panel has taken into account another fact that distinguishes this proceeding from the typical Act 312 proceeding. Unless for some unanticipated reason the City reverses course this bargaining unit will in the not too distant future cease to exist as a separate entity. Of the 27 active bargaining unit members, 14 will be eligible for full retirement in the next five years and the number who will be eligible for retirement upon reaching age 55 is higher.

## **COMPARATIVE SALARY AND BENEFITS**

Act 312, as amended, requires the Panel to give the financial ability of the local unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence. However, the legislative intent underlying the Public Act 116 amendment was not to consider financial ability to pay in isolation. The purpose of considering the wages, hours, and conditions of employment in comparable communities is to help fill in the entire picture. While wages are the easiest basis of comparison, one must be cautious to assess differences in benefits as well as the amount of deductions for health care and pension contributions.

It is never possible to achieve exactitude in making comparisons of “the wages, hours, and conditions of employment of other employees performing similar services” in “comparable communities.” Nor is it feasible to attempt to quantify the innumerable considerations that differentiate one municipality from another. However, certain baseline comparisons are

informative. Larger populations for the most part create greater demands for public safety services. Although Bay City does not have a city income tax, per capita and median income has significance. The ranking in each category is indicated in brackets.

**TABLE 7 – POPULATION AND ECONOMIC DEMOGRAPHICS**

<u>CITY</u>	<u>2012 ESTIMATED POPULATION</u>	<u>2011 PER CAPITA INCOME</u>	<u>MEDIAN HOUSEHOLD INCOME</u>	<u>PERSONS BELOW POVERTY LEVEL</u>
JACKSON	33,411 [5]	\$16,377 [3]	\$29,589 [3]	30.7% [3]
MIDLAND	42,020 [2]	\$32,185 [1]	\$50,203 [1]	11.4% [1]
MUSKEGON	37,046 [3]	\$14,690 [4]	\$25,863 [5]	31.7% [4]
SAGINAW	50,790 [1]	\$14,520 [5]	\$27,455 [4]	36.9% [5]
<i>AVERAGE</i>	<i>39,558</i>	<i>\$19,237</i>	<i>\$33,845</i>	<i>26.4%</i>
<b>BAY CITY</b>	<b>34,521 [4]</b>	<b>\$18,411 [2]</b>	<b>\$36,113 [2]</b>	<b>21.1% [2]</b>

The disparity between Midland and the other cities is noteworthy as the per capita income of its residents is one hundred percent higher than two cities and its substantially higher population means it receives higher revenue sharing. As **TABLE 8** illustrates, the taxable value of real and personal property in that city is much greater than the other cities and its recovery from the housing downturn has been more robust. The Panel notes this disparity because it has been taken into account in its assessment of each party's economic demands.

**TABLE 8 – MEDIAN HOME VALUE AND TAXABLE PROPERTY VALUE**

<u>CITY</u>	<u>MEDIAN HOME VALUE</u>	<u>2008 TAXABLE VALUE REAL &amp; PERSONAL PROP.</u>	<u>2103 VALUE REAL &amp; PERSONAL PROP.</u>
JACKSON	\$82,100 [2]	\$768,262,890 [2]	\$623,249,773 [2]
MIDLAND	\$140,000 [1]	\$2,091,945,200 [1]	\$2,321,355,878 [1]
MUSKEGON	\$74,000 [4]	\$745,111,000 [3]	\$603,082,080 [3]
SAGINAW	\$59,300 [5]	\$721,640,702 [4]	\$513,567,057 [5]
<i>AVERAGE</i>	<i>\$86,680</i>	<i>\$995,251,420</i>	<i>\$918,375,222</i>
<b>BAY CITY</b>	<b>\$78,000 [3]</b>	<b>\$649,297,307 [5]</b>	<b>\$530,621,323 [4]</b>

If the only consideration to be weighed was how members of the Bay City Firefighters Union compared to the other cities there is little doubt that a salary increase would be justified. Of course, such comparisons are a single – and not the most significant – consideration. Except for a contingent two percent base wage increase on June 30, 2013 that has not materialized, bargaining unit members have received only a 0.5% increase in base pay for the time period since July 1, 2009 until today, and if the City's wage and duration demands were granted, until the proposed contract expiration in 2017. **TABLE 9** shows the percentage increase for the Firefighter/Medic rank on July 1, 2007 to July 1, 2013.



**TABLE 9 – YEARLY AND CUMULATIVE PERCENTAGE INCREASE<sup>5</sup>**

<u>CITY</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2007-2013 CUMULATIVE</u>
JACKSON	4.00%	3.00%	3.00%	0%	1.50%	2.00%	1.50%	15.00% [1]
MIDLAND	3.00%	3.00%	3.00%	3.00%	0%	0%	2.00%	14.00% [2]
MUSKEGON	3.00%	3.00%	2.50%	2.50%	1.00%	1.00%	1.00%	14.00% [2]
SAGINAW	0%	2.00%	1.50%	2.00%	1.00%	0%	0%	6.50% [3]
<i>AVERAGE</i>	<i>2.50%</i>	<i>2.75%</i>	<i>2.50%</i>	<i>1.88%</i>	<i>0.88%</i>	<i>0.75%</i>	<i>1.13%</i>	<i>12.38%</i>
<b>BAY CITY</b>	<b>2.06%</b>	<b>1.96%</b>	<b>0%</b>	<b>0.50%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>4.52% [4]</b>

In light of these figures, one would expect that bargaining unit members lag behind their counterparts in the other cities and the expectation is correct. **TABLE 10** shows the base wage for a Firefighter/Medic on July 1, 2014, the net wage after pension contribution, and the base pay and net pay rates assuming adoption of the City's and the Union's demands on both wage and pension contribution. The table assumes a 0% pay increase for Muskegon.

**TABLE 10 – 7/1/14 BASE WAGE & NET WAGE AFTER PENSION DEDUCTION**

<u>CITY</u>	<u>7/1/14 BASE WAGE</u>	<u>PENSION CONTRIBUTION</u>	<u>NET WAGE</u>
JACKSON	\$60,964 [2]	12.99% (\$7,919)	\$53,045 [2]
MIDLAND	\$61,328 [1]	8.00% (\$4,906)	\$56,422 [1]
MUSKEGON	\$55,774 [3]	6.00% (\$3,346)	\$52,438 [3]
SAGINAW	\$53,403 [4]	8.00% (\$4,272)	\$49,131 [4]
<i>AVERAGE</i>	<i>\$57,845</i>	<i>8.75% (\$5,111)</i>	<i>\$52,759</i>
<b>BAY CITY</b>	<b>\$51,513 [5]</b>	<b>10.00% (\$5,151)</b>	<b>\$46,362 [5] [AWARD TO CITY]</b>
<b>BAY CITY</b>	<b>\$52,286 [5]</b>	<b>8.00% (\$4,183)</b>	<b>\$48,103 [5] [AWARD TO UNION]</b>

Stated differently, if the Union's base wage and pension contribution demands are both granted, bargaining unit members would receive approximately \$8,300 less than the highest paid city and \$4,656 less than the average city. If the City's base wage and pension contributions demands are both granted, they would earn more than \$10,000 less than the highest paid city and \$6,397 less than the average city. If the Panel grants the Union's wage demand and the City's pension demand, bargaining unit members would make \$9,365 less than the highest paid city and \$5,700 less than the average city.

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<sup>5</sup> Jackson, Midland, and Saginaw have collective bargaining agreements expiring on June 30, 2016. The 2014-2015 increases are: Jackson – 1.50%; Midland – 4.00%; Saginaw – 0%. The Muskegon agreement expires on December 31, 2013 and a successor agreement is not in place.

The Panel has confronted a number of complicating factors in making the comparisons required by Section 9. It is sensible to use the Firefighter/Medic rank for comparison purposes because the pay rates for other ranks in the Bay City Fire Department are based on a differential of that pay scale. However, as previously mentioned, there are no active employees holding the rank of Firefighter and when recalled all employees will hold the rank of Engineer after training. Jackson has no comparable rank. Midland offers educational incentive pay and a \$300 stipend for EMT certification. Muskegon does not have a food or clothing allowance. Saginaw has a food allowance but not a clothing allowance. The Panel's findings are based on overall compensation including direct wage compensation, vacations, holidays, other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

In his opening statement counsel for the Union understandably emphasized that the members of this bargaining unit have done their part in trying to help the City through hard economic times. This is indeed the case. The agreement by the Union allowing the City to implement a part-time paid-on-call program is a prominent example. There are a number of other sacrifices that will be discussed. But the sacrifices have been across the board. Since 2009, the City has reduced the number of full time personnel by approximately 50 employees. Employees are doing more with less. UWUA Local 542 agreed to remove Liberty and Independence bridge operations from their bargaining unit work resulting in a savings of \$280,000. Other unionized and non-unionized employees negotiated health care and benefit reductions. All of the other bargaining units have received a wage freeze since July 1, 2009, with the Teamsters non-supervisory bargaining unit taking a 0.75% wage reduction in 2011. The Panel has given careful consideration to the sacrifices of all City employees.

## **ISSUES**

### **Issue 1: Duration**

### **Issue 2: Expiration Date**

Because these issues are closely related they will be considered together. The Union seeks a three-year agreement expiring on June 30, 2016. The City seeks a four-year agreement expiring on December 31, 2017.

#### **UNION'S POSITION ON DURATION AND EXPIRATION DATE**

Except for one small unit consisting of mid-level supervisors and department heads represented by Teamsters Local 214, each of the other six collective bargaining agreements end on June 30, 2014. The agreement specifies the date for submitting demands, starting negotiations, and concluding negotiations. In light of the major changes that will continue to occur during the transition to a public safety department a three-year contract is merited.

#### **CITY'S POSITION ON DURATION AND EXPIRATION DATE**

Both parties have an interest in avoiding unnecessary expenses involved in an Act 312 proceeding. Under the City's proposal the City will have the capacity to budget its resources through 2017 with greater certainty. Similarly, members of the bargaining unit will have greater capacity to plan. Public Act 54 creates an incentive to conclude negotiations and the expiration date proposed by the City will encourage the parties to reach agreements.

#### **DISCUSSION ON DURATION AND EXPIRATION DATE**

Although both parties have articulated valid rationales supporting their positions, the Panel concludes that a four-year agreement is merited. Six months of the contract has already expired. A four-year agreement will facilitate the budgeting process. The Panel is persuaded that the City's effort to change the expiration date to December 31<sup>st</sup> has merit and the Union has not persuaded the Panel that adoption of the City's proposal will hinder meaningful negotiations.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on duration more closely corresponds to the applicable Section 9 factors.

Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on expiration date more closely corresponds to the applicable Section 9 factors.

Accordingly, the term of the agreement shall be July 1, 2013 to December 31, 2017.

### **Issue 3: Wages**

#### **UNION'S POSITION ON WAGES**

The Union recognizes that the City has faced and continues to face economic challenges. However, for the reasons outlined in Dr. Reinstein's report, it also has financial strengths that have already or will soon strengthen its financial solvency. The Union has done its fair share of helping the City by various concessions and agreeing to effectively reduce the size of its membership. The modest economic progress it seeks is amply justified.

#### **CITY'S POSITION ON WAGES**

The City acknowledges that members of this Union, and its other unionized employees, have acted responsibly in helping the City to face financial realities. However, the evidence that it does not have the financial ability to meet the Union's demands is incontrovertible. The reduction in the General Fund balance is alarming and the trend of losing large portions of the fund must be avoided.

#### **DISCUSSION ON WAGES**

As both parties recognize the evaluation of economic demands needs to be considered in totality even though decided on an issue-by-issue basis. The Panel's awards on wages takes into account the resolution of other demands that either diminish or increase overall cash compensation as well as present or future economic benefits.

Both parties propose a 0% wage increase for the first year of the agreement. The City proposes a 0% wage increase for the second, third and fourth years. The Union proposes a 1.5% wage increase in the second, third, and fourth years. **TABLE 11** shows the current wage and staff count by job title.

**TABLE 11 – CURRENT HOURLY SALARY BY JOB TITLE**

<u>JOB TITLE</u>	<u>STAFF COUNT</u>	<u>HOURLY WAGE</u>
CAPTAIN	3	\$19.99
LIEUTENANT	7	\$19.03
DRIVER	11	\$18.13
FIREFIGHTER	3	\$17.78
ASSISTANT CHIEF	2	\$32.11
AWARENESS OFFICER	1	\$27.93

As **TABLE 12** indicates, the current total annual wage cost for bargaining unit members is \$1,484,979 and under the City’s proposal that would remain the total annual wage cost for the term of the contract. On the other hand, if the Union prevailed in each year the total annual wage cost as of July 1, 2016 would be \$1,547,218. The difference between the wage demands over the term of the agreement – if the Union prevailed in each year -- is \$62,239.40.

**TABLE 12 – UNION LAST BEST OFFERS ON WAGES**

<u>JOB TITLE</u>	<u>7/1/13 0%</u>	<u>7/1/14 1.5%</u>	<u>7/1/14 1.5%</u>	<u>7/1/16 1.5%</u>
CAPTAIN	\$19.99	\$20.29	\$20.60	\$20.91
LIEUTENANT	\$19.03	\$19.33	\$19.62	\$19.91
DRIVER	\$18.13	\$18.41	\$18.68	\$18.96
FIREFIGHTER	\$17.78	\$18.05	\$18.32	\$18.59
ASSISTANT CHIEF	\$32.11	\$32.11	\$32.11	\$32.11
AWARNES OFFICER	\$25.38	\$25.77	\$26.16	\$26.55
TOTAL ANNUAL COST	\$1,484,979	\$1,484,744	\$1,526,327	\$1,547,218

In terms of external comparability the Union’s wage demand is arguably justified. The agreements for Jackson, Midland, and Saginaw expire on June 30, 2016. The rate of pay for Muskegon is unknown since the parties are bargaining the terms of a successor agreement. **TABLE 13** shows that even if one assumes no raises in Muskegon, members of this bargaining unit would still earn less than the comparable departments. It should also be noted that Jackson implemented a reduced wage rate for Firefighters/Medics hired after 7/1/12.

**TABLE 13 – SALARY COMPARISON OF TOP PAY FIREFIGHTER ON 6/30/13  
[Assuming Union prevails in all years]**

<u>CITY</u>	<u>BASE WAGE ON 6/3016</u>	<u>AMOUNT EXCEEDING BAY CITY BASE WAGE</u>
JACKSON	\$61,269 [2]	\$8,199
MIDLAND	\$62,555 [1]	\$9,485
MUSKEGON	\$55,734 [3] (Assuming no increase)	\$2,664
SAGINAW	\$53,402 [4]	\$332
AVERAGE	\$58,240	\$5,170
<b>BAY CITY</b>	<b>\$53,070</b>	<b>-</b>

Notwithstanding the fact that bargaining unit members began the term of the contract behind the external comparables and will likely be in the same relative position at the end of the agreement, the Panel cannot grant the Union’s demand in each year of the contract. The Panel must also assess the evidence in light of the situation facing other city employees and the City’s ability to pay. A three percent increase during the term of the agreement is appropriate.<sup>6</sup>

**Both parties propose a 0% wage increase effective July 1, 2013 and that is the award of the Panel.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that Union’s wage demand to be effective on July 1, 2014 more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that City’s wage demand to be effective on July 1, 2015 more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that Union’s wage demand to be effective on July 1, 2016 more closely corresponds to the applicable Section 9 factors.**

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<sup>6</sup> The Panel notes that the wage award for Assistant Chief is the amount specified in **TABLE 12**.

#### **Issue 4: Call Back procedures**

Occasionally it is necessary to recall off-duty fire personnel because of emergency situations beyond the capacity of available on-duty personnel to handle. Public safety labor agreements typically address the manner in which call-backs occur. Both parties have proposed changes to the current call-back procedures. This issue does not involve the manner in which recalled employees will be compensated.

Besides revising out-of-date verbiage, the Union's proposal amends the "usual" complement of recalled personnel to operate a spare rig (specified in the current agreement as an officer or acting officer, an engineer or firefighter qualified to operate the apparatus, and three firefighters) to "employees as needed." This aspect of the Union's demand is not objectionable to management. The crux of the difference between the two proposals is that the Union proposes that limited voluntary call-back opportunities be afforded to "bargaining unit personnel." The City proposes that recalled personnel "be assigned from the bargaining unit, Public Safety Officers or Paid on Call."

The Union is essentially seeking to maintain the status quo since it was redundant to specify that personnel recalled to a fire incident would be bargaining unit members. The City supports its demand by the need to expose public safety officers and paid-on-call personnel to the full range of situations firefighters confront.

Section 9(i) directs the Panel to take into consideration "factors that are normally taken into consideration" in voluntary collective bargaining, fact-finding, and arbitration in the public service or private employment. The predominant view in those forums is that a party proposing to alter a long-established contractual term needs to show that there is clear justification for the change. The City has not persuaded the Panel that this benchmark has been met. Training opportunities are important but the proposed language is not limited in that regard and if granted would become a permanent part of the contract until changed. In addition, the proposed language presumably affords management unconstrained discretion to entirely exclude one of the three groups from recall opportunities. While the Panel does not believe inequitable treatment

would occur perception as much as reality affects morale and that would not further “the interests and welfare of the public” referenced in Section 9(a)(ii).

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union’s demand on call back procedures more closely corresponds to the applicable Section 9 factors.**

### **Issue 5: Continuation of working conditions**

Since this proposal involves the concept of “past practice” it is helpful to define that term. Undoubtedly tens of thousands of pages have been written about the topic. A leading treatise defines past practice as “a pattern of prior conduct consistently undertaken in recurring situations so as to evolve into an understanding of the parties that the conduct is the appropriate course of action.”<sup>7</sup>

The first proposed change concerns the following sentence: “The parties, however, recognize that it is most difficult to enumerate in an Agreement practices inherent in a relationship of many years duration.” The City proposes to excise the words “of many years duration.” The second proposed change is to specify that Section 1:8 is limited to past practices or conditions of employment which arose during the term of the agreement. The stated justification is that the City should not be saddled in a new public safety organizational structure with practices that pertained only to the police or fire service. The Union opposes the demand on the ground that longstanding practices inside the fire station should not be abandoned because a firefighting force still exists.

In the Panel’s view the City’s proposed change would make Section 1:8 internally inconsistent because it would at the same time acknowledge the difficulty of enumerating “practices inherent in a relationship” and at the same time obliterate all practices that have evolved over decades if not longer. This proposal would overcorrect the anticipated problems in the transition to public safety and is in the Panel’s view unnecessary. A past practice is created by mutual acknowledgement and changed circumstances can, in appropriate circumstances, modify or end it.

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<sup>7</sup> T.J. St Antoine (ed.), THE COMMON LAW OF THE WORKPLACE 89 (2<sup>nd</sup> Ed., 2005).



Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand concerning continuation of working conditions more closely corresponds to the applicable Section 9 factors.

***Issue 6: Management Rights (assignment of work and job descriptions)***

Words used in a collective bargaining agreement matter and differences that appear minor can be consequential when later scrutinized. The first significant difference concerns the clause in the management rights section concerning the assignment of work. The City wants the sentence to say that it is a management right to "assign work and to direct the working force as to operations and related duties." The Union wants the sentence to say that management has the right to "assign work and to direct the working force as to fire and rescue operations and related duties." In the Panel's view the Union's proposal is too restrictive and could unproductively result in disputes about what is or is not a fire or rescue "operation."

The second difference involves job descriptions. The City proposes: "The City shall meet and review with the Union any future changes to current job descriptions fourteen (14) calendar days prior to implementation of these job descriptions." The Union proposes: "The City agrees to negotiate with the Union any future changes to current job descriptions in accordance with Section 12:2." Section 12:2 establishes a procedure to afford the Union an opportunity to negotiate with the City concerning rules and regulations, the ability of the City to implement such rules, and the ability of the Union to grieve the reasonableness of the rule.

This issue has been denominated economic and the Legislature has disallowed the Panel from crafting its own award on economic issues. Each of the proposals concerning changes to job descriptions contain phrases that have significance in case law. It is not the intent of the Panel to alter in any fashion statutory rights or duties that the Employer or Union may or may not have. With that proviso the City's proposed language is more acceptable.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on modifications to the management rights article more closely corresponds to the applicable Section 9 factors.**

### **Issue 7: Longevity Pay**

#### **CITY'S POSITION ON LONGEVITY PAY**

The Panel should grant the City's demand to eliminate longevity pay effective the first pay period after the effective date of this Act 312 award. The City agrees that prior to that time longevity pay should be paid according to the terms of the expired 2009-2013 collective bargaining agreement.

Longevity pay for bargaining unit members is a cost that the City cannot afford. Unlike other represented employees members of this Union receive longevity pay regardless of hire date. The current contract provides that longevity pay is calculated on a base wage of \$15,000 at the following rate: 2% after completion of 5 years of employment; 4% after completion of 10 years of employment; 6% after completion of 15 years of employment; and 8% after completion of 20 years of employment. Of the 27 IAFF Local 116 employees, 12 receive longevity at the 6% rate and 15 receive longevity at the 8% rate. This is in marked contrast to the other bargaining units eligible for longevity. In the Bay City Police Officers Association (BCPOA) only 3 of 37 members receive any longevity. In the command unit 6 of 10 members receive longevity pay (5 receive 6% and 1 receives the full 8%). The other eligible unit is the UWMA Local 542: 98% of that bargaining unit receives no longevity. The cost of granting the Union's longevity proposal is approximately \$29,000 each year and \$115,000 over the term of the agreement.

#### **UNION'S POSITION ON LONGEVITY PAY**

This Union has stepped up to its shared responsibility by temporarily giving up longevity pay but on the condition it would be restored on the last day of the expiring agreement. The willingness to make temporary concessions should not be punished by making them permanent. The Union's last best offers on hard-fought benefits attained over the years contain significant reductions proving that the Union is willing to make concessions.

The Union's demand on longevity is supported by the external comparables. The top longevity rate in Bay City is less than half of the comparable 20-year longevity payment in Jackson and Midland and \$1,637 less than the average of the four cities. Granting the City's demand would further erode the purchasing power of its members.

### DISCUSSION ON LONGEVITY PAY

It is to be expected that advocates will emphasize those facts that support their case. The City has emphasized internal comparables and the Union has emphasized external comparables. While relevant, too much weight should not be placed on another collective bargaining agreement. Bargaining units are not alike in all respects. Ildiko Knott explained the point some years ago in a Fact-Finding Report involving the Lenawee County Board of Commissioners. (MERC Case No. L92 F-0095, July 5, 1983), p. 5.

Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends on the particular circumstances of their negotiations, their bargaining history and their job market. These circumstances cannot be automatically transferred to another unit. Each group must be judged on objective standards appropriate to that group.

There are such differences in the unions representing Bay City employees. No other bargaining unit works 24-hour shifts. This means, for example, that a food allowance has great significance. A review of some agreements that have limited longevity to more senior employees or eliminated it altogether have provisions for rest breaks, standby pay, and wash-up periods that may have been the bargaining priority for those organizations.

As previously explained, the Panel has taken into account the total cost of proposals. Particularly in light of the diminishment in the cost of the Union demands discussed in the next section, and the fact that a significant number of employees will be eligible for retirement during the term of this agreement, the Panel concludes that the Union's longevity proposal is justified.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union’s demand on longevity pay more closely corresponds to the applicable Section 9 factors.**

**Issue 8: Like Work/Like Pay**

This issue is more typically described as “acting” pay in other agreements. The expiring agreement contains an intricate explanation of entitlement to pay when acting in a higher job classification. All of the external comparable cities have such provisions although they vary substantially in detail. The parties agreed to waive this requirement but stipulated that it would be restored in full force and effect at 11:59 p.m. on June 30, 2103.

The City proposes that the like work/like pay provisions be eliminated effective the first pay period after the effective date of this Award.

In the Panel’s view the Union’s position is meritorious. To say that seconds count when a building is ablaze – especially if it is occupied – is to say the obvious. Fire fighting is not like other city employment where the absence of a supervisor might have minimal consequences. Like policing, adherence to a chain of command is a fundamental principle of fighting fires. Assuming command at the scene of a fire is a grave added responsibility and if a ranking officer is absent the added responsibility should be appropriately compensated.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union’s demand on “like work like pay” more closely corresponds to the applicable Section 9 factors**

**Issue 9: Overtime Pay**

**Issue 10: Holiday Pay**

**Issue 12: Cleaning Allowance**

**Issue 15: Food Allowance**

Each Panel member concurs that the discussion of these four issues should be grouped. It should be made clear, however, that the Panel has given each issue individualized consideration and evaluated all of the applicable Section 9 factors. This is a sensible approach

as the primary question is aggregate cost. The content of the proposals do not require further elaboration.

Act 312 is an extension of the bargaining process. It is rare that one side acquires all that it would like to achieve. The Panel's disposition of these four issues should be understood in context and in light of two considerations. First, the Union's proposals on these issues are concessionary. The Union has advisedly compromised in light of the City's financial situation. Second, the City has emphasized the priority of receiving substantial relief in pension and health care costs. The Panel's disposition of these issues takes that into account.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on overtime pay more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on holiday pay more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on cleaning allowance more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the Union's demand on food allowance more closely corresponds to the applicable Section 9 factors.**

### **Issue 11: Health Insurance**

As already noted, the cost of health care insurance has increased significantly. In the period FY 2002 to 2012 those costs rose 60.43%. The cost would be significantly higher if the City still employed as many employees. The 2014 Budget Message to the City Commission indicates that the cost in FY 2014 is \$9,703,388. Like other employers in the public and private sector Bay City is seeking to reduce costs through policy changes.

## CITY'S POSITION ON HEALTHCARE

The "Publicly Funded Health Insurance Contribution Act" (commonly referred to as Public Act 152) became effective on September 27, 2011. Members of this bargaining group were grandfathered through the end of 2013. The intent of the City's proposal is to bring this unit in line with other unionized and non-unionized city employees. Except for three units whose contracts expire on June 30, 2014, all other city employees have a 5/30/60 (\$5 for generics, \$30 for brand names, and \$60 for formulary) prescription rider. This includes the BCPOA. The police command unit and two of the UWUA units also have no copayment after deductible but those contracts will be brought in line when the terms are renegotiated. Based on anticipated insurance increases during the contract term, the cost of the City's proposal is \$1,586,853. The corresponding anticipated cost under the Union's proposal is \$2,141,300. Furthermore, the record establishes that taking into consideration Public Act 152 requirements the estimated employee premium sharing would be substantially more expensive than the City's proposal. The proposed changes concerning retiree health care are moderate but necessary in light of the 5.70% funding status of the post-retirement healthcare liabilities.

## UNION'S POSITION ON HEALTHCARE INSURANCE

The Union's status quo proposal should be granted for several reasons. The Union disputes the legality of the proposed change allowing the employer to unilaterally switch from the Public Act 152 "hard cap" option to the "80/20" option. The City's proposed changes were not bargained with the Union and endorsing the City's proposal is on that ground alone unwarranted. The City's healthcare proposal has been pled as a single issue and this deprives the Union of the opportunity to deal with the merits of the plan as it affects active employees and retirees.

## DISCUSSION ON HEALTHCARE INSURANCE

The Panel declines to take a position one way or the other concerning the Union's legal position concerning Public Act 152. The Panel also declines to overrule the City's healthcare proposal on the ground that it should not be considered as a single issue rather than several issues. While it would allow the Panel more latitude if it could rule separately on the constituent parts that is not an option.

The perspective of an employee who must pay a copayment for prescriptions when there has not previously been any copayment (after the deductible has been met) is entirely understandable. However, the Panel does not believe there is any reason that this bargaining unit should be exempt from this change. The reality in the public and private sectors is that copayments are the norm rather than the exception and the proposed prescription copayments are not out of line in comparison to other public and private employers.

The other proposed changes for active employees are also merited. Collective bargaining agreements commonly limit married employees to one insurance policy and the proposed language clarifies which employee's policy will be used. The City's subrogation demand is also commonly contained in agreements and so long as the employee receives the covered medical benefit the City should not be prohibited from seeking reimbursement from a third party (or the third party's insurance carrier) for a non-duty related injury. The Panel finds nothing objectionable with the proposed language allowing the City to purchase insurance through an exchange if benefits are substantially equal or better. The Union's role is to protect benefits and not to control options available to the employer to provide those benefits.

The City proposes the following change for in Section 8:1(B) for pre-65 retirees. Except for including a subrogation provision, eligibility criteria and post-65 retiree benefits would remain unchanged.

The City will provide BCBS or equivalent healthcare coverage to eligible Pre-65 retirees (who retire from active service and their IRS dependents ~~at the same co-pays and/or deductibles as active employees.~~ with Blue Cross/Blue Shield "Flexible Blue Plan 2" high deductible health care coverage and Rx 5/30/60 or an equivalent coverage program with the City of Bay City funding one hundred 100% of an HAS for the deductible (as identified in the chart above. Employees who retire will pay the same premium share as active employees. If the City should no longer offer BCBS Flexible 2 to active employees, the retiree shall continue to pay the last premium share that was in effect for active employees under the Flexible Blue Plan 2.

Maintaining the status quo on retiree healthcare would not be in accord with the City's ability to pay nor would that disposition be supported by the internal or external comparables.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on healthcare insurance more closely corresponds to the applicable Section 9 factors.**

**Issue 13: Pension (Employee Contribution)**  
**Issue 14: Pension (Post-Retirement Escalator)**

Each Panel member concurs that the discussion of these two issues should be grouped. It should be made clear, however, that the Panel has given each pension issue individualized consideration and evaluated all of the applicable Section 9 factors. Although the parties resolved several other disputed pension issues they have not been able to do so with regard to two issues.

Bargaining unit members are eligible to retire after 25 years of service regardless of age, at full pension, at a rate of 2.8 of final average compensation multiplied by the number of years of credited service not to exceed 70% of maximum pension base. The employee contribution is currently 8% of salary. The City proposes to increase the required contribution to 10%.

The current contract provides for three post-retirement adjustments of 5% of the original pension benefit at the fifth, tenth, and fifteenth anniversary of retirement. The Union proposes to reduce the adjustment to 3.5%. The higher rate would be in effect for service completed before January 1, 2014, or the effective date of this award, whichever is later.

**CITY'S POSITION ON PENSION CHANGES**

In 2012 "legacy costs" represented slightly less than one-third of total governmental expenditures. In that year the City contributed \$5,452,000 to cover pension benefits. The amount contributed to the Police and Fire defined benefit plan was \$1,725,255. The funded ratio in that year was 61%. The required contribution has increased from \$430,767 in 2002 when the funded ratio was 126%. As of the December 31, 2011 valuation, the actuarial value of assets was \$42,095,297 and the actuarial accrued liability was \$64,843,232 leaving an unfunded actuarial accrued liability of \$22,747,995. The unfunded liability in 2008 was \$11,939,351; in 2009 it was \$15,797,839; in 2010 it was \$18,454,232. Although unwelcomed, the reality of these numbers cannot be ignored. According to the fund's actuary, the cost savings of the Union's proposal to reduce the three cost-of-living adjustments to 3.5% would be 1.2% of payroll. The cost savings of the City's proposal to apply the 5% cost-of-living adjustment only to service earned prior to January 1, 2014 would be 0.71% of payroll. The cost savings achieved by increasing the employee's contribution rate to 10% would be 1.99% of payroll. The estimated



annual savings from the Union's proposal is \$30,100 and the estimated annual savings from the City's proposal is \$64,500.

### UNION'S POSITION ON PENSION CHANGES

The comparison of pension plans must take account of more than the two components involved in these proposals. As one example, the maximum retirement benefit in Jackson is 72.5%, 85% in Muskegon, 84% in Saginaw, and not limited in Midland. The pension benefit for employees in this bargaining unit is by no means excessive in comparison. The Union is not oblivious to the underfunding of the pension fund. Its proposed reduction in retirement COLA would achieve substantially greater cost savings than the City's proposal on COLA.

### DISCUSSION ON PENSION CHANGES

The Panel reluctantly concludes that the City's pension demands should be granted. The retirement system is comprised of police officers and firefighters and the pension contribution for BCPOA members is 10%. This is a convincing reason to grant the City's demand. Most non-uniformed City employees are in defined contribution plans and those that have defined benefit plans do not have a post-retirement escalator. The contribution rates and post-retirement COLA provisions that will be awarded are not out of line with the comparable communities. The City's proposal does not apply to credited service prior to the date of the award. But the most compelling reason is the obvious one. Significant steps are needed to shore up the solvency of the Police & Fire Retirement System and the proposed changes, while painful, are nonetheless reasonable.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on employee pension contribution more closely corresponds to the applicable Section 9 factors.**

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on post-retirement escalator provisions more closely corresponds to the applicable Section 9 factors.**

## **Issue 17: Vacation Selection**

The current agreement provides that no more than two bargaining unit members will be allowed off in any vacation period. The City proposes to change this to one person.

### **CITY POSITION ON VACATION SELECTION**

Given the current personnel levels an adjustment is required in order to provide adequate staffing.

### **UNION POSITION ON VACATION SELECTION**

The City's proposal will result in senior employees having to take vacations during periods that are unfavorable and this can create a hardship for employees who would like to take family vacations when children are not in school.

### **DISCUSSION ON VACATION SELECTION**

Time away from the job is important. In the final analysis the City's need to provide adequate staffing supports granting the demand.

**Based upon the record evidence and the criteria established by Section 9 of Act 312, a majority of the Panel finds that the City's demand on vacation selection more closely corresponds to the applicable Section 9 factors.**

Finally, the chairperson would like to express his appreciation for the professionalism and cordiality shown by the advocates and participants. The quality and thoroughness of the presentations during the hearing and deliberations were of great benefit.

**ORDER OF THE PANEL**

A majority of the Panel votes to adopt the last best offer on each issue as set forth at the conclusion of the discussion of each issue.

Michael J. Falvo  
Micheal J. Falvo, Chairperson

12/19/13  
Dated

Michael L. O'Hearon  
Michael L. O'Hearon, Union Delegate  
*I concur in all awards in favor of the Union  
I dissent in all awards in favor of the City*

12/16/13  
Dated

Steven H. Schwartz  
Steven H. Schwartz, City Delegate  
*I concur in all awards in favor of the City  
I dissent in all awards in favor of the Union*

12/16/13  
Dated