

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

RECEIVED
STATE OF MICHIGAN
NOV 26 2018
EMPLOYMENT RELATIONS
COMMISSION
DETROIT OFFICE

PETITIONING PARTY:

MICHIGAN FRATERNAL ORDER OF POLICE LABOR COUNCIL

Representing

PUBLIC SAFETY LIEUTENANTS,

Labor Organization,

-and-

CITY OF PETOSKEY

Public Employer

MERC CASE NO.: L18 A-0019

2018 NOV 25 11:11
DETROIT

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended

{MCL 423.231, *et seq*}

Arbitration Panel

Chair: C. Barry Ott

Union Delegate: Heather Cummings, ESQ.

Employer Delegate: Richard A. Dinon, ESQ.

ADVOCATES

Employer Advocate: Richard A. Dinon, ESQ.

Dinon Law, PLLC

430 E. Lake Street

Petoskey, Michigan 49770

Union Advocate: Heather Cummings, ESQ.

Sheila Cummings, ESQ.

Cummings & Cummings Law Group, PLLC

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PETITION FILED: APRIL 18, 2018

PANEL CHAIR APPOINTED: MAY 21, 2018

SCHEDULING CONFERENCE HELD: JUNE 1, 2018

HEARING DATES HELD: AUGUST 15 & 16, 2018

AWARD ISSUED: October 22, 2018

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WITNESS LIST

1. David A. Willis, Jr.
2. Todd M. Troxel
3. Wade Steen
4. Alan Terry

INTRODUCTION AND BACKGROUND

The City of Petoskey has an estimated population of 5636, and is located in Emmet County on the shore of Little Traverse Bay and is a coastal resort community. This Act 312 Arbitration case involves the Fraternal Order of Police Labor Council representing the Public Safety Lieutenants of Petoskey, hereinafter referred to as the Union and the City of Petoskey, hereinafter referred to as the Employer or City. The first Collective Bargaining Agreement with this bargaining unit was effective January 1, 2016 and expired of December 31, 2017. Negotiations for a successor agreement were unsuccessful, as was a mediation effort held on February 21, 2017. The Union filed a petition for Act 312 Arbitration on April 18, 2018. The Michigan Employment Relations Commission appointed the under signed as the impartial arbitrator and chairperson of the arbitration panel on May 21, 2018. The Union appointed Heather Cummings as their delegate and the Employer appointed Richard Dinon. A prehearing conference was held on June 1, 2018 and the parties agreed that all of the disputed issues before the panel were economic issues. Last best offers were submitted on August 3, 2018. A hearing was held on August 15 and 16, 2018 and post-hearing briefs were filed with the panel chair on October 1, 2018.

The City of Petoskey employs approximately 72 full time employees and 66 part time or seasonal employees. The Teamsters Union represents a bargaining unit composed of employees of the Department of Public Works and the Parks and Recreation Department. The FOPLC represents 3 bargaining units: the Public Safety Lieutenants (3 members), the full time Public Safety Officers (14 members) and part time Public Safety Officers (6 members). The Public Safety Department is responsible

for police, fire/emergency, and medical services. The three Lieutenants together with the Chief supervise the Public Safety Department. The Lieutenants also perform police patrol duties and respond to fire calls and assume command responsibilities at fire scenes and all other critical incidents. In addition, they perform community outreach and educational programs.

STATUTORY CRITERIA

The findings, opinions, and orders of the panel must be based upon the following factors:

MCL 423.239, *et seq.*

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

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

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interests and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local government and school district fiscal Accountability act, 2011 PA 4, MC; 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the Arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public Employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

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

COMPARABLES

During the pre-hearing conference of June 1, 2018 the parties agreed to submit their respective lists of proposed comparable communities on June 26, 2018. The Employer submitted a list of some fourteen communities and the Union list included seven communities. Since this case involves a Public Safety Department that combines both police, fire/emergencies, and EMS services, it is difficult to compile a list of truly comparable communities. Following a conference call held on July 13, 2018, the parties agreed to attempt to reduce the number of proposed communities. Ultimately the parties agreed to the following list of communities recognizing the agreed upon list was not truly comparable in terms of population, taxable value, geographic location, and other factors: City of Fraser, Bay City, City of St. Joseph, City of Albion, Boyne City, City of Cheboygan, and City of East Grand Rapids. The Union also proposed the City of Bloomfield Hills, which the Employer rejects, while the Employer proposes the City of Charlevoix and Emmet County, which the Union rejects. The Union rejects the inclusion of the City of Charlevoix on the grounds that the department does not have a Lieutenant classification and is not a Public Safety Department. The Employer argues for inclusion on the grounds that Charlevoix is close to Petoskey in terms of geographic proximity and even though there are no Lieutenants in the command structure such fact is not as significant as the duties assumed by the command officers. The record in this case does not contain any details sufficient to conclude that the command structure in Charlevoix is similar to that of the Lieutenant classification in Petoskey and it is not a public safety department. Therefore, I will allow the inclusion of the City of Charlevoix for the purpose of pension benefit comparison only and weight the data accordingly. The Union rejects the inclusion of Emmet County on the grounds that the County does not provide fire/emergency service and that the submission was not timely as it was proposed after the agreed upon submission date of June 26, 2018.

Again, without belaboring the point, I will accept Emmet County for comparison of pension benefits only. I will also accept the City of Bloomfield Hills as a comparable for comparison of both wages and pension benefits on the grounds that it has a Public Safety Department, is some 248 miles from Petoskey which is less than that of St. Joseph, Albion, and Fraser, all agreed upon communities.

DISPUTED ISSUES

The parties have stipulated that the new collective bargaining agreement will cover the period beginning January 1, 2018 through December 31, 2020. The following general categories represent the issues in dispute:

1. Wage Increases for each year of the contract. Each year will be treated as a separate issue.
2. Retroactivity of wage increase for 2018.
3. Pension Plan – Defined Benefit Plan for current employees.
4. Pension Plan – Defined Contribution Plan for new hires.

WAGE INCREASE – 2018

EMPLOYER PROPOSAL

The Employer proposes to increase wages by 1%, effective prospectively.

UNION PROPOSAL

The Union proposes to increase wages by 2%, retroactive to January 1, 2018.

WAGE INCREASE – 2019

EMPLOYER PROPOSAL

The Employer proposes to increase wages by 1%, effective January 1, 2019.

UNION PROPOSAL

The Union proposes to increase wages by 2%, effective January 1, 2019.

WAGE INCREASE – 2020

EMPLOYER PROPOSAL

The Employer proposes to increase wages by 1%, effective January 1, 2020.

UNION PROPOSAL

The Union proposes to increase wages by 2%, effective January 1, 2020.

PENSION BENEFITS – CURRENT EMPLOYEES

EMPLOYERS PROPOSAL

For employees in the bargaining unit as of 12/31/2016, freeze the MERS B-4 PLAN EFFECTIVE 12/31/2018 and bridge to a MERS B-3 effective 1/1/2019, maintain the FAC 3 and F50/25 riders and maintain the employee contribution of 3% of wages.

UNION PROPOSAL

The expired CBA at Section 16.1 provides:

Effective January 1, 2012, current Employees shall be covered under the Michigan Municipal Employees' Retirement System (MMERS) plan B-4, inclusive of the F50/25 and FAC3 riders. The current employees shall pay three percent (3%) of their wages toward the retirement plan. The union proposes to maintain the DB plan and increase the Employee contribution of 3% as follows:

1/1/2018 – 3.5%, 1/1/2019 – 4.0%, 1/1/2020 – 4.5%.

PENSION BENEFITS – NEW EMPLOYEES – DEFINED CONTRIBUTION PLAN

EMPLOYERS PROPOSAL

For employees hired after 12/31/2016, receive a DC benefit consisting of an Employer contribution of 3% Employer, plus an employer match of up to an additional 2% of employee contributions. The employer contributions are subject to a 4-year vesting schedule of 25% for each of 1st four years of service.

UNION PROPOSAL

Section 16.1 to be amended to read as follows:

All employees hired after 12/31/2016, shall be enrolled in the MMERS Defined Contribution Retirement Plan. Employees may contribute up to two percent (2%) of their wages into the MERS Defined Contribution Retirement Plan.

Public Safety Officers promoted into this bargaining unit will be covered by the defined benefit pension currently in effect for existing bargaining unit members, unless that employee is covered by the defined

contribution plan for the PSO unit at the time of the promotion, in which case, the employee will be enrolled in the defined contribution plan for this bargaining unit.

ABILITY TO PAY

At the outset of the arbitration process, the Employer asserted that it was not claiming that it is unable to pay the costs of the Union's proposal, but asserts that sound fiscal practices supported by both internal and external equities support its position with respect to their wage and benefit proposals. Director of Finance, Alan Terry testified that the economic downturn of 2008 resulted in a decrease in general fund revenues as a result of a city-wide decrease in taxable values totaling some \$95 million. The reduction in taxable value resulted in an annual loss of general fund tax revenue in 2012 of \$733,000. Since that time the City has experienced a gradual increase in taxable value slowed by the effects of the Headlee formula and has as a result recovered approximately 50% of the pre-recession revenues. The City of Petoskey CAFR report for the year ending 12/31/2017, (U-15) indicates that the City experienced an increase of \$373,641 in the general fund balance, resulting in a total fund balance at year-end of \$5,228,949 which is 73.91% of expenditures for the year (Un-20). Both parties have submitted extensive evidence concerning the financial condition of the City all of which indicates the City has a strong balance sheet. Revenues are trending up and expenditures are consistently under budget. However, the City is concerned about the trend of increased costs of the Public Safety Department. It demonstrates such trend as follows; in 2009, the City had general operating millage revenue of \$3.497 million, and Public Safety expenditures of \$2.785 million or 79.6% of the millage revenue. In 2017, general operating millage revenue decreased to \$3.259 million, while Public Safety expenditures rose to \$3.425 million, or 105.1% of operating millage revenue.

WAGE INCREASES - DISCUSSION

As indicated earlier, we will discuss the issue of wage increases for the three-year term of the agreement under this general heading and decide each year as separate issues.

The Base salary For the Public Safety Lieutenant in 2017 was \$80,704 or \$38.80 per hour, at that rate they are among the highest paid of the external comparable communities, exceeded only by the City of Fraser at \$96,040 and Bloomfield Hills at \$85,220. The Employer argues that their offer of an increase of 1% for the year 2018, resulting in a base salary of \$81,515, would maintain their relative standing among the comparable communities.

The Union argues that their offer of an increase of 2% for the year 2018, resulting in a base salary of \$82,326, is reasonable and is consistent with the increases negotiated among the comparable communities, all of which afforded increases ranging from 2% to 4%. According to the Union, both the Teamsters and the Public Safety Officers received 2% yearly increases in their most recent collective bargaining agreements (E-1, p. 36) (Un-11, p. 17). It is also noted that the CPI-U, Midwest region reports an increase of 2.5% from June 2017 to June 2018 (Un-21).

The Union's last best offer for the year 2019 of an increase of 2% would result in a base salary of \$83,973, while the Employer's offer of 1% results in a base salary of \$83,149. Both offers produce salary

levels that rank among the highest for the comparable public safety departments. The record evidence indicates that only four of the comparable public safety departments have settled on wages for 2019, with increases ranging from 2% to 2.5%, resulting in base salaries that are significantly lower than that of Petoskey's, with the exception of Bloomfield Hills. The same is true for the year of 2020, only three public safety department have settled on wages for 2020, and all produce base salaries significantly lower than Petoskey's.

The City's wage proposal is prospect, while the Union's is retroactive to January 1, 2018. There is nothing in the record testimony or other evidence offered by the Employer that addresses the issue of retroactivity. The Union argues that, and the record testimony of witness Todd Troxel supports the contention that, the Employer has always greed to retroactivity in the past.

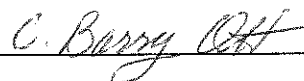
CONCLUSION – WAGE INCREASE 2018

The record evidence in this case reveals that the level of compensation for the Public Safety Lieutenants is very competitive. It is also clear that the majority of comparable communities have all granted increases of 2% or more for the year 2018. The CPI-U, for the Midwest region has increased by 2.5% from June 2017 to June 2018. An increase of 2% would maintain the units standing among the external comparable communities and is consistent with the increase in the cost of living. Therefore, a majority of the panel is of the opinion that the Section 9 factors of Act 312 are best served by the adoption of the Union's last best offer.

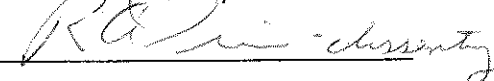
AWARD – WAGE INCREASE 2018

The panel hereby adopts the last best offer of the Union to increase wages by 2%, retroactive to January 1, 2018.

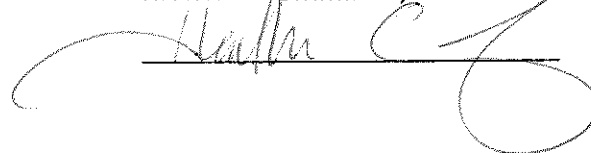
C. BARRY OTT, PANEL CHAIR



RICHARD A. DINON, EMPLOYER DELEGATE



HEATHER GUMMINGS, UNION DELEGATE



CONCLUSION – WAGE INCREASE 2019

The record evidence indicates that Petoskey’s public safety department expenditures in 2017, were at 105.1% of millage revenue, up from 79.6% in 2009, a trend that concerns the City since operating millage revenue is also used to fund other municipal services such as Parks and recreation, general administration, planning finance and some public works expenses. In view of the panel’s award of a wage increase of 2% for the year 2018, and in consideration of the financial impact on the community and the interest and welfare of the public, as required by Section 9 of Act 312, some level of restraint is required in order to maintain existing levels of public services. The 1% wage increase for 2019 offer of the Employer results in a very competitive base salary. Therefore, a majority of the panel is of the opinion that the Section 9 factors are best served by the adoption of the Employer’s last best offer.

AWARD – WAGE INCREASE 2019

The panel hereby adopts the last best offer of the Employer for a 1% wage increase effective January 1, 2019.

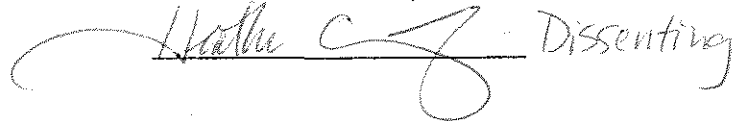
C. BARRY OTT, PANEL CHAIR



RICHARD A. DINON, EMPLOYER DELEGATE



HEATHER CUMMINGS, UNION DELEGATE



CONCLUSION – WAGE INCREASE 2020

The record evidence for the year 2020 indicates that only three public safety departments have settled on wage increases for 2020 and all result in salary levels significantly below that of Petoskey. A majority of the panel is of the opinion that the same considerations use in deciding the wage increase for 2019 are applicable for the year 2020. Therefore, a majority of the panel is of the opinion that the Section 9 factors are best served by the adoption of the Employer’s last best offer.

AWARD – WAGE INCREASE 2020

The panel hereby adopts the last best offer of the Employer for a 1% wage increase effective January 1, 2020.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott

RICHARD A. DINON, EMPLOYER DELEGATE

Richard A. Dinon

HEATHER CUMMINGS, UNION DELEGATE

Heather Cummings - Dissenting

PENSION BENEFITS – CURRENT EMPLOYEES – DISCUSSION

The Employer's last best offer seeks to freeze the MERS B-4 plan effective 12/31/18 for employees in the bargaining unit as of 12/31/2016 and bridge to a MERS B-3 plan effective 1/1/19, maintaining the FAC 3 and F50/25 riders and maintain the employee contribution of 3% of wages. The net effect of this proposal is the reduction of the present 2.5% multiplier to 2.25%. The record evidence indicates that in 2015, MERS made significant changes in their assumption regarding the rate of return on investments, changes in the smoothing rules and an increase in life expectancy that resulted in an increase in Petoskey's actuary accrued liability from \$24 million to nearly \$31 million. As of 12/31/17, this bargaining unit pension fund for active employees had an actuarial accrued liability of \$1,607,067 and an assets valuation of \$866,087, resulting in an unfunded accrued liability of \$740,980, (E-18, p. 21). According to the testimony of Mr. Terry, reducing the multiplier to 2.25% would reduce the unfunded liability to \$316,000 and reduce the Employer contribution from \$80,000 to \$53,000 annually for a savings of \$27,000 annually (E-13, p. 14).

The Employer argues that their proposal is designed to achieve a point where all similarly situated existing employees are covered by the MERS B-3 plan, and all new employees participate in the DC plan. It is the City's position that pension benefits should be standardized throughout the City, so all employees are treated equally as to their pensions. According to the City, every employee of the City has seen a reduction in their retirement benefits, by reducing the pension multiplier, increased employee contribution, or accepting a DC because the DB was no longer being offered.

The Employer notes that retirement benefits among the external comparable communities have been reduced. (E-Exhibit B), and those that have maintained the MERS B-4 plan for police or public safety employees, many require higher employee contributions than that of Petoskey.

The Union's last best offer seeks to maintain the MERS B-4 DB plan with the 2.5% multiplier. The offer includes an increase in the employee contribution from 3% to 3.5% effective 1/1/18, 4% effective 1/1/19, and 4.5% effective 1/1/20. The Union argues that the recently expired agreement between the parties was their first agreement and the Union conceded that new hires would receive a defined contribution pension rather than the defined benefit plan. The Union also agreed to start contributing to the defined benefit plan. According to the Union, the concessions were made to assist the City in meeting the costs of the pension plan and to maintain the MERS B-4, 2.5% multiplier. The Union contends that their proposal to increase employee contributions by 1.5% over the term of the agreement is intended to help the City fund the B-4 plan and ensure a healthier pension for the Lieutenants. The Union asserts that none of the comparable communities have less than a 2.5% multiplier, while some are higher, ranging from 2.6% to 2.8% (Un. 23) (V. 1, p. 49).

The Union argues that the Employer's stated reason for decreasing the multiplier is to create equity with other City workers is without merit. The Union contends that there is a rationale for the Lieutenants to maintain a higher multiplier based upon a claim that they cannot work as long as other employees and have less time to fund their pensions. This claim asserts that the shorter work span is because their job is far more dangerous and physically demanding than other City positions. The Union also points to other differences in benefits such as retiree health insurance (E-1, p.23) (U-30, p. 60) (V. 2, p.59).

A reduction in the multiplier would result in an annual savings to the City of \$27,000 (V. 2, p. 95). According to the Union, the reduction would cost the Lieutenants over \$301,913 in lost retirement benefits. The Union estimates that each member would experience a loss of about \$60,000 (E-14, p. 13). To illustrate the impact on an individual basis, I have calculated the following: a person retiring after 25 years of service with a final average salary of \$85,000, with a 2.5% multiplier would receive a single life pension of \$53,125 annually. If the multiplier is reduced to 2.25%, the annual pension would be reduced to \$47,835, a reduction of some \$5,290 annually. However, the Employer's proposal would freeze the 2.5% multiplier and bridge to a 2.25% multiplier which would apply only to those years of service after the change-over. A retiree with 15 years of service with a 2.5% multiplier and 10 years of service with a 2.25% multiplier would receive 3.5% less in pension benefits for the last 10 years of service.

While it is true that a number of communities provide a multiplier higher than 2.5%, it is also true that many require a higher employee contribution ranging from 5% to 10% of participating salary (Un. 23).

In the opinion of the panel chair, future negotiations should concentrate on increasing the employee contribution rate rather than cut pension benefits from what has been promised in the past.

In the opinion of a majority of the panel that the cost savings of the proposed multiplier reduction is outweighed by the cost of the loss in pension benefits to the Lieutenants. It is noted that the unfunded actuary liability varies from year to year based upon the assumptions experience, return on investments, life expectancy, etc. Based upon all of the above considerations of the record evidence and arguments of the parties, a majority of the panel is of the opinion that the Section 9 factors of Act 312 are best served by the adoption of the Union's last best offer.

AWARD –CURRENT EMPLOYEES

The panel hereby adopts the last best offer of the Union as follows:

Maintain the current MERS B-4 plan, FAC 3, F 50/25, and increase the employee contribution to 3.5% effective 1/1/18, 4% effective 1/1/2019, 4.5% effective 1/1/2020 for employees enrolled in the MERS Defined Benefit pension plan.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott

RICHARD A. DINON, EMPLOYER DELEGATE

R. A. Dinon

HEATHER CUMMINGS, UNION DELEGATE

Heather Cummings

PENSION BENEFITS – NEW EMPLOYEES

The Employer proposes to maintain the status quo for employers hired after December 31, 2016 which is as follows:

Section 16.1 Pension Plan

All employees hired after December 31, 2016, shall be enrolled in the MMERS Defined Contribution Retirement Plan. Once enrolled, the Employer shall pay into each employee's individual contribution plan account on a biweekly basis a sum equal to three (3%) of the employee's base wage and overtime for that pay period. In addition, the employer will match contributions made by the employee up to two percent (2%), resulting in a maximum total contribution by the employer of five percent (5%) of wages. Vesting in the plan (as it relates to the employer's contributions) shall be as follows:

Employees may contribute up to two percent (2%) of their wages into the MERS Defined Contribution Retirement plan.

- Completion of one year of service.....25%
- Completion of 2 years of service.....50%
- Completion of 3 years of service.....75%
- Completion of 4 years of service.....100%

Public Safety Officers promoted into this bargaining unit will be covered by the defined benefit pension currently in effect for existing bargaining unit members, unless that employee is covered by the defined

contribution plan for the PSO unit at the time of promotion, in which case, the employee will be enrolled in the defined contribution plan for this bargaining unit.

The Union's last best offer would delete any employer contributions for new employees. The result of such a proposal means that the employee would not receive any pension benefits except for the money the employee elected to contribute to the plan, up to 2%.

The Union's offer is simply not supported by any of the internal or external comparables and would as the Employer argues render it virtually impossible to recruit someone from outside the department. Therefore, a majority of the panel is of the opinion that the Section 9 factors of Act 312 are best served by the adoption of the Employer's last best offer.

AWARD – PENSION BENEFITS - NEW EMPLOYEES

The panel hereby adopts the last best offer of the Employer to maintain the status quo.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott

RICHARD A. DINON, EMPLOYER DELEGATE

RA D

HEATHER CUMMINGS, UNION DELEGATE

Heather C - Dissenting

SUMMARY OF AWARD

1. Wage Increase 2018 – 2%, retroactive 1/1/2018.
2. Wage Increase 2019 – 1%, effective 1/1/2019.
3. Wage Increase 2020 – 1%, effective 1/1/2020.
4. Pension, Defined Benefit. Increase employee contribution to 3.5%, effective 1/1/2018, 4%, effective 1/1/2019, 4.5%, effective 1/1/2020.
5. Pension, Defined Contribution, maintain status quo.

DATED: 11-6-18