STATE OF MICHIGAN
COMPULSORY ARBITRATION

WAYNE COUNTY,

Public Employer,

-and-

AFSCME COUNCIL 25, Local 3317,
AFL-CIO,

Labor Organization.

Arising Pursuant to Act 312, P.A. of 1969,
as amended by Act 116, P.A. of 2011

MERC Case Number: D18 G-0877

JAMIL AKHTAR (P38597)
Attorney for Labor Organization
7577 US Highway 12
Onsted, MI 49265
517-467-7373
Fax: 517-467-4044
jimakhtar@att.net

WAYNE COUNTY HUMAN RESOURCES
Kenneth S. Wilson (P31384)
Attorney for Public Employer
500 Griswold, 9th Floor
Detroit, MI 48226
313-224-0972
Fax: 313-967-1230
kwilson@perkinslawgroup.net

PERKINS LAW GROUP, PLLC
Joseph R. Furton, Jr. (P45653)
Attorney for Public Employer
615 Griswold Suite 400,
Detroit, MI 48226-3480
Main: (313) 964-1702
j.furton@perkinslawgroup.net

THE MIKE COX LAW FIRM, PLLC
Michael A. Cox (P43039)
Attorney for Public Employer
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152
734-591-4002/Fax 734-591-4006
mc@mikecoxlaw.com

POST-HEARING BRIEF IN SUPPORT OF EMPLOYER COUNTY OF WAYNE'S ECONOMIC AND NON-ECONOMIC POSITIONS IN THIS PUBLIC ACT 312 HEARING

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INTRODUCTION

The parties' positions here are straight-forward and simple: On the one hand, AFSCME Council 25, Local 3317, AFL-CIO ("Local 3317" or "Union"), which represents command officers in the Wayne County Sheriff's Office ("WCSO") and who primarily provide a correctional-officer function in the Wayne County Jail, seeks unprecedented economic benefit increases that exceed $86,000 for each member of the length of the three-year contract; increase Wayne County's ("County" or "Wayne County") defined-benefit pension plan liability, if applied county-wide, by an estimated $388,691,528; similarly reduce the County's pension plan funded ratio by a stunningly irresponsible 12%; and seek to usurp the Wayne County Sheriff's constitutional and statutory obligation to lead the WCSO -- just four years after Wayne County faced an unprecedented historic financial and operational precipice that forced Wayne County into emergency management status.

On the other hand, the County and its leadership seek to maintain its equally historic recovery – a recovery called "remarkable" by the Union's own economist,[1] and begrudgingly credited to the County's CEO's team by the Union's own ability-to-pay expert, himself a former AFSCME local president[2] - by offering the Union a generous 5% /5% /3% wage package that still protects the pensions of Wayne County's 5,000 plus retirees and 3,500 plus active employees, while keeping the County on pace to achieve fiscal stability in the face of future uncertain economic circumstances.

Initially in this Brief, the County will address its ability-to-pay, because as the Legislature instructed in its 2014 amendments to Act 312 of 1969 ("Act 312"), "the arbitration panel shall

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[1] Tr. 7/19/19, at p. 24:8-10.

[2] Tr. 8/30/19, at pp. 173:24-174:25.

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." (emphasis added) MCL 423.239. In the course of addressing its ability-to-pay, the County will address the County's recent dire history which led to the State of Michigan's first intervention under Public Act 436 of 2012 in a county's finances; the County's recovery plan, along with imposition of the County Employment Terms ("CET"), as well as its successful execution of that plan over the past four years; and the Union's primary ability-to-pay arguments regarding the County's general fund balance, including the use of the Wayne County Treasurer's Delinquent Tax Recovery Program ("DTRP"), the County's differential treatment in the Police Officers Association of Michigan ("POAM"), (frontline deputies in the Wayne County jail) and the Government Bar Association (assistant prosecutors) to address bargaining-unit specific recruitment and retention needs. As part of this ability-to-pay presentation, the County will necessarily address its constitutional, statutory, and moral obligations to the WCERS, which oversees all retirees' and most active employees' pension, the macroeconomic impact of WCERS and pension obligations on the County's balance sheets, as well as the impact of mismanagement of WCERS by its board, on both pensions *and* the County's finances.

After addressing ability-to-pay, the County will next address the respective economic proposals including, among other things, wages, overtime, holidays, longevity pay, pensions, and healthcare stipends, as well as its non-economic proposals which include, among other things, transfers, seniority, and burden of proof. The economic proposals are directly tied to the County's ability-to-pay and its ability to maintain a healthy balance sheet, while the non-economic proposals are directly tied to the Sheriff's ability to meet his constitutional and

statutory obligations, and also indirectly impact the Sheriff's finances. In short, this Brief explains the necessity of the Panel to adopt the County's economic and non-economic proposals to maintain Wayne County's financial ability and advance the interests of the citizens and retired and active employees of Wayne County.

I. THE RELEVANT FACTORS OF SECTION 9 OF ACT 312.

Act 312 of 1969, MCL 423.231 *et seq*, provides for compulsory arbitration in instances in which public employers and their police and fire bargaining units are unable to reach an agreement on the terms and conditions of employment. Act 312 arbitrations are unique because the Michigan Legislature has given Act 312 arbitrator panels a specific list of factors to consider in their deliberations. These factors, listed in Section 9 of Act 312, include the following:

1. the financial ability of the unit of government to pay;
2. the interests and welfare of the public;
3. all liabilities, whether or not they appear on the balance sheet of the unit of government;
4. any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection;
5. the lawful authority of the employer;
6. stipulations of the parties;
7. comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services in comparable communities; and,
8. comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

Section 9 also notably mandates that, when supported by "competent, material, and substantial evidence," **the ability-to-pay factor is given the most significance among all factors**. MCL 423.239(2). For economic proposals, the arbitration panel "shall adopt the last offer of settlement

which, in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in section 9." MCL 423.238. Furthermore, the findings, decision, and order regarding non-economic issues *must* be based on these factors. MCL 423.239(1).

II. THE MOMENTOUS CHANGES IN WAYNE COUNTY'S DEMOGRAPHICS BETWEEN 1950 AND 2018.

The County presented evidence detailing the significant change in its population, economy, and tax base from 1950 to 2018. This testimony gives context to the current finances of the County and its ability-to-pay. The evidence and testimony established that the revenue "hay days" of the past are not returning in the foreseeable future of Wayne County. The demographic testimony and exhibits also demonstrate that the County's proposed comparables are more useful and appropriate for the Panel to adopt than those proposed by the Union. The Union has, for the most part, selected communities that face less significant economic challenges and have better overall economic circumstances. Thus, those comparables are neither apt, nor true comparables at all.

The County first presented the testimony of demographer Patricia Becker. Ms. Becker is a University of Michigan and Wisconsin educated demographer with more than 30 years of experience in the field.[3] She prepared an analysis for the Panel entitled *Demographic and Economic Trends Wayne County*.[4] Ms. Becker testified that the population of Wayne County declined by 28% from 1950 to 2018.[5] This steep drop happened even though the population of

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[3] Bk. A Ex. 2.

[4] Bk. A Ex. 1.

[5] Tr. 7/17/19, at p. 20.

the surrounding metropolitan area grew by 250%, and the overall population of Michigan grew by 57%. [6] She further testified that this population drop negatively affected Wayne County's revenue raising capabilities.[7] Becker explained that in general, many residents who had the financial ability to move did move, and those who remained are less affluent.[8] She noted that Wayne County accounts for 45% of the population of the Tri-County area, but a disproportionate 65% of the population in poverty.[9]

Wayne County's labor force also shrunk substantially 1970 between 2018.[10] Wayne County's share of the employed population of the Tri-County fell from 64% to 41%.[11] Ms. Becker also testified that from 1970 to 2018, Wayne County's actual number of occupied housing units has declined in absolute numbers, but even more importantly, its share of occupied housing units – those who pay property taxes – dropped dramatically in comparison to the rest of the Tri-County area.[12] The number of vacant housing units went from 30,000 to 171,000.[13]

Ms. Becker testified that these trends – the staggering loss of population, loss of workforce, loss of occupied housing units, increases in the poverty rate, and chronically higher unemployment – all mean that Wayne is now significant poorer than it neighbors (and many cities within its county borders) and less able to generate revenues to support government

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[6] Tr. 7/17/19, at p. 21.

[7] Tr. 7/17/19, at p. 23.

[8] Tr. 7/17/19, at p. 23.

[9] Tr. 7/17/19, at p. 27.

[10] Tr. 7/17/19, at p. 31.

[11] Tr. 7/17/19, at p. 33.

[12] Tr. 7/17/19, at p. 35.

[13] Tr. 7/17/19, at p. 37.

services.[14] The combination of these longstanding and now entrenched changes has shrunk the economic base of Wayne County, while Oakland and Macomb have grown substantially more affluent and populous during the same time period.[15]

III. ABILITY TO PAY.

A. Financial History of Wayne County Government Between 2000 and August 21, 2015.

In the early part of this century Wayne County enjoyed a relatively healthy general fund balance sheet, stable property tax financing. However, at the same time an unaffordable employee benefits package – benefits that defied long-term economic and demographic trends – was lurking under the surface of a good economy and already undermining Wayne County's long-term fiscal health.

In 2004, Wayne County employed "somewhere around 5,000 employees."[16] That same year, Wayne County's WCERS defined-benefit pension plan was almost fully funded at 95%.[17] As the County's ability-to-pay expert Hugh Macdonald volunteered, the County's pension plan was and is part of a benefits package he described as a "golden parachute".[18] Despite its "golden" benefits, the defined-benefit plan was significantly above the 80% threshold used by the American Federation of State, County, and Municipal Employees ("AFSCME"), which is Local 3317's affiliated national union, to determine whether a pension is "healthy" or not.[19] This

[14] Tr. 7/17/19, at p. 43.

[15] Tr. 7/17/19, at p. 47.

[16] Tr. 7/17/19, at p. 91:15-19.

[17] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 27.

[18] Tr. 7/16/19, at p. 148:18-24.

[19] Bk. A Ex. 22: The Truth About Public Service Workers' Pension, at p. 1.

pension health was due in large part to the defined benefit pension plan being closed to new members, while new hires were put into defined-contribution plans.[20] Indeed, almost all of the current members of Local 3317 were placed the less expensive and more prudent defined-contribution plan when each was hired - the preferred and prudent option of most employers, public and private, over the past 25 years.

In FY 2008, Wayne County property tax collections hit an all-time high of $370.11 million that went to the County's general fund.[21] That number is almost $80 million higher than the $294.04 million Wayne County collected ten years later in FY 2018, and is not likely to be met again until sometime after FY 2028-2029.[22]

In the fall of 2008, the Great Recession hit. And the County immediately began deficit spending as its property tax collections fell dramatically -- dropping 17 million to $353.7 million in FY 2009, another drop of $30 million to $324.8 million in FY 2010, an additional $30 million slide to $292.2 in FY 2011, pausing at $292 million in FY 2012, and then dropping again almost $30 million more in FY 2013 to $263.4 million in 2013 – a loss of almost $100 million in revenues in a few short years. .[23] This drop in property tax revenue was crippling because

[20] Mr. Macdonald testified that one of the primary reasons for the WCERS pension fund's later drop in funded ratio was the Ficano administration's decision to permit "people to move from the DC (defined contribution) into the hybrid plan and buy years at an unrealistically low value". Tr. 7/26/19, at p. 164:15017; see also, p. 165:20-23 and p. 167:12-16. According to Sergeant Connell and Lieutenant Erick McDonald, most of Local 3317's members were in the defined contribution plan and then allowed to buy into the WCERS defined benefit plan when offered by the Ficano administration. Tr. 8/21/19, at pp 28, 37, and 38. Ironically, most all of the 20 or so members for whom Local 3317 now seeks to obtain "Macdonald stipends" not only bought into the defined-benefit plan at a discount, according to Mr. Macdonald, but also bought additional service years. See U. Ex. 80a prepared by Sergeant Keyes.

[21] Bk. A Ex. 6: Property Tax Collections Forecast 2007-2008 Through 2028-2029.

[22] *Id.*

[23] *Id.*

property taxes historically provided 60% of the county's general fund revenues.[24] Concurrent with this 24% drop in property tax revenue, the County entered into deficit spending over the next 6 years, with annual deficit spending ranging from (negative) $18.7 million to (negative) $53.1 million.[25] This led the County into an ongoing structural deficit situation which Budget Director Kevin Haney described as "you don't have enough revenue to cover your expenses, you have a structural deficit in a given year."[26] Mr. Haney estimated the annual structural deficit(s) before August 21, 2015 was approximately $50 million per year.[27] In turn, the inability to address each of the ongoing structural deficits led to an accumulated deficit of $157,500,000[28] in FY 2014, and was estimated to grow to, at least, $171.4 million by FY 2019.[29]

In the years leading up to August of 2015, the County responded to this crisis, in part, with questionable fiscal practices – including failing to file financial audits that complied with the Uniform Budgeting and Accounting Act, routine unbudgeted departmental overtime in the millions of dollars, failure to file an approved deficit elimination plan with the Department of Treasury, improper interfund borrowing, and beginning and then ending construction on an ill-planned, new jail. Not surprisingly, the County's credit ratings were downgraded by Fitch, Standard and Poor's, and Moody's to "non-investment grade, speculative, or junk".[30]

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[24] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 22.

[25] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 5. See also Bk. A Ex. 3: Report of the Wayne County Financial Review Team, at pp. 2-3.

[26] Tr. 7/17/19, at p. 90:22-24.

[27] Tr. 7/17/19, at p. 91:2-3.

[28] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 5.

[29] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 2.

[30] U. Ex. 43: Juan Romero Power Point, at p7. See also Bk. A Ex. 3: Report of the Wayne County Financial Review Team, at pp. 2-4.

As a result of both unwise decisions and reduced property tax collections, the County, in 2015, also faced the overwhelming issue of severely underfunded healthcare coverage for both the-then 3,241 active employees, and for its 5,317 retirees in the form of "Other Post-Employment Benefits" ("OPEB") benefits. The result was an accrued OPEB liability of $1.33 billion with only $9.1 million in assets to cover that liability.[31] The County's spending on healthcare for active and retiree healthcare was $71.07 million in FY 2014,[32] and was projected to increase to $146.38 million by FY 2018.[33] Overly expensive employee compensation packages, declining property taxes, poor accounting practices, and opening the WCERS defined-pension plan to enrollment to employees in the less expensive, pay-as-you-go defined contribution plans also put the WCER defined benefit plan – and the County's balance sheet – in a precariously dangerous position.

Finally, in 2015, the County also faced a seemingly insurmountable pension fund crisis that arose from, among other things, the expansion or reopening of the defined benefit plan by the Ficano administration to allow many prior defined contribution plan members – including, as testified to by Sergeants Connell and Keyes, most member of Local 3317 – "to move from the DC (defined contribution) into the hybrid plan and buy years at an unrealistically low value".[34] As of September 31, 2014, WCERS (or rather its actuary, Gabriel, Roeder Smith ["GRS"]) reported the County defined benefit pension had a funded ratio of 45%.[35] This 45% figure

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[31] Bk. A Ex. 11: Historical OPEB Funding Trend. See also Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 13-15.

[32] Bk. A Ex. 7: Actual Health Care Expenditures, 2007-2019.

[33] Bk. A Ex. 8: Projected Health Care Expenditures, 2007-2018.

[34] See testimony of Union ability-to-pay expert Hugh Macdonald. Tr. 7/26/19, at p. 164:15017; see also, p. 165:20-23 and p. 167:12-16.

[35] Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, A-5.

compared unfavorably to even the valuations of the City of Detroit's pension plans which were 71% funded when Detroit went into bankruptcy.[36]

Incredibly the funded ratio was dropping dramatically *at the same time* the County was putting more money (through "ARC" or "actuarially required contributions" set by WCERS, which are also called Actuarially Determined Contributions) to the pension plan. (And most of this drop, if not all, was also *after* the stock market bottomed out in 2009). In 2009, when the pension was 67% funded,[37] the County contributed (or more accurately paid the WCERS-set ARC payment of) $32,559,000 into the plan to meet its annual pension obligation.[38] By 2013, the County paid $66,195,000[39] – double its payment just four years earlier -- to meet its WCERS-set ARC payment, yet the pension's funded ratio had dropped to 44%.[40] One year later, even after another WCERS mandated contribution of $62,989,902, the funded ratio was still only 45%.[41]

These dramatically increasing pension payments understandably put severe pressure on the County's general fund cash flow and liquidity. The County's 2009 ARC contribution payment of $32.6 million was 27.82% as a percent of payroll.[42] By 2015 the County's ARC payment equaled 50.68% of payroll (and, even today, after the County's pension plan reforms,

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[36] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 10.

[37] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-5.

[38] U. Ex. 42: WCERS Schedule of County Contributions.

[39] *Id.*

[40] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-5.

[41] *Id.*

[42] Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, A-4.

still totals 47.66% of payroll)[43] The County's Recovery Plan, Bk. A Ex. 4, put the gravity of this issue clearly in focus:

> The County's ratio of unfunded actuarial liabilities to annual payroll is 681%, or almost 7 to 1. That ratio in Detroit, just prior to bankruptcy was only at 5 to 1.[44]

And, putting the issue even more starkly:

> The WCERS is paying nearing as much in annual defined benefit pension payments, $123,700,000, as the County is paying in defined benefit salaries $125,500,000.[45]

And, adding to the financial free-fall, as CFO Matthieu Dube testified, during this same roughly four-year period of time (which was during an economic recovery), the absolute asset value of the fund fell from almost $840 million to "a little below 682 million dollars."[46]

Those numbers illustrate the dire state of the WCERS defined-pension plan in 2014 and 2015. But they do not tell the full story. The WCERS' actuary noted another compelling issue in its September 31, 2014 valuation by applying the so-called "Short Condition Test" to the then-assets and liabilities of the County's pension plan. The short condition test revealed that while, in September of 2014, the plan had the assets to cover or return all active employee members' contributions, the plan's assets could cover only 53% of the future benefits owed current retirees, and *had absolutely no assets (0%) to cover any of the future accrued benefits of the County's thousands of active employees*.

B. August 21, 2015 Consent Agreement and the County's Solutions: Saving Employees' Jobs and Pensions, While Also Saving Millions in Wages,

[43] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-4. See also testimony of County CFO Matthieu Dube, Tr. 7/26/19, at pp. 19-25, where Mr. Dube discusses the impact of decreasing funded ratio, while the absolute dollar ARC payments, and the increased percentage of payroll; see also, p. 165:20-23 and p. 167:12-16.

[44] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 10.

[45] *Id*.

[46] Tr. 7/24/19, at p. 14:15-18.

Healthcare and Pension Costs.

In January of 2015, a new County CEO – elected on a platform of financial reform – began reviewing the County's books. At the same time, the State Treasurer appointed the Wayne County Financial Review Team to examine the financial records and practice of County government. Its examination led to a July 21, 2015 report to then-Governor Snyder which is Bk. A Ex. 3: Report of the Wayne County Financial Review Team. This team's damning report focused on many of the issues described above and reported "the Review team concludes in accordance with Section 5(4)(b) of Public Act 436 of 2012, the Local Financial Stability and Choice Act, ***that a financial emergency exists within Wayne County***." (emphasis added). (Notably, this report was issued just four years, almost to the day, of the beginning of this Act 312 hearing.)

As a result of this report, the Michigan Treasurer and newly-elected Wayne County CEO Warren Evans negotiated a consent agreement signed by the parties on August 21, 2018. Over the next month the County was able to negotiate new collective bargaining agreements with 11 of its 12 bargaining units, including the POAM, the representative of the deputies in the Wayne County Jail, even though POAM's contract had not expired.[47] These eleven unions represent approximately 3,500 County employees; the lone exception of the 12 bargaining units was Local 3317 representing approximately 100 employees.[48]

The 2015 contracts with the eleven settling bargaining units contained largely identical provisions designed to reform the County's fiscal structure because as Union labor economist Romero acknowledged personnel compensation packages were the only place to cut the County's

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[47] Tr. 8/9/19, at p. 8.

[48] *Id.*

costs:

Q. You would agree that whoever was running the County then had a massive issue - - had a massive problem in front of them, right?

A. Yes.

Q. Okay. And they had to make changes in personnel compensation packages because there was nowhere else to go, correct?

A. It was an area where expenditures could be cut, yes.

Q. Because in government, we don't sell cars, we don't sell computers, the main cost driver is people, correct?

A. Yes, government is people, yes.[49]

These pattern-bargained[50] collective bargaining agreements featured, among other things, these "virtually identical substantive provisions of retiree medical, medical, and pension"[51] innovations:

Healthcare: high-deductible health care plans and stipends for health savings accounts for active employees, and cessation of retiree health care in the future unless the retiree had 20 years county service before 10/1/2015, in which case, the County would provide a monthly stipend;[52]

Wages and wage-related benefits: freeze in wages and changes in the payment and use of overtime, sick pay, holidays, and personal days;[53] and,

Pensions: changes in the pension multiplier, calculation of the average final compensation ("AFC") formula, extending the normal retirement age and vesting requirements, and the

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[49] Tr. 7/19/19, at p. 116:12-22. See also Union expert Hugh Macdonald's testimony that local government cost structure is largely driven by its employees. Tr. 7/26/19, at p. 146: 4-8.

[50] Tr. 8/9/19, at p. 51:9-16.

[51] Tr. 8/9/19, at p. 34:9-12.

[52] Tr. 8/9/19, at pp. 11-14 and Tr. 8/9/19, at p. 51:9-16.

[53] Tr. 8/9/19, at p. 15.

introduction of employee contributions.[54]

These reforms are the main drivers of Wayne County's "remarkable" recovery.

C. Wayne County Today: The Numbers.

By any measure, the County has made significant strides toward financial stability in the past four years – but still faces enduring obstacles that require continued and constant vigilance. Let's begin with the impact of the healthcare, wage-related, and pension reforms:

First, Mr. Blann demonstrated and testified to the almost $300 million in reduced healthcare cost payments by Wayne County between 2015 and 2018: savings in 2015 were $32.9 million; $58 million in 2016; $95.3 million in 2017; and over $146 million in 2018.[55] The County's OPEB reforms also immediately saved over $94 million in the form of reduced payments for retiree healthcare between 2015 and 2018.[56] Wayne County reduced its OPEB liability by ending retirement healthcare for younger employees, and providing stipends for those who reached 20 years' service by October 1, 2015. As a result, the County's OPEB accrued liability has dropped from $1.333 billion to $206,420,271.[57] During testimony the Arbitration Chair questioned County CFO Matthieu Dube, "If you're running a deficit, can you pre-fund this obligation, yes or no?" And Dube responded, "No."[58] And so, as of yet, Wayne County is not in a position to prefund that obligation: to even address 80% of the current, reduced OPEB

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[54] Tr. 8/9/19, at pp. 18-21.

[55] Bk. A Ex. 16: Blann "What-If Analysis – Health Care Changes", at p. 1. See also Tr. 7/24//19, at p. 116.

[56] Bk. A Ex. 16: Blann "What-If Analysis – OPEB Changes", at pp. 4-5.

[57] Tr. 8/7/19, at pp. 32:4-5.

[58] Tr. 7/24/19, at p. 37:16-20.

obligation would cost at least $136 million.[59]

Second, Wayne County has increased the funded ratio of the WCERS defined pension, taking steps to protect the pensions of thousands of Wayne County employees and retirees, from 45% in 2014 to 62.1% now.[60] In the four years since the execution of the Consent Agreement and imposition of the County Employment Terms, through both its payment of WCERS-set ARC contributions, and importantly, additional contributions of County general funds monies (from asset sales and surplus) of over $160 million between the imposition of the CET and September of 2018.[61] At the same time, according to Mr. Blann, the County saved over $18 million in added, or "excess", out-of-pocket pension costs between 2017 and 2018.[62] Long-term, the pension changes will save the County over $141 million between now and 2033.[63] These improvements have helped increase the funded ratio from 45% in 2015 up to 62.1% now.

However, as will be explained in more detail below, the WCERS defined pension plan – and consequently, the County's balance sheet – faces a number of challenges going forward. Suffice to say, even after the County's pension reforms, including employee contributions, lower AFC calculations, reduced multiplier, older retirement dates, and over $160 million in County general funds being contributed beyond ARC requirement, the WCERS plan is *still* 10% less funded than the Detroit pension plans were immediately before Detroit entered bankruptcy. To meet the goal of 80% that CEO Evans has publicly stated in his goal ("I'm not even going to

[59] Tr. 8/7/19, at pp. 32:21.

[60] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-5.

[61] U. Ex. 42: WCERS Schedule of County Contributions.

[62] Bk. A Ex. 16: Blann "What-If Analysis – Pension Changes", at pp. 2-3.

[63] Bk. A Ex. 16: Blann "What-If Analysis – OPEB Changes", at pp. 4-5.

think about getting comfortable until our pensions are more than 80 percent funded, which is more in line with industry standards")[64], which is, not coincidentally, the same threshold that AFSCME views as a "healthy" pension, the County would need to add *another $250 million* to the WCERS defined-benefit pension plan.[65]

Third, the County has eliminated its structural deficit and put the County on the path toward a healthy general fund balance, even if it falls short of the 40% average of Michigan's ten largest counties by 14%,[66] and falls short of municipal finance expert Stephen Blann's recommendation of 50% general fund balance.[67] The County has also eliminated its accumulated deficit, however, it is clear from the testimony of Union labor economist expert Juan Romero that that elimination was only the result of a massive infusion of over $395 million in DTRF funds between 2015 and 2018:[68]

Q. …Page 2, you have your conclusions. And you - - you that the County, bullet No. 2, "County recorded 319.3 million in surpluses in the last five years."

A. Yes.

Q. Then you qualify it with the next point saying: Unrestricted general fund balance increased $24.1 million in the last five year, correct?

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[64] U. Ex. 11: CEO Warren Evans 2017 State of the County Address, at p. 5 of 15. See, the Union's 2019 State of the County exhibit, where on March 14, 2019 CEO Evans stated: "***The reality is, we need to be at 80%. And 80% is basically the minimum that is generally looked at as a responsible, significantly well-funded pension system. So we've got a long way to go.***" U. Ex. 19: CEO Warren Evans 2019 State of the County Address, at p. 3 of 1. (emphasis added).

[65] Tr. 8/7/19, at pp. 27:19-28:25.

[66] Bk. A Ex. 25: Blann "Fund Balance as a Percent of Budget".

[67] "In my opinion, the general fund of Wayne County is not high enough.… My personal recommendation would be something closer to 50 percent of the balance." Tr. 7/247/19, at p. 227:15-22. Mr. Blann's opinion also fits with the 49% general fund average of Michigan's top four population counties (excluding Wayne County): Oakland, Kent, Macomb, and Genesee counties. Bk. A Ex. 25: Blann "Fund Balance as a Percent of Budget".

[68] The quotes are from an excerpt of examination of Mr. Romero concerning pages 4 and 5 of his PowerPoint exhibit. U. Ex. 43: Juan Romero PowerPoint, at p. 7.

A. Yes.

Q. What's the difference between the 319 and 241?

A. It should be roughly $80 million, which accounts for the negative fund balance in 2014.

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Q. Okay. Did you add during the same five years all the DTRFs?

A. I did.

Q. Okay. And what was the total of the DTRFs during that same five-year period?

A. $395 million. So without that $395 million, point 2, would be, County recorded a negative 70 million in in the last five [2014-2018] years, correct?

A. Yes.[69]

So, while the DTRF funds eliminated the accumulated deficits, and funded the beginning of the current fund balance, it is equally clear that the County's employee benefit package reforms have assisted in creating the County's current modest fund balance. In short, while the hundreds of millions of dollars in savings, outlined in Mr. Blann's "what if" exhibit,[70] may not have eliminated the accumulated deficit existing in 2015, those ongoing, annual savings in recurrent costs such as wages, overtime, employee healthcare and pension obligations have allowed Wayne County to build a healthier fund balance. The County's current general fund balance reflects, as Union expert Romero's exhibit (reporting S&P's observation) noted, the "County moving toward a 'more normal operating environment.'"[71] However, as is explained below in the section addressing the Union's ability-to-pay arguments, the County general fund balance is still in a precarious state – indeed, even Mr. Romero's power point notes that as

[69] Tr. 7/19/19, at pp. 93:5-94:13. CFO Dube agrees with Mr. Romero that the accumulated deficit was only eliminated through the DTRF funds. "That's (delinquent tax revolving fund transfers) what really resolved the accumulated fund balance deficit…and it helped create some of the current fund balance in the general fund." Tr. 7/24/19, at p. 54:17-20.

[70] Bk. A Ex. 16: Blann "What-If Analysis".

[71] U. Ex. 43: Juan Romero Power Point, at p. 7.

recently as FY 2018 – during a boom economy - the County only recorded a $1.5 million surplus.[72]

Four, the County's bond ratings have been upgraded significantly – although it has a long way to go to achieve Oakland County's AAA rating. As of 2018, Fitch had raised Wayne County from its prior "non-investment grade, speculative" grade but only one spot above that grade to a BBB-.[73] Fitch viewed the County's progress positively, noting among other things, its labor reforms: "(t)he county's expenditure framework was materially improved by changes made under an Act 436 consent agreement with the state. The agreement afforded management tools to improve its expenditure flexibility, particularly in the area of labor costs."[74] However, Fitch wants to see a higher fund balance to protect the County from economic uncertainty: "Continued improved financial resilience, through higher reserve levels that Fitch would expect the county to retain through a downturn and/or strengthened budgetary flexibility would provide additional protection against future potential revenue volatility…"[75] In the same manner, Moody's and S&P have both also raised Wayne County one spot above "non-investment grade, junk" status, but want to see the County continue to progress toward better fund and operational balances.[76]

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[72] U. Ex. 43: Juan Romero Power Point, at p. 4.

[73] Bk. A Ex. 35: "Fitch affirms Wayne County, MI's IDR at 'BBB-"; Outlook Stable". See Bk. A Ex. 36: Wikipedia on Rating Services grading on creditworthiness.

[74] Bk. A Ex. 35: "Fitch affirms Wayne County, MI's IDR at 'BBB-"; Outlook Stable", at p. 1. Under "Key Rating Drivers".

[75] Bk. A Ex. 35: "Fitch affirms Wayne County, MI's IDR at 'BBB-"; Outlook Stable", at p. 2. Under "Ratings Sensitivities".

[76] See, for example, the examination of Mr. Romero concerning Moody's concerns about Wayne County going forward, including, among other things, this concern of Moody's: "***Pent-up expenditure demands, including workers' compensation, deferred capital, that will likely eat into the County's recently achieved structural surplus.***" Tr. 7/19/19, at pp. 128:3-6 (emphasis

IV. OTHER NON-QUANTITATIVE STRUCTURAL OBSTACLES INFLUENCING WAYNE COUNTY'S ABILITY TO PAY.

Before addressing the Union's Ability-To-Pay arguments it is important and appropriate to address two other non-quantifiable (or, at least, cannot be reduced to dollars and cents) issues that address the County's ability-to-pay and also impair it finances when compared to other comparable communities: one is demographic and the other is legal.

A. Demographic Trends.

It is important to, again, consider the impact of demographics: Between 1950 and 2017, Wayne County's population dropped from 2,435,235 to 1,753,893 – a drop of 27%, while the "Metro Area Outside Wayne" (Oakland, Macomb, Livingston, Lapeer, and St. Clair counties) grew by 246%.[77] More importantly, a significant portion of Wayne County's population decline occurred recently during the decade between 2004 and 2013, when it lost over 200,000 residents.[78] As one may expect, Wayne County's labor force, its proverbial foot soldiers of taxable activity, has decreased dramatically as well, from 1,062,000 in 1970 to 818,000 in 2017. This is a drop of 23%. At the same time, the labor force in Oakland and Macomb counties almost doubled from 604,000 to 1,095,000.[79]

As the County's expert demographer Ms. Patricia Becker noted, those residents and workers who left Wayne County are more generally more affluent and more able to support government services: "It shows the people who are not in poverty, who are employed rather than

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added); more generally, see 127:16-128:19.

[77] Bk. A Ex. 1: P. Becker, Demographic and Economic Trends, Wayne County, at p. 1.

[78] Bk. A Ex. 4: Recovery Plan, Wayne County, Michigan, at p. 23.

[79] Bk. A Ex. 1: P. Becker, Demographic and Economic Trends, Wayne County, at p. 5.

unemployed, are more likely to leave, leaving their poorer cousins behind."[80] And so Wayne County's poverty rate has grown with the exodus of the "more affluent cousins", from 15% in 1970 to 23% in 2017, a year when the national and Michigan economies were booming.[81] In line with the decreasing population and increasing poverty rate, the number of Wayne County "Occupied Housing Units" dropped from 830,000 in 1970 to 815,000 in 2017.[82]

While this drop of 15,000 units is not large in absolute numbers, it is nonetheless alarming when compared with the growth of occupied housing units in Oakland and Macomb counties between 1970 and 2017, tripling from 437,000 units to 1,206,000 units, the likely permanent and irreversible loss of housing units is unmistakable. The loss of housing units is intimately tied to Wayne County present and future ability to pay because "housing units are a pretty important source of property tax, property tax laid on buildings, …all pay property tax, or are supposed to."[83] These statistics from Ms. Becker clearly demonstrate that Wayne County has not only incurred a long-term loss of people and workers, which impairs its current ability to sustain or increase revenues, but that this long-term loss impairs the County's ability to raise revenues – and its ability-to-pay - in the long-term as well. Put differently, there is not one statistic in either Ms. Becker's exhibit nor in her testimony that suggests any near-term or long-term movement to reverse Wayne County's decades-long residential and economic decline. This observable phenomenon necessarily counsels fiscal caution and proves the appropriateness of the County's economic proposals.

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[80] Tr. 7/17/19, at p. 44: 16-18.

[81] Bk. A Ex. 1: P. Becker, Demographic and Economic Trends, Wayne County, at p. 5.

[82] *Id.*

[83] Tr. 7/17/19, at p. 36:16-19.

One last, but important casualty, from the huge loss of population is the resulting loss of seats in the State House, the State Senate, and importance in state wide races for Governor and other positions. This demographic fact has led to less political power for Wayne County which inevitably leads to less statutory revenue sharing, pilot grants, and other political benefits that go with legislative and ballot-box power.

B. Legal Impediments to the County's Ability to Pay.

During the course of hearing the Panel heard testimony regarding the limitations on Wayne County's ability to raise revenues. Like many Michigan municipalities the County relies heavily on property taxes for revenue. And like most other communities Wayne County has had to live within the restrictions of the "Headlee Amendment", Mich. Const. 1963 art IX, §§25-33, which among other things, requires a vote of the people for any property tax increases, and with "Proposal A", which limits the growth of property taxes as determined by taxable value (as opposed to the prior higher state equalized value) to 5% or the rate of inflation, whichever is lower, with the practical effect that Budget Director Haney colloquially described as "it (property tax collections) falls like a rock, and then when it (property tax collections) tries to come up for air, it takes a long time for it to come up for air."[84]

Thus, as described above, the 24% drop in property taxes between 2008 and 2014 in Wayne County is unlikely to return for at least another decade.[85] Wayne County's demographic problems only exacerbate this property tax issue compared to other communities – but it is admittedly a problem shared by most other municipalities. But Wayne County suffers from Wayne County-specific legal infirmities.

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[84] Tr. 7/17/19, at p. 77: 12-16.

[85] Bk. A Ex. 6: Property Tax Collections Forecast, 2007-2008 through 2028-2029.

First, one legal issue that is Wayne County-specific and directly impairs Wayne County's ability to pay is Wayne County Charter Section 3.115(13) which places two distinct "supermajority" hurdles in front of any proposed property tax increase. One limitation requires a supermajority of the County Commission to approve placing a tax increase proposal on the ballot and the other limitation requires a supermajority of the voters to support the property tax increase:

> …Any proposal for a tax increase must be approved by a 2/3 vote of Commissioners serving to be placed on the ballot and approved by a vote of more than 60% of the qualified electors of Wayne County…[86]

Budget Director Haney recounted for the Panel the story of a prior failed attempt to raise taxes that fell because the effort fell one vote shy of a supermajority on the County Commission.[87]

And as Mr. Macdonald testified, he was unaware of any other county or city in Michigan that has a similar ordinance, and as a result of that ordinance and Proposal A, it is much harder to raise property tax revenue than it was when he worked for a prior Wayne County CEO.[88]

A *second* legal impediment concerns Wayne County's status as a county. Mich. Const. 1963 art IX, § 10 mandates that 15% of Michigan statewide 6% sales tax (which collects billions annually) "shall be used exclusively for assistance to townships, cities, and villages…" This constitutional guarantee to big cities such as Detroit, Livonia, and Dearborn put counties, such as Wayne County, at a comparative disadvantage, impacting Wayne County's ability-to-pay, and its ability to compete with Act 312 comparable communities.

A *third* legal impediment is that Wayne County is not authorized to levy an income tax on

[86] U. Ex. 5: Wayne County Charter, Section 3.115 (13) "Powers and Duties", at p. 13.

[87] Tr. 7/17/19, at pp. 118-119.

[88] Tr. 7/26/19, at pp. 133-135.

its residents or individuals who work in Wayne County. This is in contrast to Michigan home rule cities such as Detroit, Dearborn, and Livonia which may levy income taxes pursuant to the City Income Tax Act, MCL 141.501 *et. seq*. Detroit does levy a city income tax, as do 21 other Michigan cities.[89]

A *fourth* legal impediment, at least compared to one of the comparable municipalities here, the city of Detroit, is that the Michigan Constitution authorizes casino gaming in up to 3 casinos in the city of Detroit.[90] And these casinos pay over $170 million in gaming taxes authorized by statute to the city of Detroit (but not Wayne County) every year.

V. THE UNION'S ABILITY-TO-PAY ARGUMENTS: DTRFS, GENERAL FUND BALANCE, AND EMPLOYER CARVE-OUTS FOR THE POAM AND THE GBA.

During the course of the Act 312 hearing, Local 3317 primarily advanced three arguments to establish the County had the ability to pay for Local 3317's economic proposals: (1) the County could use DTRF funds to pay for Local 3317's demands; (2) the County's general fund balance had more than adequate funding to absorb Local 3317's economic demands; and (3) the County paid for (much more limited) benefits to the POAM and the GBA and so it must have the ability to pay for Local 3317's economic proposals. All three arguments are misplaced and must be rejected.

A. The Use of Funds from the Delinquent Tax Revolving Fund ("DTRFs") to Support the Union's Economic Proposal Is Irresponsible.

Throughout the course of the hearing, Local 3317 has suggested directly and indirectly

[89] https://www.mlive.com/news/2017/08/michigan_cities_with_an_income.html.

[90] See Mich. Const. 1963 art IV, § 41.

that, somehow, the County rely on the use of DTRFs to pay for Local 3317's economic proposal. This obtuse, ill-defined proposal is simply not feasible. There are numerous legal, practical and financial reasons why the County cannot, or should not (nor can the Panel) rely on the use of DTRFs to pay for the Union's economic proposals.

First, under our state constitutional scheme, the Wayne County treasurer is a county constitutional officer (in contrast to the position of County CEO, which is a statutory creation) and as the "agent" of the County, has the *sole* power to determine when there is a "surplus" in the DTRF program. MCL 211.87b(2). If the treasurer decides not to declare a surplus, then there is no surplus, and state law does not provide for any recourse to challenge the treasurer's determination.

Second, County CFO Dube testified that (a) the presence of payment plans (compared to the period right after the Great Recession) and (b) the cut in the prior statutory interest rate of 18% will put downward pressure on the size or growth of DTRF funds in the future.[91]

Third, and more practically, as Budget Director Haney explained, to receive a large DTRF payment in the future the County must first suffer an economic slowdown: "So what happens is that general fund - - the property taxes and the DTRF program have an inverse relationship, the more better the property taxes and the better the economy, if you will, then there's going to be less chance of someone going into delinquency and going into the program."[92] It was this uncertain nature of the DTRFs that led Mr. Romero to agree that they are "one time

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[91] Tr. 8/7/19, at p. 21:11-19. See also Hugh Macdonald testimony confirming that the payment plan and statutory interest changes will reduce the DTRF in the future. Tr. 7/26/19, at p. 178:2-16.

[92] Tr. 7/17/19, at p. 130:15-21. See Union expert labor economist Romero's testimony agreeing that the DTRF only becomes big in a bad economy. Tr. 7/19/19, at p. 119:9-15.

monies".[93] As a result, the County's Exhibit A-9 projects the DTRF distributions dropping from $20.7 million this year to under $9 million in 2019. Accordingly, the unpredictable nature of DTRF distributions – and the origin of these funds only arising from bad economic times – make this an unsuitable source for funds to support the Union's economic proposals.

B. The County's General Fund Balance Cannot Support the Union's Economic Proposal.

A central premise of the Union's economic proposals is the fallacious assumption that a county which four years ago was found to be in a state of "financial emergency", drowning in an accumulated deficit of $150 million, and trapped in an annual structural deficit of $50 million is now the municipal equivalent of Daddy Warbucks. This is simply not true. Perhaps the best place to start is with the Union's own exhibits which demonstrate the future flat growth of the County's revenues – and belie the idea that the County's fund balance can absorb the Union's proposals which sharply increase benefits expenses.

Mr. Romero sought to use Union Exhibit 31 to prove the County had the money to pay the exorbitant compensation package (over $86,000 increase per member) sought by Local 3317. However, Union Exhibit 31 only proves the tenuousness of the County's fiscal situation that was also noted by all of the rating agencies. Table A of Union Exhibit 31 bears out a central point of the County's approach at the bargaining table and here at the Act 312 hearing: property tax revenues, the main driver of governmental revenues in Wayne County, are or are likely to be functionally flat for many years. Looking at Exhibit 31[94], Mr. Romero's Tables A and B show an actual property tax growth of just $2 million or .6% growth over four years (from $296 million to

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[93] Tr. 7/19/19, at p. 117:4.

[94] U. Ex. 31: Tables prepared by Juan Romero, Tables A and B, pp. 1-2.

$298 million)[95] between 2014 and 2018, and if the projected property tax growth through 2020 (looking at the same "Property Tax" row on Table B) is reviewed, there is actually an $8 million (2%) decrease, from $294 million in 2014 to $286 million in 2020. While Mr. While Romero did initially contest the County's projections, he went on to concede that the County's projections are prudent based on a possible economic downturn by 2020 or 2021:

Q. And at least the County's projecting that in two years, it may be 8 million less, 10 million less than what it is in FY 2018, correct?

A. Than the actuals in FY 2018, yes.

Q. And that would perhaps coincide with AFSCME's own internal economic predictions that there might be a slight downturn in 2020 or 2021, correct?

A. To a certain extent.

Q. ***Meaning these numbers seem pretty prudent to you, correct?***

A. ***Yes.***[96]

In the same manner, the actual "Total Revenues" growth from 2014 to 2018 was only $12 million, from $565 million to $577 million; while a large absolute number, $12 million is still only 2% over 4 years – well below the inflation rate. So, at most, the Union through the Romero tables, proved that the County's projected flat to slightly negative growth is "prudent" given its own (AFSCME) internal economic forecasting.[97]

It is timely to consider together both the Romero tables and the Union's argument that the DTRFs can be used to fund the Union's economic proposals. The Union and Mr. Romero

[95] Tr. 7/19/19, at p. 84:10-13. The questioning of Mr. Romero on the tables in U. Ex. 31 begins on p. 81.

[96] Tr. 7/19/19, at p. 84-85. (emphasis added).

[97] Also compare total revenue growth versus total expenditure growth between Tables A and B of Union Exhibit 31. Total revenues grow from $565 million in 2014 to a projected $566 million in 2020. At the same time, total expenditures grow from$506 million in 2014 to $566 million in 2020. So, over the course of 7 years, revenues grow just $1 million, while expenditures grow by a whopping $60 million.

attempted to use the "Unrestricted Fund Balance" row – the bottom row of Table A of Exhibit 31 – to demonstrate that the County has, as of FY 2018, a $158 million surplus that can withstand the exorbitant economic increases (over $86,000 per member over 3 years). Yet, as Mr. Romero conceded under oath at the hearing, without the infusion of non-recurrent $395 million of Great Recession-related DTRF funds between 2014 and 2018,[98] the County would have likely had a negative fund balance of over $70 million, instead of the positive $158 million.[99] This underscores the tenuousness of the County's current fund balance and the need to preserve – if not expand – the wage, healthcare, and pension reforms of 2015.

It is a central premise of the Union that the County's general fund balance is fat. To this end, across the top of page 6 of Union Exhibit 43, the Union's labor economist, Mr. Romero, typed in "Fund Balance Exceeds The Highest Standards". The standard established by the Union's labor economist - who is neither an economist, nor an accountant,[100] but rather a lawyer who has never been in government nor ever prepared a governmental budget[101] - for Wayne County's general fund balance exceeding "the highest standards" is a threshold number of 17%, which he took from reading a self-selected excerpt in an internet article published by the Government Finance Officers Association's website[102] entitled "Fund Balance Guidelines for the General Fund." His excerpt states:

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[98] Tr. 7/19/19, at pp. 93:5-94:13.

[99] And as the County's DTRF exhibit, Bk. A Ex. 9: Delinquent County Tax Transfers to General Fund, demonstrates, absent a preceding economic catastrophe, the DTRF payments will *never* generate nearly $400 million over four years again; especially with the reforms instituted to protect homeowners such as payment plans and reduced statutory interest.

[100] See Tr. 7/19/19, at p. 62 for Mr. Romero's background.

[101] See Tr. 7/19/19, at pp. 122:11-16 for lack of budget or governmental experience.

[102] U. Ex. 56: Government Finance Officers Association – Fund Balance Guidelines, at p. 2.

Nevertheless, GFOA recommends, ***at a minimum***, that general purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of ***no less than two months*** of regular general fund operating revenues or regular general fund operating expenditures.[103] (emphasis added).

The "nevertheless" is emphasized because it stands as a "nevertheless" right after the GFOA author(s) wrote that governments like Wayne County "should take into account each government's own unique circumstances" – such as its recent State-declared "financial emergency"; its recent status as a "junk bond" resident among rating agencies; its inability to raise revenues through income taxes like 22 Michigan cities; its failure to have to a constitutional guarantee to state revenue sharing; and its overdependence on property taxes in a community that is declining, not growing.[104] Nor does the Union focus on that its claimed threshold is, at best, a "minimum" or a "no less than" number that qualifies, at most, as the absolute floor and red flag for danger if one's municipality was at or below the 17% or 2- month threshold.

Asked to explain on July 24th what the accumulated fund balance of $173.8 million

[103] See Tr. 7/19/19, at p. 20:14-19 where Mr. Romero adopts this GFOA excerpt as his threshold. And see Tr. 7/19/19, at pp. 17-20, where Mr. Romero explains how he determined percentage threshold for his power point claim that Wayne County's general fund "exceeds the highest standards."

[104] See elsewhere on the same page 2 where the author cautions governments to consider the fund balance's "potential impact on the entity's bond ratings and the corresponding increased cost of borrowed funds". U. Ex. 56: Government Finance Officers Association – Fund Balance Guidelines, at p. 2. All the proofs put forth by both sides regarding agency ratings show that all three ratings agencies are watching the Wayne County general fund balance for further growth. Consider this comment from Fitch on the County's "Structural Balance":

Restored reserves and achievement of structural balance ***have been instrumental*** in credit quality improvement. ***Any reversal of such progress*** could put downward pressure on the rating.

Bk. A Ex. 35: "Fitch affirms Wayne County, MI's IDR at 'BBB-'; Outlook Stable", at p. 2. Under "Ratings Sensitivities".

means going forward, CFO Dube responded:

> It means that going forward we know we have to be *very, very diligent* in looking at our structural budget year to year. That *there is not a lot of room to absorb one-time costs*.[105]

Asked to explain this statement, Dube gave a number of anecdotes that illustrate and provide some insight into the problems of a county that has endured tremendous economic difficulties over the past decade:

- "…So there's a dozen elevators that are completely out (of service in the Guardian Building which is the County's headquarters)"
- "…We had an issue where a judge was riding and down the elevators at the courthouse with inmates who were going to court cases because the elevators (in a different building) were down."
- "We have issues at the health administration building…The MEO's (medical examiner) office has water going into their body storage area. They're having issues with keeping the cooler functioning…".[106]

Putting numbers to those anecdotes, the County entered a worksheet that Mr. Dube prepared to graphically show the demands on that $173.8 million:

[105] Tr. 7/24/19, at pp. 62:19-21.

[106] See generally Tr. 7/24/19, at pp. 62-64.

Wayne County
General Fund Fund Balance Analysis
Fiscal Year Ended 09/30/2018
($ in millions)

			% Rev	% Exp
$	173.8	GF Fund Balance	28.7%	28.7%
	(20.2)	Court Fund Balance		
	(23.0)	Budget Stabilization Fund		
	(2.8)	Inventory		
	(12.6)	Restricted		
	(12.0)	Assigned		
$	103.2		17.0%	17.1%
	(20.0)	Capital Expenditure		
$	83.20		13.7%	13.8%
	-260.4	Pension to 80%		
	-136.9	OPEB to 80%		
$	(314.10)		-51.8%	-51.9% [107]

This exhibit and Dube's testimony[108] demonstrate how quickly the County's fund balance drops below the Union's "threshold" of 17%. As the exhibit shows, the fund balance is shaved to 17% ***even before*** capital expenditures[109] are considered or increases in pension funding are added to shore up the stability of the WCERS pension fund. The exhibit does not include one of CEO Evan's workers' equity goals (in addition to shoring up the pension) to get every Wayne County employee up to a wage scale of $15 per hour: "we're trying to get to 15 dollars an hour for all County employees." [110]

Nor does Exhibit A 23 begin to capture other contingencies that may pop up and for

[107] Bk. A Ex. 23: Dube Fund Balance Worksheet.

[108] See generally Tr. 7/24/19, at pp. 66-71.

[109] Both Mr. Romero, Tr. 7/19/19, at pp. 115, and Hugh Macdonald acknowledged the likely depleted state of the Counties physical facilities. In fact, Macdonald was more descriptive and graphic that CFO Dube: "I do know the County's building division has been almost gutted. So they couldn't do any improvements and probably not even maintenance." Tr. 7/26/19, at p. 191:17-19.

[110] Tr. 8/7/19, at p. 11:1-3.

which the County needs to keep funds on hand, especially for capital expenditures:

- The Criminal Justice Center: "…as we enter more and more construction progress we're going to have more demand for capital expenditures related to the CJC. Somebody's going to find something that was missed…we're going to have to cover some portion of that construction cost".[111]
- In response to a question from Mr. Akhtar on August 9th, Dube gave the possible magnitude of these unknown costs of the Criminal Justice Center, explaining these costs "could be a couple of hundred million dollars that we have to come up with." [112]
- In the same response, Dube put a financial number on the ultimate need to refurbish the county's main office building: "Guardian Building on First Street, I believe that we're about 50 million or so in capital needs." [113]
- And these needs go beyond just buildings: "…we're at tens of millions of dollars county-wide, much of it having to come from the general fund to find replacements of equipment, replacements of facilities because now they're – they are to the point where they are failing." [114]

Aside from pension fund needs and its impact on the County's general fund balance, which will be addressed below, it is important to consider the County's fiscal year (October 1st through September 31st) when evaluating the County's general fund balance. Mr. Blann, who is a member of GFOA, and one of the persons who assisted in drafting U. Ex. 56: Government

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[111] Tr. 7/24/19, at p. 73:20-25.

[112] Tr. 8/9/19, at p. 49:1-5.

[113] *Id.*

[114] Tr. 7/24/19, at p. 66: 11-14.

Finance Officers Association – Fund Balance Guidelines,[115] explained that one of the reasons he suggests a 50% general fund balance for Wayne County is how its calendar impacts liquidity and cash flow:

> ...for Wayne County better than 50 percent of the general fund revenue comes from property taxes. Well, when are property taxes levied in Michigan? July. July is 9 months into the fiscal year…And so Wayne County in particular…has at least three-quarters and maybe more than three-quarters of the fiscal year to get through without collecting a very significant piece of its budget revenue stream.[116]

So a healthy fund balance is required "because you need to be able to spend that during the early part of the fiscal year until the tax revenue comes in to make you whole."[117]

Finally, while not much time was devoted to some of the other mundane nuts-and-bolts costs of municipal government at the hearing, the Panel should note the uncertainty of other funding sources that the County relies on – perhaps not the magnitude of property taxes, but still important to the County's balance sheet – such as federal grants which were $26 million in 2014, $25 million in 2018, and may now fall to as low as $5 million in 2020.[118] Or, consider another Union exhibit, U. Ex. 62: Fitch PowerPoint, August 8, 2019, that shows general fund "transfers out" escalating through no fault of the County: debt service expenditures increasing from $6.4 million in 2014 to $27.6 million in 2018; indigent health expenditures increasing from $6.4 million to $14.8 million in 2018; and as noted earlier, but shown in practical terms, capital expenditures to address decade-long-deferred maintenance growing from $0 to $33.6 million

[115] "In fact, that particular best practice document, fund balance guidelines for the general fund, is one that I helped to draft and update over the years while serving on the CAFR committee for GFOA." Tr. 7/24/19, at p. 156:20-25.

[116] Tr. 7/24/19, at p. 158:2-22.

[117] Tr. 7/24/19, at p. 66: 11-14.

[118] U. Ex. 31: Tables prepared by Juan Romero, Tables A and B, pp. 1-2.

between 2014 and 2018.[119]

C. The County's Slightly Different Treatment of POAM and the Government Bar Association Was Driven by Identifiable Operational Needs.

1. POAM.

The Union argues the County's differential treatment of POAM proves the County's ability-to-pay can afford the Union's exorbitant economic proposal (which, incidentally seeks higher wage, healthcare, and retirement benefits than POAM received in the past, or has negotiated for in its current TA'd contract, which is awaiting approval by the County Commission). So the Union argument goes, the County has favored POAM over Local 3317 in three ways: (1) a wage increase in 2015; (2) a sick pay provision that is better than the CET status quo provision governing Local 3317's sick pay; and (3) the ability of more senior POAM members to become eligible for retiree healthcare stipends if those members had 20 years' county service before October 1, 2017, as opposed to October 1, 2015, which was the CET provision for Local 3317 and every other union (which negotiated such provisions). But that differential treatment was driven by both operational and financial cost-cutting considerations unique to the POAM bargaining unit.

The rationale for this differing treatment is fourfold: *First*, unlike the other 11 unions, in 2015 POAM was not required to bargain with the County after the execution of the Consent Agreement with the State on August 21, 2015 because POAM's contract ran through October 1, 2016. As Labor Relations Director Martinico testified when POAM agreed to a new contract in 2015 (when it had no obligation to do so), where POAM agreed to new terms and conditions on healthcare, retiree healthcare, and pensions, POAM saved the County millions of dollars in that

[119] U. Ex. 62: Fitch PowerPoint, August 8, 2019, at p. 8.

new 2015-2016 fiscal year.[120] So the County received millions of dollars in benefits costs saving in exchange for the POAM wage increase. (POAM also received a 2.5% wage increase in 2018, but that was part of a new contract extension.) In contrast, even though Local 3317's contract was expired in 2014, it refused to bargain in good faith, and in contrast to every other union, never reached an agreement with the County.

Second, and equally important reason for the wage increase was the severe recruitment and retention issues within POAM, which continue through today. As Mr. Haney testified, "(w)ell, POAM right now there's approximately 200 or 200 and change open positions…"[121] Consequently, "a lot of the time we are not hitting the consent agreement, consent order (on staffing)." [122] There is no such vacancy issue in Local 3317, as the openings never surpass one or two out of 100 members.[123] Thus the wage increase acted as an incentive for persons to hire into POAM. And the wage increase acts as a recognition that POAM "came to the table" when it did not have to, recognizing the savings the County recorded as a result of that early negotiation, and acts to make POAM more attractive to job candidates.

Third, but in the same manner, retention of senior officers to stem or reduce potential openings in the POAM unit motivated the County to offer an extended period, first from 2015 to 2017, and then to 2018, for senior POAM members to keep or become eligible for retirement healthcare stipends. As Mr. Wilson testified (as a witness reflecting on his prior time as labor relations director), the County feared the retirement of senior POAM members would create a

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[120] Tr. 8/9/19 73:23-74:05.

[121] Tr. 8/16/19 34:23-35:5.

[122] *Id*.

[123] Tr. 8/16/19 24:3-5.

greater vacancy issue. This provision – and increased wages – act as retention tools to ensure the circumstance of 200 vacancies among frontline deputies in the Jail does not become even worse through retirement of the most experienced deputies.

Fourth, the sick pay differential is driven by both retention (by making conditions incrementally better) and, more importantly, cost savings. Mr. Martinico testified that a reason for the sick pay differential "was to create an incentive, a greater incentive in the POAM bargaining unit for people…not to use their sick leave."[124] This policy seeks to alleviate jail overtime: if a deputy is working a shift on straight time, that cost less than paying another deputy overtime to work for a sick colleague.

2. Retention of Government Bar Association Assistant Prosecutors.

One of the Union's arguments is that if the County can afford to enter into a Memorandum of Agreement[125] ("MOA") with the Government Bar Association and the Wayne County Prosecutor for an additional $1.5 million for longevity, merit pay and new positions, then the County has the ability to pay the Union its economic proposals which give each 3317 member an additional $86,000 over the coming three years. This argument by the Union is, again, misplaced.

Unlike Local 3317, the Prosecutor's Office has undergone a severe, decade-long exit of both junior and senior prosecutors, leading to a recurrent recruitment and retention problem which could threaten public safety. (Again, there are no or few vacancies in Local 3317 positions). Prosecutor Worthy's presentation to the Wayne County Commission on August 15,

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[124] Tr. 8/21/19 21:7-18.

[125] U. Ex. 42: January 23, 2019 Memorandum of Agreement.

2019,[126] makes painfully clear the travails of her office, which handles 44% of all the felony trials and 53% of all the capital felony trials in the State, related to finances:

1. Starting assistant prosecutors start at $10,000 less than their counterparts in other urban county offices;
2. Experienced (7-year) Wayne County assistant prosecutors earn up to less than $20,000 than their peers;
3. Over 80 attorneys have left in the past four years; over 55 have left in the past 2 years, out of an attorney staff of 140;
4. 43% of the assistant prosecutors have less than 2 years with the office; and,
5. 60% of the assistant prosecutors have been with the office for less than 5 years.[127]

Prosecutor Worthy's presentation outlines a text-book case for increased financing to address recruitment and retention issues that are specific to her office – and do not extend to Local 3317's workplace.[128] As Budget Director Haney pointed out, the agreement was needed to stop the Wayne County Prosecutor's Office from remaining the training ground for every other prosecutor's office.[129] In contrast, there is (1) no recruitment problem in Local 3317; (2) no retention problem in Local 3317; and (3) the MOA is only a one-time, one fiscal year infusion, in contrast to Local 3317's longevity proposal that seeks more money per year – and over three years – for jail sergeants, rather than prosecutors.

VI. PENSIONS AND THE ABILITY TO PAY.

As a prologue here it is important to make a simple point: that after four years of undeniably successful work on increasing the County's pension's funded ratio, that pension plan is still 10 percent behind the funded ratios of Detroit pensions plans before Detroit entered

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[126] Bk. A Ex. 42: Budget Presentation, 8/15/2019, Kym L. Worthy, Wayne County Prosecutor.

[127] *Id*.

[128] See also Mr. Martinico's testimony, Tr. 8/9/19, 50: 9-11.

[129] Tr. 8/16/19, at p. 16.

bankruptcy. And this is funding ratio deficiency still exists, despite a booming economy. That alone should be cause for grave concern about diverting any dollars to the Union's economic demands.

CEO Evans and the county leadership have set a goal of funding WCERS to, at least, an 80% funded ratio status. Interestingly, the Union included a number of Mr. Evans's State of the County presentations in its exhibit list where Mr. Evans reaffirms this goal. Toward that end, the County has made financial sacrifices, where it can, to contribute more than legally required to the WCERS plan. As the Union's Exhibit 43, "Schedule of County Contributions",[130] illustrates in FY 2018 the County not only paid it WCERS-set ARC payment of $55,082,405, but also an additional $84,771,698 from both county surplus and the sale of county assets, for a total contribution of $139,854,103. That $139 million is equal to roughly 1/3 of the $577,410,177 in general fund revenues the County received that year.[131] Even looking at the ARC requirement of $55 million alone, that ARC-alone number represents over 10% of the County's general fund budget. That ARC payment of $55 million is effectively a "pension tax" on the County's payroll equal to, according to the most recent WCERS annual valuation report, 52.99% of county payroll.[132] (This pension tax on County payroll was 0.00% in 2001 and just 3.14% in 2002[133]). The Union's own ability-to-pay expert Mr. Mcdonald readily acknowledged the loosely-linked-dichotomy between wages and pension payments -- that today's high ARC payments impact the County's ability to pay wages.[134]

[130] Bk. A. Ex. 42: WCERS – Schedule of County Contributions.
[131] U. Ex. 31: Union Table A, at p. 1.
[132] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-4.
[133] Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, A-4.
[134] Tr. 7/2619, at pp. 186:23-187:8.

So even if the status quo remains, and the "tax" is reduced in this year, FY 2020, to *only* 47.66%, that amount remains an incredibly high tax on the County's payroll and general fund. Yet, if the economy turns, as both of the Union experts Romero and McDonald predicted, then the WCERS's investment income is likely to decrease – and likely to lead to the WCERS board requiring a higher ARC payment from the County. And that will come at a time when the County's own revenues are likely to be falling. As a result, the "pension tax" is likely to increase as the County's general fund is less funded and less resilient.

So, it is imperative for both the County's general fund balance and the solubility of the WCERS pension plan to pursue funding options that over time protect the funding source (the County) and the pension plan. To that end, CEO Evans and the County have pursued a public goal and practice of seeking to fund the WCERS to an 80% funded ratio status, which as CFO Dube explained, over time creates the ability, with ordinary ARC payments, to "self-fund" WCERS to 100% funded status:

> The reason for an 80 percent funding mechanism or level of funding is at 80 % the continued contributions of ARC should be enough, at least conceptually, to continue to grow the funds' assets. And so the fund would – without additional above-the-ARC contributions should be able to self-fund itself through – with just the ARC be able to get to 100 percent level of funding over time.[135]

Not coincidentally, the County's goal fits with AFSCME's/Local 3317 own statement of what constitutes a healthy pension – 80% funded status. Apparently, even a large portion of Local 3317 members understand its exorbitant wage and other proposals potentially threaten (through reduced funding) their WCERs pensions, as this exchange between the Chair and Union Vice President Lt. Erick McDonald demonstrates:

MR. GRAVELLE: What he's asking, if I may, is today, are your members generally, to

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[135] Tr. 7/24/19, at p. 57:15-24.

the best of your knowledge, more concerned about wage increases or pension protection?

THE WITNESS: I would say that right at this point - - you know, at one point back in '15 or '14 when we had this vote - -

MR. GRAVELLE: I mean just right now.

THE WITNESS: It was huge one way. *Now it's about 50/50* I would say, maybe, yeah.[136]

And the actuary for WCERS board that oversees the pensions of the members of Local 3317 gave this "Recommendation and Conclusion" last September:

As shown on page A-5, the Plan has gone from being 44% funded in 2013 to 62% funded in 2018. The accelerated funding policy adopted by the Board ***and the additional contributions by the County this year were important factors in this remarkable increase***…(we) ***recommend the County continue to contribute more than the calculated rate if they have the ability to do so***…Since the actuarially compute rate and dollar minimum is dropping this year, and the plan is still only 62% funded, the Board could consider the option of maintaining the contributions at the level in effect for Fiscal 2019. (emphasis added).[137]

This recommendation from the fiduciary for the Union's members' pension is but another weighty and practical reason to find the County does not have the ability-to-pay the Union's unprecedented economic demands. Wayne County has prioritized and will continue to prioritize proper funding of WCERS because it is both a moral and business imperative.

VII. COMPARABILITY.

Act 312 provides that the Panel consider the "comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services in comparable communities," i.e., external comparables, (see MCL 423.239(1)(d)) as well as "comparison of the wages, hours, and

[136] Tr. 7/21/19, at p. 48: 1-13.

[137] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, A-12.

conditions of employment of other employees of the unit of government outside of the bargaining unit in question," i.e., internal comparables. MCL 423. 239(1)(e).

The County submits that several points are of paramount importance in the comparability analysis. *First*, the plain language of the statute is that the employees are "performing similar services" within other communities. MCL 423.239(1)(d). The record evidence (exhibits and testimony) established that a substantial majority of the members in Local 3317 hold supervisory corrections-officer positions, and not traditional "fresh air" police officers who patrol streets and arrest or ticket individuals, where the training, skill sets and work place environment are much different from that corrections officer. Thus, many of the Union's proposed comparables, such as Dearborn and Livonia, are with bargaining units that do not "perform similar services." As shown in the wage analysis,[138] 85% of the wages earned by the members of Local 3317 are in the various Wayne County Jail division, or court services, rather than in the "fresh air" positions of traditional police work. *Second*, the Union's proposed comparables are simply wealthier than Wayne County and have entirely different and more reliable revenue sources, and face much less severe economic challenges than Wayne County. *Third*, the Union never attempted to rebut in any meaningful fashion the significance of the County's extensive evidence of internal comparable contracts.

<u>A. External Comparables</u>.

Patricia's Becker's Second Report, *Comparability Analysis for Wayne County*,[139] demonstrates that the Union comparables of Dearborn, Livonia, and Oakland County are not comparable at all. The report establishes that Wayne County is simply much less affluent than

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[138] Bk. A Ex. 43.

[139] Bk. B Ex. 1.

Oakland County, and Livonia, and Dearborn. For example, the assessed value per 10,000 residents of Wayne County is thousands of dollars below any of those three municipalities. Wayne County's median household income is the lowest of the group; and its unemployment rate is much higher than the other comparables. Ms. Becker also testified about unique features of each of those municipalities which help set them apart (favorably) from Wayne County, such as Dearborn possessing a unique industrial tax base that feeds its tax base higher.[140]

Ms. Becker testified that she believed that the best comparables for Wayne County were other large counties, like Wayne County, that have lost substantial population, such as Cuyahoga and Milwaukee.[141] She further testified that because the function of a County (and its county law enforcement arm) is very different that the function of a local municipality such as a city or township, and so cities such as Dearborn and Livonia are not appropriate comparables.[142] She testified that, in general, the primary function of most counties (and their sheriff departments) is criminal justice and corrections; in particular, the courts and jails.[143] She testified that Cuyahoga and Milwaukee Counties were appropriate comparables, precisely because they were large counties that had similar demographic and economic circumstances as Wayne County.[144]

She testified that she does not believe that Oakland County is an appropriate comparable for a number of reasons.[145] Oakland has actually grown in its population by 37%.[146] Its housing

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[140] Tr. 8/7/19, at p. 73.

[141] Tr. 8/7/19, at p. 62.

[142] Tr. 8/7/19, at pp. 61-62.

[143] Tr. 8/7/19, at p. 63.

[144] Tr. 8/7/19, at pp. 60, 63.

[145] Tr. 8/7/19, at p. 63.

[146] *Id*.

units have doubled while Wayne has shrunk by 6%.[147] The median income in Oakland is substantially higher,[148] and the percentage of the population in poverty is much lower in Oakland County than in Wayne County.[149] Unemployment in Oakland is also much lower.[150] Thus the basic demographic and economic differences between the two counties are such that they are entirely incomparable in Ms. Becker's expert and uncontroverted opinion.[151]

Dearborn and Livonia are also not appropriate comparables in Ms. Becker's expert opinion She testified that while the budgets of counties are typically driven by corrections, i.e. jails, the budgets of cities are usually largely focused on police protection.[152] Additionally, she added that Dearborn has a much higher SEV (state equalized value) tax base because of its large industrial base near the Southfield Freeway.[153] Livonia also has a much higher median income than Wayne County as a whole. They are both much smaller than Wayne County as well.[154] Due to the fact that they are demographically and economically different, much smaller, and functionally different, she testified they are simply not comparable for purposes of Act 312.[155]

Amber Hunt, the CFO of the Wayne County Airport Authority gave testimony that precludes the use of the Authority as an appropriate comparable for Wayne County. She first

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[147] Tr. 8/7/19, at p. 65.

[148] *Id*.

[149] Tr. 8/7/19, at p. 66.

[150] *Id*.

[151] Tr. 8/7/19, at pp. 69, 73.

[152] *Id*.

[153] Tr. 8/7/19, at p. 73.

[154] Tr. 8/7/19, at p. 77.

[155] Tr. 8/7/19, at p. 71-77.

testified that the Authority is not a department of the County in any way and is a separate and distinct corporate government entity created by Act 90 of 2002, MCL 259.108-259.125.[156] The most striking difference is its functional difference – it's an airport rather than a County, and is much smaller than Wayne County. But beyond that obvious and important fact, the Authority's revenue structure and base is as different from a County as it possibly could be. Ms. Hunt testified that by virtue of its contractual arrangements with the airlines*, it cannot run a deficit*.[157] If there are cost overruns, the Authority passes it on to the airlines. If there is a surplus, that is returned to the airlines as well. Thus, it has not had to face the very real and difficult economic difficulties that the County of Wayne does. Simply put, it is useless as a comparable not only because it is an Airport, but because its revenue structure bears no resemblance to that of a County.

Drew Van De Grift, an assistant Wayne County Corporate Counsel, prepared an extensive analysis of the overall wage and benefit packages offered by the County and the proposed comparables.[158] Prior to working at the County, Mr. Van De Grif worked at the Michigan Department of Treasury Bureau of Local Government Service, Office of Fiscal Responsibility,[159] where he worked to reform troubled municipalities and pension systems.[160] The analysis he prepared is based on a review of the relevant collective bargaining provisions, direct interviews with employees at the various communities, and publicly-available data regarding the pension

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[156] Tr. 8/7/19, at p. 99-100.

[157] Tr. 8/7/19, at p. 102.

[158] Bk. B Ex. 4.

[159] Tr. 8/7/19, at p. 125.

[160] *Id*.

contributions and funding levels of the various municipalities involved.[161] While his analysis is comprehensive enough to compare various benefits, its' most important feature is that it compares the total cost of the wages and benefits of the various communities in total.[162] He noted that his totals do not include either the cost of medical insurance or OPEB liability, both of which would, if included, make the total cost to the County (per employee) substantially higher than his exhibits show (because of the relatively richer Wayne County medical insurance program and the severity of Wayne County's OPEB liability).[163] While the charts speak for themselves, regardless of whether one compares Sergeants, or Lieutenants, in any applicable year, Wayne County is always near the very top of the total compensation costs for any of the considered communities. This is true despite its ongoing financial woes, i.e., need to more fully fund its general fund balance and pension system, from a property tax and revenue base that is demographically challenged.

He also testified that Wayne County's pension situation was very much like Benton Harbor and Flint, other communities who have been under PA 436 emergency management. He noted that the communities of Dearborn, Livonia and Oakland County are dissimilar to Wayne in that their required pension contributions are significantly below that of Wayne County.[164] Thus to give the Union the substantial wage increases, unprecedented longevity bonuses, or costly pension increase it seeks would make the County even more of an outlier, paying the most

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[161] Tr. 8/7/19, at p. 127.

[162] Tr. 8/7/19, at p. 136.

[163] Tr. 8/7/19, at p. 172.

[164] Tr. 8/7/19, at p. 154.

among all the arguable comparables, despite its severe financial challenges.[165]

The Union called Ms. Nancy Ciccione as a witness on comparability. Although a polished witness with technical expertise regarding the design of compensation packages, her ultimate analysis and conclusions are virtually worthless for a number of reasons. First, she admitted under cross-examination that she had no input to the Union's comparables.[166] She testifies that she "was given the list."[167] This alone renders her testimony as less than useful. She testified that in the majority of her presentations she is consulted on what communities would be appropriate comparables, but in this instance, she was not.[168]

For example, even though the record evidence showed that a significant majority of the bargaining unit function as supervisory *corrections* officers, she did not use supervisory corrections officers as comparables.[169] For example, she used Michigan State Troopers ("MSP") instead of State of Michigan Department of Corrections ("MDOC") officers as "comparable," despite the fact that the great majority of the members of Local 3317 work in a jail environment and do work that is much more similar to a MDOC sergeants, than MSP troopers. She admitted that the work of corrections officers is different than the work of police officers.[170] This necessarily lessens the usefulness of the Union's comparables of the Dearborn Police Department and the Livonia Police Department for the same reason – the supervisors in those departments

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[165] Bk. B Ex. 4A.

[166] Tr. 7/26/19, at p. 62.

[167] *Id*.

[168] Tr. 7/26/19, at p. 109; see also Bk. A Ex. 43, Local 3317 wage analysis.

[169] Tr. 7/26/19, at p. 64.

[170] Tr. 7/26/19, at p. 64: "they are differing."

engage in "police work" rather than "correctional" work in jails.[171] Thus, the first two flaws of her analysis are that (a) the Union has "cherry picked" proposed comparables and (b) she has ignored that the substantial majority of the members of Local 3317 function are in corrections, not in "fresh air" police work. Put differently, she began her analysis using the wrong employees from the wrong communities.

Next, her criticism of the wages and benefits of Wayne County employees is dependent upon a comparison to the wages and benefits of employees in the third *wealthiest* county in the nation, Oakland County. She simply ignores the vast difference in demographic and economic circumstances between the two Counties.

Thus, the County proved at hearing by exhibits and testimony overall economic package it presented in its Last Best Offers is the most appropriate when considering the factor of external comparables. It further proved that its total compensation compares favorably with employees actually doing "similar work" in actual "comparable communities."[172]

B. Internal Comparables.

The next factor for the Panel to consider is a "comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question," i.e., internal comparables. MCL 423.239(1)(e)

The County entered into evidence the Collective Bargaining Agreements ("CBAs") and contractual extensions it has reached with every other collective bargaining unit is Wayne County. Each and every one of these negotiated and incumbent agreements contains the *identical* pensions and healthcare terms that the County seeks to continue with this unit. This

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[171] Tr. 7/26/19, at p. 63.
[172] Bk. B Ex. 4 and Bk. B Ex. 4A.

internal consistency is especially important in light of the County's Economic Recovery Plan (and workplace harmony). If it is ultimately to be successful, the Plan requires some measure of continued financial austerity (although, the County's wage proposals are fairly generous given the current interest environment) on the part of the County and a shared sacrifice from all employees. This was the agreed upon and stated principle of the Plan; and the County, to its credit, has followed it with great fidelity, (as have to their equal credit, the other unionized bargaining units) allowing for only minor differences when demonstrably necessary. It is not an overstatement to say that to exempt Local 3317 from these provisions simply because they have pursued a strategy of litigation and recalcitrance could be the undoing of the Plan.

As was established at hearing, the County was able to reach agreement with every other union it dealt with in the 2015 negotiations other than Local 3317. The County entered into evidence the series of Collective Bargaining agreement signed with all its other bargaining units, as well as a series of subsequently negotiated new contracts with many of those unions.[173]

Mr. Martinico testified that the changes that resulted from the 2015 negotiations to pensions and healthcare are a necessary component of the County's Economic Recovery Plan.[174] The first contract including the wage (i.e. wage, overtime, holiday, and sick time), healthcare and pension reform provisions introduced into evidence was the result of bargaining with the County's largest union, AFSCME Local Council 25.[175] The negotiated changes included a change in active employees' healthcare to a high deductible health care plan. The contract included also changes to the pension plan, including a change in the pension multiplier and

[173] Bk. C Ex. 1 through Ex. 19.

[174] Tr. 8/16/19, at p. 7.

[175] Bk. C Ex.14; Tr. 8/16/19, at p. 7.

changes in AFC calculations. These changes were then accepted by all other units within the County, and have since been extended in additional extensions or entirely new contracts the County has reached with six of its unions.[176] These changes were the result of long hours of negotiations and drafting work between the prior County labor relations director negotiated and union representative Richard Johnson.[177]

The Union did not respond in any meaningful fashion to the County's evidence with respect to internal comparables. For instance, it pointed out that the POAM received a two-year extension (from 2015 to 2017) of the retiree healthcare stipend language but did not address the testimony that that extension was a concession to POAM because it had an open contract and could have otherwise lawfully refused to negotiate. Moreover, it failed to give the Panel any principled reason that the Chair should not adopt the Last Best Offers of the County with respect to healthcare and pensions as they conform with all the other bargaining units in the County.

Through the exhibits and testimony presented by both sides clearly establishes s that the Section 9's required "comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question," i.e., internal comparables, favors adoption of the County's economic and non-economic proposals. MCL 423.239(1)(e).

VIII. ISSUES IN DISPUTE.

The following is a summation of the testimony and evidence presented regarding the issues in dispute.

A. Economic Proposals/Last Best Offers.

[176] Tr. 8/16/19, at p. 20.

[177] Tr. 8/16/19, at p. 18.

1. Wages Including Longevity.

The wages proposals submitted were just the beginning of the Union's "Pie in the Sky" approach to this hearing. The Union proposes pay increases of 7% for 2019, 7% for 2020, and 7% for 2021. The financial impact of these requests is best illustrated by the costing analysis provided by Kevin Haney.[178] It sets forth that the economic demands from this unit alone with cost the county roughly an additional $8.6 million. That is roughly (using 100 members) $86,000 *per member* of the bargaining unit in additional costs to the County.[179]

No external comparable community is providing 21% pay raises to its officers over the next three years. Nor is any comparable community giving any of its officers over $86,000 in compensation increases over the next 3 years. No internal comparable is receiving 21% in pay raises over the next three years. The Union failed to present evidence of any bargaining unit within Wayne County that is receiving anything near 21% over three years. These increases are exponentially larger than any increases that any internal comparable union has achieved at the table with Wayne County.

The County has proposed wage increases of 5 % in 2019, 5 % in 2020, and 3% in 2021. The County's proposal is equitable and fair, with regard to its ability to pay, the external comparables, and the raises given to other units within the County. The County submits that based on an examination of the data pertaining to both internal and external comparables as well as the ability-to-pay evidence presented, the Chair should adopt the County's Last Best Offer as the more appropriate proposal.

Local 3317's position on longevity really lays its negotiation strategy bare. It is simply

[178] Bk. A. Ex. 39, Tr. 8/16/19, at p. 32.

[179] *Id*.

unmitigated greed without consideration of its fellow employees at the County, the unprecedented nature of such extensive bonuses, the precarious finances of the County, the vulnerability of Local 3317's members' pensions, or economic reality. The core of the Union's proposal is a $6,000 dollars per year for each of the three years of the contract for every sergeant with 5 years in grade; $7,000 dollars per year for each of the three years of the contract for every lieutenant with 5 years in grade; and $8,000 dollars per year for each of the three years of the contract for every captain with five years in grade. The County has proposed a one-time $1,000 bonus for all members in its wage proposal.

Simply put, there is no precedent within the County for $18,000 - $24,000 per employee longevity bonuses. There is no precedent for $18,000 – 24,0000 longevity bonuses in any of the proffered external comparables. There is no retention and recruitment issue within the bargaining unit. As discussed above, where, as in the case of the assistant prosecutors discussed above, the retention numbers were comparably lower for those lawyers, and were only for one fiscal year. While the Union attempted to show that the prosecutors are receiving retention bonuses, the record is clear that there are no retention problems with Local 3317, as there is with the Prosecutor's office. The Prosecutor made a compelling case for a "one shot" retention bonus while Local 3317 has not. Experienced assistant prosecutors in Wayne County are paid, om average. about $20,000 less than those in other urban counties.This has led to significant retention problems as Wayne County has lost 67 assistant prosecutors from 2015 through 2018, and the Prosecutor estimates she will lose an additional 28 or 29 in 2019 if steps aren't taken to address the problem. [180] Moreover, Mr. Martinico testified that the retention bonus with the

[180] Bk. A Ex. 42.

prosecutors was a one-time payment; Local 3317 seeks longevity bonuses for every year of their contract.

Regardless, the total cost of the union's wage proposal including the longevity component for both Local 3317 and POAM approaches 56 million dollars assuming the Union's pension proposal is rejected by the panel, and about 64 million dollars if it is accepted. Either way such increases cannot be funded by the County when its revenues are projected to increase, on average, approximately 4 million dollars a year over the next five years.[181] Moreover, as pointed out by the County's CFO fund balance guidelines state how, assuming arguendo there is an excess fund balance, which the County denies to be the case, these should not be used to fund recurring and ongoing costs such as the unprecedented wage demands made by the Union herein.

<u>2. Sick Leave</u>.

Mr. Martinico testified to the difference between the union and county proposals on sick leave[182] stating how the County's proposal on Sick Leave is similar to the Union's. However there are several differences two of which are significant (and very costly) : (1) the inclusion of cash payouts of sick leave "banks" in the determination of Average Final Compensation ("AFC") for purposes of calculating retirement benefits for participants in the County's defined benefit pension plans, and (2) the calculation of annual payouts of unused sick time and of bonus annual leave days.[183] Specifically, the differences in the parties' proposals are as follows:

Both the County and the Union have proposed the payout of all remaining accrued and

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[181] U. Ex. 62, Presentation to Fitch Ratings, at p. 26.
[182] Tr. 8/16/19, at p. 144.
[183] Tr. 8/16/19, at p. 144-146.

unused sick leave banks upon an employee's death, retirement or separation from employment. However, the County's proposal is intended to limit the adverse economic impact of sick leave payouts to employees who have large accumulated sick leave banks by excluding these payouts from the calculation of AFC, which significantly inflates the calculation of lifetime defined-benefits . In contrast, the Union's proposal provides that 75% of such payout is included in AFC for payouts occasioned by an employee's retirement. The exclusion of these sick leave payout amounts from AFC has been negotiated with and agreed to *every* other County bargaining unit and is the case for *all* other County employees, without exception, including the POAM.[184] The inclusion/exclusion of these payouts from AFC is also dealt with in the parties' respective proposals on the subject of Retirement. Again, the inclusion of such payouts in calculating AFC, as the Union proposes, would significantly increase the County's funding obligation as to what is still a severely underfunded plan . Regardless, uniformity among all of the County's bargaining units is essential with regard to the determination of AFC and creating a greater benefit for Local 3317 would undoubtedly cause pressure upon all of the County's 11 other bargaining units to obtain parity, at great financial expense to the County and adversely impacting the funding of the retirement plan.

The County has proposed that, for employees hired on or after October 1, 1983 (virtually the entire bargaining unit), accumulated sick leave in excess of 40 days be paid annually to employees at the rate of 50%, which payment may be taken in the form of deferred compensation, at the employee's election.[185] Presently such payments are expressly excluded from AFC calculations. The union has proposed that these payouts be made at the rate of 100%

[184] *Id.* at 145.

[185] Tr. 8/16/19, at p. 144.

(unless the number of days paid out is less than 6, in which case such 5 or fewer days would be paid out at 50%), and that all such payments be included in calculating AFC, again increasing AFC and, as to be expected the County's pension liabilities. The County's proposal is for a maximum payout of 48 hours (6 days) annually, without causing the County to fund increased retirement benefits resulting from the inclusion of these amounts in AFC. Here again the Union's proposal is at variance from the corresponding provision of the POAM agreement, which excludes this payment from the calculation of AFC.[186]

Finally, the County's proposal provides that employees who have utilized three (3) or fewer sick leave days in a calendar year are awarded three (3) additional "bonus" days of annual leave (i.e., 3 additional days off (24 hours) with pay) in the succeeding year. This provision mirrors the corresponding provision in the POAM agreement. However, the union's proposal awards three (3) additional bonus annual leave days to employees who utilize five (5) or fewer sick days in a year. Additionally, the Union's proposal would permit that such "bonus" annual leave days are subject to annual cash payout to employees and that this cash payout is then included in the calculation of AFC for pension purposes. The County proposal, again mirroring the POAM agreement, does not provide for "bonus" annual leave days to be paid out in cash annually or to be included in the determination of AFC if paid out at separation.

There is however, one difference, between the County's proposed language and that in the POAM CBA which provides that accumulated sick leave days exceeding 40 days are paid at 50%, and over 46 days are paid at 100 %; in contrast, the County proposes that all days accumulated in excess of 40 days are paid at 50%. This differential is, as explained above, to

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[186] *Id.* at p. 145.

incentivize POAM members to show up at work – especially given the current POAM vacancies – to avoid the paying overtime. Put differently, it is more cost-effective to incentivizes POAM members to not use sick days, as opposed to pay overtime to fill the time slots of POAM members who call in sick.[187]

The evidence produced at the hearing demonstrates that the County's proposal is more appropriate on its face, and as demonstrated by the internal comparables, the POAM contract, and Mr. Martinico's testimony.

3. Retirement Benefits Proposals.

Before reviewing the two retirement benefits proposals, it is important to recall this portion of the testimony of CFO Dube on Wayne County's financial fall and recovery was that: "a big driver was funding the pension system."[188] In Article 34, the County has proposed a retirement benefits proposal that is consistent with the status quo CET retirement provisions that currently protect the pensions of Local 3317's members' pensions and the pensions of all of Wayne County's thousands of active and retired employees, while allowing the County to move toward a healthy balance sheet that allows it to meet the county governmental needs of its citizens. In contrast, Local 3317 retirement benefit proposals in its Article 38[189] will cost the County millions of dollars, render the County's current wage proposal unaffordable, increase the WCERS defined-pension liability by hundreds of millions of dollars, reduce the funded ratio status of WCERS over 12%, and upend a carefully constructed pension structure negotiated between the County and its 11 other unions in 2015, and in a number of subsequent successor

[187] Tr. 8/16/19, at p.154.
[188] Tr. 7/24/19, at 11:17-20.
[189] U. Ex. 65: Union's Last Best Offer, 7/12/19.

collective bargaining agreements. Accordingly, the Panel should adopt the County's status quo retirement benefits provisions.

A second, noteworthy preliminary point is that none of the other 11 bargaining units that have signed a successor contract (since the 2015 collective bargaining agreements) with the County have the retirement benefit terms sought by Local 3317. Instead, all of those Unions' newly negotiated or successor contracts, which run through 2020 and 2021 have maintained the same pension terms (offered here by the County) as their negotiated 2015 contracts.[190]

The following table captures most of the larger, dramatic changes proposed by the Union from the current status quo that has protected all employees' pensions:

Term or Condition	CET Status Quo/County Offer Article 34*	Local 3317**
Normal Retirement	Age 62, with graduations (chart in LBO) for those who are over 55 years and have over 30 years "service" (not credited service)	25 years***/Age 55 20 years/Age 60 8 years/Age 65
Multiplier(s)	1.25% for all years after 10/1/15	1.5% First 20 years/1.75% all years over 20 year
Average Final Compensation ("AFC") Years	Average of last 10 years	Best 5 out of last 7 years
Average Final Compensation ("AFC factors")	Includes only Base Wage NONE of these are included: overtime, holiday, premium pay, sick leave, or vacation leave bank	Includes all of the following: Base salary and wage overtime premium pay (inc shift differential and special pay) holiday pay
Average Final Compensation ("AFC") Maximum %	75%	60%****
Employee contributions	7% for 1st $52,155 in gross wages 8% for all gross wages after	3%/2% after pension is 100% funded

[190] These successor contracts with the same pension provisions include AFSCME Locals 25, 101, and 409 (Tr. 8/9/19, at p. 38:1-2); Government Administrators Association ("GAA"), GAA general fund supervisors union, GAA nurses' union, and AFSCME's supervisors union (Tr. 8/9/19, at p. 39:9-12); the dieticians and nutritionists union, as well as the Michigan building trades union (Tr. 8/9/19, at pp. 39-40); and a tentative agreement with POAM through 2021, which is before the County Commission for approval. Tr. 8/9/19, at p. 43:10-44:14.

Vesting	10 years of credited service	8 years***

* The figures in this column come from the County's Last Best Offer, under "Article 34 – Retirement", Bk. A Ex. 40: County Last Best Offers of Settlement, with the specific proposals to be found as follows: Normal retirement, 34.1.J; Multiplier, 34.1.E; AFC Years, 34.1.E; AFC Factors, 34.1.E; Employee contributions, 34.2.B; and Vesting, 34.1.J. All of these conditions are also in the CET 2a, Section 34.01 A.-N., pp. 61-63, U. Ex. 77: County Employment Terms (CET), 2a, 9/23/2016.

** The figures in this column come from Local 3317's Last Best Offer, U. Ex. 65: Local 3317 Last Best Offer – Retirement Benefits, under "Article 38-Retirement", in that article's last section entitled, "Transfer Procedures For Sheriff Employees", page 5, under "A. Defined Benefits": Normal retirement, A1; Multiplier, A2; AFC Years, A3; AFC Factors, A3; Employee

***"Years" equals "years of credited service"

**** For AFC-Maximum percentage, see Bk. A Ex. 34: Gabriel Roeder Smith 8/2/2019 Draft Supplemental Actuarial Valuation, at pp. 3-4.

Before reviewing the costs of these proposals, it is helpful to see where Local 3317's proposals came from: their pre-2015 contracts, i.e., the contracts with the types of pension benefits that drove the County into a "financial emergency" and force a Consent Agreement in August of 2015 with the State of Michigan. According to Union Vice-President Erick McDonald, the Local 3317 command officers are primarily in either Plan 5 or Plan 6.[191] The pre-2015, pre-Consent Agreement Plan 5 and Plan 6 benefits outlined in Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, at pp. B-6 through B-9 shows the origin of the Union's proposal: for instance, its Normal Retirement proposal, is on page B-6: the Multiplier(s) numbers come from B-6; and its AFC-Years proposal comes from pages B-8 and B-6.

In an interesting twist, Local 3317's AFC composition or factors proposal – i.e. what

[191] See generally, Lt. McDonald's testimony at Tr. 8/21/19, at pp. 37, 38, 40, 41, and 54.

forms of compensation are considered for AFC – is even richer than the pre-2015 county benefits package (that almost sent the County into bankruptcy), because it now includes now holiday pay, something that was not even considered during the "golden parachute" days of pre-2015 Wayne County.[192]

In short, the Union's retirement benefit proposal seeks to put Wayne County back on the path toward a "financial emergency". In the same way, the Union now seeks a 3% lowered (from the status quo 7%/8%) employee compensation contribution to fund their proposed more generous retirement packages. And to illustrate another financial overreach that would threaten the long-term health of the County, the Union's proposed 3% proposal is even lower than what Local 3317 members were paying before 2015. In 2014, Local 3317 plan 6 members like Lt. McDonald and Sgt. Connell were paying 4.0% in compensation as employee contributions to their pensions. So, the current proposal calls for an even lower employee contribution than was the norm before the financial emergency of 2015 – while making the pension benefits much richer. That is just reckless. The numbers tell the story.

Section 20h(5) of the Public Employee Retirement System Investment Act ("PERSIA"), MCL 38.1140h(5), requires that "(a) system shall provide a supplemental actuarial analysis before adoption of pension benefit changes". In accordance with this provision, the Union sought a supplemental actuarial analysis of its Last Best Offer proposal's retirement proposals, but failed to meet the statutory requirement because it provided only a *draft,*[193] as opposed to a *completed*, actuarial analysis to this Panel.[194] Thus the *draft,* let alone a completed study, clearly

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[192] Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, at pp. B-6 through B-9

[193] Bk. A Ex. 34: Gabriel Roeder Smith 8/2/2019 Draft Supplemental Actuarial Valuation.

[194] Recovery Plan, Wayne County, Michigan, at p. 5; see also: "MR AKHTAR: I'm going to

violates the mandatory language of Section 20h(5) and so the Union's retirement proposal is a legal nullity. As a result, the Panel must choose the incumbent retirement benefit proposals put forth by the County.

But even if the Panel did not follow PERSIA, the Union's own draft actuarial analysis eviscerates the feasibility of the Union's retirement benefits proposal. Through his Exhibit 41[195], and in his testimony[196] on August 21, Mr. Blann outlined the devastating financial consequences of the Union's retirement benefits proposal based on the draft GRS supplemental actuarial report of August 2, 2019[197]. As an initial matter, the Union proposed changes would increase WCERS' (and by extension, the County's) liability by $7,746,194 – just for 86 of the County's 3500 or so employees – which is a 24.3% increase in actuarial liability. (See Table 1). In Table 3, Blann considered the impact of this increased liability on the WCERS defined benefit plan's funded ratio, if the Panel awarded the Union its desired retirement benefits proposal, and those terms were ultimately, through pattern bargaining, obtained by every other bargaining unit. Blann's uncontroverted table and testimony demonstrates that the employees' WCERS defined-benefit plan funded ratio would drop from 63.1% to 50.8%.

This 12% drop would leave the WCERS plan at a funding level over 20% *below* where the Detroit pension plans stood when Detroit went into bankruptcy, and would also, under Act

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object. This is a *draft proposal* that we gave them so they could start studying our pension proposals, and the appropriate time to ask questions about this is when it's introduced as an exhibit by us.") Tr. 8/14/19, at p. 79:21-15; see also "MR AKHTAR: And it's a draft - - it's a draft proposal; it hasn't been finalized yet." Tr. 8/14/19, at p. 80:14-15.

[195] Bk. A Ex. 39: Blann Tables on Proposed (retirement) Changes for Local 3317. Roeder Smith 8/2/2019 Draft Supplemental Actuarial Valuation.

[196] See Blann testimony on Union's pension proposals, Tr. 8/14/19, at pp. 82-99.

[197] Bk. A Ex. 34: Gabriel Roeder Smith 8/2/2019 Draft Supplemental Actuarial Valuation.

202 of 2017, MCL 38.205 *et seq*., trigger the State Treasurer to find that the WCERS defined benefit plan is statutorily underfunded because its "actuarially accrued liability…is less than 60% funded." MCL 38.205.[198] This would erase most of the County's progress over the past four years and, more importantly, inexorably lead to a rating service downgrade of Wayne County debt back down to junk, non-investment grade status.

Even more detrimental would be the immediate impact on the County's general fund and its annual ARC commitment to WCERS. As Mr. Blann's uncontroverted Table 4 demonstrates, the Union's retirement proposal would have a countywide impact of increasing the County's annually determined contribution to WCERS by another $19,283,317, and a total of $388,691,528 over the next 16 years. This would take Wayne County's current "pension tax" (i.e., its pension payment as a percentage of payroll) from 47.66% to 66.46%. This would be over 30% higher than Wayne County has *ever* paid as a percentage of defined benefit payroll.[199]

On August 21, Sergeant Connell testified that Wayne County paid Social Security for all of the officers in Local 3317, which he confirmed was unusual for law enforcement:

Q. Okay. And you understand in the police officer world that's a little bit unusual, correct?
A. Correct.[200]

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[198] While Mr. Blann is not an actuary, and the GRS 8/2/2019 report is a draft, simple math renders the common sense and unavoidable conclusion that, minimally, the Union's changes would certainly drop the WCERS plan under 60% funded.

[199] See for comparison, Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, at p. A-3., and Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, at p. A-4.

[200] Tr. 8/14/19, at pp. 49:12-50:2.

The payment of Social Security taxes for 25 or 30 years is post-retirement-like, pension-like benefit that Local 3317 gets, which is unusual in the police officer world, and in addition to the "golden parachute"-like pension benefits that Mr. McDonald allude to, and Drew Van De Gift testified about on August 7, 2019, (MR. GRAVELLE: You see very substantial pension contributions for all employees")[201] This "extra" pension benefit puts Local 3317 officer at an even greater pension advantage to officers in police departments like Dearborn and the City of Detroit, who do not pay Social Security tax benefits for their police officers.

The Union's retirement benefits proposal, among other things, (1) blows a proverbial hole in the funded ratio status of the WCERS plan; (2) defies the repeated recommendations of the WCERS' actuary – recommendations that Hugh Macdonald agree are "pretty close" to the Ten Commandments[202] – to put more money in WCERS to increase, not decrease, funded ratio; (3) defies the best practices advice of the Treasurer's municipal stability board which advises against any benefits increases until a plan if 100% funded, (4) defies the judgement of its own AFSCME brother and sisters that pensions need to be, at least, 80% funded to be "healthy", and (5) destroy the County's credit rating. For all those reasons, and more, the Panel should adopt the County's status quo proposal on pension benefits.

4. Pension Board Composition- Retirement Board Eligibility

Section 34.13 of the current, status quo CET[203] provides for a reconstituted 10-member

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[201] See generally, Tr. 8/7/19, at pp. 135:5-6; and generally, pp. 127-136; see also Bk. B. Ex. 4a. Drew Van De Gift, Table of 3317 Sergeants and Lieutenants Compensation Packages.

[202] Tr. 7/26/19, at p. 205:15-22.

[203] U. Ex. 77: County Employment Terms (CET), 2a, 9/23/2016, at pp. 71-72., "34.13 Retirement Board Eligibility".

board governing WCERS that, primarily, adds professionals trained in investment and financial planning as members, in attempt to more professionalize the WCERS board. The CET and County proposal[204] call for the following 10 members:

Chair of the County Commission or her designee;

A trustee chosen by the CEO, who is not a plan participant nor a County employee;

The County CEO or his designee;

2 trustees appointed by the CEO, who neither plan participants nor County employees, but "*must be either a licensed or certified professional in investment or finance or…experience in municipal finance*.";

3 members of WCERS who are residents of Wayne County and elected by rules adopted by WCERS;

1 retiree who is a resident of Wayne County, elected by retirees

An additional trustee who is selected by the CEO, subject to approval by a majority vote of the WCERS board, who are neither plan participants nor employees, but who is *"a licensed or certified professional in investment or finance."*

Significantly, the status quo CET and the County's current proposal requires, at least, 30% of the WCERS board to have relevant training in investments, finance, or municipal finance. And equally significant, all other Wayne County unions have agreed to this reconstituted and professionalized board membership in their current CBAs. While the Union made some non-specific, generalized objections to the County's board composition proposal, it only offered only this limited written proposal to request the Panel to deviate from the CET's 10-member board plan:

38.08 Retirement Board Eligibility

Effective the date of execution of this Agreement by the County Executive, if not otherwise prohibited by law, eligibility for election or appointment to a position of

[204] Bk. A Ex. 40: County Last Best Offers of Settlement, Section 34.13, "Changes in Composition of the Wayne County Retirement Commission".

> trustee on the Board of the Wayne County Employees Retirement System will include retired employees of Wayne County who reside within the State of Michigan.

So, apparently, the Union's sole priority is ensuring that a retiree, who resides in Michigan, but not necessarily Wayne County, is on the WCERS board. The CET status quo and County proposal largely achieves this Union goal already.

The traditional pre-2015 8-member, WCERS board consisted of 4 members elected by active employees, 2 members elected by retirees, the County CEO or his designee, and the Chair of the County Commission or her designee.[205] As Mr. Macdonald testified, the 6 members elected by the active members and retirees are generally current or former union presidents or officers – with the exception of one retiree representatives who worked for a former CEO – *as a liaison to unions*.[206] Mr. Macdonald testified he had no formal training in investments,[207] nor is there any evidence that any of the current board members have any experience or training in either investments or finance.

The origin of the idea of a new board composition pre-dates the 2015 financial emergency. The so-called "Block" arbitration panel awarded a new WCERS board composition on October 16, 2013 as part of its award in Michigan Employment Relations Commission, Case No. D12 C-0189, which is Union's Exhibit 52.[208] This award was very similar to the current CET and County proposal, except it consisted of a 9-member board, but it did require that 3 persons, among the nine members, possess a license or certificate in the fields of investment or

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[205] See testimony of Hugh Macdonald, Tr. 7/26/19, at pp. 149-152 and Tr. 8/14/19, at 57-58.

[206] Tr. 7/26/19, at pp. 149-152.

[207] Tr. 7/26/19, at pp. 144:8-10.

[208] U. Ex. 52: Block Panel Act 312 Award, MERC Case No. D12 C-0189, 10/13/2013, at pp. 44-47.

finance.[209] The panel noted the current 8 member board, with 4 active and 2 retired employees, "disadvantages the County, as only one-fourth of the members represent the County, which has the responsibility for financing the pension plans." [210] Further, aside from this tilt toward retirees at the expense of the County, the traditional board "has been a poor administrator of the pension plans."[211]

The Block panel found "there is no financial expertise structured into the Commission as it currently exists" and "the Commission has not used professional investment advice to select vendors to provide investment advice."[212] It is clear that for the Block panel this lack of any members possessing financial or investment or comparable municipal finance experience led to two large identifiable problems: one, a poor investment record; and two, the foolhardy 13th check/Inflation Equity Fund ("IEF") program. The Block panel cited a 2012 study by Northern Trust – strangely reminiscent of the 2018 study done by @Co at the behest of Deputy County CEO "Judge" Richard Kaufman – that found the WCERs board had a poor investment history, and that if WCERS had merely invested "in index funds linked to the Standard & Poors 500" (or other such funds) it would have done much better. Indeed, the Block panel noted a number of recurrent time periods where WCERS underperformed index funds.[213]

Unfortunately, WCERS poor investment performance did not stop after the Block opinion. On the contrary, while the WCERS Board did hire @Co to advise it, the board

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[209] U. Ex. 52: Block Panel Act 312 Award, MERC Case No. D12 C-0189, 10/13/2013, at p. 44.

[210] U. Ex. 52: Block Panel Act 312 Award, MERC Case No. D12 C-0189, 10/13/2013, at p. 45.

[211] *Id*.

[212] *Id*.

[213] U. Ex. 52: Block Panel Act 312 Award, MERC Case No. D12 C-0189, 10/13/2013, at pp. 11-12.

continued to engage in poor investments, with little or no supervision of its investment managers, or course correction when its investment managers were not hitting their own promised targets.[214] Mr. Macdonald testified regarding @Co's most recent report to WCERS, dated March 31, 2019, which is the County's Exhibit 25.[215] Reviewing WCERS's investment decisions and oversight of its investment managers,[216] Macdonald testified:

Q. But you would agree that over the past 10 years your investment consultant *has regularly missed it one-year target, its three-year target, its five-year target, its seven-year target and its 10-year target*?

A. Well, I'd only object to the paraphrasing that @Co's responsible for it…

A. *The board is responsible for it.*

Q. The WCER's board.

A. *Yeah, they make the investments*.[217] (emphasis added).

After questioning by the Panel Chairman, Mr. Macdonald testified further that the Board's missing of its own investment targets "goes back a number of years."[218]

Last fall, Deputy CEO Kaufman, the CEO's lone representative (and one of only two representatives of elected officials who are responsible to the public, as opposed to a union), asked @Co to do a study of how WCERS would have done between 2013 and 2018 if WCERS had followed the indexing model alluded to in the Block 2013 award when it reported the results

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[214] See Bk. A Ex. 17: Rehmann – Pension Investment Projections, at pp 1-2, for a range of $51,126,110 to $239,685,000 in additional plan assets today if the WCERS board had hit the assumed rate of return of 7.25% or the @ Co. target of a 8.71% rate of return.

[215] Bk. A Ex. 25: @ Co. Investment Performance Review, 3/31/2019.

[216] See page 2 of 12, Bk. A Ex.25: @ Co. Investment Performance Review, 3/31/2019.

[217] Tr. 7/26/19, at p. 170: 1-11.

[218] Tr. 7/26/19, at p. 172:8-18.

of the 2012 Northern Trust study of WCERS. The result is County Exhibit A-33[219]. In its report, @ Co. reports that (a) WCERS had paid its investments managers $27,531,271 over the prior 5 years, as well as an additional $1.25 million to @ Co.,[220] yet (2) those investment managers and the WCERS board had underperformed the Dow Jones Industrial Average by over -5.25% with a loss of potential assets equal to $122,204,480.[221] This loss of potential assets (if WCERS had simply indexed, as suggested by Northern Trust in 2012) is equal to 14% of all the assets ($863,172,000) that the WCERS' actuary reported on hand as of September 30, 2018.[222]

While the WCERS board attempted to remedy the "professional investment advice" criticism by hiring "@Co", it importantly, still has "no financial expertise structured into the Commission" – to the continuing detriment of WCERS fund balance and the County's balance sheet. Put differently, it defies common sense and good judgment that the current WCERS board has no professional training or experience in investments or finances on its board, yet it is handling the investment of hundreds of millions of dollars for thousands of active and retired employees. That is simply irresponsible and the functional equivalent of playing Russian Roulette with pensions. Equally disturbing is the failure to change course when appropriate as WCERS and/or its investment managers missed every marker, year after year.

The Block panel was also disturbed by WCERS sanction of the 13th check.[223] The Block

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[219] Bk. A Ex. 33: @ Co. Investment-Commissioner Kaufman Information Request, 10/29/19.

[220] Bk. A Ex. 33: @ Co. Investment-Commissioner Kaufman Information Request, 10/29/19, at p. 5.

[221] Bk. A Ex. 33: @ Co. Investment-Commissioner Kaufman Information Request, 10/29/19, at p. 7.

[222] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, at p. A-5.

[223] On August 9, 2019, during the testimony of Joseph Martinico, the counsel for the Union erroneously and vehemently tried to claim that the WCERS board did not have absolute

panel noted the same GRS memorandum of September 21, 2010, that is part of the record here as Exhibit 19[224], where GRS found that had the WCERS board not distributed the 13th checks, WCERS then-September 2009 asset would have been $1,285, 329,459, instead of the then assets

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discretion in (a) deciding to put investment returns in the Inflation Equity Fund ("IEF") and (b) did not then have absolute discretion in disbursing 13th checks – which WCERS did every single year – but rather the WCERS board was required to disburse the 13th checks. "I believe it says shall is the way we wrote it." Tr. 8/9/19, at p. 28:18-19, and see generally pp. 26-29.

Yet, Hugh Macdonald had previously testified two weeks earlier on 7/26/19 that: "From the very beginning the Retirement Board *set the threshold* for transfer to the inflation equity fund, which is the 13th check…From the money in the IEF, the Retirement *could then appropriate*…" (emphasis added) Tr. 7/26/19, at p. 154: 11-24. "Q…But starting in the early 2000s the WCERS Board could decide to put as – to distribute *as much as it wanted* or to put *as much as it wanted* in the fund, correct? To pay forward. A. Yes to both." (emphasis added) Tr. 7/26/19, at p. 157: 21-254.

Mr. Macdonald even proudly defended the disbursal of 13th checks after being shown the GRS analysis that the 13th checks had cost the WCERS over $335 million in assets. "Q. Okay. And given that finding (by GRS), do you still think the 13th check was a good idea? A. Yes." Tr. 7/26/19, at p. 162:9-11.

And on August 14, 2019, after the false claim that the WCERS had no discretion regarding the 13th checks, Mr. Macdonald reasserted the WCERS board's autonomy on the 13th checks:

> Q…the WCERS board was completely autonomous in making decisions over whether first to put money into the inflation equity fund and then secondly, to distribute that from the - - inflation equity fund to retirees; would you agree to that?
>
> A. Except as limited by the ordinance, yes…
>
> A. The ordinance was amended and the – what the distribution limits were removed, yes.
>
> Q. Okay. And so with that exception that you just stated you would agree that all the decisions made on the 13th check were a function of autonomous, independent decisions by the WCERS board, correct?
>
> A. That's correct. Tr. 8/14/19, at pp. 49:12-50:2.

Finally, see the attached Appendix I which contains Section 141-32, Inflation Equity programs, which is a 2000 version of the 13th check ordinance, which at subsection (c) repeatedly uses the word "may" repeatedly regarding distribution of funds from the IEF.

[224] Bk. A Ex. 20: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2014, at pp. B-6 through B-9.

amount of $950,046,400. In other words, the WCERS annual decision to issue, without fail, the "13th checks" disbursements cost the pension system over $335 million up through 2009 in lost assets. That $335 million in lost assets is equal to 39% of the current assets ($863,172,000) held by WCERS.[225] Or, put differently, Mr. Dube's fund balance worksheet[226] shows that $335 million (at a 2009 value with any return on investment) would have been more than enough to raise the pension's current funded ratio over 80% with tens of millions of dollars to spare.

Mr. Blann prepared Exhibit A-18 to show the present-day 2019 impact of the 13th check decisions in present-day 2019 dollars.[227] On page 2 of A-18, Mr. Blann illustrates both the reduced *rate* of return and the reduced *absolute* dollars from the pre-2009 loss of $335 million that, dependent on the assumed rate of return, would mean hundreds of million more dollars today – if the loss cost opportunity of the lost $335 million and its impact on the rate of return is considered. As Mr. Blann illustrates, the improvements on plan assets, if that $335 million had not been squandered, *ranges from $684 million to $815 million* in *additional* plan assets today. For perspective, if that low-end figure of $684,321,326 was added to the 2018 actuarially determined assets of $863,172,000, then the plan assets would total $1,547,493,326. If that total is divided by the WCERS' accrued liability of $1,390,355, then the plan would now have a funded ratio of 111%.

This funded ratio balance would exceed the pension fund balances of municipalities such as Oakland County (102%) and the City of Livonia (99.8%)[228] which in turn would significantly

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[225] Bk. A Ex. 21: GRS-WCERS Annual Actuarial Valuation Report, September 31, 2018, at p. A-5.

[226] Bk. A Ex. 23: Dube Fund Balance Worksheet.

[227] Bk. A Ex. 18: Rehmann – Impact of 13th Check Projections.

[228] Bk. A Ex. 31: Pension Table Comparison of Local 3317's selected comparables.

lower Wayne County's current 47.66% of payroll ARC payments to something closer, or even better than, Oakland County's 0% or Livonia's 22.26%. In sum, by any number of objective measures, the mismanagement of the current and historical WCERS board(s) has had an incalculably large and negative impact on the WCERS funded ratio and the County's % of payroll payments. This mismanagement has placed thousands of active and retired employees' pensions at risk, and wreaked havoc on the County's balance sheet.

Finally, to further illustrate the need for a reconstituted board, two excerpts of testimony from one of the WCERS board members puts the need for professionalizing the board in sharp focus. First, after reviewing GRS' September 2009 memorandum on the loss of $335 million in plan assets and Mr. Blann's exhibit addressing how much larger the WCERS plan assets would be in 2019 had that $335 million not been spent on 13th checks, here is the view of a representative member of the current WCERS board member, who shockingly had no regrets about the 13th check boondoggle:

> "Q. Okay. And given that finding (by GRS), do you still think the 13th check was a good idea?
> A. Yes." [229]

And then when asked about the Michigan Department of Treasury's Municipal Stabilization Board's best practices guide's recommendation that municipal pension funds not increase pension benefits unless they are 100% or more fully funded, the same WCERS board member testified:

[229] Tr. 7/26/19, at p. 162:9-11.

Q. Okay. And there the municipal stability board in the fourth point down says, "Require all retirement systems to be one hundred percent funded before any benefit increases can take effect." Do you see that there, sir?A. I see that.

Q. Okay. Do you agree with that point, sir?

A. I believe it's inane. [230]

The County does not claiming malice or malfeasance of this board member or others, merely, these excerpts – and the WCERS board's performance – demand a reconstituted board with professionals. Accordingly, the Panel should adopt the CET/County's proposal for WCERS board composition, as has been negotiated with every other union.

5. Insurance.

a. County Insurance Proposal

Health Insurance for Active Bargaining Unit Members

One of the causes of the County's structural deficit was the ever-increasing cost of healthcare. As a result, in an effort to continue to balance its budget, and otherwise continue to better fund the pension system, the County's Last Best Offer for healthcare is the status quo as to healthcare for active bargaining unit members. It provides as follows:

High Deductible Health Plan ("HDHP")

$1,350.00 deductible for in-network services per member for 2019.

$2,700.00 deductible for in-network services per family for 2019.

[Deductible amounts are modified consistent with IRS restrictions as necessary to permit tax-free contributions to HSA accounts]

25% premium sharing.

Healthcare Spending Accounts ("Accounts")

County shall offer bargaining unit members the option to implement accounts for healthcare, dependent care, or both, during the term of the CBA. These accounts

[230] Tr. 8/14/19, at pp. 113: 9-16.

will comply with the applicable sections of the internal revenue code and will provide employees with a voluntary program to achieve income tax savings on unreimbursed medical and qualifying dependent care expenses.

No Healthcare Benefit Opt-Out Program.

Future Employer Benefit Credits to the Employee Retirement Healthcare Benefit Trust ("Trust")*. The employer shall not make contributions to the Trust. As a result, employees will no longer accrue, subject to vesting, any additional contributions from the employer. However, future service shall be credited towards any and all vesting requirements under the plan. For example, an employee with four (4) years of service has received $20,000.00. If that employee remains at the County for an additional six (6) years, those six (6) years shall count towards complying with the 10-year vesting requirement for distribution of 50% of employer contributions, along with all interest accrued on that amount. Employees shall continue to make contributions pursuant to the terms of the CBA, and those not participating in the Trust may do so upon enrolling during open enrollment consistent with IRS rules.*

Dental Coverage

Employees may select coverage to be offered by several providers. However, the County will only fund up to the cost of a specified DHMO for present coverage. Additional coverage cost will be paid by the employee.

Additionally, the County is proposing to add coverage for vision and optical as follows:

Optical Program

The Employer shall continue to provide active Employees with a self-insured optical reimbursement program with a one-hundred seventy-five dollar ($175) maximum total benefit for each active employee and family members eligible for medical coverage ("Optical Program") at the Employer's expense. Benefits will be restored on October 1, of each odd numbered year.

Once participation in this program is elected, the enrollment shall be maintained for a minimum of two (2) years. After the two (2) year period, the employee may elect another vision/optical program.

Vision Benefits Option

A. During open enrollment, instead of participating in the Optical Program, full-time active employees have the option of selecting vision insurance coverage for themselves and their eligible dependents.

B. Vision exams will be covered under the Employee's medical insurance plan once every twenty-four (24) months with a ten dollar ($10.00) co-pay.

C. Frames, lenses, or contact lenses will be covered once every twenty-four (24) months under a vision benefit plan at levels provided in Appendices.

Once participation in this program is elected, the enrollment shall be maintained for a minimum of two (2) years. After the two (2) year period, the employee may elect another vision/optical program.

b. County Proposed Insurance Programs for Active Employees other than Healthcare.

The County's Last Best Offer on other insurance programs are as follows:

Life Insurance

Increase from $25,000 to $30,000.

Life Insurance for Certain Specialty Units

Status quo of $50,000 for SWAT Detail, Bomb Squad Detail, and Canine Unit Members.

Workers' Compensation

Status quo, including medical, dental, life, and vision insurance continuation for two years.

Long-Term Disability Income Benefit Plan

Status quo, including a maximum of $2,400 per month for two years. (*union proposal is $2200)*

c. County Retiree Healthcare Proposal.

As of 2013, the actuarial accrued liability for County retiree healthcare subsidies for existing and future retirees was $1,325,669,000. The actuarial value of assets set aside to fund these benefits was $11,177,000 or 0.8% of the future benefits. Thus, the County had virtually no funding for retiree healthcare benefits to over 5,300 retirees. **Effectively, 70% of the County's long-term obligations related to healthcare and pension liabilities, the majority, *to wit*, 43%, pertained to healthcare funding.** Having no wherewithal to pre-fund its OPEB liability, the County bargained into its agreements with eleven(11) unions the same provisions regarding

retiree healthcare it imposed on Local 3317 and seeks to maintain as the status quo. The Last Best Offer is as follows:

Bargaining unit members will not receive any County funded healthcare upon their retirement from the County. Nor will bargaining unit members, including, but not limited to, those enrolled in the Healthcare Retirement Trust, be offered the right or opportunity to purchase coverage under the County's group plans.

Those with twenty (20) or more years of seniority as of October 1, 2015, when eligible to retire, will receive healthcare stipends pursuant to the eligibility procedures in Macdonald.

Regardless of the retirement plan, all employees hired, re-hired, re-employed, and re-instated, except specifically referenced by arbitration or court order on or after May 2, 2007, will not receive, nor be eligible for, retiree healthcare stipends. However, these employees are eligible to participate in an Employee Healthcare Benefit Trust, in accordance with the terms and conditions outlined in both Article 34 and the Wayne County Health and Welfare Benefit Plan. See, Article 34 of CET, specifically 34.01(C), (E), and (F).

d. Summary of Union Healthcare Proposal for Active Bargaining Unit Members.

The Union's proposal as to healthcare for active bargaining unit members is similar to the County's. However, there are some meaningful differences as follows:

The County proposal states that *Except where inconsistent with the express terms of this collective bargaining agreement, the Wayne County Health Welfare Benefit Plan ("WCHWBP"), as amended, is hereby incorporated by reference.* The Union proposal uses essentially the same language but refers to the WCHWBP dated December 1, 2006. The Union Proposal also indicates that healthcare coverage for eligible dependents will be in accordance with the terms and conditions of the WCHWBP which cannot be amended except by mutual agreement.

Oddly, the Union, by restricting eligibility for active healthcare more so than does the County in its proposal, does not permit terminated employees reinstated through arbitration from receiving healthcare as would a new hire; i.e., that of the employer's choice for at least one year.

e. Dental Insurance.

County requires employees to be responsible for dental costs in excess of a DHMO for single coverage as chosen by the County. To the contrary, the Union proposes that the County fund seventy-five percent (75%) of a DHMO, Golden Dental, and Delta Dental. The County's proposal is identical to the dental insurance provisions in effect for all other County employees.

f. Pre-Paid Legal Plan.

Notwithstanding language in its June 21, 2019 proposal to the County, the Union informed the County that it was removing this proposal from its overall proposal on insurance.

g. One Healthcare Option per Family.

Unlike the County's proposal, the Union proposal fails to include language providing only one healthcare benefit option per family.

h. Differences between County and Union Proposed Insurance Programs for Activities other than Healthcare.

i. Workers' Compensation.

The Union proposes employees on Workers' Compensation receive medical, optical, life, and dental insurance benefits for up to eighteen (18) months. Employer proposes up to twenty-four (24) months.

Present provisions in employer 33.25(A) are consistent with Union proposed 37.14 and 37.15. The present provisions in Employer 33.25(B) are identical to the prior Union collective bargaining agreement. Employer 33.23 is consistent with Union proposed 37.25 to the extent that each incorporates the County of Wayne, Michigan Long-Term Disability Income Benefit Plan. However, the Employer's, consistent with the POAM agreement, does not require mutual agreement of the parties to be effective as to terms agreed to in the collective bargaining

agreement that may be different from those in the Plan.

ii. Long-Term Disability Income Benefit Plan.

The County proposes a $2,400 a month maximum payment compared to the Union's $2,200 a month maximum payment.

iii. Comparison between County and Union Retiree Healthcare Proposals.

Mr. Martinico testified that the agreement negotiated with AFSCME Local 25 became a model agreement that was used in bargaining with all other labor unions, including the changes to retiree health.[231] Local 3317's proposal for retiree healthcare flies in the face of the retiree healthcare provisions negotiated into the CBAs of its eleven other unions in 2015-2016 and into all of the six of the successor agreements in 2019. The County's proposal reiterates the language contained in all these agreements, as well as the CET, that retirees are no longer entitled to receive post-retirement healthcare benefits or other healthcare coverage from the County except as indicated below:

> *Bargaining unit members with twenty (20) years or more of completed service as of October 1, 2015, when eligible to retire, will be eligible to receive post-retirement healthcare stipends (attached as Appendix II) as determined pursuant to the healthcare eligibility provisions contained in the settlement in Macdonald, et al, v. County of Wayne, Circuit Court Case Number: 09-031117.*

These provisions, applied to all County employees, were crucial to the County's Economic Recovery Plan by effectively reducing its OPEB liabilities by almost one billion dollars. And their continuation is crucial to the County's continued fiscal recovery. Yet Local 3317 seeks to expand eligibility for stipends to disability retirees and normal retirees to those with twenty (20) or more years of service as of October 1, 2015. The expansion of these stipends

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[231] Tr. 8/9/19, at p. 34.

for Local 3317 will inevitably result in further expansion to include such retirees from POAM, a 700-member bargaining unit, as well as to all other bargaining units throughout the County. The result is the negation of one of the most important components of the County's economic recovery.

The Union argues that their proposal replicates language in the POAM CBA. That is inaccurate, as neither the POAM CBA, nor the CBAs the County has with any of its other bargaining units permits bargaining unit members to use "purchased time" to establish 20 years seniority in order to qualify for stipends as the union seeks by its proposal.[232]

Mr. Martinico testified that the limited extension, from 2015 to 2017, was negotiated with POAM because, among other things, it was an operational imperative to prevent more POAM vacancies within the Jail. Further, the POAM contract was not even open for negotiation in 2015, so a valid and legal negotiation strategy for POAM could have been to simply refuse to negotiate until the contract re-opened in 2016.[233] But POAM came to the table and negotiated, and agreed to terms that save the County millions of dollars in structural savings, despite POAM having no legal obligation to do so. Knowing that POAM could simply stay put for a year, the County granted concessions in order to obtain POAM's earlier agreement to the overall structural changes to healthcare and pensions.[234]

The proofs at the Hearing prove that the County's insurance proposals (including insurance for retirees) are the more appropriate in light of the ongoing need for financial austerity.

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[232] Tr. 8/30/19 p.70; Ex. Bk. C, Exs. 10-20.

[233] Tr. 8/9/19, at p. 6:34.

[234] Tr. 8/9/19, at p. 6:35; 47-48.

6. Overtime.

The parties' proposals on overtime differ significantly. The Union's proposal is unworkable and unacceptable because it does not justly compensate employees for overtime worked, but rather is yet another attempt at a bonus structure that allows employees, among other things, to take vacation and sick time, but have those hours logged as time worked for overtime calculations, even though the employee did not work.

Mr. Martinico testified that the County's overtime proposal is similar to the overtime provisions contained in the bargaining unit group (POAM) that Local 3317 supervises.[235] He further testified that the County's proposal differs from the union's proposal in two significant ways: first, with regard to the circumstances that qualify for the payment of overtime rates, and second, as to the limitations on the assignment of overtime. The County's proposal continues the current provision requiring the payment of overtime rates (150%) for work in excess of 80 hours in a pay period (2 weeks). Non-working paid hours (vacation, sick time, holidays, and personal business leave) are not included as hours worked for purposes of calculating overtime and overtime rates.[236] The current and proposed provision conforms to the applicable statutory law (Fair Labor Standards Act) and mirrors the corresponding provisions of the POAM,[237] which, incidentally, were a result of a 312 Award entered by Arbitrator Block.[238] Mr. Martinico also testified (as did others) that there is a severe staffing shortage in the Wayne County Jails which

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[235] Tr. 8/16/19, at p. 120.

[236] Tr. 8/16/19, at p. 120-121.

[237] Bk. C Ex. 23.

[238] Tr. 8/16/19, at p. 122.

leads to extensive (and expensive) overtime costs for the County.[239] He testified that the County's proposal is intended to help address the extremely high county expenditures on jail overtime.

Moreover, the County proposal places the same limitation on the number of hours that an employee may be involuntarily required/assigned to work overtime as exists for POAM represented employees supervised by Local 3317 members. The County proposal provides that Local 3317 members may not be required to work more than 56 hours in any one work week (work week is defined, by agreement, as a seven (7) day period, Monday through Sunday), except in the case of staffing or other declared operational emergency. This common sense exception is also provided for in the POAM agreement. Additionally, the Union incorrectly asserted that there were double time provisions within the POAM contact; here are not.[240]

In light of the side-by-side working relationship of the two labor organizations (POAM and Local 3317) and their joint correctional responsibilities in terms of the operation of the County's three correctional facilities and the command structure required for maintaining a safe and efficient jail operation, it is the County's position that the two labor agreements should be identical with regard to this provision, as any dissimilarities may cause issues impacting operations and safety in the jails.

The Union's proposal, if accepted, would substantially increase the cost of overtime pay for the County. Its proposal seeks to require overtime rates (150%) for work in excess of 8 hours in one day, 40 hours in one work week, and all hours on the 6th day worked in the employee's

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[239] Tr. 8/16/19, at p. 125.

[240] There was a trial run for several months that was used that was discontinued that Mr. Martinico described as "spectacularly unsuccessful." Tr. 8/14/19, at p. 126.

work week. Additionally, it requires overtime pay at double time (200%) for work on the Employee's second leave day in a work week, provided that the employee is paid 40 hours in that week. Finally, the union proposes that non-working paid hours (vacation, sick time, holidays and personal business leave) be included as hours worked for purposes of eligibility for overtime. These proposals are all vastly different from those in effect for POAM represented employees.

Finally, the Union also seeks to limit the number of hours employees can be required to work to 56 hours in any one work week, without any exception for staffing or operational emergencies as is contained in the POAM contract. Inasmuch as the County is required by judicially-enforced state court consent judgement – monitored by the Chief Judge of the 3rd Circuit Court - to provide minimum staffing levels in its jail facilities, this limitation may occasionally prevent the County from being able to comply with the consent judgment's mandates without incurring the substantial additional cost of permanently increasing staffing levels to accommodate these occasional staffing needs.

Based on the record produced at hearing, the County submits that its proposal regarding overtime pay should prevail.

7. <u>Holidays</u>.

The County's proposal on Holidays is virtually identical in all respects with the Holiday provisions of POAM's collective bargaining agreement, the bargaining unit consisting of the law enforcement employees supervised by Local 3317 members, and clearly the most appropriate internal comparable bargaining unit for purposes of this provision.

The County proposal provides for the specification of 13 holidays (12 designated holidays and Election Day), as well as the recognition of a birthday holiday for employees

having completed one year of service with the County (in the case of this bargaining unit, this service requirement is satisfied by the entire unit), increasing the number of recognized holidays to 14. In this regard, the County proposal is patterned after the corresponding provision in the POAM agreement. Additionally, the County's proposal provides for pay at the rate of 200% for the first 8 hours worked on any/all of the designated 14 holidays, and the contractual overtime rate of 150% for any/all hours worked in excess of 8. This proposal also follows and is patterned after the provisions of the POAM bargaining agreement.

In contrast, the Union's proposal varies significantly from both the status quo for Local 3317 members as well as from the comparable POAM agreement. First, it designates 8 holidays as "Major Holidays", entitling employees who work the holiday to receive pay at 200% for the first 8 hours worked, and 300% for any additional hours, as well as 4 hours of banked holiday leave time which may be scheduled as time off or paid to the employee as cash at separation. The remaining 5/6 holidays (or "Minor Holidays") are paid at 150%, plus 4 hours of holiday leave time, for the first 8 hours worked on a Minor Holiday, and all hours worked in excess of 8 are paid at the contractual overtime rate of 150%. The differentiation between "major" and "minor" holidays proposed by Local 3317, and the significantly higher wage and overtime rates for work on the "major" holidays, is not found in the existing POAM agreement. Instead, it is an attempt to resurrect a provision of the expired 2011-2014 Local 3317 agreement, which has been superseded, and has not been in effect for the past 4 years; i.e., since 2015.

B. Non-Economic Proposals.

The primary witness for the County on non-economic proposals was Undersheriff Daniel Pfannes. He has had a long, varied, and distinguished career in law enforcement having worked

his way up through the ranks in the City of Westland, beginning as a patrolman and ending as its Police Chief. He holds a master's degree in criminal justice from the University of Detroit, and is a graduate of the FBI National Academy, the FBI Law Enforcement Executive Program and the leadership program at Harvard's John F Kennedy School of Government.[241] He has served two consecutive Wayne County Sheriffs as Undersheriff. The Undersheriff is the second highest position within the Sheriff's Department and is responsible for maintaining operational oversight of the Department, and speaks for the Sheriff in his absence.[242]

Undersheriff Pfannes testified that the current situation in the Wayne County Jail is challenging due to the necessity of complying with the terms of the jail consent order, the significant retention and recruitment problems within the POAM unit, and the constitutionally mandated responsibilities of the Sheriff. Based on his experience and insight gathered over decades in law enforcement, Undersheriff Pfannes testified that that the department viewed the changes it made in 2015 to non-economic terms within the department as a necessary "refinement" of the operations.[243] He testified that from his perspective, the changes made the department better. He explained that operational flexibility is extremely important to the department, so that it can overcome problems and concerns as they arise.[244] He stated how first and foremost among these refinements was the ability of the Sheriff to select individuals with the right skill set to succeed in the supervisory positions of Local 3317. As set forth below, this flexibility is crucial to the mission of the Sheriff, and are necessary for his department to deliver

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[241] Tr. 8/22/19, at p. 50-51.

[242] Tr. 8/22/19, at p. 48.

[243] Tr. 8/22/19, at p. 54.

[244] Tr. 8/22/19, at p. 53.

top notch service to the citizens of Wayne County.

1. Transfers.

There was an extensive amount of testimony regarding transfers. First, the arbitrator will note that the County has only proposed two (2) slight changes from the current terms, one of which clarifies and recognizes the organization under the Executive with respect to the Juvenile Detention Facility:

17.02(A) added:

26. Lobby Desk

27. Any special details created by the Sheriff's Office to provide policing service for contracting entities.

17.02(C) added:

3. Juvenile Detention Facility -- This addition recognizes that the Juvenile Detention Facility is wholly under the control of the Executive, not the Sheriff's Office.

17.03(C) deleted.

As stated above with respect to the Juvenile Detention Facility, appointment to and removal from this position is at the sole discretion of the Executive. Thus, it cannot be filled by seniority.

Undersheriff Pfannes testified that the ability to select the right individual for the right role is crucial in this supervisory unit, as "everything is done through people."[245] In his view, the individuals that serve in these roles are not fungible.[246] He described the members of Local 3317 as the first line of supervision of the department.[247] He stated that the sheriff must retain

[245] Tr. 8/22/19, at p. 51.

[246] *Id*.

[247] Tr. 8/22/19, at p. 52.

significant discretion to fill these roles with individuals whose skill set best matches the position, rather than using seniority only.[248] The Undersheriff gave a number of compelling examples supporting his reasoning.

For example, a senior member of Local 3317 may be a very successful and valued member of the jail supervisory team, but might have none of the experience and skills necessary to succeed as a road patrol supervisor.[249] Road Patrol supervisors need to have a significant understanding of the powers of arrest, search and seizure law, and an ability to deal with the public.[250] To select these officers based solely on seniority is to do a disservice to Wayne County citizens. Another example is the records desk position. The individual assigned to this position must be detail-oriented and capable of ensuring compliance with the jail consent decree.[251] The individual must check multiple databases to ensure that the right individuals are released, and any mistake can result in a dangerous individual being released.[252] Just such a mistake made national news, and resulted in the erroneous release of a prisoner.[253]

Another example in which the Sheriff must retain appointment and removal discretion are the supervisory positions in Court Services. The Undersheriff testified that the relationship between the court and the sheriff with respect to these positions is akin to a contract, with the courts in the role of a customer. The Sheriff fills these positions at the complete discretion of the courts; in other words, the court system could choose to use private officers and the Sheriff 's

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[248] Tr. 8/22/19, at p. 54.

[249] Tr. 8/22/19, at p. 54.

[250] Tr. 8/22/19, at p. 55-56.

[251] Tr. 8/22/19, at p. 68.

[252] Tr. 8/22/19, at p. 70.

[253] *Id*.

Department would lose the revenue stream and the positions. On occasion, judges and administrators request that individuals in these positions be removed, for whatever reason. Thus, in order to maintain an outstanding relationship with the Courts and protect these positions for members of Local 3317, the Sheriff needs the discretion to transfer these employees to satisfy the "customer." This is also the logic behind the Sheriff's need to keep discretion with respect to any positions for third parties. As ultimately the entities paying for the services have authority to cancel the contract, the Sheriff needs the flexibility to transfer these employees as required.

The Undersheriff testified that each of the positions that the Sheriff reserved appointment and removal discretion in the Last Best Offer is a position that requires a specific set of skills and experience, and would be inappropriate to fill on the basis of seniority alone.[254] The Undersheriff also testified that those positions that the Union's proposal has designated with an asterisk have the effect of turning them into *de facto* seniority positions, as the Sheriff cannot use his discretion to move officers in and out of the positions, but must have good cause for removal.[255]

At Hearing, the Union stipulated to move the Classification and Registry position and the classification position to discretionary.[256]

The Undersheriff also provided a compelling answer to the Union's proffered reason for making seniority the be all and end all of its proposal – opportunity. In his view, making seniority the sole determining factor is the opposite of opportunity, because it prevents other officers from seeking out positions that they are well suited for, and it de-incentivizes officers

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[254] Tr. 8/22/19, at p. 72.

[255] Tr. 8/22/19, at p. 59.

[256] Tr. 8/22/19, at p. 66,75.

from developing skills if these positions are all simply seniority based.[257]

The Union's proposal seeks a complete reversal with regard to Transfers back to the pre-2015 (2011-2014) contract language, with additional language that forbids the Sheriff's Office from removing the Union President, Vice President, and Chief Steward from any position to which they were discretionarily appointed by the Sheriff. The County proposal provides that such union officials may not be transferred from positions that they hold by reason of competitive bid and seniority, but that assignments held by exercise of Sheriff discretion in the first place are subject to transfer by the exercise of that same discretion.

The union proposal, it appears, seeks to protect its officers from the fear of retribution by the Sheriff. This fear is unjustified and entirely without merit. No evidence of retribution was produced at the Hearing. As a result, language cannot be permitted to operate so as to prevent the Sheriff from exercising his/her discretion in a manner directed to best serve and carry out his law enforcement responsibilities. The proposal also severely limits the authority of the Sheriff to transfer individuals from many assignments that they hold only as a result of his discretionary appointment. While the County's proposal merely seeks to clarify and correct the current Article, the Union proposes to completely "blow up" the article on Transfers and revert back to the old contract. The Union proposal places improper and inappropriate constraints on the Sheriff's legal authority to operate the Department most effectively and efficiently and should be rejected.

2. Seniority.

The County's proposal on Seniority maintains the status quo in large part and is similar to the Union's proposal except with regard to the following significant differences.

[257] Tr. 8/22/19, at p. 58.

First, the union proposes a change to the status quo such that employees who are promoted to positions outside of the bargaining unit have their bargaining unit seniority frozen and those individuals cannot accumulate further bargaining unit seniority until such time as the employee returns to the bargaining unit. Further, the Union proposes that such returning employee not be permitted to return to the classification of Captain, the highest rank/classification in the bargaining unit, under any circumstances, and also restricts the employee from bumping any other employee in the bargaining unit. Under the union's proposal, such returning employee may return only to a vacant position in the unit. The County proposal, contrary to the punitive, retaliatory measures proposed by the union, provides that employees appointed or promoted to a Department rank or Wayne County executive position outside of the bargaining unit shall continue to accrue and accumulate bargaining unit seniority, and that such employee may exercise his/her seniority upon returning to the unit. Put differently, the County proposal permits individuals to advance professionally; the Union proposal punishes attempts at advancement.

Second, the County proposes that seniority be adjusted for disciplinary suspensions of thirty-one (31) days or longer. The Union's proposal does not provide for any adjustment to seniority for disciplinary suspensions.

Third, the County proposal provides for the loss of seniority as a voluntary quit in the event an employee fails to provide appropriate notice to the Employer during an absence of three (3) consecutive work days (no-call, no-show). The Union proposes that such loss of seniority occur only after an absence of five (5) consecutive working days.

Fourth, the County's proposal provides for the union to be furnished with a seniority list

within 90 days following the implementation of the Collective Bargaining Agreement. The Union proposes that such a list be provided within 60 days.

The County submits that its Last Best Offer on seniority should be adopted by the panel.

3. Burden of Proof.

County Proposal:

XX.06 Grievance and Demand for Arbitration

F. In all disciplinary proceedings, the Department shall carry the burden of proof.

Union Proposal:

XX.06 Grievance and Demand for Arbitration

K. In all disciplinary proceedings, the Department shall carry the burden of proof in order to substantiate the charges and the standard of proof shall be proof beyond a reasonable doubt. In application of this standard, the parties understand that all department charges are non-criminal in nature.

The status quo with respect to the standard of proof in arbitration, as set forth in the currently effective CET, is as follows:

12.05 Arbitration Hearing

B. The Arbitrator shall conduct a hearing and the burden of proof shall be upon the Employer, using the Preponderance of Evidence Standard, to prove the charge brought against the Employee.

The County's proposal does not provide for any specific standard of proof be used in disciplinary matters. Instead, the County leaves the standard of proof to be determined at the discretion of the arbitrator.

The Union's proposal seeks to completely deviate from the status quo and impose the highest possible legal standard that must be met - proof beyond a reasonable doubt - to all disciplinary proceedings, from those involving minor reprimands to cases of termination or

discharge. The proof beyond a reasonable doubt standard is exceedingly uncommon in labor arbitration and is ordinarily used only in criminal cases. That standard does not apply in civil cases because the outcome of criminal proceedings is substantially far more severe than in a civil case, or in a labor arbitration, and can result in the deprivation of a defendant's liberty or even their death. The outcomes in a labor arbitration or a civil case result in penalties that are monetary rather than incarceration or loss of freedom.

According to Elkouri and Elkouri's *How Arbitration Works,* the majority rule in arbitration is the preponderance of evidence standard.[258] In *Wholesale Produce*, the Arbitrator specifically noted that a labor arbitration is not a criminal proceeding and that the reliance on the beyond a reasonable doubt standard is unworkable. The preponderance standard is the norm for state employees as well.[259] Additionally, the Merit Systems Protection Board standard for federal employees is preponderance of the evidence as well.[260]

The bargaining unit at hand is a supervisory unit made up of sworn law enforcement officers. Should a member of the bargaining unit engage in misconduct, it has the potential to do significant harm to the public. There is no principled reason that the County and the Sheriff should be hamstrung with an unworkable standard of proof.

No internal comparable within the County has "beyond a reasonable doubt" as a standard. The POAM contract and every other contract within the County is consistent with the County's proposal.

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[258] See, Chapter 15.3.D.ii, p. 950, "Quantum of Proof"; *see also Rittman Nursing and Rehab Center* 113 LA 284 (Kelman 1999); *Wholesale Produce Supply Co.*, 101 LA 1101 (Bognanno 1993).

[259] See *State University of New York*, 74 LA 299 (Babiskin 1980).

[260] 5 USC §7701(c)(1)(B); *see also*, *Social Sec Admin* 80 LA 725 (1983).

Finally, inasmuch as the primary purpose of discipline in the employment context is most often corrective in nature or to deter future similar misconduct, rather than punitive, the use of the proof beyond a reasonable doubt standard would have an unintended consequence of creating a chilling effect on management in making decisions to discipline members to correct behavior in the workplace and deter others from poor conduct. The standard of proof should not be an obstacle or deterrent to the necessary, common sense discretion required in managing employees in a workplace environment, particularly an environment interfacing so closely with the public and impacting public safety.

CONCLUSION

Four years ago, in the face of financial disaster, County leadership and most every responsible union worked together to craft labor agreements that would preserve jobs, protect pensions, and allow the County the ability to right its ship and continue to serve its citizens. The lone exception was Local 3317.

Today the County leadership and the leadership of every other union have crafted agreements that continue to preserve jobs, protect pensions, and allow the County the ability to continue on the path of financial recovery while addressing the needs of the public. Again, the lone, unreasonable dissenter is Local 3317.

Wayne County urges the Panel to adopt its common sense economic and non-economic proposals to give it the financial and operational flexibility to continue to serve its citizens, while it also preserves its employees' jobs and protects their pensions.

Dated: September 13, 2019 /s/ Kenneth S. Wilson
WAYNE COUNTY HUMAN RESOURCES
Kenneth S. Wilson (P31384)

Attorney for Public Employer
500 Griswold, 9th Floor
Detroit, MI 48226
313-224-0972
Fax: 313-967-1230
kwilson@perkinslawgroup.net

/s/ Joseph R. Furton, Jr.

PERKINS LAW GROUP, PLLC
Joseph R. Furton, Jr. (P45653)
Attorney for Public Employer
615 Griswold Suite 400,
Detroit, MI 48226-3480
Main: (313) 964-1702
j.furton@perkinslawgroup.net

/s/ Michael A. Cox

THE MIKE COX LAW FIRM, PLLC
Michael A. Cox (P43039)
Attorney for Public Employer
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152
734-591-4002/Fax 734-591-4006
mc@mikecoxlaw.com