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4/88 ARB

IN THE MATTER OF ARBITRATION BETWEEN

THE CITY OF CEDAR SPRINGS,

-and-

MERC Case No.: G-784

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

FILE COPY

APPEARANCES:

For the Employer: Jack R. Clary, Esq.

For the Union: William Birdseye, Advocate
Karen Wing, Research Director

William Birdseye, Union Panel Member
Jack Clary, City Panel Member

Richard L. Kanner, Panel Chairman

Cedar Springs, City of

4/88

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

INTRODUCTION

This dispute between the City of Cedar Springs and the Police Officers Association of Michigan concerning unresolved issues pertaining to the parties' first collective bargaining agreement was heard on October 12, 1987 and October 26, 1987 by Richard L. Kanner, Impartial Chairman, pursuant to Michigan Public Act 312 of 1969, as amended. On September 24, 1987 the Panel issued an Interim Award affirming the arbitrator's authority to address the merits of the union's last best offer that the retroactive date of the contract be July 11, 1985, the date of certification by the Michigan Employment Relations Commission. Final offers of settlement were submitted on November 2, 1987.

The issues before the Panel for resolution are:

NON-ECONOMIC ISSUES

Union

1. Agency Shop
2. Layoff and Recall

ECONOMIC ISSUES

Union

1. Wages.
2. Sick Leave
3. Longevity
4. Hours of Work/Overtime
5. Term of Agreement

All of the issues above have been designated as economic or non-economic. Pursuant to the Act, the Panel shall adopt the final offer of settlement by one or the other party for each economic issue.

BACKGROUND

Cedar Springs is a small rural community located in northern Kent County. It has a population of 2,767 citizens and functions as a charter city. The city is primarily residential with very little industrial or commercial property.

The Police Department is composed of four full-time police officers including the chief and several part-time officers. The bargaining unit is composed of a sergeant, two full-time police officers and any part-time officer who has worked 400 hours in the previous year. All part-time officers are employed elsewhere and work primarily on weekends or for other fill-in due to full-time employee absences.

The City is a rural community. Except for a small strip mall just outside the City, all of the police officers' work is within the 1.6 square mile City. Cedar Springs is primarily a residential community. It is not a tourist community. The City relies on the Detective Bureau of the Kent County Sheriff's Department or the State Police for detectives work or when technical assistance is needed.

17.455(39) Bases for findings, opinions and order.]

...

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services

and with other employees generally:. . .

(i) In public employment in comparable communities.

THE PARTIES' DISPUTED COMPARABLES

The comparison of wages, hours, and conditions of employment in comparable communities is of prime importance. Absent specific proof to the contrary, it is assumed that such factors of employment in both parties' comparable communities are similar. To the extent that working conditions are dissimilar, such factor will be hereinafter discussed.

Therefore, it is the ability of the community to pay wages which is the primary comparability factor to be measured. Such conclusion follows from the fact that wages is usually the primary disputed issue, and a level of wages paid to police officers is usually directly related to the economic wellbeing of the community.

Secondarily, the geographic location of the comparable communities is pertinent. This is for the reason that each group of comparables should equally compete for police officers in a particular labor market to attract potential employees.

The union submits, as comparables, the cities of Lowell, Rockford, and the Village of Sparta.

The employer submits as comparables Read City, Montague, and Ithaca.

Both parties' comparables are within a fifty mile radius of Cedar Springs, and, therefore, are within the same labor market.

The following table sets forth population and state equalized valuation (S.E.V.) values for each set of comparables.

EMPLOYER COMPARABLES:

City	Population	Size of Dept.	Total S.E.V. ¹	S.E.V Per Capita
Read City	2,364	4	\$16,581,800 <i>18,192,219</i>	\$7,014.00
Montague	2,364	5	\$1,819,219	\$7,696.00
Ithaca ²	2,809	4	\$19,735,270	\$7,026.00
AVERAGE				
	2,512		\$18,169,763	\$6,710.00
Cedar Springs	2,767	3	\$15,002,400	\$5,421.00

UNION COMPARABLES:

City	Population	Size of Dept.	Total S.E.V.	S.E.V. Per Capita
Sparta	3,589	3	\$32,187,900	\$8,968.00
Rockford	3,664	4	\$34,194,900	\$9,333.00
Lowell	3,707	4	\$32,676,600	\$8,815.00
AVERAGES:				
	\$3,653		\$33,019,800	\$9,038.00

It is evident, by the above analysis, that Cedar Springs is closest to the employer's comparables in terms of average S.E.V. per capita and population. Since taxes are levied on S.E.V., such a figure best denotes the overall wealth of a community, and its ability to pay higher wages to police officers. An additional fact is worthy

1. These figures are 1983 S.E.V. figures.

2. While initially the employer included Coopersville as a comparable, it withdrew this city at hearing.

of emphasis. It is noted that the union's comparables have a group of much larger commercial tax payers than that of Cedar Springs. (Employer 13) Under Michigan law, cities may levy up to 20 mills. When a city has a large industrial and commercial base, it can impose a lower mileage rate on its residential home owners. Rockford levies 12.6 mills; Lowell levies 12.38 mills; and Cedar Springs levies 15 mills. Therefore, Cedar Springs' residents are bearing a heavier tax burden than the citizens of two of the union's comparables.

The above figures, denoting a much lower S.E.V. in Cedar Springs than the average of the union comparables, and yet payment of higher taxes, forces the conclusion that Cedar Springs is a much less wealthy community than those in the union's comparables. It more closely resembles the employer's comparables in this regard.

The closer relative population size of the union comparables to that of Cedar Springs is not, in the panel's view, a substantive characteristic. Population size, per se, is not a pertinent factor so long as the population size is relatively similar.

The union further asserts that the employer selectively culled its comparables from among other cities in the same geographical area. But absent a showing that the omitted cities were similar to Cedar Springs and would have supported the union position, such assertion is not pertinent. Either party may select examples of comparables supporting its position, and leave out other examples.

Further, the fact, as argued by the union, that the police officers in the union's comparables interact with officers in Cedar

Springs in the performance of some of their duties is not, in our view, a pertinent factor. Only to the degree that such interaction adds to the work load of Cedar Springs' officers is such factor an appropriate consideration. No such evidence is in the record.

The union further contends that union comparables all provide 24 hour full service police department operations as does Cedar Springs, and the city comparables do not. But again such factor, standing alone, does not indicate added duties and work load. Per the testimony of Sgt. M. Weinrich, in Cedar Springs two officers worked six days in one week and four days in the second week, and average 80 hours every two weeks. Another officer works midnights, 40 hours per week. Accordingly, only one officer can be said to bear the more onerous duty of working nights in order to supply 24 hour service. Such a limited distinction relative to the city's above two comparables, which do not supply 24 hour service, is not so substantive as to militate in favor of choosing the union comparables as more comparable to Cedar Springs.

Accordingly, both as to wealth, as measured by S.E.V., tax burden, and working conditions, the city's comparables are more nearly similar to these factors in Cedar Springs. The panel, therefore, will be governed by the city's comparables.

WAGES

The union's three year offer requests across the board increases of 6%, 6% and 3% retroactive to July 11, 1985, the date the union became certified as bargaining agent. The union's last best

offer is as follows:

UNION'S FINAL OFFER OF SETTLEMENT:

APPENDIX A - WAGES

Classification	July 11, 1985	July 1, 1986	July 1, 1987
Patrolman			
Start	\$20,269	\$21,591	\$22,239
6 months	20,899	22,153	22,818
1 year	21,429	22,715	23,396
1½ years	21,959	23,276	23,974
2 years	22,489	23,838	24,553
Part-Time Patrolman	7.20/hour	7.74/hour	7.97/hour
Sergeant	\$22,996	\$24,376	\$25,107

[Increase on July 11, 1985 represents 6% across-the-board.

Increase on July 1, 1986 represents 6% across-the-board.

Increase on July 1, 1987 represents 3% across-the-board.]

Wages to be retroactive to July 11, 1985 on all hours compensated.

CITY FINAL OFFER OF SETTLEMENT

The city's last best offer begins on July 1, 1986 at 4.3%, and 3.9% and 3.5% for the next two years. The following is the City's last best offer:

Effective the first pay period on or after the dates indicated, adopt the following classifications and wages:

July 1, 1986:

Classification	Start	After 1 Yr.	After 2 Yrs.
Full-time Police Officer	19,188	20,176	22,126
Sergeant	--	--	22,626
Part-time Reserve officer	7.16/hr	--	--

July 1, 1987:

Full-time Police Officer	20,046	21,034	22,984
Sergeant	--	--	23,484
Part-time Reserve Officer	7.45/hr	--	--

July 1, 1988:

Full-time Police Officer	20,852	21,840	23,790
Sergeant	--	--	24,290
Part-time Reserve Officer	7.70/hr		

Hourly rates shall be determined by dividing the above annualized rates by 2,080 hours.

Utilizing a police officer's salary at the two year level, the wages set forth in the city's comparables are as follows:

City	7/1/85	7/1/86	7/1/87	7/1/88	7/1/89
Read	n.a. ³	\$18,650	\$19,400	\$20,100	Open
Montague	n.a.	\$19,718	\$21,258	Open	Open
Sparta	n.a.	\$22,285	\$23,176	\$24,103	Open

City Offer	7/1/85	7/1/86	7/1/87	7/1/88
Cedar Springs	Freeze at \$21,216	\$22,126	\$22,984	\$23,790

Union Offer

Cedar Springs	\$22,489	\$23,838	\$24,553	Contract Expires
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3. Not available

The city comparable rates for 1985 were not submitted. Therefore, the city has used the 1986 rates. The average for 1986 is \$20,218.00 and, hence is \$998.00 higher than the frozen \$21,216.00 Cedar Spring rate for 1985. The Cedar Springs' officers received an 8.2% raise July 1, 1984. Hence, the city asserts that freezing the 1985 salary of \$21,216.00 for the year 1985 is fair.

The average rate for 1986 is \$20,218.00 which puts the city offer \$1,908.00 above average.

The average rate for 1987 is \$21,278.00 which puts the city offer \$1,706.00 above average.

The average rate for 1988 is \$22,101.00 which puts the city offer \$1,689.00 above average. The union offers would, of course, put Cedar Springs at even a greater amount above average in reference to the city comparables.

The decision to choose the city's last best offer on wages based on its comparables does result in a wage freeze for 1985 for all of the bargaining unit. The union contends that by such decision the panel effectively will deny the bargaining unit a raise since its last one on July 1, 1984. But that raise was, as stated, 8.2% which effectively put the bargaining unit \$998.00 or 5% higher than the average of comparables for 1985 (using 1986 figures) (Union, Exhibit 8).

"OTHER EMPLOYEES GENERALLY" (S/S 9 (d) ABOVE

The union further argues that some other non-bargaining unit

employees in Cedar Springs received a 6% raise or higher for 1985, 6% or higher for 1986, and 3% or higher for 1987, and a few received much higher rises.

The city counters by contending that some of these raises were the result of promotions.

The record discloses that Amber Bailey was promoted from City Clerk to City Manager in 1983, and on July 1, 1983 received a 42% raise from \$7.55 to \$10.75 per hour. Hence, her raise of 6% on July 1, 1985 did not relate to her prior promotion. She also received raises of 6% on July 1, 1986 and 3% on July 1, 1987. (Union Ex. 10)

Paula Magoon was promoted from Clerk to Treasurer in 1983, and received a 16.7% raise on July 1, 1983. She received an 18% raise on July 1, 1985, but it is noted that on July 1, 1984 she only received a 2% raise in the face of an 8.2% raise for police officers. On July 1, 1986 she received a 9% raise and a 3% raise on July 1, 1987.

Deb Rolloff was promoted to Deputy Clerk in 1985, and received a 29% raise on July 1, 1985; 14% on July 1, 1986; and 3% on July 1, 1987.

Taking an overall view of a comparison of all non-bargaining unit employees, it appears that four out of the nine received 6% on July 1, 1984 in the face of the bargaining unit receiving 8.2%, and they received 6% on July 1, 1985; two out of the nine received substantial raises on July 1, 1985 to reflect promotions in excess of the 6%; one received a 6% raise on

July 1, 1985 having received a 42% raise on July 1, 1983 to reflect her promotion; and two received no raise on July 1, 1985. (Union Ex. 10)

Accordingly, these "in house" non-bargaining unit comparables present a "mixed bag" not clearly reflecting raises weighted in their favor as compared to the city's offer to the bargaining unit.

While the above statutory criterion has some applicability, it does not, in the Panel's view, have the impact or pertinency as do wages paid to police officers in comparable communities.

17.455(39) BASES FOR FINDINGS, OPINIONS AND ORDER. SEC. 9

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

The city further asserts that the cost price index cap for July, 1985 was 319.1. The index for July, 1986 was 322.9 or a 1.2% increase in the cost of living. In fiscal 1986/87 such an increase in cost of living was 3.9%. Such increase comports more with the city offer than the union offer.

In respect to the union's comparables the city also emphasizes that the increase for police officers in Lowell was 4% for 1986, and in Rockford no increase in that year. Sparta police officers received a 3% raise in 1986. Thus, again the city's offer is more in line with these percentage increases.

SERGEANTS

The current rate for the sergeant is \$21,694.00. This is

\$478 above the maximum patrolman's rate of \$21,216.00. The employer, for each of the years in question, has proposed a rate for the sergeant which is \$500 above the maximum patrolman's rate. The union's proposed rate for the sergeant is slightly higher; \$507 the first year, \$538 the second year and \$554 the last year. Apparently, there is no significant issue between the parties on the differential for the sergeant.

PART-TIME OFFICERS

The part-time reserve officers' increases follow the employer's pattern offered to full-time employees. Employer's Exhibit No. 6 lists the part-time rates for surrounding cities, including some of those sought as comparable. The employer's proposal falls well within these rates.

AWARD OF WAGES

Taking all of the above factors into account, the panel awards the city's above last best offer as to wages.

SICK LEAVE

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE XIV - SICK LEAVE

14.1: Paid Sick Leave.

A. All full-time employees shall accumulate 8.67 hours of sick leave per month but not more than thirteen (13) days per year.

B. All eligible employees may use up to five (5) sick days per calendar year in the event of a death in their immediate family (wife, son, daughter, father mother, brother, sister or grandparents). Amounts of leave less than five (5) days may be used in the event of a death of a relative of a lesser degree.

Sick leave to be retroactive to July 11, 1985

CITY'S LAST BEST OFFER:

Issue No. 4: Paid Sick Leave.

Section 11.3. Paid Sick Leave. A full-time employee shall earn one (1) paid sick leave day for each month of continuous service. A paid sick leave day shall be eight (8) hours and paid at the employee's regular rate of pay at that time it is used.

The difference between the two offers is only one day per year. The city admits that the practice has been to afford the bargaining unit thirteen days per year. But it argues that twelve days per year is standard for both the city and union comparables. (City Ex. 14)

The panel is persuaded to the union's position for the reason that such a long standing practice should not be upset. Such factor falls within the following provision of the statute:

17.455(39) Bases for findings, opinions and orders]
Sec. 9..

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. (MCL Sec. 423.239).

As to the five day funeral leave, since the union's last

best offer denotes that such time is deducted from the employee's sick leave bank, no additional costs should be involved. Also, the city agrees that said five days may be deducted from the employee's sick bank.

AWARD

The panel awards the above union last best offer on sick leave except as to retroactivity.

LONGEVITY

UNION'S LAST BEST OFFER:

ARTICLE XVIII - LONGEVITY

18.1: Effective July 11, 1985, all full-time employees shall receive the following longevity payments.

<u>Years of Service</u>	<u>Annual Amount</u>
Upon completion of 3 years through 5 years	\$120
Upon completion of 6 years through 11 years	\$200
Upon completion of 12 years through 17 years	\$300
Upon completion of 18 years or more	\$400

18.2: Payments shall be made in the first pay period in August, with seniority determined by employees on the payroll as of July 1st.

Longevity to be retroactive to July 11, 1985

CITY'S LAST BEST OFFER:

LONGEVITY.

Continue the status quo: no longevity.

It is noted that in the city comparables, two out of three have a longevity payment. The union offer places the city close to the average in each yearly period. Accordingly, the city comparables support the union offer.

The rationale underlying a longevity payment is to pay a bonus for long time service. Notwithstanding the city's assertion that labor contracts usually provide for regular yearly wage increases and, hence, there is no need for such payment, longevity payments have extensively been included in labor contracts. Accordingly, such an issue is legitimately introduced by unions in collective bargaining. But this is an interest arbitration, not collective bargaining. The panel is strictly governed by the above statute, and must consider all appropriate statutory guidelines.

As heretofore set forth, it was noted that the city officers are paid \$1,908.00 (1986), \$1,706.00 (1987) and \$1,689.00 (1988) higher on average than other comparable cities (pg. 10, Opinion). As argued by the city, one of the statutory guidelines is s/s 9 f as follows:

Sec. 9...

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

Hence, while, as stated, longevity payments have been incorporated in labor contracts in the majority of the city's comparables, here such factor is outweighed by the fact that, per

these same comparables, city police officers are paid well above average.

The union points out that after two years a police officer in the city reaches a maximum salary. Therefore, longevity payments serve to retain experienced officers. But the subject contract will provide for increases during the term thereof. Accordingly, a two year police officer is not frozen at a particular level. The fact that police officers in the city are paid well above average, as referenced to city comparables, should serve to retain experienced officers.

AWARD

The panel awards the city last best offer as to longevity.

HOURS OF WORK/OVERTIME

UNION LAST BEST OFFER

ARTICLE X - HOURS OF WORK

10.3: Premium Pay. Time and one-half ($1\frac{1}{2}$) of an employee's regular straight-time hourly rate of pay shall be paid for:

A. All hours performed in excess of eighty (80) hours in an employee's tour of duty.

All hours performed in excess of eight (8) hours in a day.

Hours of work/overtime to be retroactive to July 11, 1995.

CITY LAST BEST OFFER

ISSUE No. 7: Overtime Premium.

Section 9.3 (a) All hours worked in excess of eight (8) in one (1) workday or all hours worked in excess of eighty-six (86) in a tour of duty. No overtime shall result when an employee changes shifts on his regular schedule.

The present practice in the city is to pay overtime at time and one-half rates for all hours over eight in one day, and all hours over eighty during an officer's tour of duty. A tour of duty is defined as fourteen days.

The city has submitted no evidence relative to overtime provisions in its comparables. The union's comparables reflect that all pay overtime per the union offer.

The city asserts that the Fair Labor Standards Act, referenced to overtime (s/s 553.230), has recently become applicable to public employees. That section, however, recites 86 hours as the "maximum" hours standard for a 14 day tour of duty before overtime is triggered. Hence, a lesser number of hours, such as 80, appears to be appropriate.

In any event the panel is here governed by the above PA 312 statute. Hence, the union comparables and the practice of the parties must be dispositive of the subject issue.

To the degree, if any, that a change of shift hours during a work week necessitates payment of overtime, as argued by the city, such factor, in the panel's view, is not sufficient to tip the scales in favor of the city's offer.

AWARD

The panel awards the union last best offer as to overtime except as to retroactivity.

ABILITY TO PAY

In view of the panel's award of the city last best offer as to wages, and in view of the minimal economic consequences resultant from the award of the union last best offer as to sick leave and hours of work/overtime, the city's argument relative to the lack of ability to pay need not be addressed.

AGENCY SHOP

UNION LAST BEST OFFER

ARTICLE III - AGENCY SHOP

3.1: All members of the bargaining unit shall, as a condition of employment, become members of the union, within thirty days of employment or entering or reentering the bargaining unit, or pay a service fee equal to a dues paying member

3.2: The employer, upon receipt of a written notice from the union, that an employee is no longer a dues paying member in good standing with the union, shall terminate the employment of said employee within thirty days from the date of said notice, unless said employee presents a letter from the union stating that he has been returned to a good membership status, prior to the expiration of the above mentioned thirty day period.

3.3: During the period of time covered by the Agreement, the employer agrees to deduct from the pay of all employees all dues and initiation fees of the POAM, provided, however, that the union presents to the employer authorization signed by such employees, allowing such deductions and payments to the union. This may be done through the steward of the union.

3.4: Monthly agency fees and initiation agency fees will be deducted by the city and transmitted, along with a list showing from whom such deductions have been made, to the Treasurer of the Union, 28815 West Eight Mile Road, Suite 103, Livonia, Michigan 48152; as prescribed above for the deduction and transmission of union dues and initiation fees. The union agrees to indemnify and hold the city harmless against any and all claims, demands, suits, liability and any other actions arising out of

compliance with Article III.

Agency shop to be effective date of award.
CITY LAST BEST OFFER

ISSUE NO. 2: Agency Shop.

Section 3.1. All employees within the bargaining unit who desire to become a member of the Union and who wish to have monthly dues deducted, may do so by filing with the Employer a signed authorization card. Those employees who do not wish to become a member of the Union but who desire to pay an agency fee to the Union in an amount equal to dues, may do so by filing with the employer a signed authorization card. Upon receipt of a signed authorization card, the employer will deduct monthly dues or service fees in the amount authorized by the union and transmit them to the designated address authorized by the union. The union agrees to hold the employer harmless for any and all claims arising under this Section.

The panel is persuaded to award the last best offer of the union for the reason that it more nearly complies with the theory underlying agency shop. An agency shop precludes employees from enjoying benefits achieved by the union without paying a "service fee" equivalent to union dues. To the contrary, the employer's last best offer makes such payment discretionary with employees.

Further, the union offer includes a provision insuring that union dues will be paid by union members. Such a provision is a substantial protection to the union against the delinquency of its members.

The panel has taken note of the city's argument that recruitment of part-time officers may be detrimentally affected by enforcing payment of such a "service fee". The city asserts that many of these part-time officers are full-time officers at other cities,

and, hence, would then pay double fees. But in the panel's view, such a situation is common where an employee holds two union jobs. The added income from a part-time job with the city far outweighs the small amount of the service fee.

The city further contends that the small compliment of officers in the bargaining unit should indicate that there be no requirement for payment of union dues and service fees. In the panel's opinion, the fact that the union agency shop provision is fairly common-place offsets such argument.

AWARD

The panel awards the union last best offer as to agency shop.

LAYOFF AND RECALL

UNION LAST BEST OFFER

ARTICLE VII-LAYOFF/RECALL

7.1: "Lay-off" means the reduction in the work force due to lack of funds.

A. First, all non-bargaining unit, part-time temporary or reserve officers shall be laid off.

B. Next, all part-time bargaining unit members.

C. next, all probationary employees.

D. Last, the lowest seniority full-time bargaining unit members shall be laid off.

7.2: No one will be hired either part-time, temporary, or otherwise until those who have been laid off have been notified by certified mail by the employer that they are to be recalled. Any employee failing to return to work ten (10) days after notification from the city of his recall will be deemed to have quit.

CITY LAST BEST OFFER:

ISSUE NO. 3 LAYOFF.

Section 6.5. Layoff. All reductions in the bargaining unit shall be accomplished in the following manner:

(a) The employee with the least seniority in a classification affected shall be laid off first and thereafter further layoffs shall follow the inverse order of seniority providing that the more senior employees have the experience, qualifications and present ability to perform the required work. Part-time reserve officers shall be a separate classification from full-time police officers.

Layoff and recall rights in accordance with seniority is a cornerstone in a collective bargaining agreement. The thrust thereof is the right to job protection.

As to union last best offer in s/s 7.1, the panel agrees with the city that a layoff should not be restricted as based only on lack of funds. Such a phrase will lead to disputes. Also, there may be other reasons, such as efficiency, for a reduction of work force even in a small police department.

The city further contends that it is doubtful that this panel has the authority to determine non-mandatory bargaining issues. Accordingly, per city assertion, that part of the union last best offer dealing with limitation on the city's right to hire while bargaining units are on layoff, and that non-bargaining unit employees be laid off before bargaining unit employees, are non-mandatory subjects of bargaining.

The panel agrees that a PA 312 panel may not address issues involving non-mandatory subjects of bargaining. But whether the above

two issues are non-mandatory subjects of bargaining will not be addressed herein. This is for the reason that such issue has not be definitively argued by the parties.

Leaving aside the non-mandatory subject of bargaining issue, the panel is not persuaded to approve s/s 7.1 (a) in the union last best offer which effects the layoff of non-bargaining unit members.⁴ Such a provision is, in the panel's view, unusual in that it governs the rights of employees in areas outside of the bargaining unit. A collective bargaining agreement should serve to govern the rights and responsibilities of the employer and the union in relation to the duly certified bargaining unit, and not the rights of the employer viz a viz those employees not in the bargaining unit.

Next, as to s/s 7.1 (b), the city asserts that, per its last best offer, part-time bargaining unit members should be classified separately for layoff/recall purposes from full-time officers. It contends that there is considerable fluidity among part-time officers in that there numbers and hours change frequently depending upon availability.

The panel is, however, persuaded to accept s/s 7.1 (b) of the union last best offer for the reason that thereby full-time bargaining unit members are given greater protection. It is

4. Part-time reserve officers are not in the bargaining unit until they have worked 400 hours in the previous year.

theoretically possible, under the city last best offer, to lay-off all full-time officers and run the police department with experienced part-timers.

In the panel's view, an officer who has elected to pursue a career as a full-time employee deserves such protection. Full-time officers are thereby encouraged to pursue careers as police officers, and greater professionalism is accordingly achieved.

The city further contends that its last best offer emphasizes that expertise and ability to do the job should be preconditions to a layoff and recall. But in the panel's view, particularly in such a small police department, it can be inferred that full-time officers are qualified to perform their duties. There is no need for such a qualification test which can only serve to promulgate grievance disputes relative to such issue.

As to s/s 7.2, the panel agrees with the substance of the union last best offer except that, as to the ten day period, such provision conflicts with section 6.4 (d) in the collective bargaining agreement otherwise agreed upon.⁵

AWARD

7.1 In the event of a layoff the following procedure shall be followed:

5. 6.4: Loss of Seniority. An employee's seniority and employment relationship with the employer shall terminate for the following reasons: ...

D. If the employee fails to report to work within three (3) working days following notification of recall. (Joint
1)

- (a) All part-time bargaining unit members;
- (b) Next, all probationary employees;
- (c) Last, the lowest seniority full-time bargaining unit members shall be laid off.

7.2: No one will be hired either part-time, temporary, or otherwise until those who have been laid-off have been notified by certified mail by the employer that they are to be recalled. Any employee failing to return to work three (3) days after notification from the city of his recall will be deemed to have quit.

TERM OF AGREEMENT

ARTICLE XXIII - TERM OF AGREEMENT

UNION LAST BEST OFFER

23.1: This Agreement shall be effective July 11, 1985 and continue in full force until midnight, June 30, 1988. It shall be automatically renewed from year to year. Thereafter unless either party notifies the other in writing at least ninety (90) days prior to the termination date above that modification or termination is desired.

CITY LAST BEST OFFER

Beginning July 1, 1986 and terminating June 30, 1989.⁶

6. The actual city last best offer recites as follows:

"Beginning on the date of the Act 312 Award and terminating at midnight, June 30, 1989". But the city brief recites as follows:

"The employer has offered a contract beginning July 1, 1986, and ending June 30, 1989;" (at pg. 8) "A contract for a period July 1, 1986, through June 30, 1989, is certainly fair and appropriate under the circumstances presented." (at pg. 25)

The panel is persuaded that, per city contention, adoption of the union last best offer would terminate the contract only 3½ months hence. Such short time of experience under an initial contract before entering into negotiations, and possible PA 312 proceedings for a new contract, does not serve the public interest, per the following provision of the statute:

17.455(39) Bases for findings, opinions and order...

Sec. 9...(c) The interests and welfare of the public..

Further, the July 11, 1985 date, set forth in the union last best offer, is the date of the certification of the union. However, the parties did not begin to negotiate until March 27, 1986. Accordingly, such latter date was the first time the parties had the opportunity to agree to a contract. It, therefore, is not fair to adopt the union last best offer as to contract term in accordance with section 9 (h):

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. (MCL Sec. 423.239)

In view of the panel's adoption of the city last best offer as to the beginning of the term of the contract (July 1, 1986), no retroactivity to July 11, 1985 can be awarded prior thereto, as requested by the union, referenced to the above awards as to sick leave, and hours of

work/overtime.

AWARD

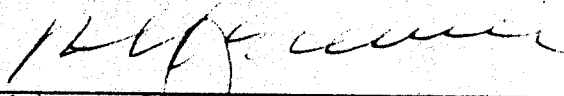
The panel awards the city last best offer as to term of the contract.

No retroactivity to July 11, 1985 is awarded, as requested by the union, in reference to the above sick leave, and hours of work/overtime awards.

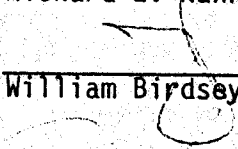
THE CURRENT TENTATIVE AGREEMENT

AWARD

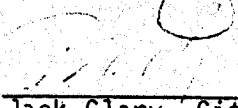
The panel awards the current tentative agreement as set forth in employer Ex. 2 and Joint Ex. 1.



Richard L. Kanner, Panel Chairman



William Birdseye, Union Panel Member



Jack Clary, City Panel Member

Dated: 7/26/88