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IN THE MATTER OF THE
ARBITRATION BETWEEN:

CITY OF PORTAGE

and

MERC Case No. L 00 D-7021

PORTAGE POLICE OFFICERS ASSOCIATION

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION & AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Kevin McCarthy
City Delegate

Michael Ward
Union Delegate

Date:

3/15/02

Portage, City of

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**CITY OF PORTAGE
and
PORTAGE POLICE OFFICERS ASSOCIATION
MERC Case No. L 00 D-7021**

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INTRODUCTION

These proceedings were held pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, City Delegate Kevin McCarthy, and Union Delegate Michael Ward.

A pre-hearing was held on March 28, 2001 and hearings were held on August 30 and 31; September 6 and 7 and October 8 and 9, 2001 at the City of Portage Offices. The City of Portage was represented by Attorney Kevin McCarthy. The Union was represented by Attorney Michael Ward. The record consists of 1054 pages of record testimony in six volumes and 135 county and 28 union exhibits and one joint exhibit. References to record testimony will be identified as TR-volume number, page number.

Last offers of settlement were submitted by the parties on October 26, 2001 and the City submitted a revised last offer on November 12, 2001. Post hearing briefs were dated and submitted by the parties on December 21, 2001, but due to apparent mishandling by the postal service, second mailings were not received by the independent arbitrator until January 8, 2002. A reply brief was submitted by the City January 22, 2002 and by the Union January 28, 2002.

By written stipulation, which is contained in the case file, the parties waived all time limits applicable to this proceeding, both statutory and administrative.

Additionally, a number of issues that were identified as issues in this dispute at the March 28, 2001 pre-hearing conference, as reflected in the independent arbitrators March 30, 2001 letter summarizing the pre-hearing conference, were resolved, withdrawn or stipulated to by the parties. Those are as follows:

UNION ISSUES (TR-248)

- 8.3(d)—return to work on a limited basis—withdrawn.
- 9.4—long-term disability, definition of disabled—withdrawn.
- 11.1(e)—overtime scheduling—withdrawn.

UNION AND EMPLOYER ISSUES

- Article XIX—promotional procedure—parties reached agreement at hearing.
- Contract duration—parties reached agreement at hearing, contract period to be from July 1, 2000 through June 30, 2002.
- Residency requirement—parties reached agreement at hearing (TR-7).
- Shift differential—parties reached agreement at hearing on a letter of understanding (TR-7).

EMPLOYER ISSUES

- Physical fitness program implementation—withdrawn.
- Body armor style, type and use—parties reached agreement at hearing.
- Personal performance assessment procedure—parties reached agreement at hearing.

The parties also stipulated that the issues not before the arbitrator for determination that are in the current collective bargaining agreement will be advanced into the new agreement in the same form and shape as under the old agreement (TR-8).

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. The section provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

- The lawful authority of the employer.*
- Stipulations of the parties.*
- The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - In public employment in comparable communities.*
 - In private employment in comparable communities.*
- The average consumer prices for goods and services, commonly known as the cost of living.*

- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (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.*

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

BACKGROUND

The City of Portage is located in the West Central portion of Kalamazoo County, Michigan. It is bordered on the North by the City of Kalamazoo, which is bordered on its North by Kalamazoo Township. It is the second most populated unit of government in Kalamazoo County and Kalamazoo Township is the most populated township and third most populated unit of government in Kalamazoo County.

Portage had a population of 44,897 in 2000 (E-11); and in 1999 its SEV was \$1,474,231,200 (E-13).

COMPARABLE COMMUNITIES

As noted earlier, Section 9(d) of Act 312 directs the panel to consider and compare the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services in public and private employment and with other employees generally in comparable communities.

In this proceeding, the Union proposed the City of Kalamazoo, Kalamazoo County Sheriff's Department and Kalamazoo Township as comparables (U-1 through U-4). The City proposed the communities of Battle Creek, Bay City, Burton, East Lansing, Holland, Jackson, Kentwood, Midland, Port Huron and Wyoming as comparables (E-1 through E-10).

The Union proposes the communities of Kalamazoo City, Kalamazoo County Sheriff's Department and Kalamazoo Township should be used as comparables because the employees performing similar services within these communities are in the same labor market as the Portage police officers. The Union also points out that police officers from all four units of government are board members of the Kalamazoo County Police Officers Association, which sets general labor relation policies for the four associations and that Portage police officers have regular contact with officers from the proposed comparable jurisdictions when carrying out their responsibilities. All four communities also share in the revenue from a Kalamazoo County law enforcement mileage (U-4).

In both direct and cross examination of witnesses testifying on comparability, the City tried to draw a distinction between the responsibilities of the police officers of the City of Kalamazoo and Portage. The City of Kalamazoo has a public safety officer classification. Employees in this classification are cross trained for fire suppression duties and perform those duties as back up to the fire fighting personnel. Portage police officers have no such classification. However, during cross examination City witness Police Chief Richard White testified that Portage police officers duties include responding to fires much the same as Kalamazoo police officers (TR-48) and that the City of Kalamazoo has separate fire fighters, the same as the City of Portage and that the four police agencies serve as back up on calls for each other (TR-59).

The City offered the Act 312 arbitration award in MERC Case No. G 94 F-4010 (E-16) as evidence that the arbitrator in that case accepted as comparables the same comparables the City has proposed in this case. Employer exhibit 16 also states the parties, in that case, stipulated to the comparables offered by the Union in this case. It is noted that the City of Kalamazoo had the same arrangement it currently has with respect to its public safety department in 1996 when the parties agreed to the comparables in that case. There is no evidence that there has been major changes in the

law enforcement functions of any of the jurisdictions proposed as comparables by the Union in this case since the parties stipulated to those same comparables in 1996.

The Employer, in its post-hearing brief, argues the Union's proposed comparables are significantly dissimilar from Portage. It points out that the City of Kalamazoo's population is 73% greater than that of Portage and has 252 sworn employees in its public safety department, while Portage has only 57. The City says the size, structure, hours and working conditions of the Kalamazoo Public Safety Department are significantly different from those of Portage and, therefore, comparing Kalamazoo Public Safety Officers with Portage police officers would not be a comparison of employees performing similar services in public employment in a comparable community. The City basically makes the same argument of size and duty differences with respect to the Union's proposed comparable of Kalamazoo County and its Sheriff's Department. It argues that the Township of Kalamazoo also should not be considered comparable because its population and police force is too small in comparison with the City of Portage's population and police force. Lastly, the City points to a recent Act 312 award in Kalamazoo Township Police Officers Association and the Charter Township of Kalamazoo, MERC Act 312 No. L00 L-7015, as support for its position on comparability. In that award the Union representing the employees of Kalamazoo Township put forth the same four communities and employee groups as the Union's proposed comparables in this proceeding. Council for the Township used basically the same arguments in that proceeding as the City is using in this proceeding as a basis for the independent arbitrator to reject the Union's proposed comparables. In that case, the arbitrator concluded that the Union's proposed comparables were not comparable communities. The opinion does not elaborate upon the basis for which the arbitrator made that conclusion. The City further argues that for the sake of stability and local labor relations, the decision on comparability in this case should track the decision in the Kalamazoo Township case. The City says the arbitrator in Case L00 L-

7015 recognized that the form of government, departmental size and the demographics of the communities offered by the Union were more dissimilar to that of Kalamazoo Township than similar. I appreciate the City's point on the value of stability and labor relations. However, I do not view the arbitrator's finding in MERC Case L00 L-7015 as relieving this arbitrator of the responsibility of determining the comparable communities by independent review of the evidence and testimony in this case.

An examination of the exhibits offered by the City to support its comparables compared to those offered by the Union reveals that the City of Kalamazoo's population is only 11% greater than the City of Wyoming's population (E-11). Kalamazoo Township's population is about 40% less than that of the City of Burton, the smallest city offered as a comparable by the City, and its SEV is about 38% less than that of Bay City, offered by the City as a comparable. The panel does not view these variances in population and SEV as significant when taking all other factors into consideration. There is sufficient evidence relating to the geographic proximity of the Union's proposed comparables to the City of Portage, which results in comparability involving the general economy, housing and other conditions of employment and labor market as well as evidence of working relationships to support accepting the Union's proposed comparables in this case.

I do not believe Section 9 (d) limits comparable communities to only those with the same form of governance. As to the City's argument that the public safety officers in the City of Kalamazoo and the deputy sheriffs in Kalamazoo County cannot be compared with the police officers in Portage because their duties, hours and working conditions differ and that the departments differ greatly in size, I believe significant record testimony supports a finding that there is as much or more similarities as dissimilarities in the functions, duties, working conditions and responsibility of a sizable number of the law enforcement officers in both the City of Kalamazoo and Kalamazoo County Sheriff Department to the functions, duties, working conditions and

responsibilities of the police officers in Portage to justify supporting them as comparables (TR-89-95, 104-110).

The panel also believes, as did the arbitrator in the arbitrated case in 1996, that the ten cities offered by the City as comparables are within a reasonable range of Portage relative to population, square miles, SEV and crime rates per population (E-11 through E-15). None of the comparables proposed by the City have a population greater than Kalamazoo City or smaller than Kalamazoo Township, both of which are Union proposed comparables. As noted above, Kalamazoo Township's SEV is approximately 38% less than that of Bay City, which has the lowest SEV of the comparables proposed by the City. Total crimes per 1,000 population for all 13 proposed comparables are within a range of 73 for the City of Midland, offered by the City and 237 for the City of Kalamazoo, offered by the Union.

Viewing the comparable factors contained in the exhibits offered in this proceeding as a whole, the panel concludes that the majority of factors applicable to each community offered for comparison fall within a reasonable range of comparability. Therefore, the panel chooses the following communities are comparable to the City of Portage in this proceeding: City of Kalamazoo, Township of Kalamazoo, County Sheriff's Department of Kalamazoo County, the Cities of Battle Creek, Bay City, Burton, East Lansing, Holland, Jackson, Kentwood, Midland, Port Huron and Wyoming.

ECONOMIC ISSUES

The parties have either withdrawn or reached agreement on previously identified non-economic issues. Therefore, the panel finds all outstanding remaining issues in this proceeding are economic issues. The panel will address each of these issues separately.

Before addressing the first economic issue, however, the independent arbitrator notes that the City, in its post-hearing brief, points out that the Union has taken the

position on several issues that the contract should be modified so that radio operators and police service technicians ("PSTs") will have the same benefit levels as police officers and detectives. The City points out that following the radio operators and PST's joining the police officers and detectives bargaining unit both groups were part of the negotiations in 1996 that led to the current contract. The City says the Union could have argued to bargain to equalize benefits in the current contract, but choose not to. The City also says that it is not unusual to have different benefits for police officers and dispatchers and points to several exhibits identifying those differences in comparable communities offered by the City. The City also says that the Union itself treats these employees differently in the Union administered retiree health insurance plan.

The independent arbitrator notes that how the parties came to agreement on the issues addressed or modified in the negotiations leading to the current contract is not at issue in this case. There is testimony in this case indicating that some provisions were modified in the existing contract addressing parity issues and some were not (TR-134). When addressing the parity proposals advanced by the Union on the issues in this case the independent arbitrator will, of course, consider the exhibits and testimony presented by the parties from internal and external comparables pertaining to each issue. I will also consider the value generally in labor relations of attempting to treat members of the bargaining unit similarly with respect to employee benefits while recognizing that there may be justification for differences with respect to certain benefits when the evidence presented in this case supports justification for those differences.

ISSUE 1

Funeral Leave

The current contract at Section 7.6 contains different provisions for paid funeral leave for non-probationary police officers and detectives than for non-probationary radio operators and PST's. Both may receive up to three days time off with pay to

attend the funeral of members of their "immediate family." However, "immediate family" is defined differently. Immediate family includes stepmother and stepfather for police officers and detectives, but not for radio operators and PST's. Also, the current contract allows an additional two working days to police officers and detectives for the death of the employee's current spouse or parents. This provision is not available to radio operators and PST's (J-1).

The City's last offer of settlement proposes to revise the language and provide the radio operators and PST's the same benefits provided to the police officers and detectives in the current contract. The City's last offer of settlement would result in the radio operators and PST's eligibility for three days off with pay for the death of a stepmother or stepfather and an additional two days for the death of a current spouse or parents.

The Union's last offer of settlement proposes two additional changes beyond that of the City's last offer of settlement. The Union proposes to expand the eligibility for the two additional working days for the death of a current spouse or parent by adding children, stepchildren and grandchildren. The Union also proposes to remove the provision that this section apply to non-probationary employees only and would have it also apply to probationary employees.

The City, in its post-hearing brief, says a review of external comparables reveals that funeral leave benefits as displayed in employer exhibits 17-20 reveal that the City's last best offer will place all of the bargaining unit employees on par with those in comparable communities.

The Union says in its post-hearing brief that it has examined City exhibits E-1-10 and Union exhibits U-1-3 and that only the Cities of Burton and Kalamazoo exclude probationary employees from funeral leave benefits. The independent arbitrator has also examined these exhibits and exhibits E-1A, E-4A, E-9A and E-10A and finds that the length of the probationary period is 12 months for all comparable contracts, with the

exception of six months for the City of Holland and eighteen months for the City of Midland. A review of E-18 reveals that seven comparable communities provide five or more paid funeral leave days for employees in the police bargaining units, two communities provide four days and three communities provide three days. Exhibit E-19 reveals that radio operators in two comparable jurisdictions are allowed two additional days beyond the initial three for the death of a spouse and child and in one case mother or father and two communities do not provide more than three days funeral leave. There is no record testimony or exhibits providing information on the internal comparables on this issue.

Both parties, in their last offers of settlement, would treat all members of the bargaining unit the same relative to funeral leave. The evidence reveals that the majority of comparable communities make no distinction between probationary and non-probationary employees when applying this benefit. City witness Dena Carlson testified that none of the other comparable communities where radio operators and PST's were in the same bargaining unit provided less funeral leave to radio operators and PST's than to police officers (TR-150). The City, in its reply brief, refers to E-113 and says the cost of the Union's proposal would be \$565 for police officers and \$403 for radio operators in the first year. This cost is based on an assumption that adopting the Union's proposal would result in use of 16 additional hours of overtime being paid to each group. There is no record evidence or testimony to support the assumption made in arriving at this calculation.

Evidence supports the Union's position of having this contract provision apply to probationary employees and to make funeral leave benefits the same for all members of the bargaining unit. With respect to expansion of the additional two day provision to include children, stepchildren and grandchildren, it appears from a review of the exhibits that children are frequently included in this provision. Stepchildren and grandchildren are not included in many of the comparables for these additional days,

but when considering this issue it is difficult to distinguish a child from a stepchild and given the general age of members in this bargaining unit it is unlikely that the provision would be exercised much more frequently by inclusion of grandchildren in this section.

Taking all of these factors into consideration the panel finds the Union's last offer of settlement on funeral leave to be the more acceptable position. Therefore, Section 7.6 of the contract will be modified to reflect the language contained in the Union's last offer of settlement on issue 1 to be effective on the date this arbitration award is issued.

City:	Agree _____	Disagree <u><i>Union McCarty</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 2

Jury Duty

The current contract at Section 7.7 specifies a different procedure for compensation and limitations on compensation to police officers and detectives than for radio operators and PST's when an employee is called for jury duty. This difference is in part a result of the radio operators and PST's having joined with the police officers and detectives in this bargaining unit prior to the current contract. Union witness Scott Hurlbert testified that some items of difference between the contracts of radio operators and PST's and police officers and detectives were covered during the last negotiations leading to the current contract and some were not (TR-134).

The Union's last offer of settlement on this issue proposes to eliminate the second paragraph of Section 7.7, which would result in the radio operators and PST's having the same jury duty compensation and limitations as the current contract provides police officers and detectives. The Union's proposed last offer of settlement language also revises the first section of Section 7.7 by deleting the words "full-time,

permanent" and inserting "bargaining unit" to describe the employees covered by this section.

The City's last offer of settlement proposes no change be made from the current contract language in Section 7.7.

The Union, in support of its position, says the only difference between the police officer and detective jury duty leave and the radio operators and PST's is that the leave is limited to 30 days per year for radio operators and PST's and that the language applicable to radio operators and PST's does not require the City to schedule the employee on the day shift on days he or she is scheduled for jury duty, as does the language applicable to police officers and detectives. The Union points to the testimony of Union witness Phillips to support its assertion that the City's practice has been to schedule radio operators and PST's to the day shift on days he or she is scheduled for jury duty, even though that requirement is not in the current contract (TR-164). Witness Phillips also testified that it was common to have police officers fill in for dispatchers when necessary so that the City was not limited to the nine current dispatchers to fill a position on a shift on those occasions when a radio operator was called for jury duty (TR-164). There was also testimony that the incidences of police officers and radio operators actually serving on jury duty was infrequent and no evidence was presented that any employee served on a jury more than 30 days in a calendar year (TR-155). There was also testimony on the issue of the Union's proposed language change in the first sentence of Section 7.7 deleting the words "full time, permanent" and inserting "bargaining unit, employee." Union witness Hurlbert testified that the intent of the change was to make the jury duty contract provisions the same for all bargaining unit employees and that he interpreted the current contract language to include all full time employees including probationary employees (TR-156-158).

The City supports its position that no contract change is necessary by pointing to record testimony that it is rare for a police officer or dispatcher to be left on jury duty

and to serve through a trial. Therefore, the City argues that there is no need to remove the 30-day limitation language in the paragraph describing the applicability of this provision to radio operators and PST's. The City also says the requirement to transfer a dispatcher called to jury duty to the day shift, in the event that they are not already serving on the day shift, could result in having to pay additional overtime. The City did not, however, rebut the testimony of witness Phillips that transferring the employee to the day shift was the current practice and that police officers were frequently used to fill in for dispatchers.

The City offered exhibits E-21 and E-22 in support of its position. Employer exhibit 22 reveals that two of the seven contracts summarized in the exhibit provide for shift assignments for radio operators. That exhibit also reveals that nearly all of the contracts provide for regular pay minus jury fees and two out of the seven place a limit of 45 days on employee paid days for jury duty.

The panel finds value in this instance in providing uniformity in the contract for all employees who may be required to serve on jury duty. Testimony reveals that this provision is likely to be used infrequently and, therefore, not likely to be of significant cost to the employer. The panel recognizes the City's cost estimate on this issue in E-113 as noted in its reply brief, but again notes that the estimated cost is based on non-documented assumptions. It is common and in our democracy important for an employer, particularly a public employer, to support the civic responsibility of jury duty. The specific proposal in the Union's last offer of settlement would result in the same benefit and limitations to radio operators and PST's as currently provided to police officers and detectives. There was no evidence presented that these provisions are significantly inconsistent with the provisions in comparable communities where both dispatchers and police officers are in the same bargaining unit. Exhibit E-22 does show that shift assignment provisions in the Union's proposal is in only one of the contracts where radio operators have a separate contract from police officers, but that is

not the situation here. Testimony in this case, un-rebutted by the City, was that police officers can and do fill in for radio operators when needed. This should minimize the need for overtime if, and when, a radio operator is serving on a jury.

Lastly, there was testimony on the issue of whether this provision applied to probationary employees or not (TR-157-158). It is noted that the first sentence in the second paragraph of Section 7.7 in the current contract applying to radio operators and PST's makes no reference to non-probationary employees or limiting it to only full time, permanent employees. In an effort to avoid future lack of clarity on this issue, it is the panel's view that in accepting the Union's language on this issue that Section 7.7 will apply to all employees in the bargaining unit during their probationary period.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on the issue jury duty. Therefore, Section 7.7 of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree *Sam McCarty*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 3

Sick Leave Accumulation (Section 8.1)

The current contract language at Section 8.1 addresses the accumulation of sick leave for bargaining unit employees and the time period after employment at which employees are eligible for sick leave. The current contract treats police officers and detectives differently than radio operators and PST's. The contract states police officers, starting with their second month of continuous employment, shall accumulate paid sick leave credits of one day per month. Therefore, at the end of the second month of employment a police officer will be eligible to take up to eight hours of sick leave. Full

time and part time radio operators and full time PST's, on the other hand, accumulate paid sick leave credits of one day per month—prorated for part time—from the date of hire, but are not eligible to use credited sick leave until the beginning of the seventh month of continuous employment.

The Union's last offer of settlement proposes language that would provide sick leave accumulation and eligibility for use to all bargaining unit employees the same as the police officers are provided in the current contract. The City's last offer of settlement urges the panel to retain the current contract language as is.

The Union offers Union exhibit 7 in support of its position. U-7 points out that in the Union's proposed comparables all contracts have the same sick leave accumulation and eligibility for use benefits for radio operators, PST's and police officers. The Union, in its post-hearing brief, also points to the City's exhibits on this issue. A comparison of E-24 and E-26 demonstrates that all of the comparable communities offered by the City, including those with separate contracts for their radio operators, have the same accumulation and eligibility for use benefits for police and radio operators, with the exception of the City of Port Huron.

The City, in its post-hearing brief, argues the Union offered no reasons for this proposed change, other than unit parity. Neither party provided testimony on what problems there is with the current contract or what problems there would be if the panel adopts the Union's proposal. The City did point out, in its post-hearing brief, that if the panel accepted this proposal it would actually change the provision for radio operators and PST's so that they would not begin to accumulate sick leave benefits until the beginning of the second month of continuous employment.

City exhibit E-24 also compares the period in which employees performing similar duties in comparable communities are eligible to use sick leave credits with the City of Portage employees in this bargaining unit. E-24 reveals that seven comparable communities allow police and radio operator personnel to take annual sick leave

anytime after employment, two after the first month, one after three months, two after six months and one after six months or before six months at the discretion of the chief. This exhibit supports the Union's position that the majority of contracts from the comparable communities provide the opportunity to use credited sick leave sooner than beginning after the six month of employment. This supports a contract change that is more consistent with the current contract language applicable to the police officers.

City witness Cindy Bezaury testified on internal comparables. She stated that in all other bargaining units within the City of Portage, except police command, employees are not eligible to exercise their accumulated sick leave until after six months (TR-182). Evidence was not provided on how the comparable communities applied sick leave eligibility to non-police and radio operator employees.

Record evidence, even considering E-113, does not demonstrate that this is a significant economic issue regardless of how the panel rules. Record evidence, specifically E-24 and a comparison of E-24 and E-26, supports treating all members of the bargaining unit the same and provides support for the accumulation of and use of sick leave eligibility of the employees in this bargaining unit starting with the second month of continuous employment as provided the police officers in the current contract. It is recognized that this differs from other employees within the City of Portage, but there is strong evidence that it is consistent with other comparable communities' treatment of police officers and radio operators.

This change will alter the provisions of the current contract for radio operators and PST's, as pointed out in the City's post-hearing brief, to delay by one month the time in which sick leave credit begins to accumulate, but it also will allow radio operators and PST's the use of sick leave credit four months earlier than in the current contract and it will make clear that all unit employees are covered by this provision. It is

presumed that the Union knew what it was asking for in its last offer of settlement on this issue.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on sick leave accumulation to be the more reasonable position. Therefore, Section 8.1 of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on this date this arbitration award is issued.

City: Agree _____

Disagree *Kevin McCarthy*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 4

Sick leave accumulation and pay off (Section 8.4, 8.5)

Both the Union and the City's last offer of settlement propose modifications to these sections. The City's proposed modification would treat all members of the bargaining unit the same. It would change the current limitation of sick leave payout to radio operators and PST's currently applicable only to retirement and allow radio operators and PST's to be eligible for sick leave pay out for any reason upon separation after fifteen years, as is currently provided to police officers and detectives. The City would make no change in the current limitations of a 1200-hour cap on accumulated sick leave and a payout of 50% of annual sick leave with a cap of 500 hours upon separation.

The Union's last offer of settlement would treat all employees in the bargaining unit the same, but also proposes to allow unlimited accumulation of sick leave and remove the cap of 500 hours for pay out, thereby making employees eligible for pay out for 50% of all unused sick days upon separation.

The Union offered exhibit U-8 to support its position. U-8 shows that the Union's comparables all allow unlimited accumulation, but two of the three comparables have hourly caps on pay offs.

The City presented Employer exhibits E-27 through E-30 in support of its position. E-28 reveals, even with the correction to the City of Wyoming pointed out by the Union in its post-hearing brief, that only two of the thirteen comparable communities, the Cities of Kalamazoo and Port Huron, have both an unlimited accumulation of sick days and no cap on the payment of 50% of accumulated days upon separation. Two communities, the City of Burton and Kalamazoo Township, either require or allow employees to receive all or half pay for unused sick leave annually and Kalamazoo Township places a cap of 90 days payment upon separation.

Union witness Hurlbert testified that the Union's proposal on this issue would coincide with its proposal on pension benefits (TR1-187, 188). The panel believes this proposal can be considered independently from the pension proposal since both parties last offer of settlement treats all members of this bargaining unit the same.

A review of the testimony and exhibits leads the panel to conclude that the City's last offer of settlement is the more reasonable. E-28 reveals that seven of the thirteen comparable communities have caps on the hours of sick leave pay out and one of the cities with no cap has limited the number of hours that can be accumulated. E-30 reveals a similar pattern with only the Cities of Kalamazoo and Wyoming having both unlimited accumulation and unlimited pay out days as proposed by the Union in this case.

Taking all of these factors into consideration the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, Section 8.4 and 8.5 will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date is arbitration award is issued.

City: Agree *Kevin McCarty*
Union: Agree _____

Disagree _____
Disagree *Michael Ward*

ISSUE 5

Worker's Compensation Supplemented Pay [Section 8.3 (b)]

The current contract at Section 8.3 (b) provides police officers and detectives a pay supplement to worker's compensation benefits for a period not to exceed twenty-six (26) weeks in any 12 consecutive months. No similar benefit is provided to radio operators and PST's. The Union's last offer of settlement proposes to offer this same benefit to radio operators and PST's and to extend the eligibility period for this benefit from twenty-six (26) weeks to fifty-two (52) weeks for all employees.

The City's last offer of settlement proposes no change from the current contract.

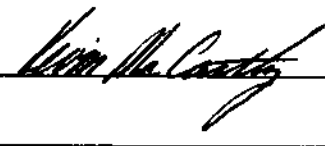
The Union supports its position with U-9, which reveals that all three of the Union's comparables provide a supplement to all unit members for either a fifty-two (52) week or indefinite period. The Union also presented testimony describing an incident during the current contract when a police officer was off duty resulting from a work-related injury in excess of fifty-two (52) weeks.

The City, in support of the status quo, presented testimony (TR-219, 221) and argued in its brief that the incidences of employees being off work from a work-related injury longer than twenty-six (26) weeks are infrequent. The City also indicated that in the case of the officer injured during the period of this contract he, with sick leave and long-term disability payments, did receive his full pay for the fifty-three (53) weeks he was off. The City also argues there is no need to treat the members of the bargaining unit similarly due to the differing nature of the police officers and detectives and radio operators and PST's jobs. The City also testified that the maximum supplement provided other employees within the City of Portage is twenty-six (26) weeks,

including firefighters and that the police command unit is currently limited to a thirteen (13) week supplement.

The panel finds the City's last offer of settlement to be the more reasonable in this matter. While there could be some support for allowing a twenty-six (26) week supplemented pay to worker's compensation for radio operators and PST's similar to nearly all other city employees including police officers and detectives, the Union's proposal to add an additional twenty-six (26) weeks to the current twenty-six (26) week supplement for all members is not supported by the evidence. It is true that Union exhibit U-9 reveals the Union's comparables on this issue support its position of a fifty-two (52) week supplement. However, a review of Employer exhibits E-1 through E-10 do not reveal this to be true in the majority of comparable communities. Also, a review of Employee exhibits E-1A, E-4A, E-9A and E-10A, all applicable to radio operators and PST's, reveal that two of the contracts provide a thirty (30) day and one a ninety (90) day supplement with extensions at the discretion of the chief. One contract provides a twenty-six (26) supplemental benefit limit. Testimony on internal comparables also does not support the extension of this supplemental benefit to fifty-two (52) weeks.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of worker's compensation supplemented pay benefit, there will no change from the current contract.

City: Agree 
Union: Agree _____

Disagree _____
Disagree 

ISSUE 6

Life Insurance (Section 9.1)

The current contract provides that the City will pay the monthly premium for \$30,000 of group double indemnity life insurance coverage under the employer's

present plan and provide \$100,000 false arrest insurance for each police officer and detective while on duty. The Employer also pays a monthly premium for \$15,000 of insurance coverage for full time radio operators and PST's and \$12,500 for part-time radio operators. Employees may purchase, at their own expense and at the employer's group rate, an additional \$15,000 of life insurance.

The Union's last offer of settlement proposes that the employer paid premium pay for a \$40,000 double indemnity life insurance policy for all employees within the bargaining unit and increase the false arrest insurance from \$100,000 to \$1 million coverage. The Union's proposal would also permit employees to purchase an additional \$12,000 of coverage at their own cost.

The City's last offer of settlement proposes to continue the police officers and detectives level of life insurance coverage at \$30,000, increase the insurance benefit for both part-time and full-time radio operators to \$20,000 and allow employees to purchase additional insurance coverage equal to their employer paid coverage. The City, like the Union's last offer of settlement, would increase the level of false arrest liability insurance to \$1 million.

The Union points out that U-10, E-33 and E-32 show that every comparable community currently provides the same life insurance benefit to radio operators as it does to police officers. The Union also notes that its proposed coverage at the \$40,000 level is \$10,000 less than that provided for Portage non-union employees (TR2-259) and the City's proposal is less than that currently provided to police officers by seven of the thirteen comparable communities (E-32).

The City argues that its last offer of settlement is more consistent with the comparable communities than is the Union's. The City also uses E-32 as a basis for its position and points out six comparable communities provide life insurance coverage between \$25,000 and \$30,000 and that two of the Union's comparables provide \$20,000 coverage for police officers. The City also relies on testimony from witness Bezaury on

internal comparables, noting that three of the other four bargaining unit city employee groups benefit is \$20,000 and one is \$30,000.

Both of the last offers of settlement on this issue have support in this record. The independent arbitrator can see merit in both proposals.

An examination of E-32, using data from E-100 to determine average figures for the Cities of Port Huron and Kentwood, reveals that the average life insurance benefit coverage for police officers among the thirteen comparable communities is between \$33,000 and \$34,000. An examination of E-34, using data from E-106 applying to radio operators base salary reveals that the average life insurance benefit coverage for radio operators among the seven comparable communities is approximately \$29,500. Add to this analysis, the current life insurance benefit provided to the majority of the employees within the City of Portage and this data supports the City's last offer of settlement as being more closely aligned with the evidence presented in this case.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, Section 9.1 will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City:	Agree <u><i>Kim McCarty</i></u>	Disagree _____
Union:	Agree _____	Disagree <u><i>Michael Ward</i></u>

ISSUE 7 (EMPLOYER ISSUE 1)

Health Insurance (Section 9.2)

Both the Union and the City propose changes to Section 9.2 of the current contract, which is titled "Hospitalization Insurance," but which in practice under the current contract covers health, hospitalization, prescription drug and vision insurance. Section 9.3 covers dental insurance and is not an issue in this proceeding.

Current contract language requires the employer to provide group health insurance benefits "comparable to that which prevailed immediately prior to the execution of this agreement" and sets a maximum monthly premium the employer is to pay. The maximum payment from the employer differs in the current contract between police officers and detectives and full and part time radio operators and PST's (J-1).

The Union's last offer of settlement proposes to change Section 9.2 in the following ways: 1) it would specify that the coverage include health, hospitalization, prescription drug and vision insurance, 2) it would further specify that the coverage be as described in E-43 of this proceeding, which reflects the coverage for the BCN-5 plan coverage effective 2/1/01 and 3) the Union proposes that the employer pay the full cost of the premium for the BCN-5 plan and make available additional plans to include BC/BS High Option, BC/BS 80/20 plan, PHP by the BC HMO plan, and the PHP-PPO plan. Employees selecting one of the alternative plans would be required to pay the difference in the monthly premium between the BCN-5 and the plan selected. Employees would also be offered the opportunity to opt out of the City health insurance plans and, if doing so, would be eligible to receive a monthly cash supplement equal to 50% of the total monthly premium of the insurance type and plan the employee is covered by when discontinued.

The City's last offer of settlement proposes Section 9.2 change in the following ways: 1) the employer for the life of this agreement would provide coverage levels as provided on 2/1/00 subject to unilateral change by the carrier in future years. Employer exhibit E-43, which reflects the BCN-5 coverage effective 2/1/01, is similar to that provided on 2/1/00, but also reflects the change in the carrier for vision coverage from 2000 to 2001. 2) The City also proposes that the employees' share of premium payment be changed from the current employer caps on payment to the employer paying 95% and the employee paying 5% of the premium cost. 3) The employer would

provide two alternative insurance plans, BC High Option and PHP-HMO, which could be selected by an employee, but the employee selecting one of these optional plans would have to pay any difference in the premium above the 95% cost paid by the employer for the BCN-5 plan. 4) The employer could also provide benefits comparable to the BCN-5 plan through another carrier licensed to do business in Michigan. The Union's last offer of settlement has a similar provision authorizing the employer to provide comparable benefits through another carrier.

Both the City's and the Union's last offers of settlement permit an employee to opt out of insurance plans offered by the City, but differ in the provisions for the amount of payment to the employee who has opted out. The Union proposes the employee receive 50% of the full monthly premium paid for by both the City and the employer for the type of insurance covered. The City proposes the employee receive 50% of the City's share of the monthly premium paid by the City for the type of insurance covered by the employee.

The panel has had the benefit of and has thoroughly reviewed the substantial record evidence and testimony on this issue. Union exhibit U-11 and employer exhibits E-35 through E-43 and TR-260-308 provide valuable information on this issue. The independent arbitrator recognizes the growing importance of health insurance coverage and costs to both employers and employees in recent years.

In this record there is clear evidence of the rising costs of health care over the past several years. A comparison of E-41 and E-42 and testimony at TR-318-319 address these costs including a potential 25% to 30% increase in insurance premiums anticipated 2/1/02. Record evidence also indicates that the cost of the particular plans offered to the City of Portage employees, including those in this bargaining unit, are at the high end of costs compared to comparable communities (E-41, E-42) and that the benefits within the plans vary, but the majority of the comparable communities are requiring a higher level of prescription drug co-pay from employees than is Portage (E-38).

Employer exhibit E-36 also reveals that of the twelve comparable communities in which information is provided, eight are not requiring a portion of the premium be paid by the employees at least for one or more of the plans offered. On the other hand, a review of E-41 and E-42 reveals that with the exception of the non-union employees in Portage, all of the other employees covered by the four bargaining units within Portage are required to pay a portion of the health insurance premiums.

With the exception of whether the employee should continue to pay a portion of the costs of health insurance premiums, the independent arbitrator believes the record reflects the parties are relatively close together on other matters involving this issue. The Union seeks specific reference to the coverage offered by the BCN-5 plan as of 2/1/01. The City agrees to provide coverage levels at the BCN-5 level provided 2/1/00. Since 2/1/00 the City testified that it continued coverage for the vision insurance, which was required on 2/1/00 (TR-324). There also was record testimony that the employees do receive information on coverage available at least annually (TR-290).

The City's last offer of settlement on the opt out provision does appear to differ from the current contract language and the Union's proposal in that it would only require the employer to pay only 50% of the City paid portion of the monthly premium rather than "50% of the monthly premium." On the other hand, the City testified that its proposal on this issue is exactly the same as that currently provided in the contracts for the City employees covered within the UAW and firefighters agreements. The City also points out in its post-hearing brief that the City has already discontinued offering the BCN 80/20 plan, and therefore, that would be impractical to implement in the Union's proposal.

Considering the evidence and testimony as a whole on this issue it appears the City's last offer of settlement is the more reasonable. The City's proposed level of employee share in the cost of insurance premiums is not unreasonable in the context of what has been the practice in the current contract, other bargaining units within the

City and anticipated increases in health care costs. This is particularly so when considering the fact that the contract resulting from this arbitration proceeding will be back before the parties for negotiation prior to its expiration 7/1/02. The importance of health care costs, coverage and administration are not likely to diminish in the context of future employer-employee relations and future negotiations provide an opportunity for the parties to clarify any ambiguity left as a result of this proceeding. For example, the independent arbitrator does find some ambiguity in how insurance coverage will be provided to the two employees in the bargaining unit who currently have coverage under the IBA-PPO plan, which is being discontinued under the City's last best offer. Also, the parties may want to clarify the language in the City's last offer of settlement which requires coverage levels provided on February 1, 2000 "subject to unilateral change by the carrier in future years." Contrast this language with the provision in the last sentence of the section, which permits the employer to provide "comparable benefits" through another insurance carrier. The parties may want to clarify the apparent practice that the City can and will find alternate carriers to provide comparable benefits should a carrier drastically reduce certain benefits unilaterally.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on health insurance to be the more acceptable position. Therefore, Section 9.2 of the contract will be modified to reflect the language contained in the City's last offer of settlement on this issue to be effective on the date this arbitration is issued or the most practical date thereafter considering the need for administrative changes.

City: Agree *Kevin McCarty*
Union: Agree _____

Disagree _____
Disagree *Michael Ward*

ISSUE 8

Employer contribution to retiree health insurance (Section 9.5)

The current contract at Section 9.5 provides that the City shall add retiree health insurance coverage for members of the bargaining unit to its health coverage of the same benefits provided its employees of the bargaining unit. The Union must be the administrator of the retiree health insurance fund and the contract specifies how much the employer will contribute annually to that fund (J-1). The current contract reflects the annual payment the City has made on July 1, 1996 through July 12, 1999. The July 1, 1999 payment was \$110,000. Union witness Hurlbert testified that even though the current contract has expired, the City has paid \$110,000 into the fund on July 1, 2000 and July 1, 2001 (TR-401-402).

The Union's last offer of settlement proposes the City increase its payment to this fund to \$125,000 on July 1, 2000 and \$140,000 on July 1, 2001.

The City's last offer proposes the City makes payments to this fund of \$110,000 on July 1, 2000 and \$112,200 on July 1, 2001.

Both the Union and the City presented exhibits and testimony in support of their assumptions on the costs of health insurance, the number of projected retirees and contributions to the fund necessary to keep it actuarially solvent for the next 20 years. Union exhibit U-12 provided certain projections with assumptions of a 5% increase in contributions and insurance costs each year and an 8% annual investment return. This exhibit shows this fund reaching a peak balance in 2019. Testimony revealed that the exhibit did not take into account the actuarial estimates of retiree deaths during this period.

City exhibit E-50 was presented by City witness Bezaury. This exhibit used the Union's assumptions on increased insurance costs and annual investment return, but reflected a contribution of \$110,000 by the City annually and an adjusted calculation for the number of retirees, taking into consideration projected retirement ages, and

actuarial projections for life expectancy. This exhibit projects the fund reaching a peak balance in 2020, even with a City contribution of \$110,000 per year.

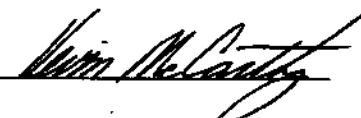

Both the Union and the City presented exhibits describing the manner in which comparable communities address retiree health insurance (U-12, E-44 through E-47). Employer exhibit E-45 and E-46 revealed that nearly all of the comparable communities have some level of employer contribution to pay for retiree health insurance ranging from 100% City-paid, to lesser amounts or no contribution for spouse or dependents or limitations when employees obtain Medicare eligibility. It appears the City of Portage is somewhat unique in requiring the association be responsible for administering this benefit.

City witness Bezaury described the City's responsibilities for retiree health insurance for other City employees (TR-413-414). She testified that the City pays the entire premium for department heads and non-represented employees, but only for the employees, not spouse or dependents, and that benefit stops at age 65 (TR-413). UAW represented employees have full employer paid retiree health insurance and DPS foreman have a monthly cash supplement. Command officers also have a monthly cash supplement of \$450 from age 55 through 64 and also administer their own fund. Fire fighters have a program similar to members of this bargaining unit and also administer their own fund.

The independent arbitrator has considered several factors in reaching a decision on this issue. First, it is difficult to make precise comparisons with comparable communities, but record evidence indicates most employers are contributing a portion of, if not a 100% payment to retiree health insurance with certain limitations. Second, the record reveals there is a variety of methods the City has established for its current employees to contribute to this benefit. Third, the projections from U-12 and E-50 to maintain the solvency of the current association fund vary somewhat, but in both the Union and City scenario it appears the fund will remain solvent for some time. E-50 and

related testimony appears to be the more credible estimate. Fourth, City witness Bezaury testified that the State of Michigan requires retiree health insurance plans to have a full actuarial update every five years (TR-421). Fifth, given the decision of this panel on health insurance for employees and the fact that the radio operators and PST's have recently come into this unit and are covered by this benefit, it would seem logical that a full actuarial study on this issue be undertaken before further adjustments are made. The independent arbitrator is confident, given the projections in E-50 and U-12, that the contribution to be made by the City in its last offer of settlement will be sufficient to maintain the solvency of the fund and the benefits to the retirees during the period of this contract and perhaps until the next full actuarial study is completed.

Therefore, Section 9.5 will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City:	Agree	<u></u>	Disagree	_____
Union:	Agree	_____	Disagree	<u></u>

ISSUE 9

Overtime, election of compensatory time off (Section 11.1)

The existing contract, at Section 11.1, provides that employees in the bargaining unit be paid time and one-half for hours worked beyond 40 hours in certain circumstances. There is no provision allowing employees to elect to take compensatory time off instead of receiving pay for overtime hours.

The Union's last offer of settlement proposed to add language to Section 11.1 to allow bargaining unit employees the opportunity to elect to receive compensatory time off, at the appropriate overtime rate, in lieu of receiving payment for overtime hours. Employees would be allowed to accumulate up to a maximum of 80 compensatory hours.

The City's last offer of settlement proposes no change in the current contract.

Union exhibit U-13 and City exhibits E-51 through E-54 provide a summary of how comparable communities address this issue. E-52 reveals that 12 of the 13 comparable communities provide some form of election of comp time in lieu of being paid for overtime. The majority have some restrictions on the number of hours which can be accumulated for purposes of comp time, but the majority of those exceed the maximum number of hours which the Union proposes in its last offer of settlement. E-53 describes this policy as it relates to radio operators in comparable communities. Six of the seven communities described in this exhibit, allow radio operators the option of electing comp time. The maximum number of hours to be accumulated differs from those for police officers in several of the communities, but as noted during testimony on this issue, those communities have separate contracts for radio operators and police officers, which is not the case in this bargaining unit.

The Union argues in support of its position that this provision at least allows employees the option of less time at work and more time to attend to non-work matters in lieu of overtime pay for overtime hours worked. The Union points to the comparable communities as evidence that this provision is commonly provided in contracts with comparable employees and its proposal with regard to the maximum accumulated hours is reasonable. The Union, in its brief and reply brief, says the City's argument that it would create major cost is without merit, because management has the ability to schedule when the compensatory time would be taken and the ability to schedule non-overtime replacements if needed in most instances.

The City, in its brief and reply brief, point to the testimony of City witness Chief White indicating that the City objects to this provision because of cost in providing employees to fill positions when comp time is taken; scheduling concerns because of the perceived limitations on the employer's discretion to schedule comp time and the increased accounting and administrative burden in implementing this provision. City

witness Bezaury testified that only non-union, non-exempt city employees and department heads currently are allowed comp time according to the Fair Labor Standards Act and are allowed to accumulate up to 60 hours per year. Department heads get only hour-for-hour comp time (TR-439). Chief White testified to his experience in other agencies that had comp time and indicated that it was not an impossibility to keep track of the hours (TR-437). He also testified that his budget currently accounts for overtime to fill vacancies and that there are a number of ways to fill vacancies due to vacation or illness of radio operators, PST's and police officers other than through payment of overtime to personnel (TR-435, 436). The City, in its brief, says scheduling is a problem because of statutory requirements (29 USC 207) (o) (5) and recent court cases restricting the employer's ability to manage when the comp time will be taken.

The independent arbitrator does not read the statutory language as totally restricting discretion and control by the employer in when comp time would be allowed under this provision. In fact, Union witness Hurlbert testified that he expected it to be administered just as regular time off is handled, a request by the employee that has to be approved by the employer (TR-426).

A review of other comparable community contracts on this issue reveals that some address the procedure for administering this provision more precisely than others. The independent arbitrator is somewhat concerned with the lack of specificity in the language offered by the Union in its last offer of settlement, but some of the other contracts have little more. Given that the contract emanating from this proceeding will expire June 30, 2002, the parties have the benefit of review of other comparable community provisions on this issue to use as a guide if more clarity in its administration is desired. The evidence in this record supports inclusion of a provision like this in the contract. There is a relationship between the quality of service and the extent of overtime demanded of employees in this position. The management of overtime and

comp time is also primarily within the control of the employer. The City, in its reply brief, says there was no record support for the Union's post-hearing statement that every comparable city manages its comp time without any problem. Neither was there any record testimony to the contrary. Nor is there any evidence indicating the extent that employees may choose to exercise this option. It appears to the independent arbitrator that this provision adds to, rather than detracts from, the ability of the City to provide quality service to its citizens without extensive additional costs, if managed properly.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on overtime-election of compensatory time off to be the more reasonable position. Therefore, Section 11.1 of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree *Kevin McCarthy*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 10

Overtime, call-in pay [Section 11.1 (a)]

The current contract at Section 11.1 (a) specifies that when an employee is called into work other than a previously scheduled time "he shall receive not less than two hours of straight time pay for work so performed, which shall count towards the eight hours per day or 40 hours per week requirement for overtime pay."

The Union's last offer of settlement proposes to change the minimum amount of payment received to not less than three hours from the current two hours.

The City's last offer of settlement proposes no change from the current contract.

The Union provided U-14 and the testimony of Union witness Hurlbert in support of its position. The City provided E-55 through E-58 and the testimony of witnesses Carlson, White and Bezaury to support its position.

A review of the exhibits, testimony and post-hearing briefs reveals that both parties relied primarily on the manner in which the comparable communities addressed this issue. Union witness Hurlbert testified, and the Union's post hearing brief spoke to, the additional time usually not compensated for when an employee is called in unexpectedly as a basis for the Union's proposal. The Union's post-hearing brief also notes that E-56 may be deceptive because in listing eight out of the 13 comparable communities as having the same two hour minimum provision as Portage currently has, it should reflect that all of those communities, with the exception of Holland, actually pay time and one-half for the two hour minimum, which equates to three hours straight time pay.

The City, in its post hearing brief, also uses E-56 to support its position stating that eight of the 13 comparable communities have provisions similar to the current Portage contract. This City further states that even though the contract language says call-in pay will be paid at straight time, practical application results in pay at time and one-half because hours worked by the called-in employee are in excess of the regular eight hour day or 40 hour week.

Record testimony and review of the contracts of several of the comparable communities—E-1, E-2, E-4, E-7, E-8—and examination of the language proposed by the Union supports the City's position on this issue. The Union's post-hearing brief says E-56 should reflect time and one-half for all but one of the communities identified as having a minimum of two hours. That may be true, but based on the unchallenged testimony of Union witness Hurlbert (TR-452) and City witnesses Carlson (TR-455) and Bezaury (TR-458) Portage police officers currently get paid time and one-half for call-ins with a two hour minimum the same as those communities listed in E-56 with a two

hour minimum. This is also supported by the language in the current contract, which would be continued in the Union proposed language, that the minimum hours of straight time pay "shall count towards the eight hours per day or 40 hours per week requirement for overtime pay." The Union's proposal would result in the City paying a minimum of four and a half hours straight time pay for call-in. E-56, supplemented by record testimony, demonstrates that the City of Portage's current contract provision on this issue is comparable to a clear majority of the comparable communities.

Taking all of these factors into consideration the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of overtime call-in pay there will be no change from the current contract.

City: Agree *Kevin McCarthy*
Union: Agree _____

Disagree _____
Disagree *Michael Ward*

ISSUE 11

Holiday defined, number of holidays (Section 12.1 and 12.2)

The current contract, at Section 12.1, specifies those holidays which employees will get paid time and one-half at the regular hourly rate if that employee works that holiday. The current number of holidays total 11 full days. Section 12.2 refers to the number of annual leave days credited to police officers and detectives in light of the fact that they may have to work holidays. Union witness Hurlbert testified that police officers and detectives get pro-rated monthly pay equal to the current 11 paid holidays (TR-467).

The Union's last offer of settlement proposes to add eight more hours to the number of holidays by providing for a full day rather than a half day on December 24 and December 31.

The City's last offer of settlement proposes no change in this contract provision.

The Union provided U-15 and testimony of Scott Hurlbert in support of its position. In its post-hearing brief the Union says external comparables support its position and E-60, which describes this provision for police officers in all comparable communities, should take into account additional floating holidays and personal leave days within several of the comparable communities. The Union says when these additional days are considered, the City is far below the majority of comparable communities relative to paid time off for holidays.

The City argued that employees in this bargaining unit already receive more paid holidays than other city employees. City witness Bezaury testified that these employees receive a personal leave day in addition to the specified holidays, which brings the total days to 12. Command officers have the same provision in their contract as police officers and other city employees get between 10 ^{1/2} and 11 ^{1/2} total days (TR-486, 487). The City also points to E-59 noting that the average number of holidays among the City's comparable communities is 9.9.

The independent arbitrator used E-60 as a resource when considering this issue. Taking E-60 and adding the number of additional days for the comparable communities identified in the Union's post-hearing brief, reveals that eight of the comparable communities have total days paid above and four below the 11 days currently provided to police officers and detectives in this bargaining unit. However, even with the additional days the Union argues be considered, with the exception of adding any days for the City of Burton, which combines sick days and personal leave days, adding the total days offered by the comparable communities divided by the number of comparables, results in an average for the comparable communities of 11.3 days. Record testimony revealed that other employees within the City of Portage receive paid holiday benefits equal to or less than that provided police officers and detectives in the current contract.

Upon considering both external and internal comparable evidence the independent arbitrator concludes there is greater support for the City's position on this issue. Additionally, the panel's decision on the issue of the election of comp time for overtime worked should allow employees the opportunity for additional time off.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of the number of holidays there will be no change from the current contract.

City: Agree *Vincent McLaughlin*
Union: Agree _____

Disagree _____
Disagree *Michael Ward*

ISSUE 12

Holiday parity (Sections 12.3 and 12.4)

Sections 12.3 and 12.4 of the current contract specify procedures in scheduling, payment for and administration of holidays applicable to radio operators and PST's. Provisions in these two sections are more detailed and specific than provisions in Section 12.2 applicable to police officers and detectives. These provisions were incorporated into this contract when the radio operators and PST's joined the police officers and detectives in this bargaining unit.

The Union's last offer of settlement proposes that these sections be eliminated from the contract, which would result in all bargaining unit employees being treated the same in the administration and payment for holidays.

The City's last offer of settlement proposes no change in this contract provision.

The Union offered U-16 and the testimony of Scott Hurlbert in support of its position. The Union points out that in nearly all of the other comparable units where police officers and radio operators and PST's are in the same bargaining unit, there is no distinction in the holiday benefits and how they are applied to police officers, detectives,

radio operators and technicians. The Union says there is no need for a distinction in this contract and acknowledges that currently PST's are provided an additional holiday beyond that provided others in this bargaining unit if December 23 and December 24 happen to occur on Monday through Friday (TR-473).

The City argues that there is justification for maintaining different holiday provisions in the contract because PST's may or may not work on holidays. The City further points out that current contract language refers to a provision for part-time radio operators and the Union's last offer of settlement makes no provision for this position. Record testimony does provide evidence that even though there are no part-time radio operators currently, the contract does not preclude the City from hiring a part-time radio operator (TR-488-489).

Exhibits U-16 and employer exhibits E-59 through E-66 relate to this issue. A review of those exhibits supports the Union's position that the majority of comparable units make no distinction among members of the bargaining unit related to holiday pay and administration. This is true even in those comparable communities where there are separate contracts for radio operators and PST's from police officers and detectives.

On the other hand, in this particular situation acceptance of the Union's last offer of settlement is problematic. First, since the panel has not accepted the Union's last offer of settlement on the number of holidays, acceptance of the Union's last offer of settlement on this matter would result in PST's losing a benefit they already have related to the number of holidays recognized. Second, the absence of a provision to address part-time radio operators could cause the City to be reluctant to hire a part-time radio operator. There is record testimony that there is extensive overtime scheduled for radio operators currently and the addition of a part-time radio operator might be positive for both the employer and the employees. Lastly, there was no record evidence to indicate the current provision is causing dissension among the bargaining unit employees or administrative problems.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of holiday parity there will be no change from the current contract.

City: Agree *Kevin McCarthy*

Disagree _____

Union: Agree _____

Disagree *Michael Ward*

ISSUE 13

Vacation entitlement (Section 13.1)

The current contract, in Section 13.1 (a) through 13.1 (d) describes the vacation time applicable to all employees in the bargaining unit based on seniority. Section 13.1 (a) provides 40 hours of paid vacation following the first six months of employment. Subsections (b) through (d) specify the hours provided to employees based on seniority.

The Union's last offer of settlement proposes to delete Subsections 13.1 (b) through 13.1 (d) and replace them with new subsections 13.1 (b) through 13.1 (f). The Union proposes to add an additional 24 hours of vacation time for employees with 1-4 years seniority; another additional 24 hours for employees with 10-13 years of seniority; and another additional 12 hours for employees with 20 years seniority.

The City's last offer of settlement proposes no change in this contract provision.

The Union provided exhibit U-17 and the testimony of Scott Hurlbert in support of its position. U-17 reveals that the City of Portage employees in this bargaining unit have significantly fewer days vacation time based on years of service than do comparable employees in the Union proposed comparable communities. The Union also points out, in its post-hearing brief, that the City's proposed comparable communities, reflected in exhibits E-67-70, support the Union's position that bargaining

unit employees in Portage have a vacation benefit substantially less than the City and Union's comparables combined.

The City, in its post-hearing brief, acknowledges that the comparable communities do, on average, provide greater vacation benefits than does Portage. The City's principle arguments for maintaining the status quo are: 1) that vacation time comparisons alone distort a fair comparison of this issue and when a comparison of total paid time off is made, as presented in E-89, Portage is "in the middle of the pack" for paid time off. 2) A comparison of internal comparables as presented in E-71, supports the City point that the current contract provides benefits comparable to nearly all other City of Portage employees and breaking this pattern could likely result in other bargaining units seeking the same benefit (TR-503). 3) The City argues that U-17 may not reflect an accurate comparison between Portage employees and employees in the City and County of Kalamazoo because comparable employees in those communities work 10 or 12 hour shifts. With respect to this distinction, however, the record reflects these distinctions may have been accounted for in this exhibit, or at least the exhibit is not misrepresenting the Union's position, as clarified by Mr. Ward and witness Hurlbert at TR-494, 496-497.

The independent arbitrator has reviewed E-68 and E-89 in particular in considering this issue. When reviewing E-68 particular attention was directed to a comparison of vacation days off for employees in the 1-4 year and 15 and above seniority categories. Comparing the Union's proposed changes to the current external comparable communities, in general, for employees with 1-5 years seniority, nine communities provide a lesser number of vacation days, three about the same and one more. On the other hand, when comparing employees with 15 or more years seniority it appears three communities provide a lesser number of vacation days, one about the same and nine communities provide more than the number the Union is proposing in this proceeding. In other words, the Union's proposal appears to offer a greater benefit

than do the majority of comparable communities to employees during years 1-4, but a lesser benefit than a majority of comparable communities offer for employees with greater than 15 years seniority. The Union's proposal does not seem substantially different than the majority of comparable communities existing contracts.

Additionally, upon examination of E-89, even adding the additional hours proposed by the Union for employees with 14 years experience, as presented in this exhibit, does not substantially change the position of Portage in comparison with the other communities looking at total annual leave hours.

The City points to E-71 and argues the Union's proposal, if accepted, would result in these employees having a greater vacation benefit than other City employees and that other bargaining unit employees would likely ask for a comparable benefit. That may happen, but the record also reflects that current contracts with several of the bargaining units do not expire until 2003 and 2004 (TR-504) and what will be important at that time to the employees and employer in the context of negotiation of those agreements is speculative. On this issue, given the nature of the work of these employees, the independent arbitrator is inclined to give a little more consideration to the vacation benefits provided to employees performing similar responsibilities in comparable communities and the City of Portage than to all employees in the City of Portage. The Union's proposal on this issue does appear more consistent with the method in which the majority the comparable communities address this benefit than that reflected in the current Portage contract.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue the more reasonable position. Therefore, Section 13.1 will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree *Jim McCarty*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 14

Longevity pay schedule (Section 14.1)

Section 14.1 of the current contract provides a schedule for longevity pay to employees based on seniority. The longevity pay schedule provides an additional percentage of base pay to all bargaining unit employees upon completion of years of employment as follows: 5 years = 2%, 10 years = 4%, 15 years = 5.5%, 20 years = 7.5%.

The Union's last offer of settlement proposes to revise Section 14.1 by adding an additional increase in longevity pay as follows: 25 years = 8.5%.

The City's last offer of settlement proposes no change from the current contract.

The Union provided exhibit U-18 and testimony of Scott Hurlbert on this issue. The City provided exhibits E-72 through E-75 and the testimony of Cindy Bezaury in support of its position.

Exhibits U-18 and E-73 display comparable communities' provisions for employees providing similar services with respect to longevity pay. The Union, in its post-hearing brief, points out that when reviewing these exhibits one should account for the fact that the Kalamazoo County and Kalamazoo Township defined contribution pension plan also includes longevity pay when calculating the employer contribution to the pension plan. Therefore, employees in those units of government are in effect getting more than \$500 as a tax deferred benefit which should be considered when comparing benefits as depicted on U-18 and E-73.

The City supports its position by also referring to E-72 and U-18 pointing out both exhibits reveal that a majority of comparable communities do not have a 25 year longevity step. The City also notes that the City of Portage already pays a longevity pay benefit greater than the majority of comparable communities.


In its post-hearing brief the City provides calculations comparing the City of Portage benefits to those of comparable communities after adding a 3% base salary increase consistent with the City's last offer of settlement on wages. These calculations


reveal only the City of Port Huron and Kalamazoo County would exceed the City of Portage in longevity pay under the current contract.

The City also points to the testimony of Cindy Bezaury on internal comparables. Witness Bezaury testified that non-union employees, the foreman's union at DPS and the UAW represented employees have no longevity provision and that the police command unit has the same provision as currently provided employees in this unit. Firefighters have a fixed \$110 times years of service provision (TR-523).

The independent arbitrator has reviewed the data provided in the exhibits, particularly E-73 and concludes the City's position on this issue is more supportable. Calculation and comparison of benefits provided by the comparable communities, not just looking at the 25 year benefit increment, but at the benefit levels during the career of an employee, reveals that the City of Portage current longevity benefit levels meet or exceed nearly all of the comparable communities with the exception of Port Huron. This is further supported when considering the base pay increase that will be a part of this proceeding. This occurs even if one considers the Union's argument on relating this issue to the contribution made by Kalamazoo County and City to the defined contribution pension plan. Add to these facts the evidence presented on the internal comparables and the City's position is further strengthened. Appendix E of J-1 reveals that this provision, if accepted, would immediately apply to approximately 15 current employees for an immediate potential cost of approximately \$7,500.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of longevity pay there will be no change from the current contract.

City: Agree 
Union: Agree _____

Disagree _____
Disagree 

ISSUE 15

Personal leave days (Section 7.1)

Section 7.1 of the current contract provides each employee 1 paid personal leave day per year to be scheduled at the employee's request, subject to the approval of the Chief of Police.

The Union's last offer of settlement proposes to add a sentence to Section 7.1 specifying that "beginning July 1, 2001 each employee will receive 3 paid personal leave days each year, which will be scheduled at the employee's request subject to the approval of the Police Chief."

The City's last offer of settlement proposes no change in the current contract.

Union exhibit U-21 and City exhibits E-84 through E-91 were presented by the respective parties in support of this issue. City witness Dena Carlson testified to the calculations made in arriving at the information described on City exhibits (TR-577-593). The City, in its post-hearing brief, argues that the number of personal leave days provided employees should be considered in the context of all paid days off. Employer exhibit E-89 displays the total annual leave hours for the employees performing similar services in the 13 comparable communities.

During cross examination witness Carlson was questioned on certain calculations leading to the data developed on E-89, but was not asked to explain how the total holiday hours were determined for the Cities of Bay City, Kentwood and Midland. Witness Carlson did acknowledge that the City of Burton employees could use a total of 128 hours provided for sick and personal use (TR-582).

The Union, in its post-hearing brief, points out inconsistencies in exhibit E-89 with other record evidence, specifically E-59 and E-3, the contract for the City of Burton. The Union argues that after these corrections are made only two comparable communities have less personal leave days than the City of Portage. The City did not address this

issue in its reply brief. There was no record testimony or exhibits presented on internal comparables.

An examination of the contracts for the Cities of Bay City, Kentwood, Midland and Burton support the Union's statements in its post-hearing brief. The independent arbitrator also finds merit in the City's argument that comparing comparable communities' number of personal leave days should not be done in isolation from consideration of a comparison of the total annual leave hours granted employees including vacation days and holidays.

The independent arbitrator has used E-89 as a reference for considering this issue. Using E-89, figures have been revised to reflect holiday hours for the City of Kentwood at 72, Bay City at 56 and Midland at 56. Recognizing that the City of Burton allows up to 128 hours to be used for either sick leave or personal leave the independent arbitrator attributed half of the 128 hours, or 64 hours, to personal hours and added that number to the total annual leave hours for the City of Burton for a new total of 344 hours. Based on record testimony the City of Kalamazoo's total annual leave hours were changed from 203 hours to 216 hours (TR-590).

Adding total annual leave hours as revised and dividing by 13 results in an average of 267 total annual leave hours among the 13 comparable communities. Adding 16 more hours to the personal leave hours granted Portage employees would provide these bargaining unit employees 274 total annual leave hours, which is closer to the 267 average than is the current 256 hours.

However, the panel in this proceeding has supported the Union's position on vacation entitlement thereby adding an additional 24 hours vacation time for employees with 1-4 years seniority and another additional 24 hours for employees with 10-13 years seniority. When these additional hours are added to the City of Portage's current 256 hours the total annual leave hours for employees with the above referenced

seniority would range from 280 to 314 hours, thereby exceeding the 267 hour average of the comparable communities.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of personal leave days there will no change from the current contract.

City: Agree *Kevin McCarty*

Disagree _____

Union: Agree _____

Disagree *Michael Ward*

ISSUE 16

Clothing allowance (Section 21.1)

Section 21.1 of the current contract provides a clothing allowance for non-uniform officers at \$800 per year. The \$800 amount was increased from \$675 effective July 1, 1999 (J-1).

Both the Union and the City's last offer of settlement proposes modification to Section 21.1 to convert this benefit to a tax-free reimbursement system. Considering an employee eligible for this benefit to be in the 20% to 30% tax bracket, this change will provide the employee with \$160 to \$240 additional net purchasing amount, with no change in the \$800 amount.

The difference between the City and Union's last offer of settlement on this issue is the Union proposes to increase the benefit amount to \$850 effective July 1, 2001.

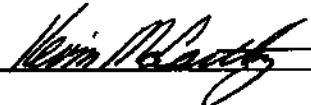
The Union argues that the current amount has been in the contract for two-and-a-half years and cost for clothing has increased during that time.


The City points to the fact that its proposal will provide an additional net payment to employees of roughly \$240 and considering this in the context how comparable communities provide for clothing allowance as presented in E-93, the City's proposal is far superior to the benefits provided by comparable communities. The City

also points out that while E-93 shows the County and City of Kalamazoo provide an \$850 clothing allowance, neither pays this benefit on a tax-free basis. City witness Bezaury also testified the City's last offer of settlement is exactly the same as that provided in the current command officers contract (TR-607).

While it is true that clothing costs may have increased by inflation since the last agreement to increase this allowance to \$800 became effective July 1, 1999, the City's last offer of settlement more than compensates for inflation during that period and for the period of this contract.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, Section 21.1 of the contract will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree 
Union: Agree _____

Disagree _____
Disagree 

ISSUE 17

Shoe allowance (Section 21.3)

Section 21.3 of the current contract provides police officers and detectives a shoe allowance of \$75 per year. This provision became effective July 1, 1998.

The City's last offer of settlement proposes revising the language in Section 21.3 similar to the City's proposal for clothing allowance, so that an employee would receive a net cash benefit of approximately \$22.

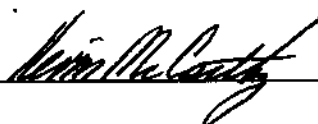
The Union's last offer of settlement is similar to the City's, but differs in that it proposes to increase the \$75 to \$100.


Employer exhibit E-95 reveals that the majority of comparable communities provide no shoe allowance. City witness Carlson testified that the employees in similar

positions in Kalamazoo County are provided no shoe allowance (TR-615) and City witness Bezaury testified that command officers in the City of Portage get no shoe allowance, but do get an \$850 clothing allowance under the same tax-free system proposed in the City's last offer of settlement in this contract.

The independent arbitrator views the evidence on this issue the same as that for the clothing allowance. The benefit to the employees from the City's last offer of settlement accounts for inflation since the last agreement on this issue and during the course of this agreement. Record testimony supports the conclusion that the City's last offer of settlement provides members of this bargaining unit with a shoe and clothing allowance benefit greater than nearly every other comparable community and greater than the current contract for command officers in the City of Portage.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on the issue of shoe allowance the more reasonable position. Therefore, Section 21.3 will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree 
Union: Agree _____

Disagree _____
Disagree 

ISSUE 18

Pension parity (Section 23.2)

Section 23.2 of the current contract refers to the fact that effective July 1, 1985 the police officers and detectives in this bargaining unit shifted from a defined benefit pension plan to a defined contribution pension plan. Radio operators and PST's remain in a defined benefit pension plan.

The Union's last offer of settlement proposes language in Section 23.2 be deleted and replaced with language that would result in all radio operators and PST's, with the

exception of radio operators Carolyn Secondi and Jerome Phillips, being included in the defined contribution plan and the money representing the present value of their accrued benefit would be transferred from the defined benefit plan to the defined contribution plan as soon as possible after the issuance of this arbitration award.

The City's last offer of settlement proposes no change in this contract provision.

Exhibits U-24, U-24A and E-96 through E-98 were presented on this issue. Record testimony and evidence revealed that all other City of Portage employee bargaining groups, including the non-represented employees, converted from a defined benefit plan to a defined contribution plan in the 1980's. When those conversions occurred there were a few employees who remained in the defined benefit plan.

John Roth, an actuary and President of Retirement Planned Concepts, testified on this issue. Mr. Roth's firm has contracted with the City to advise on these plans and he has been involved with these plans and their conversion since the 80's (TR-694). Mr. Roth testified that: 1) at the time previous conversions occurred there remained, in some instances, one or more employees in the defined benefit plan and, therefore, the City continues to administer a defined benefit plan for those employees or retirees (TR-701-702). 2) There continue to be three or four active participants from other bargaining units and a department head in the defined benefit plan (TR-703), but no one else is entering into the defined benefit plan other than employees in this group (TR-702-703). 3) The plan takes into account that some employees leave prior to vesting to get a benefit and new people enter (TR-708-709). That appears to have been the situation with this bargaining unit when one compares the names of bargaining unit members listed on exhibit U-24A with the names of radio operators and PST's listed on exhibit J-1, Appendix E. 4) It would have been cheaper for the City to have this conversion occur several years ago than at present and it will be cheaper to convert now than in the future (TR-711-712). 5) There has been a trend in recent years for employers and employee groups to move from a defined benefit plan to a defined contribution plan

(TR-693). 6) Most defined benefit plans have an un-funded liability on the basis of a projected benefit (TR-689). 7) That consistent with the calculations on page 3 of E-97 his recommendation would be that the City make the contribution of approximately \$58,000 annually to the plan for the next four years, approximately \$11,000 more than the City is currently contributing if the Union's proposal is adopted (TR-697), but that the City could amortize that payment over a period of more than four years (TR-700). 8) That he had no idea or opinion on any ramifications to the City or its bond rating if the period of amortization for the two employees remaining in the defined benefit plan were longer than four years (TR-714).

Evidence and testimony was also presented on the question of whether this issue was presented to the radio operators and PST's in previous negotiations. The City, in testimony and in its brief and reply brief, argue the Union was presented the opportunity to make this conversion and choose not to. Union witness Phillips testified that in her experience, from 1990 to the present, the bargaining unit for radio operators and PST's was not presented this issue for acceptance or rejection (TR-729-730). The City also argues in its brief and post-hearing brief, that the Union formerly representing the radio operators and PST's provided a written commitment that the City's cost would not increase as a result of a conversion such as that now proposed. The City relies on E-96 to support this point.

The independent arbitrator does not view E-96 as making this commitment. It is noted that item 3 on page 2 of E-96 includes the language "during the term of any then existing collective bargaining agreement" when referring to increased costs associated with a conversion. Additionally, the independent arbitrator is in general agreement with the Union's characterization of E-96 on this issue as put forth in the Union's reply brief, which is also supported by the testimony of City witness Bezaury (TR-671).

Union witness Phillips testified to the benefits of converting to a defined contribution plan from the employee perspective (TR-635-642). The fact that the City

has made this conversion for all other bargaining units and non-represented employees reveals that the City generally supports the defined contribution plan as the preferred method of administering pension benefits.

The independent arbitrator finds the Union's last offer of settlement on this issue the more reasonable position. It is true the City will bear some additional costs now that it would not have several years ago, but based on the testimony of witness Roth the City has some flexibility in managing that cost. Mr. Roth did not identify any major negative ramifications to the City if this conversion were to occur now. Allowing two of the employees to remain in the defined benefit plan is also not unique based on the history of previous conversions and the fact that the City does have a defined benefit plan these two employees can be included in does not add significant administrative cost to the City.

It is also true, as testified to by Mr. Roth, that if no change were to occur now the cost of conversion in the future would only increase. It does appear in this instance, with this benefit, it is better for the employees and the City in the long run to have the defined contribution plan apply to as many employees as possible, particularly any new employees. The status quo would only exacerbate the problem.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on the issue of pension parity. Therefore, Section 23.2 of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City:	Agree _____	Disagree <u><i>Kevin M. Carney</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 19

Wages

Wages in the current contract are established in Appendix A. The parties have a provision for COLA contained in Appendix B. The parties in this proceeding have agreed to continue to include the same provision on COLA in the contract covered by this proceeding. The City's last offer of settlement contains language in Appendix B to accomplish this.

The Union's last offer of settlement on wages proposes a 4% salary increase effective and retroactive to July 1, 2000 and a 4% salary increase effective and retroactive to July 1, 2001 to each bargaining unit classification at each step of the existing salary scale.

The City's last offer of settlement proposes a 3% increase for the same effective dates and the same across the board application as the Union. Exhibits U-25 and E-99 through E-113 were presented by the parties to support their respective positions. The exhibits and testimony compared this unit's wages with those of employees performing similar functions in comparable communities and with other employees within the City of Portage. Exhibits E-100 and E-106 provide a general comparison of 20 year officer wages plus longevity pay among the comparable communities. These exhibits show the City of Portage in the top one-fourth of the top salary range for police officers and in the mid-range for radio operators as of January and July 2000.

Exhibit E-104 shows that the average percentage pay increase for police officers in the comparable communities in July 2000 and in July 2001 was 2.52% and 2.79% respectively. Exhibit E-107 provides comparative costs to the City from 1996-97 through 2000-01 for City of Portage labor agreements for all City bargaining units except this one and this one separately. These costs include wage increases plus any other employee benefits agreed to by the parties. E-107 reflects costs to the City for agreements reached with this unit during the time period covered by the exhibit

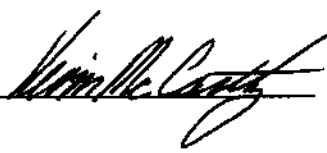
comparable to other internal units. A comparison of the costs reported on E-107 with the CPI-W for July 1999 and July 2000 presented in E-110 shows the overall benefit increases and resulting costs to the City for all bargaining units, including this one, for fiscal years 1999 and 2000 exceeded the CPI-W on July 1999 and July 2000. At the same time, the average wage increase shown on E-104 for July 2000 and July 2001 for external comparables was less than the CPI-W increases for July 2000 and July 2001 as presented on exhibit E-110. The last page of U-25 describes the total cost of the City of Portage labor settlement with Portage firefighters, which identifies a 4.32% increase in total costs for 2000-01 and a 5.71% increase for 2001-02. Part of U-25 contains memorandum from Cindy Bezaury, dated September 18, 2000, describing the settlement agreement between the City and the firefighters local 1467. That memorandum reflects an overall base wage annual adjustment of 3% or less for the first three years of that contract, a portion of which covers the same time period as the contract at issue in this proceeding.

The City noted in its post-hearing brief and reply brief that there would be an additional economic benefit to employees of approximately \$1,000 if the City's proposal on health insurance was adopted in this proceeding. That proposal is being adopted in this proceeding. Adding that cost to the cost of wages proposed by the City would result in an overall total cost increase to the City ranging from 5.3% to 6.3% for the first year of this contract. Those arguments are supported by record testimony (TR-754).

The Union, in its reply brief, takes issue with the statement in the City's brief that the panel must consider the overall economic impact of all contract changes. The independent arbitrator does not read this as a statement by the City on an economic inability to pay, but rather as a statement to consider the overall economic benefits to the employees from other contract changes in addition to wages. Section 9 of Act 312 lists applicable factors to be considered. Subsection (d), (e), (f) and (h) need not be considered independent from one another and in fact should be considered in relation to one another just as the parties would in a negotiated contract.

The evidence and record testimony on this issue, whether looking at comparable wages alone, the CPI or in the context of overall compensation, support the City's last offer of settlement as the more reasonable position.

Taking all of these factors into consideration, the panel accepts the City's last offer of settlement on the issue of wages. Therefore, Appendix A and B of the contract will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree 
Union: Agree _____

Disagree _____
Disagree 

ISSUE 20

Employer contribution to pension

Appendix F at #2 of the current contract specifies the amount and manner in which the employer will contribute funds to the defined contribution plan for police officers and detectives.

The Union's last offer of settlement proposes this contribution prospectively change from a set dollar amount to 18% of each employees base pay including 8 of the 10 radio operators and PST's that would be included in the plan based on the decision on pension parity.

The City's last offer of settlement proposes to also make a pension payment of 18% of each employees base pay into the pension plan, but to convert that figure into a fixed dollar amount that would be reflected in Appendix F. Record testimony (TR-822-829) and employer exhibits E-114 through E-121 provide evidence that the City of Portage is currently paying approximately 19.6% of base salary to police officers and approximately 14% of radio operators base salary into the pension plan. The amount of

contribution is not at issue in the last offer of settlements submitted by the parties, only the form in which the contribution is reflected in the contract.

The City argues in its post-hearing brief that if a percentage is used, the amount of money spent on the pension plan in future negotiation would rise even without a change in language, and the extra cost of this benefit could easily be ignored, thereby distorting the true cost of the new agreement. The City also fears this would be a foot in the door for future negotiations to apply the percentage to gross pay rather than base pay.

The Union points out in its post-hearing brief that the two other comparable communities with a defined contribution plan state the employer contribution in terms of a percentage of gross wages. It is noted that the percentage contribution in each of these cases is less than proposed here because it is applied to gross pay, not base pay.

The panel finds the Union's position on this issue the more reasonable. The Union's language takes into account the inclusion of 8 of the 10 radio operators and PST's into the defined contribution plan. Also, based on the City's participation in this proceeding, the independent arbitrator seriously doubts that this issue would be easily ignored in future negotiations merely because a percentage is used rather than a fixed dollar amount.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on the issue of employer contribution to pension. Therefore, Appendix F of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree *Kevin M. Carthy*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 21 (Employer Issue 2)

Long term disability (Section 9.4)

Section 9.4 of the current contract specifies the employer will purchase, at its sole expense, a long term disability insurance policy to cover all full time employees and describes what that benefit will be.

The City's last offer of settlement proposes to add a sentence to this section stating that "long term disability coverage shall be for non-work related injuries and illnesses only."

The Union's last offer of settlement proposed no change to this section of the contract.

The City, through witness Patti Thompson, and in its post-hearing brief, states the basis for this proposal is to prevent an employee from receiving more during a workers comp related injury than the employee would receive if working. Witness Thompson described a scenario in which the employee could be receiving more for a period of time during an extended work related injury than would be received when working. The City views this as a potential incentive to malingering, which is neither good for the employee or the City. The City further states, in support of its position, that the firefighters and public service foreman unions recently agreed to this change.

The Union points out in its post-hearing and reply briefs that City witness Thompson testified that there would be no cost savings to the City as a result of this change (TR-862) and neither of the two employees which she could recall were off work as a result of an injury were, in her opinion, malingering (TR-870).

There was no external comparables offered on this issue.

The panel does not find sufficient record evidence to justify the change proposed by the City. There is no evidence of cost savings to the City or malingering by employees, at least in this bargaining unit, to support the basis for the City's position. The fact that two other City of Portage bargaining units recently agreed to this

provision is not justification alone to make this change in this proceeding. It appears those agreements were reached as a result of negotiated settlements, not through arbitration. The City has not presented sufficient justification for this change to be made in this proceeding.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on the issue of long-term disability. Therefore, there will be no change made to Section 9.4 of the contract.

City:	Agree _____	Disagree <u><i>Kevin McCarthy</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 22 (Employer Issue 3)

College incentive bonus (Article XV)

Article XV of the current contract, Section 15.1 through 15.4, provides to all regular full time employee, \$50 per year for each 12 college credit hours earned by the employee subject to certain conditions, with a maximum per employee of \$650.

The City's last offer of settlement proposes to replace the current language in this Article with Section 15.1 and 15.2, which would in essence do away with the college incentive program and replace it with a tuition reimbursement program. The reimbursement program would have a \$2,000 fund available for use by all members of the bargaining unit from which they could be reimbursed for 50% of actual tuition costs upon verification of courses completed with a minimum grade of C or better. No single employee could be reimbursed more than \$1,000 per year and if several employees sought reimbursement in a year the 50% reimbursement would be reduced per employee dependent upon the number of employees seeking reimbursement.

The Union's last offer of settlement proposes no change in this contract provision.

The City, through testimony of witness Bezaury and in its post-hearing brief, supports the proposal on the basis that a tuition reimbursement program incents more employees to seek continuing education, whereas the current college incentive bonus program rewards employees for past behavior for having taken classes prior to employment with the City or many years ago. The City also points out that tuition reimbursement is not taxable as income to the employee whereas the current college incentive payment is.

Record testimony established that under the current program the City is paying approximately \$19,200 annually in college incentive bonus, that all police officers and detectives except one are receiving at least a bonus of \$50 and that currently 26 officers receive more than \$349 in an annual bonus. Five of the 10 radio operators and PST's currently receive at least a minimum \$50 bonus. If this proposal is adopted the City would divide the \$19,200 it currently pays in bonuses equally among the number of employees in the bargaining unit and build that into their base salary. Based on current estimates that would equal approximately \$349 per employee, which of course would be taxable.

The Union argues in its post-hearing brief that this proposal would result in reducing the wages of a number of employees who have been receiving the college incentive bonus. As noted above, 26 officers currently receive more than \$349 annually as a bonus for having attended college and their pay resulting from the bonus would be reduced whereas other employees who have not attended or attended college less would receive an increase.

The City presented exhibits E-76 through E-81 describing the manner in which comparable communities address this issue. E-77 provides data on tuition reimbursement programs and E-81 provides data on college incentive bonus programs in comparable communities. These exhibits reveal that the current City of Portage college incentive bonus program is comparable to that provided by the City's of

Kentwood, Midland, East Lansing, Battle Creek and Kalamazoo County (E-81). The City of Burton has a program providing lesser benefits and 7 jurisdictions provide no incentive bonus program. However, each of these communities providing no college incentive bonus program do provide a tuition reimbursement program (E-77). College reimbursement programs provided by these cities, with the exception of Bay City, have no limit on the funds available for their reimbursement program and Bay City has a fund maximum of \$10,000 annually. A comparison of E-77 and E-81 revealed that many units of government have a combination of a tuition reimbursement and a college incentive bonus program. Looking at these programs together, none are as limiting in their benefits as proposed by the City in its last offer of settlement.

There was testimony that a similar program was negotiated with the police command unit for the City of Portage. The independent arbitrator has had the benefit of reviewing the current contract for the command officers and notes that the \$2,000 limit was applied to the 10 employees in that unit. If the same formula were applied to this 55 employment unit the pool of funds available for tuition would be \$11,000.

The independent arbitrator recognizes that current college incentive bonus offered by the City of Portage may be more generous and potentially more costly than the City would like. There are benefits to a tuition reimbursement program. But the City's last offer of settlement does not appear reasonable in the context of other comparable communities' program involving either college incentive bonus or tuition reimbursement or both nor is it comparable to the command officers when considering the difference in the number of employees. Perhaps the parties can negotiate something between what is and what's proposed in upcoming negotiations. Based on this record the independent arbitrator does not find the City's proposal as reasonable and, therefore, the Union's last offer of settlement is the more reasonable.

Taking all of these factors into consideration the panel accepts the Union's last offer of settlement on this issue of college incentive bonus. Therefore, there will be no change in Article XV of the contract.

City:	Agree _____	Disagree <u><i>Kevin McCarty</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 23 (Employer Issue 5)

Attendance (Section 23.8)

The City proposes in its last offer of settlement to add Section 23.8 to the contract specifying that "any employee who, in a calendar year, accumulates 32 hours of lost time from work, will be subject to progressive discipline for each additional occasion of lost time from work." The proposal defines lost time as inclusive of sick time. City witness Bezaury testified that an employee who uses more than 32 hours sick time in a year could be subject to discipline under this provision (TR-993). The City states the basis for this proposal is that employees in this bargaining unit, particularly radio operators, seem to have a higher absentee rate when compared to employees nationally. There was no data to compare other employees performing similar duties in comparable communities.

The City presented exhibit E-129, which summarizes other comparable communities' policy on this matter. Of the 13 comparable communities, 6 have no policy and only 3 of the remaining communities appear to have a policy involving discipline.

The Union's last offer of settlement urges proposed Section 23.8 not be included in the contract. The Union provided U-27, which is a arbitration award issued in a grievance involving the City and an officer then in this bargaining unit on the issue of

whether a City policy similar to the City proposal for Section 23.8 violated Section 3.1 of the contract. Section 3.1 provides "no employee shall be reprimanded or otherwise disciplined except for just cause" (J-1). The arbitrator in that case found that the policy was incompatible with the just cause requirement of the contract. The Union says Section 23.8 as proposed by the City presents the same conflict with Section 3.1 as found in the grievance proceeding.

The independent arbitrator believes the City's proposal cannot be accepted for two reasons. First, the record evidence does not provide a strong basis for the proposal, particularly when comparing comparable communities treatment of this issue. Second and more importantly, the language in Section 23.8 does conflict with the language in Section 3.1 addressing discipline. The City might argue that since this process is proposed in the contract and not in City policy it is not the same as the issue decided in the grievance proceeding.

The independent arbitrator is convinced, however, that if Section 23.8 is included in the contract it will only lead to further litigation because Section 23.8 and Section 3.1 appear to be contradictory. If the City's proposal would have included a modification to Section 3.1 adding language such as, "unless otherwise specifically provided for in this agreement" the two sections might not be in conflict, but without that modification they are.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on this issue as the more reasonable. Therefore, Section 23.8 will not be included in the contract.

City: Agree _____
Union: Agree Michael Wood

Disagree Kevin McCarty
Disagree _____

SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing. All agreements reached in negotiations as well as all mandatory subjects of bargaining contained in the prior contract not addressed in this proceeding will be carried forward into the collective bargaining agreement reached by the panel.

Re: City of Portage and Portage Police Officers Association
MERC Case No. L 00 D-7021

Date: 3/15/02

William E. Long
William E. Long
Arbitrator/Chair

Date: 3/5/02

Kevin McCarthy
Kevin McCarthy
City Delegate

Date: 3/1/2002

Michael Ward
Michael Ward
Union Delegate