1789.

STATE OF MICHIGAN

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION ARISING PURSUANT TO ACT 312, PUBLIC ACTS OF 1969, AS AMENDED BETWEEN:

CITY OF MONROE (Employer)(City)

-and-

POLICE OFFICERS LABOR COUNCIL (Union)

_____/

MERC Case #D98 B-0202

FINDINGS OF FACT, OPINION AND ORDERS

APPEARANCES:

ARBITRATION PANEL:	Mario Chiesa, Impartial Chairperson
	Joseph Lybik, Employer Delegate
	Jerry Caster, Union Delegate
FOR THE UNION:	John A. Lyons, P.C. By: Mark P. Douma 675 E. Big Beaver, Suite 105 Troy, MI 48083
FOR THE EMPLOYER:	Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C. By: Dennis B. DuBay 440 E. Congress, 5th Floor Detroit, MI 48226-2917

INTRODUCTION

As previously indicated, this procedure is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. The Union filed the July 2, 1998 petition.

I was appointed the impartial arbitrator and chairperson of the arbitration panel via a correspondence from the Employment Relations Commission dated August 3, 1998.

A pre-hearing conference was conducted by telephone conference on Friday, October 23, 1998. Three days were scheduled for the hearing, April 27, May 3 and May 7, 1999. As it turned out, April 27 and May 7, 1999 were not utilized and the entire matter was litigated on May 3, 1999. Even though there was only one day of hearing, the parties were extremely well prepared and submitted literally dozens and dozens of pages of documents, and substantial amounts of testimony.

Last offers of settlement were exchanged through my office on May 21, 1999. Briefs were exchanged in the same fashion on July 7, 1999.

On September 28, 1999 the panel held an executive session at the City's facilities. During the discussions it became apparent that there was an excellent chance that the parties could arrive at a settlement regarding the issue of drug testing. There are many considerations involved in analyzing a drug testing protocol, and the parties were encouraged, as they were with all the other issues, to settle the matter. To their credit, the parties did arrive at an agreement regarding drug testing. The language was forwarded to me in a document dated November 16, 1999.

It should be noted that the parties waived all regulatory and statutory limits. They accomplished this both in writing, which

was forwarded to MERC, and which was memorialized in a pre-arbitration statement, and verbally on the record. Nonetheless, these Findings of Fact, Opinion and Orders have been issued as soon as possible under the prevailing circumstances.

STATUTORY SUMMARY

Act 312 is an extensive piece of legislation outlining both procedural and substantive aspects of interest compulsory arbitration. Without getting into every provision, but certainly ignoring none, there are aspects of the statute which should be highlighted.

For instance, Section 9 outlines a set of factors which the panel shall base its findings, opinions and orders upon. Those factors read as follows:

> "(a) The lawful authority of the employer.
>
> "(b) Stipulations of the parties.
>
> "(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> "(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (i) In public employment in comparable communities.
>
> (ii) In private employment in comparable communities.
>
> "(e) 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."

This statute also provides that a majority decision of the panel, if supported by competent, material and substantial evidence on the whole record, will be final and binding. Furthermore, Section 8 provides that the economic issues be identified. Parties are required to submit a "last offer of settlement" which typically is referred to as "last best offers" on each economic issue. As to the economic issues, the arbitration panel must adopt the last offer of settlement which, in its opinion, more nearly complies with the applicable factors prescribed in Section 9.

Section 10 of the statute establishes, inter alia, that increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period or periods in dispute.

ISSUES

The parties settled a number of the issues, some before the arbitration, with some being withdrawn at or after the arbitration. One of the issues the parties did resolve was the duration of the

contract. The parties agreed that the Collective Bargaining Agreement would span the period from July 1, 1998 through June 30, 2001. In addition, the TA's, settlements of the parties, and language in the prior contract, which had not been deleted or altered by any agreements or by provisions of this award, are made a part of this award.

The outstanding issues resolved by this arbitration, as indicated above, are wages, vacation leave, and shift premium. Each of these issues have been characterized as economic. As a result, the arbitration panel has the responsibility of accepting one or the other party's last offer of settlement. Furthermore, the panel ruled that the issue of wages is one issue and the last offer of settlement submitted by each party shall contain an offer for the entire span of the Collective Bargaining Agreement.

THE RECORD

There was an extensive hearing with both parties being afforded every opportunity to present all the evidence they thought was necessary. As a result, testimony was taken from several witnesses. In addition, there were numerous exhibits, with dozens and dozens of pages of data and information to be reviewed.

All the factors contained in Section 9 of the Act, along with all the evidence related to each, was carefully considered and applied. Of course, every item and each bit of evidence has not been mentioned in the analysis of the issues. However, that doesn't mean anything was ignored. All the evidence and factors

were evaluated and these Findings, Opinion and Orders are based strictly thereon.

COMPARABLES

In Act 312 compulsory arbitrations parties typically, and this case was no exception, spend a considerable amount of time presenting evidence and making arguments regarding paragraph (d) of Section 9 of the statute. That portion of the statute involves comparison of the wages, hours and conditions of employment of employees involved in the arbitration with the same factors of other employees performing similar services and with employees generally in both public employment in comparable communities and in private employment in comparable communities.

The statute doesn't specifically outline how such comparable communities shall be determined. While parties historically argue about the comparability of communities, they usually agree on a few of them. In this case both parties have submitted the following communities: Adrian, Allen Park, Romulus, Southgate, Trenton, and Wyandotte. In addition, the Union maintains that Garden City, Harper Woods, Lincoln Park, Mt. Clemens, Wayne, and Ypsilanti, should be considered comparable communities. The City offers that Brownstown Township, Ecorse, Pittsfield Township, Riverview, Van Buren Township and Woodhaven, should also be considered comparable communities.

Before discussing the evidence regarding the proposed comparable communities, it would be appropriate to explore some of the characteristics of the City of Monroe.

Located in Monroe County, the City of Monroe occupies approximately nine square miles and has a 1990 census population of 22,902 residents. The resulting population density is about 2,545 residents per square mile. The majority of owner/occupied housing units fall within the range of $50,000 to $99,999, the median value being $65,100. The 1990 per capita income for residents of Monroe was $13,146. The median family income was $35,364.

There are also a number of other employee groups in the City. For instance, there are two groups, each known as the City of Monroe Employees Association. The first one identified as Unit 1, contains 74 general City employees. Unit 2 consists of supervisors and/or department heads and is comprised of eight employees. Organized employees in the Department of Public Services and Parks and Recreation are represented by Teamsters Local 214. There are approximately 70 such employees.

In the Public Safety area, it appears that the Fire Department has approximately 40 members in the bargaining unit. Those members are represented by the Monroe Fire Fighters Association which is Local 326 of the International Association of Fire Fighters. The Police Command Officers are represented by the Monroe Command Officers Association which is affiliated with the Police Officers Labor Council.

According to the data in the record, there are thirteen non-union appointed employees, three confidential and one elected.

As I previously indicated, the parties have mutually offered the cities of Adrian, Allen Park, Romulus, Southgate, Trenton and

Wyandotte. As a result, I am not going to analyze the comparability relationship between Monroe and those communities.

In addition, the Employer has offered the communities of Brownstown Township, Ecorse, Pittsfield Township, Riverview, Van Buren Township and Woodhaven. The Union has added the additional communities of Garden City, Harper Woods, Lincoln Park, Mt. Clemens, Wayne and Ypsilanti.

The Union points out that its proposed comparables were utilized in prior 312 proceedings. Additionally, it maintains that during the most recent 312 in the Command unit, the parties agreed and stipulated to the use of the comparables now offered by the Union. Furthermore, it takes the position that the townships offered by the Employer should not be considered because there are pronounced differences in the ability to tax and the population densities are strikingly dissimilar. Further, it points out that the City of Ecorse's median home value is "grossly dissimilar" to that of Monroe's.

The City points out that its proposed comparables consists of all the communities in Lenawee, Monroe, Southern Washtenaw and Southern Wayne County, with full-time police departments and a 1990 population within 50% of the 1990 population of the City of Monroe. Given Monroe's population of 22,902, the range of the City's standard would be 11,451 to 34,353. It maintains that its list of comparables is centered around a rational and well-founded basis, utilizing geographical area and size. It maintains that the communities proposed by the Union are simply not comparable to the

City of Monroe and must be rejected out of hand. It maintains that the prior arbitration decisions which utilized the Union's offered comparables was based on 20 year old data and the Command 312 referenced in the Union's arguments was essentially focused on internal equity. For various reasons it argues that the Union's additional five offerings should not be accepted.

As I indicated, there is no quarrel with the use of the six communities offered by both parties. In evaluating the rest, I note that over the years parties have relied on various factors in trying to convince arbitration panels that communities are comparable to the one involved in the arbitration. Land area, population, housing density, character, i.e., commercial versus residential, SEV, crime statistics, ability to tax, commercial support, and a variety of other elements, are often relied upon. Many have approached the issue by utilizing the data in this municipal statistical area. Others have taken the position that those communities which exist within an area officers seek employment or within which the communities compete for personnel, are the ones which should be utilized.

As suggested by the Union, the comparable communities it has offered which the Employer has not, i.e., Garden City, Harper Woods, Lincoln Park, Mt. Clemens, Wayne and Ypsilanti, have been utilized in 312 arbitrations between these parties in the past. That doesn't necessarily mean that they should always be utilized because there may very well be changes in a community's nature which warrants a re-evaluation of its status. I do agree with the

City that geographically the communities are a little further from Monroe than others. However, I note that some are closer to Monroe than, for instance, Adrian. Also, with the exception of Lincoln Park, all of the communities meet the population criteria established by the City. I also note that the Union's offerings all have a higher population density than Monroe. Lincoln Park, Harper Woods, Garden City and Ypsilanti have more than twice the density. The median family income is fairly comparable with Monroe, as is the median home value. If the geographical component is stretched a bit, it would seem that all of the communities should be considered. Having said that, I do note that one could argue, and it would be reasonable to conclude, that some are more comparable than others and, thus, there must be some weighing.

In dealing with the City's additional offerings, I do agree with the Union that it is very questionable to include Brownstown, Pittsfield and Van Buren Townships. They are all townships which means that their taxing and financial structure are much different than Monroe. Additionally, if you examine the population density, Van Buren Township, Pittsfield Township and Brownstown Township have a density ranging from 836 per square mile to 620 per square mile, while Monroe is over 2,500. As a result, it is difficult to conclude that the townships should be considered comparable to the City of Monroe.

It is also very difficult to consider Ecorse comparable to the City of Monroe. Its population is just a little above 12,000, but as measured by median family income and home value, Ecorse is a

much less affluent community than Monroe. Furthermore, to get the cart before the horse, the evidence establishes that there is very little data available from Ecorse.

However, Riverview and Woodhaven present a different circumstance. Geographically they are very close to the City of Monroe. Their populations are less than the City of Monroe, with Woodhaven's population density being substantially less, while Riverview's is somewhat more than Monroe. The per capita income is higher in Riverview and Woodhaven than it is in Monroe, as is the family median income of both communities. The mean home value is also higher than Monroe. Both Riverview and Woodhaven have 28 officers, as compared to 44 referenced in Monroe. However, they are geographically close to Monroe and not that different in the characteristics contained in the record to warrant being ignored. Indeed, the information supplied regarding those two communities will be carefully considered.

ABILITY TO PAY

One of the Section 9 factors outlined in the statute is the "financial ability of the unit of government to meet those costs." This term is referenced by most parties as the Employer's "ability to pay." On occasion the issue isn't raised because there is no inability, but in this case the Employer has made a point of introducing substantial evidence regarding its financial status.

As is generally the case, Monroe must rely upon its general fund to support its public safety operations, including fire and

police protection. Of course, the general fund is also the source of operating revenue for many other departments.

The evidence establishes that the City's main sources of revenue are property tax and state revenue sharing. Forty-five percent of the state revenue sharing is guaranteed by the constitution, while the remaining 55 percent is subject to change. It was explained that prior to Proposal A, the City dealt with the state equalized value as a basis for tax revenue. While it is still tracked today, the tax levy is currently based on taxable value, with the difference between taxable value and SEV being sixty-eight million dollars. Applying the 13.5 mills of operating millage to the difference shows a loss of approximately $900,000 for the current year. The testimony established that while there is some vacant property in the northwest side of the City that is being developed as a subdivision, the rest of the property is called "brown field" which describes areas where there was old factory development. While those areas would be available for residential development, it would take an extensive amount of money. For instance, there is an area available which was previously occupied by Consolidated Paper. The numbers for cleaning up the brown field area has fluctuated between five and seven million dollars.

The record also establishes that while currently the City is levying at 13.5 mills, it has the ability to levy 14.68 mills.

General fund revenues for 1996 were $14,660,167. This increased almost imperceptibly to $14,690,106 in the fiscal year

1997, but dropped almost 3.5 percent to $14,190,080 in fiscal year 1998. There is a projected increase of approximately $400,000 for fiscal year 1999 and a budgeted increase of $337,000 for fiscal year 2000. An examination of the general fund balance shows a positive balance of $1,581,007 in fiscal year 1996. This is just slightly more than 11 percent of general fund expenditures. In fiscal year 1997 that figure was 10.57 percent, in fiscal year 1998 10.91 percent. It is projected to be 11.41 percent in fiscal year 1999 and 11.18 percent is budgeted for fiscal year 2000. Police department expenditures have increased from $2,922,240 in fiscal year 1996 to $3,535,836 in fiscal year 1998. The projection for fiscal year 1999 is $3,758,370, with a budgeted figure for fiscal year 2000 being $3,580,916. There has been a progressive increase in police department personnel expenditures beginning with $2,489,256 in fiscal year 1996, increasing to $3,351,976 projected in fiscal year 1999, with a budgeted figure of $3,408,374 for fiscal year 2000. According to the data, no projections have been made for labor agreements for fiscal year 1999 or fiscal year 2000.

The City also takes note of what it considers to be two substantial unfunded personnel liabilities. One is characterized as post-retirement health care, and the other is termination bonus. These are being paid strictly on a pay-as-you-go basis.

The Union has suggested that the Employer had not previously taken the position that it lacked the ability to pay in any of the Union's demands. In this regard I note that ability to pay is a statutory criteria which must be considered. As a result, I cannot

ignore the evidence, but certainly there are factors which may influence the persuasive value of the evidence.

The City takes the position that it is not impoverished, but that the panel must take into consideration that the budget remains severely constrained as a result of the flat revenue it receives from its limited property tax base and the flat revenue sharing it receives from the state.

As I have indicated, the panel has the responsibility of carefully weighing all of the Section 9 factors and certainly the evidence presented regarding the City's ability to pay shows that there are constraints which must be carefully considered in formulating any resolution to this dispute.

CPI

The data in the record shows that from the period 6/30/95 to 6/30/98 both the corporal and police officer salaries increased 8.22%. The consumer price index for urban wage earners and clerical workers for the relevant area 1980-1984 equals 100, increased 7.48%. That same figure less medical increases is 7.30%. Data is also available for the period June 30, 1998 through February 28, 1999. The percentage increase for all items was 1.13%. In the same period for all items less medical the increase was 1.02%.

WAGES

Wages is an economic issue. As previously explained, each last offer of settlement covers all three years of the Collective Bargaining Agreement. Each year is not treated as a separate issue.

The pay schedule currently in effect is from the last Collective Bargaining Agreement for the period July 1, 1997 to June 30, 1998. That schedule appears as follows:

"PAY PLAN FOR EMPLOYEES	Hourly	Monthly	Annually
Start through 6 months	13.9350	2,415.40	28,984.80
7 months through 12 months	14.5567	2,523.16	30,277.94
13 months through 18 months	15.2260	2,639.17	31,670.08
19 months through 24 months	15.8470	2,746.81	32,961.76
25 months through 30 months	16.5451	2,867.82	34,413.81
31 months through 36 months	17.2890	2,996.76	35,961.12
37 months through 42 months	18.0330	3,125.72	37,508.64
43 months through 48 months	18.8070	3,259.88	39,118.56
49 months and after	19.6420	3,404.61	40,855.36
12+ Years of Service	20.1330	3,489.72	41,876.64"

It is noted that the movement into the corporal's position, which is the 12+ years of service, is based on time alone. There is no test and an individual becomes a corporal after 12 years of service. The documentation provided by the City shows that out of the 34 officers listed, 16 are corporals. It appears that approximately four more will become corporals during the term of this agreement. Notwithstanding, in addition to the 16 corporals, there are approximately 12 officers who are currently at the 49 months and after rate.

The Union's last offer of settlement is to increase each of the wage levels by 4% per year. In other words, the across-the-board wage increase on July 1, 1998 would be 4%. There would be a

4% increase on July 1, 1999 and a 4% increase on July 1, 2000. If the math is correct, that means a corporal who is currently earning $41,876.64 base rate, will increase to approximately $43,552.00 in the first year to $45,294.00 in the second year, to $47,106.00 in the third year of the contract. A top paid officer who is currently earning $40,855.36 at base rate would progress to approximately $42,490.00 in the first year to $44,189.00 in the second year to $45,957.00 in the last year of the contract.

The City's last offer of settlement provides a 3% across-the-board increase effective July 1, 1998, with a 2.75% increase effective July 1, 1999 and a 2.75% increase effective July 1, 2000. Thus, a corporal who is currently earning $41,876.64 will receive an increase in the first year of the contract to approximately $43,133.00. This rate will increase to approximately $44,319.00 in the second year of the contract and to $45,538.00 in the third year of the contract. Top paid officers currently earning $40,855.36 per year will, during their first year of the contract, be increased to approximately $42,081.00. In the second year of the contract that rate will become $43,238.00, while in the third year of the contract the rate will be approximately $44,427.00.

As indicated by the offers, there is no issue of retroactivity regarding salary increases, with the increases being effective on July 1 of each year of the Collective Bargaining Agreement.

Adoption of the Union's last offer of settlement would lead to an approximate 12.5% increase over the three years of the Collective Bargaining Agreement. Adoption of the Employer's last

offer of settlement would lead to an approximate 8.74% increase over three years of the Collective Bargaining Agreement. Adoption of the Union's last offer of settlement would result in the approximate increase for corporals of about $5,229 over the three years, while top paid officers not yet corporals would realize an increase of approximately $5,101. Adoption of the City's last offer of settlement would lead to a dollar increase for corporals over the three years of the contract of approximately $3,661. For top paid officers not yet corporals the total dollar increase over the three years of the contract would be approximately $3,572.

A number of comparisons and calculations must be made and it must be understood that as a result of rounding and utilizing one or the other party's data, the figures may not be exactly what some other individual may arrive at. Yet, based upon the evidence in this record, the comparisons are valid and reliable.

If we look at those communities which the parties agree are comparable to the City of Monroe, i.e., Adrian, Allen Park, Romulus, Southgate, Trenton and Wyandotte, I note that on 7/1/97 the average wage rate for a top paid officer was $40,926.00. This compares to the 7/1/97 rate in Monroe of $41,877.00 for a corporal, and $40,855.00 for a top paid officer.

As of 7/1/98 the average salary was $42,584.00. The City's last offer of settlement would place a corporal at $43,133.00 and a top paid officer at $42,081.00. Acceptance of the Union's offer would place a corporal at $43,551.00 and a top paid officer at $44,290.00.

Out of this group of communities there is data from only two of them for 7/1/99. One is the highest paying community out of the group and the other appears to be about the second lowest paying. Any comparison wouldn't be very probative. There is even less data regarding 7/1/2000.

It is noted that when the percentage increases are calculated, or for that matter the ones in the record utilized, with the exception of Allen Park which for some reason granted about a 10.4% increase from 7/1/97 to 7/1/98, none of the communities granted a 4% increase during any of the periods. For instance, from 9/1/97 to 7/1/98 officers in Adrian received a 3% increase. For the same period officers in Romulus, which has a distinction of being the highest paid in this group, received a 3.25% increase. Southgate was 3%, Trenton 3%, Wyandotte 2%.

Of course, we also have the communities in contention. When the figures for Garden City, Harper Woods, Lincoln Park, Wayne, Ypsilanti, Riverview, Woodhaven and Mt. Clemens, although there was little data regarding Mt. Clemens, are considered, the average salary paid on 7/1/97 was $44,385.00. On 7/1/98 that figure was $45,679.00, while the figure on 7/1/99 was $47,320.00. Clearly, this group of comparables has an average salary which is substantially higher than that which was paid in the City of Monroe and which is sought by both parties. In examining the data regarding the percentage increases and, again, keeping in mind the slight difference in data in rounding, I note that from 7/1/97 to 7/1/98 Garden City officers received a 4% increase. Harper Woods

was 3%, Lincoln Park 2%, Wayne 2.5%, Ypsilanti 3%, Riverview 3%, and Woodhaven 2.9%. The percentage increases for the following year, that is, 7/1/98 to 7/1/99, was 4% for Garden City, 3% for Harper Woods, 2.5% for Wayne, 3% for Ypsilanti, 3% for Riverview and 2.9% for Woodhaven.

When the parties' last offers of settlement are considered in light of the foregoing, it is almost a tossup with a slight tipping towards the Employer on the basis that the pure percentage increases it has offered are closer to the average percentage increases than the Union's. It is realized that percentage increases are applied to actual salary rates and, of course, the increases depend on the rates. If a community starts with a lower rate, then arguably it would need a higher percentage increase to maintain its rank.

When the last offers of settlement are considered in light of the evidence regarding the consumer price index increases, it is clear that given the almost minuscule increase in the consumer price index of the so-called cost of living, that the City's last offer of settlement is more acceptable.

The same conclusion holds true when the last offers of settlement are compared to the ability of the City to absorb the cost of the proposed increases. While certainly the City is not impoverished, its somewhat stagnate financial circumstance, although it does have the ability to increase taxes a bit, does support the adoption of the City's last offer of settlement. According to the City's data, its wage offer will cost $134,949 in

the fiscal year 1999, and $273,609 in fiscal year 2000. Since the data shown on the City's exhibits does not contain any projections, per settlement of outstanding labor agreements for fiscal year 1999 or fiscal year 2000, any such settlements, which of course are inevitable, would impact on the analysis. The evidence certainly suggests that the fund balance will drop, although of course to a lesser degree, if the City's last offer of settlement is adopted.

Furthermore, the City makes a point when it argues that its retention rate of officers indicates it is competitive with other communities, both in the private and public sector. How probative that point is, is questionable because the actual turnover rates are not known. What is shown by the evidence is that from 1995-1996 to 1999-2000, the Police Department has increased its employment level by six individuals.

It is also noted that there is evidence regarding salary increases for some of the other City units. The data does not include Police Command or Fire personnel, but it does contain information regarding the two municipal units, as well as the Teamsters unit. Unit 1 received a 3% increase effective 7/1/98. There was no information available for 7/1/99 or 7/1/2000. Unit 2 received a 2.75% increase on 7/1/98, 3% on 7/1/99 and 2.75% for 7/1/2000. The data for the Teamsters unit shows a 2.5% increase on 7/1/98 and a 3% increase on 7/1/99. Clearly, when the parties' last offers of settlement are compared to the City units, the City's last offer of settlement is more acceptable.

Of course, all Section 9 factors have been carefully analyzed, including total compensation and, of course, one cannot ignore the impact of other awards. After carefully analyzing the entire record, the panel comes to the conclusion that the City's last offer of settlement must be adopted. It is understood that the City's last offer provides for full retroactivity. If that were not the case, then panel would order full retroactivity.

AWARD

The City's last offer ~~of settlement~~ on Wages shall forthwith be adopted.

Mario Chiesa, Chairperson 1-13-2000

1st dissent
Union Delegate

Joseph A. Lyford - Agree
Employer Delegate 1/5/00

Of course, all Section 9 factors have been carefully analyzed, including total compensation and, of course, one cannot ignore the impact of other awards. After carefully analyzing the entire record, the panel comes to the conclusion that the City's last offer of settlement must be adopted. It is understood that the City's last offer provides for full retroactivity. If that were not the case, then panel would order full retroactivity.

AWARD

The City's last offer of settlement shall forthwith be adopted.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

Dissents
Union Delegate

/s/
Employer Delegate

VACATIONS

The panel must also consider the economic issue of vacation. Currently the provisions relating to vacations, and for that matter, personal leave which dovetails into vacations, read as follows:

ARTICLE VIII VACATION LEAVE

"**Section 1:** The City shall provide vacation leave to each employee in the following manner:

A. Employees who have completed one (1) year of service but less than five (5) years of service shall be granted two (2) weeks or ten (10) days vacation leave without loss of pay.

B. Employees who have completed five (5) years of service shall be granted ten (10) days vacation leave plus one (1) day for each year of service after five to a maximum of twenty (20) days vacation leave.

"**Section 2:** It is further agreed that the City shall maintain all current administrative practices and procedures in reference to vacation leave.

"**Section 3:** See Personal Leave Days for explanation of additional paid time off for all Patrolmen with one (1) year of service. Additional time amounts to five (5) days for use as either personal time or vacation. Use of time must be designated by employee.

"**Section 4:** The parties have agreed to the Addendum as a further explanation to Section 2 above."

ARTICLE IX SICK LEAVE AND UNSCHEDULED ABSENCES

****

"**Section 11: Personal Leave Days**

"All Patrolmen with one (1) year of service will be granted five (5) days to be used as either Personal Leave Days or vacation days. These days, if used as personal leave days, shall not be chargeable to either accumulated sick leave or accumulated vacation days. In order to use such personal leave

days, requests must be made in writing to the Chief of Police or his designee at least seventy-two (72) hours in advance of the expected leave day, exceptions to the above may be made in cases of bonafide emergencies.

"The parties acknowledge that if a Patrolman does not use the total amount of these days during the contract year (July 1 to June 30) then those days not used shall be placed in the employee's vacation carry over bank so long as he does not exceed the normal allotted carry over. The amount being no more than the total of two (2) years earned. Those Personal Leave Days added to vacation day accumulation lose their identity as personal leave days and become vacation days."

The Union's last offer of settlement appears as follows:

"2. **VACATION LEAVE** (Article VIII, Section 1)

"The Union is requesting that the vacation leave schedule in Article VIII, Section 1, be modified to read as follows:

Section 1: The City shall provide vacation leave to each employee in the following manner:

A. Employees who have completed one (1) year of service but less than five (5) years of service shall be granted twelve (12) days vacation leave without loss of pay.

B. Employees who have completed five (5) years of service shall be granted twelve (12) days vacation leave plus one (1) day for each year of service after five (5) to a maximum of twenty-two (22) days vacation leave."

The City's last offer of settlement appears as follows:

"**City Last Offer of Settlement:**

"Revise Article VIII - Vacation Leave, Section 1, as follows:

"**Section 1**: The City shall provide vacation leave to each employee in the following manner:

A. Employees who have completed one (1) year of service but less than five (5) years of service shall be granted two (2) weeks or ten (10) days vacation leave without loss of pay.

B. Employees who have completed five (5) years of service shall be granted ten (10) days vacation leave plus one (1) day for each year of service after five to a maximum of twenty (20) days vacation leave.

C. Employees who have completed twenty (20) years of service shall be granted twenty-two (22) days vacation leave without loss of pay.

D. Employees who have completed twenty-five (25) years of service shall be granted twenty-four (24) days vacation leave without loss of pay."

"Effective Date: July 1, 1998."

The Union's position is that its last offer of settlement adds only two additional days to the vacation schedule. It relates these are needed because since officers are currently working six-day schedules, in order to get a full two weeks of vacation they need 12 days rather than 10. It argues that even with the increase, the bargaining unit will still be below the average number of vacation days among the comparable communities, as well as below the average of the comparable communities in the value of the combined vacation and personal leave days.

The Employer points out that notwithstanding the fact that officers work six-day schedules, they enjoy a "long weekend" every five weeks and are off Friday, Saturday, Sunday and Monday. When this is combined with available vacation and personal time, it provides officers with substantial flexibility. By utilizing four vacation days and a long weekend, an officer can get eight days

off. The City argues that its offer recognizes seniority and provides incentives for senior employees. It points out that unused personal days are rolled into a vacation day accrual bank.

A comparison of the last offers of settlement of the current provision shows that the Union's offer would provide two more vacation days to the schedule. In practical terms it means that an officer who has completed one year of service, but less than five years, will have 12 vacation days available, and an officer who has completed five years of service shall have 12 vacation days, plus one day for each year of service after five, to a maximum of 22 vacation days.

The City's last offer of settlement would not alter the vacation schedules outlined in the Collective Bargaining Agreement, but would, in essence, add to them, so that an officer who completed 20 years of service would be granted 22 vacation days, and one who completed 25 years of service would be granted 24 vacation days. According to the data regarding the date of hire of patrol officers as contained in the City's exhibit book, it seems that approximately four officers would benefit by the increase once an officer has completed 25 years, while approximately seven officers would benefit from the increase once an officer has completed 20 years.

It is often difficult to compare vacation schedules in comparable communities to the community in the arbitration because the progressions may be based on different years of service. However, if we deal with just the maximum available, the data shows

as of 1998, officers in Adrian have a maximum of 20 vacation days and no personal leave days. Allen Park has a maximum of 29 vacation days and 2 personal leave days for a total of 31 days. Romulus has 25 vacation days and 3 personal leave days for a total of 28 days. Southgate has a maximum of 30 days with either 3 or 4 personal days, depending upon whose data you accept, for a total of 33 or 34. Trenton has a maximum of 30 vacation days and 4 personal leave days for a total of 34 days. Lastly, Wyandotte provides 28 vacation days and 3 personal leave days for a total of 31. The average total amount of time, including vacation and personal leave days, is 29.5 days. Utilizing the remaining alleged comparables, the average for the combination of vacation and personal days is 28.5 days.

The Union's last offer would provide 22 vacation days, continue the 5 personal days, for a total of 27 days. This is below both averages, but it is noted that in Monroe adoption of the Union's last offer of settlement would lead to the maximum amount of time off after approximately 15 years of service. Some of the other communities require greater service before reaching the maximum rate.

The City's last offer of settlement would provide a total of 27 days off for officers who have completed 20 years of service, i.e., 22 days of vacation plus 5 personal days, and 29 days, i.e., 24 days of vacation and 5 personal days, for officers who have completed 25 years of service. Even at the maximum rate available and after 25 years of service, the Employer's last offer would be

below the averages for the agreed-upon comparables, as well as the remaining comparables.

The data provided by the City shows that when dealing with maximum vacation days with 20 or more years of service, the Police Patrol and, for that matter the Command, are the lowest in terms of maximum hours of vacation time available. This does not reflect the ranking for years of service one through 15, but only at 20 or more. It is true that the City's last offer would alleviate the discrepancies at the higher level, but that doesn't do much to the comparisons with the comparable communities.

Certainly it is true that the cost to the City would increase. Perhaps one could also anticipate that the Command unit would seek and receive the same type of benefit, and as suggested by the City, the Fire unit may very well seek additional vacation days. However, while those issues must certainly be kept in mind, it is noted that this arbitration deals with the Police Patrol unit.

After considering all the applicable Section 9 factors, the panel finds that the Union's last offer of settlement must be adopted. The Union has requested full retroactivity for all economic benefits and part of the City's last offer of settlement on the vacation issue was that the effective date should be July 1, 1998. The evidence convinces the panel that the vacation award shall be effective July 1, 1998.

AWARD

The panel orders that the Union's last offer ~~of settlement~~ on Vacation be adopted. It shall be retroactive to July 1, 1998.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

/s/
Union Delegate

Joseph S. Lykiel - DISSENT
Employer Delegate
1/5/00

AWARD

The panel orders that the Union's last offer of settlement be adopted. It shall be retroactive to July 1, 1998.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

Union Delegate

I/C Dissent
Employer Delegate

SHIFT PREMIUM

The current provision regarding shift premium reads as follows:

ARTICLE VI SALARIES AND FRINGE BENEFITS

****

"Section 11: Shift Premium

"Effective 01-01-98 Police Officers working between specific hours - 1:00 p.m. to 8:59 p.m. and 9:00 p.m. to 4:59 a.m. will receive a shift premium in addition to their regular hourly rate. The amount of payment as specified in the #312 Award of June 30, 1997 is:

A. .35/hr. for the afternoon shift

B. .25/hr. for the midnight shift"

The Union's last offer of settlement appears as follows:

"SHIFT PREMIUM (Article VI, Section 11)

"The Union requests that Article VI, Section 11, be modified to read as follows:

Section 11: Shift Premium

Police officers working shifts which begin between the hours of 12:59 p.m. and 4:59 a.m. will receive a fifty cent (50¢) per hour shift premium in addition to their regular hourly rate."

The City's last offer of settlement is to maintain the status quo.

The evidence establishes that the only other unit in the City receiving a shift premium is the Police Command unit which receives 50 cents per hour. The testimony was that the shift premium was instituted as a result of a 312 award. However, it is noted that in Addendum G to the Command contract expiring on June 30, 1998, there is reference that payment of shift premium was awarded to the

Patrol Association in a 312 award in June of 1997, and the Command Association negotiated the premium with the City in November of 1997. Nonetheless, the evidence is clear that the Command unit receives a 50-cent per hour shift premium.

Of the agreed-to comparables, Adrian does not pay a shift premium. Allen Park pays 25 cents per hour for afternoons and 50 cents an hour for midnights. Romulus pays 30 cents per hour for afternoons and midnights, while Southgate pays 50 cents per hour for afternoons and midnights. Trenton pays 40 cents per hour for afternoons and 50 cents per hour for midnights. Wyandotte pays 15 cents per hour for afternoons and 25 cents per hour for midnights. Of the other alleged comparables, Garden City pays 18 cents per hour afternoons, 36 cents per hour for midnights. Harper Woods pays 75 cents per hour, but apparently it has rotating shifts. Lincoln Park pays 20 cents per hour for afternoons and 15 cents per hour for midnights. Mt. Clemens pays 5 percent for afternoons which, according to the data, is a $1.04 based on 1998 wages, and 10 percent for midnights, which would be $2.08 per hour. Wayne does not pay a shift premium, nor does Ypsilanti. Riverview pays $600 per year. Officers appear to be on a rotating shift with that amount going up to $650 on July 1, 1999. Woodhaven pays 25 cents per hour for afternoons and 35 cents per hour for midnights.

According to the City's data, the current cost for shift premium payments is about $12,142. Adoption of the Union's offer would increase the cost approximately $8,658.

The shift premium currently received by Patrol Officers is arguably reasonable in relationship to the shift premium paid in comparable communities. It is noted, however, that the Command unit does indeed receive what the Patrol unit is now seeking. Given the nature of the benefit, it is difficult to rationalize a difference between the Patrol and the Command unit.

After carefully considering all of the applicable Section 9 factors, the panel orders that the Union's last offer of settlement be adopted. It shall be effective on July 1, 1998.

AWARD

The panel orders that the Union's last offer ~~of settlement~~ on Shift Premium be adopted. It shall be effective July 1, 1998.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

ISI
Union Delegate

Joseph S. Fayhee - DISSENT
Employer Delegate 1/5/00

The shift premium currently received by Patrol Officers is arguably reasonable in relationship to the shift premium paid in comparable communities. It is noted, however, that the Command unit does indeed receive what the Patrol unit is now seeking. Given the nature of the benefit, it is difficult to rationalize a difference between the Patrol and the Command unit.

After carefully considering all of the applicable Section 9 factors, the panel orders that the Union's last offer of settlement be adopted. It shall be effective on July 1, 1998.

AWARD

The panel orders that the Union's last offer of settlement be adopted. It shall be effective July 1, 1998.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

Union Delegate

/s/ dissent
Employer Delegate

DRUG TESTING

Attached hereto and made a part hereof is the drug testing procedure the parties have agreed to adopt.

1-13-2000
Mario Chiesa, Chairperson

Union Delegate

Employer Delegate

DRUG TESTING

Attached hereto and made a part hereof is the drug testing procedure the parties have agreed to adopt.

Mario Chiesa 1-13-2000
Mario Chiesa, Chairperson

/s/
Union Delegate

Joseph S. Fybish - Agent 1/5/00
Employer Delegate

DRUG TESTING POLICY
MERC Case No. D90-J-1469

I. PURPOSE

The purpose of this order is to provide all sworn officers with notice of the provisions of the departmental drug testing program.

II. POLICY

It is the policy of this department that the critical mission of law enforcement justifies maintenance of a drug-free work environment through the use of a reasonable employee drug testing program.

The law enforcement profession has several uniquely compelling interests that Justify the use of employee drug testing. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse will seriously impair an officer's physical and mental health and, thus job performance.

Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession and public confidence in that integrity are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, in order to ensure the integrity of the department and to preserve public trust and confidence in a fit and drug free law enforcement profession, this department will implement a drug testing program to detect prohibited drug use by sworn employees.

II. DEFINITIONS

A. Sworn Officer. Those officers who have been formally vested with full law enforcement powers and authority.

B. Supervisor. Those sworn officers assigned to a position having day-to-day responsibility for supervising subordinates, or who are responsible for commanding a work element.

C. Drug Test. The compulsory production and submission of urine and/or blood, in accordance with departmental procedures, by an officer for chemical analysis to detect prohibited drug usage.

D. Reasonable Suspicion. That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived inferences from those facts about the conduct of an officer. These facts or inferences would lead the reasonable person to suspect that the officer is or has been using drugs while on or off duty.

E. MRO - Medical Review Officer. The medical review officer is a physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The MRO will be a licensed physician with knowledge of substance abuse disorders. The MRO shall have appropriate medical training to interpret and evaluate an officer's test results in conjunction with his or her medical history and any other relevant biomedical information.

IV. PROCEDURES/RULES

A. GENERAL RULES

The following rules shall apply to all officers, while on and off duty:

1. No officer shall illegally use, possess or sell any controlled substance.

2. No officer shall ingest any controlled or prescribed substance, except under the direction of a licensed medical practitioner.

a. Officers shall notify their immediate supervisor when required to use prescription medicine that may influence their job performance. The Officer shall submit one of the following:

(1) note from the prescribing doctor;

(2) copy of the prescription;

(3) show the bottle label to his immediate supervisor.

b. Supervisors shall document this information and retain the memorandum for at least thirty (30) days.

3. No officer shall ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage.

4. Any officer who unintentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his supervisor so that appropriate medical steps may be taken to ensure the officer's health and safety.

5. Any officer having a reasonable basis to believe thatanother officer is illegally using, or is in possession of, any controlled substance shall immediately report the facts and circumstances to his supervisor.

6. Discipline of sworn officers for any violation of this drug testing policy shall be in accordance with the due process rights provided in the department's rules and regulations, policies and procedures, and the collective bargaining agreement. (The officer may be immediately relieved of duty pending a departmental investigation at the discretion of the Chief or his designee, when one of the following occurs:

a. A refusal to participate;

b. Reasonable suspicion;

c. The Medical Review officer determines that an officer's drug test was positive.)

B. APPLICANT DRUG TESTING

1. Applicants for the position of Police Officer shall be required to take a drug test as a condition of employment during a pre-employment medical examination.

2. Applicants shall be disqualified from further consideration for employment under the following circumstances:

a. Refusal to submit to a required drug test, or

b. A confirmed positive drug test indicating drug use prohibited by this order.

C. RIGHT OF INSPECTION

All property owned and/or controlled by the city, including lockers, desks or other property issued to an employee, is subject to City inspection at any time as there is no expectation of privacy.

D. TESTING STANDARDS

Sworn officers will be required to take drug tests as condition of continued employment in order to ascertain prohibited drug use, as provided below:

1. A drug test will be administered as part of any promotional physical examination required by this department.

2. A drug screening test shall be considered as a condition of acceptance to the narcotic Unit.

Furthermore, the members of the narcotic Unit may tested randomly at least once every six months and also when an officer leaves the unit.

3. The Employer may order a Sworn Officer to submit a drug test when there is reasonable suspicion that the Sworn officer is or has been using illegal drugs or prescription drugs in violation of this policy. Reasonable suspicion may be based upon, for example, among other things, direct observation of use and/or the physical symptoms of having used drugs, a pattern of abnormal conduct or erratic behavior including, but not limited to, excessive absenteeism, tardiness, indifferent job performance, poor work, and on-the-job injuries or accidents, indictment for a drug-related offense, and/or newly-discovered evidence that the employee has tampered with a previous urine sample and/or drug text.

4. A Sworn officer's failure or refusal to submit to a drug test as directed by the Department or the alteration or substitution of a specimen shall be a violation of this drug testing policy and shall result in discipline up to, and including, discharge.

E. DRUG USE DETERMINATION

The determination that an employee uses illegal drugs may be made on the basis of direct observation, confirmed results of the Department's drug testing program, the employee's own admission or other appropriate basis.

F. PENALTY

Violation of any provision of this drug testing order shall be grounds for disciplinary action. Discipline shall be administered as set forth in the Code of Conduct and Rules and Regulations for the Monroe Police Department and further defined in the Department's Policies and Procedures, and may include discharge from the Police Department. Any discipline remains subject to review in accordance with the collective bargaining agreement.

G. DRUG TESTING PROCEDURES

1. The testing procedures and safeguards provided in this order shall be adhered to by any laboratory personnel administering departmental drug tests.

2. Laboratory personnel authorized to administer departmental drug test shall require positive identification from each officer to be tested before the Officer enters the testing area.

3. In order to prevent a false positive test result, a pro-test interview shall be conducted by testing personnel to ascertain and document the officer's recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs.

4. The testing area shall be private and secure. Authorized testing personnel shall search the testing area before an officer enters same in order to document that the area is free of any foreign substances. Authorized testing personnel may:

a. Control the test area to ensure that samples have not been hidden for a substitution;

b. Prohibit the carrying of purses, bags, luggage, briefcases, or other containers into the test area;

c. Prohibit the wearing of coats and/or jackets into the test area; and

It is recognized that the city has the right to request the clinic personnel administering a urine drug test to take such steps as checking the color and temperature of the urine specimen(s) to detect tampering or substitution, provided that the employee's right of privacy is guaranteed, and in no circumstances may observation take place while the employee is producing the urine specimens. If it is established that the employee's specimen has been intentionally tampered with or substituted by the employee, the employee is subject to discipline as if the specimen tested positive. In order to deter adulteration of the urine specimen during the collection process, physiologic determinations such as creatinine, specific gravity and/or chloride measurements may be performed by the laboratory.

Any findings by the laboratory outside the "normal" ranges for creatinine, specific gravity and/or chloride shall be immediately reported to the City so that another specimen can be collected without undue delay. The clinic shall also immediately notify the MRO.

5. Where the officer appears unable or unwilling to give a specimen at the time of the test, testing personnel shall document the circumstances on the drug-test report form. The officer shall be permitted no more than two (2) hours to give a sample. During that time, the officer shall remain in the testing area, which shall remain under the observation and control of the clinic personnel. Direct observation of the officer producing the sample is prohibited. Reasonable amounts of water may be given to the employee to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test except for good cause as determined by the MRO.

6. Urine in excess of the first 60ml shall be placed in a second container by authorized testing personnel. The samples must be provided at the same time, and marked and placed in identical specimen containers

by authorized testing personnel. One sample shall be submitted for immediate drug testing. The other sample shall remain at the facility in frozen storage. If an employee in told that the first (1st) sample tested positive, the employee may, within seventy-two (72) hours of receipt of actual notice, request that the second (2nd) urine specimen be forwarded by the first (1st) laboratory to another independent and unrelated, approved laboratory of the parties, choice for Gas Chromotoyraby/Mass Spectremetry (GC/MS) confirmatory testing of the presence of the drug. If the Officer requests a second test, he/she shall simultaneously pay to the City the cost of the second test. The Officer may be suspended without pay once the first (1st) laboratory reports a positive finding while the second (2nd) test is being performed. If the second (2nd) laboratory report is negative, the officer will be reimbursed for the cost of the second (2nd) test and for all lost time.

7. All specimen samples shall be sealed, labeled, initialled by the officer and laboratory technician, and checked against the identity of the officer. Samples shall be stored in a secured and refrigerated atmosphere until testing or delivery to the testing lab representative.

H. DRUG-TESTING METHODOLOGY

1. The testing or processing phase shall consist of:

   a. Initial screening test;

   b. Confirmation test--if the initial screen testing in positive.

2. The urine sample is first tested using the initial drug screening procedure. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending". Notification of test results to the supervisor or other departmental designee shall be hold until the confirmation test results are obtained and verified by the MRO.

3. A specimen testing positive will undergo an additional confirmatory test. The confirmation procedure shall be

technologically different and more sensitive than the initial screening test.

4. The drug screening tests selected shall be capable of identifying marijuana, cocaine and every major drug of abuse, including heroin, amphetamines and barbiturates. Personnel utilized for testing will be qualified to collect urine samples, or adequately trained in collection procedures.

5. Concentrations of a drug at or about the following levels shall be considered a positive test result when using the initial immunoassay drug screening test:

a. Initial Test Standards

The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether negative or positive for these classes of drugs:

Analyte	SKBL Initial Test Level (ng/ml)
Marijuana	**50 ng/ml**
Cocaine	**300 ng/ml**
Opiates	**2000 ng/ml**
Phencyclidine	**25 ng/ml**
Amphetamine	**1000 ng/ml**

Some specimens may be subjected to initial testing by methods other than immunoassays, where the latter are unavailable for detection of specific drugs of special concern.

b. **Confirmatory Test Standards**

All specimens identified as positive on initial screening test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques and by quantitative analysis at the cutoff levels listed below:

Analyte	SKBL Initial Test Level (ng/ml)
Marijuana	**15 ng/ml**
Cocaine	**150 ng/ml**
Opiates:	
Morphine	**2000 ng/ml**
Codeine	**2000 ng/ml**
Phencyclidine	**5 ng/ml**
Amphetamine	**500 ng/ml**

I. CHAIN OF EVIDENCE – STORAGE

1. Each stop in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of custody.

2. Where a positive result is confirmed, urine specimens shall be maintained in a secured, refrigerated storage area. If a dispute arises, the specimens will be stored until all legal disputes are settled.

J. DRUG TEST RESUILTS

All records pertaining to departmental-required drug tests shall remain confidential, and shall not be provided to other employers or agencies without the written permission of the person whose records are sought. However, medical, administrative, and immediate supervisory personnel may have access to relevant portions of the records as necessary to insure the acceptable performance of the officer's job duties