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**MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION
ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED**

In the Matter of The Act 312 Arbitration Between:

CITY OF MIDLAND,

Employer,

-and-

MERC Case No. L99 E-3003

**MIDLAND FIRE FIGHTERS ASSOCIATION,
LOCAL 1315**

Union.

ERRATA

First line, p. 16, "exceeded commencing July 1, 2001, with premiums increasing \$2,100.70 per pay period." should read as follows:

"exceeded commencing July 1, 2001, with premiums increasing *to \$100.70* per pay period."

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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APPEARANCES

FOR THE CITY

Dennis B. DuBay, Esq.

FOR THE UNION:

Michael L. O'Hearon, Esq.

PANEL

Martin L. Kotch

Chairperson of Arbitration Panel

Joseph W. Fremont

City Delegate

Gregory A. Weisbarth

Union Delegate

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INDUSTRY SERVICES COMMISSION
DETROIT OFFICE

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BACKGROUND

A pre-hearing conference was held in the City of Midland on June 22, 2000. Hearings were held in the City of Midland on October 5, 2000, October 6, 2000, October 10, 2000, October 11, 2000, October 17, 2000, October 18, 2000, November 16, 2000, November 30, 2000, December 1, 2000, January 3, 2001, and January 4, 2001. The panel has met in executive session three times.

The panel considered twelve issues presented by the Union, and five issues presented by the City. City issues three and five were withdrawn.

COMPARABLES¹

The statute requires that the panel consider the wages, hours, and working conditions of the employees involved in the proceeding, with those employees performing similar services in comparable communities. The statute is silent as to the definition of "comparable." Of the many factors employed in reaching a determination of comparability, arbitration panels have chosen comparable communities previously used and agreed upon by the parties, as well as communities utilized by previous panels. The criteria employed by a panel to determine comparability include population, tax base, and unit size.

Six communities have been agreed upon by the parties: Battle Creek, Bay City, Jackson, Monroe, Muskegon, and Port Huron. The Union has proposed an additional 12: Allen Park, Birmingham, Dearborn Heights, Harrison Township, Kentwood, Madison Heights, Meridian Township, Plymouth Township, Redford Township, Saginaw, Trenton, and Ypsilanti Township, all rejected by the City. The City has proposed three additional communities: Adrian, Holland, and Mt. Pleasant. The Union rejects all three. Thus, there are 15 communities in dispute.

¹ The panel wishes to comment on the matter of comparables. Twenty-one communities were proposed by the parties, with six having been agreed upon. The panel, examining data in great detail, selected eleven. Unfortunately, in dealing with post-hearing arguments, virtually none of the statistical data presented by either side was accurate, since each was based, for the most part, on *its* comparables. Given the length of the hearings, and the volume of data presented, it was a mistake, which the panel Chair will not make again, not to have resolved the matter of comparables before commencing presentation of evidence.

It is the Union's position that despite its having accepted them, these previously agreed-upon communities differ vastly from Midland in terms of financial condition. For this reason the Union seeks to add additional, more closely comparable communities. It began this selection process by using a 50% range from the City of Midland's 1998 population estimates. From this list, all municipalities without a full-time career fire department and those relying on more volunteer than career fire personnel were excluded. In addition, the Union employed a 50% range of full-time department size in order to exclude departments either significantly larger or smaller than that of Midland. The Union then proceeded to assess the SEV of the remaining communities. It argues that the SEV provides the best indicator of tax revenue and thus ability to pay. Once again, the Union used a 50% range. In addition, it utilized a 50% range for *per capita* SEV.²

In summary, Union has employed the following five criteria:

- a. Previously agreed-upon municipalities.
- b. Inclusion of the City of Saginaw as part of the Tri-City labor market demographic.
- c. 50% population range.
- d. 50% department size.
- e. 50% total SEV.
- f. 50% per capita SEV.

The City's selection of comparables began with locating communities within a 50% population range of that Midland. Those falling into this list were then further distinguished by determining whether they were "core" cities as opposed to "bedroom communities." Thus the City limited its comparables to cities that were the largest in its respective county. Each of them, like Midland, is an out-state community which makes up a significant portion of the population

²The Union asserts that it has added the City of Saginaw to the list, despite substantial financial disparity with Midland, on the basis that Saginaw is part of the Tri-City area demographic, and has a mutual aid agreement with the City of Midland. Further, the Union explains its acceptance of the City of Monroe, even though it had not done so in 1996, by arguing that while Monroe did not fit the criteria employed in 1996, but does in this arbitration, and since the City proposed Monroe in 1996, it must be regarded as mutually agreed-on now.

of their respective counties. All the communities chosen by the City are cities, as opposed to townships or other kinds of local government. Finally, the City chose as comparables those communities which had full-time fire fighters. Thus, the City's comparables are all out-state communities which share the same form of government, are core cities, and employee full-time fire fighters. All are within 50% of the population of Midland.

In rejecting the City's comparables, the Union's position is that the City is attempting to compare affluent Midland with other municipalities that do not have the resources available to Midland. Further, the Union points out that the City utilized five criteria in choosing its comparables: population, location, form of government, number of full-time fire fighters and "core city." In so doing, the Union argues, the City has virtually ignored economic criteria which lie at the heart of virtually all the issues before the panel.

The City has objected to the inclusion of municipalities within the tri-county area of Wayne, Oakland, and Macomb counties.³ While conceding such inclusion is unusual, the Union counters that the City itself resorted to communities from that area when it commissioned the "Hay Study," a compensation survey. Moreover, the Union argues that the City of Midland is more accurately reflected in a comparison with tri-county communities rather than out-state communities. Census data and data regarding SEV, *per capita* income, median household income, and median family income, demonstrate a closer fit between Midland and tri-county communities than with out-state communities. It argues that Midland, in fact, has financial capability equal to or greater than most of those tri-county communities.

In responding to the City's bases for selection, the Union contends that geography is not a relevant concern here. Neither party based its arguments on labor market conditions or on

³ The City relies on an opinion by arbitrator Paul Glendon in rejecting metropolitan Detroit communities. He considered Allen Park, Lincoln Park and Southgate to be part of the "uninterrupted urban patchwork that makes up the Detroit metropolitan area. As such, they are significantly influenced by metropolitan Detroit wages, employment and law-enforcement conditions. All three cities are innately dissimilar to the City of Jackson, which despite its relatively modest size is the largest City and must be considered the dominant economic and social influence in Jackson County."

standard metropolitan statistical areas. Indeed, the Union indicates, the City has proposed comparables as geographically diverse as its own. As to the City's insistence that comparable communities be "core" cities, the Union asserts that this criterion is meaningless. There is no evidence whatsoever to suggest that City as opposed to county residents experience different working conditions.

In arguing the inappropriateness of the use of tri-county communities, the City notes that the Union's law firm conceded that it had never used Midland as a comparable community when representing Allen Park, Birmingham and Redford Township fire fighters.⁴ The City further contends that townships are substantially different from cities. They are incorporated under different public acts, have different municipal financing mechanisms, and provide different services to the respective communities. For these reasons, it says, they must be rejected out of hand. The Union responds that the argument of "different form of government" has no merit whatsoever. The issue, it says, is not form of government; the issue is comparability of financial factors, and departmental comparisons. Indeed, states the Union, the financial data show greater comparability between Midland and the townships than with the cities. This is clearly shown, it contends, by examination of tax rates.

The City notes that all of the Union's proposed additional communities fail to meet one or more of its criteria. Furthermore, it argues, the Union's proposed cities from the last Act 312 proceeding do not meet the criteria the Union says it is now employing. Finally, the City argues that had the Union in fact employed the criteria it suggests it is currently employing, it would have to have added an additional 20 communities from the tri-county area. The City argues that the Union gives no reason whatsoever why it has chosen the ones it has, and excluded those others.

The Union has provided data comparing *per capita* income, median household income, and

⁴ It might, however, be argued that communities comparable to these named communities abound in the tri-county area, and recourse to Midland would not have been necessary, or even appropriate.

median family income of the City's proposed comparables. *Per capita* income ranges in these communities from a low of \$8,890 to a high of \$13,146. The median figure is \$11,006. The *per capita* income for Midland is \$19,347. The median household income in these communities ranges from a low of \$18,748 to a high of \$30,469. The median figure for these communities is \$21,522. The median household income in Midland is \$39,087. The median family income ranges from a low of \$26,785 to a high of \$36,511. The median family income in Midland is \$49,387.

The Union then makes a comparison between Midland and its proposed tri-county communities, using the same three categories. Here the figures are much closer, and they require more precise analysis. Birmingham has a *per capita* income of \$37,061. No other community in the list even approaches this figure. The next highest community is that of Plymouth Township, at \$24,403. Midland's figure is \$19,347. The median figure for all the communities is \$17,177. Aside from these three named communities, the figures are within \$3,000 of one another.

Median household income presents a similar picture. Birmingham and Plymouth Township significantly exceed the other communities. Allen Park, Dearborn Heights, Harrison Township, Redford Township, Trenton, and Midland are virtually identical, that is, within \$2,000 of one another. The median figure for all communities is \$39,568, with Midland being at \$39,087.

As to median family income, the picture is again strikingly similar. Birmingham and Plymouth Township are at quite some remove from the others. The remaining communities range from \$40,962 to \$47,847, with Midland's figure being \$49,387. The median for all these communities in this category is \$45,645.

The Union next presents an analysis of the SEV of the City's proposed comparables and its own proposed communities. Battle Creek is about \$1,200,000. Holland, about \$900,000. The numbers step down from there to a low of about \$300,000 for Mt. Pleasant. Midland's SEV is about \$2,000,000. The median figure is approximately \$594,000. Among the tri-county

comparables, the highest figure is Birmingham's \$1,443,000. Four other communities are over \$1,000,000.

Of the City's newly proposed communities, Adrian's only significant figure in proximity to Midland is *per capita* income. The same is true of Mt. Pleasant. These two cities are simply not in the same financial arena as Midland. Holland presents a closer question, but it apparently uses more volunteers than full-time fire fighters, and both SEV and *per capita* SEV are below 50% of Midland's.

In assessing the Union's proposed communities, a more varied result is reached. Allen Park is well below 50% of Midland's SEV. Its *per capita* SEV is barely at 50%. While other indicators place it closer to Midland, the major factors militate against its inclusion. In like manner, Harrison Township and Ypsilanti fail to meet the 50% SEV criterion. Trenton is well below the 50% range. Saginaw is hopelessly below any reasonable financial comparability with Midland, and its proposal by the Union fails for precisely the reason the Union has advanced with respect to the City's proposed communities: the reasons presented for its inclusion are entirely non-financial. Kentwood and Plymouth Township fail to meet the Union's own criterion of full-time department.

Dearborn Heights meets the major criterion of 50% for SEV, and other factors are close to Midland, although *per capita* SEV is well below the 50% range. Madison Heights, Meridian, Plymouth and Redford Townships all meet the 50% criterion for the major financial indicators utilized by the Union.

The City's objection to the Union's proposed communities embrace their non-core status, Township form of government, and tri-county location. It must be said that the City has failed to make a persuasive case as to the relevance of core status or Township *vis-a-vis* City. Its position is little more than assertion of the importance of the distinctions, with little else.

Use of tri-county communities poses a different, and closer question. There can be no question that wages in this area generally exceed those paid in the rest of the state. That is to

say, there is undoubtedly upward wage pressure brought about by the very density and complexity of business and industry in this area. Nonetheless, it must be recognized that smaller communities in this area, albeit "forced upward" in terms of municipal pay scales, do manage to pay their employees at this "inflated" level, and frequently with far fewer resources at their disposal than has Midland. Impressionistically, at least, it would appear that the economic anomaly that is Midland is not unlike that of Dearborn. Ignoring Ford, ignoring Dow, is rather like ignoring the elephant in the front parlor.

In economic terms, Midland is simply *not* like other 40,000-population communities in the state of Michigan. It is true that labor market considerations differ, markedly in some instances, between Midland and tri-county communities. However, this difference has not been pressed by the City in its arguments. In terms of other criteria generally employed to determine comparability, the Union's efforts to winnow out communities significantly out of range of the numbers applicable to Midland seem to have been reasonable. The one noticeable exception to this is Birmingham. By most measures, Birmingham has at its disposal greater resources than has Midland. Combined with the immeasurable but undoubtedly real upward pressures alluded to above, Birmingham must be excluded as a comparable community.

A final list of comparables is therefore the following: Battle Creek, Bay City, Jackson, Monroe, Muskegon, Port Huron, Dearborn Heights, Madison Heights, Redford Township, Meridian Township.

**UNION ISSUE NO. 1: ARTICLE 11, SALARIES AND OVERTIME,
SECTION 1, WAGES; APPENDICES -COMPENSATION PLAN FOR
FIRE FIGHTERS; APPENDIX - WAGES, SECTION 1- ECONOMIC**

The Union's last best offer calls for a 4% across the board for three years. The resulting figures for the duration of the contract would thus be: \$42,378, \$44,073, \$45,836. The City's last offer calls for 3.5%, 3%, 3%. The resulting figures would thus be: \$42,174, \$43,439, \$44,743.

Data compiled from the list of the comparables adopted by the panel show the following:

The average compensation of all the comparables is \$45,337 (last year of contract). The Union's figure for Midland is \$45,836. These figures place Midland almost exactly in the median for all communities. The range goes from a high of \$50,059 to a low of \$42,338. Midland would thus be \$4,223 below the high figure, and \$3,498 above the low figure. Using the City's proposal, Midland would be \$5,316 below the high, and \$2,405 above the low.

The Union contends that an accurate reading of the wages provided internal comparables throughout the last contract demonstrates the fire fighters received less in wage increases than did other internal units, taking into consideration compensation provided in other areas, such as pension and bonuses.

The City has asserted that it faces an uncertain financial future. The contingency fund for the Dow tax appeals does not cover the City's potential total exposure,. Until that matter is resolved, the City must remain cautious in its finances. In addition, market conditions render the pension fund potentially unstable. Finally, the City's offer again places Midland at or above the middle of the comparables. The City asserts that its wage offer is substantial, and taken with the benefits received by the Union, is more than justified in light of statutory criteria.

The parties are relatively close on the matter of wages. Midland will remain in essentially the same position relative to comparables with either proposal. Taking wages in isolation, ability to pay tends to support the Union. Of course, the statute prohibits such an analysis. Indeed, the major counterweight to ability to pay is the consideration of overall compensation packages and benefits. In light of the panel's decision with respect to health care, adoption of the City's proposal would strike a better balance in terms of the contract as a whole.

The panel adopts the position of the City on this issue.

**UNION ISSUE NO. 2: FOOD ALLOWANCE-ESTABLISHMENT OF RATES
WITHIN THE SALARY RANGES – PROPOSED NEW SECTION – ECONOMIC**

The Union is proposing the establishment of a food allowance in the amount of a \$675 per year per employee. The City is proposing maintenance of the *status quo* – no food allowance. The Union's argument proceeds as follows: 24 hour shift employees report to work at 7:30 in the morning and work to that same time on the following day. Thus two meals are encompassed within the shift and all meals are prepared at the station by a bargaining unit member. Owing to the nature of their work, fire fighters must remain in the station ready to respond to emergency alarms. Most municipalities recognize this and compensate accordingly. There was testimony that the general practice among Midland fire fighters was to contribute \$15 to \$20 per pay period. This covered only one meal per day, and each employee was required to bring food in for the other meal.

As for the City, it contends that some comparable communities provide such a food allowance, some do not. Moreover, no internal unit is provided a food allowance by the City of Midland. The Union has provided no justification to increase overall compensation costs.

In viewing the comparables selected by the panel, it can be seen that all but one provide a food allowance for their fire fighters. The overall average of this allowance is \$574. The Union has requested \$675 per year. This figure places the Union's request at the median of the comparable communities. It is lower than five of those communities, and higher than six. The range is from a \$800 to \$360, excluding, of course, the one community that provides no allowance.

In light of the practice of the comparable communities, the Union's proposal has merit. Moreover, the City's argument that its internal units are not provided a food allowance is without substance; there is no evidence the employees in the units are, in effect, chained to their desks during normal meal-time periods.

The panel adopts the position of the Union on this issue.

**UNION ISSUE NO. 3: CLEANING ALLOWANCE, ARTICLE 13,
SECTION 2 AND APPENDIX – ECONOMIC**

A summary of practice among comparables shows the following:

Provide and maintain	3	
Provide- no allowance	2	
Provide- allowance	1	\$250
Uniform Allowance	2	\$550 -- no cleaning allowance
	1	1.15% of base wage (\$564) -- no cleaning allowance
	1	\$400 -- employer maintains uniforms
Uniform and Cleaning	1	\$425 uniforms -- \$275 cleaning allowance

The Union is seeking what it claims to be a modest increase in the cleaning allowance for uniforms. The City seeks the *status quo*. An examination of the comparables reveals that the Midland fire fighters currently enjoy a more substantial benefit with respect to cleaning allowance than all but three of the 11.

Perhaps the strongest point the Union makes is in its drawing a comparison between the fire fighters and the police. The City pays for the cleaning of police uniforms. Without more, however, the panel is unable to ascertain the quantitative difference between the allowance granted the fire fighters and a total payment provided by the City to the police. Given the advantageous position in which the Midland fire fighters are placed relative to the external comparable communities, the panel concludes that the Union has failed to make a persuasive case for a change in cleaning allowance provision of the contract.

The panel adopts the position of the City on this issue.

**UNION ISSUE NO. 4: EDUCATION PAY - ESTABLISHMENT OF RATES
WITHIN THE SALARY RANGES - PROPOSED NEW SECTION –
ECONOMIC**

The parties are close in their last best offers. The City agrees that members of the unit should receive compensation for certain levels of advanced degrees or certifications. The City

agrees that fire fighters possessing HAZMAT technician certification should receive \$300 per year. The City also agrees that fire fighters should receive parity with the Police Department. Thus, members with associate degrees will receive \$400 per year, members with a bachelor's degree will receive \$750 per year. It is agreed that payments will not be cumulative.

The parties differ on the effective date of such compensation. The Union has proposed that payments commence July 1, 2001 and be paid the first day in July thereafter. The City has proposed their offer be effective one year earlier, July 1, 2000, and paid the first pay period of December each year. In addition, the Union proposes that employees having attained a fire officer I, II, or III certification receive an annual payment of either \$100, \$200, or \$300 respectively, and fire fighters having achieved emergency medical certification as an EMT, EMTS, or AEMT receive an annual payment of \$200. The Union maintains that the monetary difference between the two proposals is \$10,100.

The Union argues it is clear that the City has acknowledged the value of education. The training for which the Union seeks compensation is clearly job-related. Indeed, the City reimburses the employee for tuition. This training is not easy. To complete all three levels of Fire Officer certification, 280 hours are required. The certifications are not mandatory requirements of employment or promotion. However, an employee is eligible for earlier promotion if he or she possesses certification. College degrees likewise allow employees to be eligible for accelerated promotion, but not as a sole criterion; Fire Officer certificates are required to achieve this accelerated promotion.

As to EMT, EMTS, and AEMT certifications, the City's response is that it is certified only as a First Responder, and that such advanced training is not required. The Union contends that nowhere else is it shown that advanced training which *is* compensated, is utilized on the job. The Union contends that comparables both internal and external, show a higher degree of pay than that which has been proposed by the Union.

The disagreement between the parties centers chiefly on a Fire Fighter I, II, III categories, and the advanced medical certifications. Despite much testimony and the presentation of exhibits, it is difficult to find levels of equivalence, if any, between the Fire Fighter and medical

certifications and the various certifications in the internal units for which the City pays compensation. An examination of the external comparables also shows at best a mixed picture. Four communities have no compensation for educational attainment. Three compensate for basic EMT training. The great majority do not pay for advanced degrees, associate's or bachelor's.

In the absence of a more definitive information with respect to comparables both internal and external, it is difficult for the panel to support the Union's position. The City has offered to introduce a new level of compensation based on educational attainment. The parties are not in dispute here, other than offering different starting dates. As the Union itself points out, the acquisition of Fire Fighter certificates provides an accelerated route to promotion. This may well be incentive enough for employees to seek to certification, which is paid for by the City. Obviously, with promotion would come a higher wage scale. The City's proposal is certainly not out of line with the practice of external comparables, and puts the fire fighters at parity with the police officers.

The panel adopts the position of the City's on this issue.

**UNION ISSUE NO. 5 (A AND B): ARTICLE 9, SECTION 1 AND
ARTICLE 10, SECTION 1**

It is clear that both parties regard the health care issue as the "Jewel in the Crown." Since the panel is restricted to choosing only one last offer, the statutory criterion of overall compensation takes on added weight, if the winner on this issue is not to become "winner takes all."

The Union argues that the City's last best offer on this issue is fatally flawed. The City's response to the Union proposal on this issue is at odds with its own proposal on health insurance. This, the Union contends, is a violation of the strictures of Act 312, which requires the panel to choose only one last best offer.

With respect to this question, there are several paths which the panel might follow. The first is to treat the Union's proposal and the City's proposal as distinct from one another. The Union is correct that such a choice would preclude the panel from adopting the Union's position on one issue, and the City's position on the other. The second would be to treat the City's proposal

under City Issue 4 as its response to the Union's proposal on health insurance. The third approach would be to send the Union's health insurance proposal and the City's health insurance proposal back to the parties for further collective bargaining, presumably with the assistance of a State mediator.

In course of the proceedings, the City objected to Union's putting in evidence concerning active employees. Much discussion was had concerning what the City understood to be the Union's original proposals embraced in their petition for arbitration. At best it appeared that there was less than a meeting of the minds with respect to the City's understanding, both at the time the proposal was first tendered by the Union, and in subsequent discussions. A ruling was deferred until briefs could be submitted. The panel met in executive session on this point, and a decision was reached permitting the Union to put forward its case with respect to active employees. The essence of the panel's decision was that the Union had been consistent throughout in presenting a proposal which included new language with respect to active employees. The City's misimpression resulted largely from its conclusion, after a cursory examination of the Union's position, that there was no possible meeting ground.

Apparently unmindful of the Union's position, the City advanced its own proposal with respect to health insurance and active employees: City Issue 4. Given the circumstance of the panel's ruling, and the potential for hopelessly contradictory results, as the Union has pointed out, it appears that the best option would be to treat the City's proposal in its Issue 4 as its response to the Union's proposed contract change. In this way, at least with respect to that portion of the Union's proposal which directly addresses the matters raised in City Issue 4, the panel will be able to choose between two last best offers addressing the same issue. The City's *status quo* response to the remainder of the Union's proposal will, of course, remain in place.

Recourse to this solution is substantially strengthened by the City's opening sentence in its brief discussing City Issue 4. There the City writes, "*with the exception of the optional health insurance packages, the City's offer has been discussed in detail in conjunction with the Union's health insurance issues.*" This candid declaration makes it abundantly clear that the Union's health insurance issue has been directly joined. In essence, the City has bifurcated its discussion of the health insurance issue. It negatives the Union's health insurance proposal in its discussion

under the Union's issue, and presents its alternative in its discussion under the heading of its own issue on health insurance. The panel believes that a fair reading of the positions taken by the parties warrants treating the issues in the manner indicated above, *i.e.*, as one Union proposal and one City response.

The Union proposes continuation of the present Blue Cross/Blue Shield coverage. It proposes changes in the financing of that coverage. Were rates to exceed the caps set forth in its proposal, the difference would be made up by unit members up to a maximum of 2% of their base wage. Thus, the Union caps the exposure of its members for rate overage, and returns the exposure to the City for any amounts over that cap.

The second major element of the Union's proposal is an alteration in the pension contribution from 8% to 7% from each employee, with the 1% going to a Pre-funding Retirement Health Care Insurance Fund. The final element in the structure of the Union's last offer is the elimination of the 50% contribution by retirees for their medical insurance coverage.

The Union proposes that its employees pay for increases beyond the level specified in the contract up to a maximum of 2% of their base wage. Additionally, it proposes caps as of July 1, 2001 of \$266.63 for a single person, \$559.94 for two persons, and \$653.25 for a family. For each contract year thereafter, health premium caps shall be increased by the CPI (medical). Further, the Union proposes to eliminate the \$5 per pay pre-funding for all full-time employees hired prior to March 1, 1997.

The current contract provides for the City to pay no more than \$5,500 per member toward the cost of health insurance premiums, with the employee absorbing any additional cost. This amount applies regardless of whether the covered employee requires single, two-person, or family coverage. After July 1, 2000, health insurance premiums increased to a point that, for the first time, members began contributing to the health insurance costs. For fiscal year July 1, 2000 to June 30, 2001 the cost was \$1,118.52. The Union contends that this represents a wage loss ranging from 2.5% to 5.1% of the base wage. The amount is paid regardless of the employee requirement for coverage. Under this system, employees requiring only single coverage subsidize, in part, the rest of the bargaining unit. The Union notes that even this figure has been

exceeded commencing July 1, 2001, with premiums increasing \$2,100.70 per pay period.

The Union characterizes the City's last offer as regressive, in terms of its presentation at the hearings. City exhibit 207 proposed a maximum family coverage of \$539 per month or \$6,468 per year. The City's last offer was \$5,903.13 per year or \$491.93 per month. Moreover, the increase the City proposes for itself beginning in the year 2000 is \$403, or 3.6%, while the fire fighters have suffered a 20.3% increase in the same period.

The Union argues that the comparables support its position. Only one of the comparables requires premium sharing from its active employees, and that requirement bears no resemblance to the obligation imposed on Midland's fire fighters. As to retiree premium cost shifting, again, only one of the comparables requires such a contribution.

The City argues that the most recently expired contract was the product of protracted negotiations and an Act 312 proceeding. Ultimately, there was a settlement, which included an overhaul of the health insurance and a significant change in the pension program. The employer's premiums were capped. Pre-March 1997 hirees were to pay \$5 to the retiree health insurance fund. Post-March 1997 hirees would not pay \$5, but would pay 50% of their retirement health costs. The City's percentage payment for Pre-March 1997 hirees would depend on age. The multiplier increased from 2.525% to 2.7%. As a result of this new contract language, there were substantial personnel changes, with retirements under the new multiplier, promotions, and new hires. The City contends that the Union is now seeking to renege on its bargain.

The City takes the position that the proposed diversion of 1% to "assist" the City is illusory. While this money would go to health, the pension plan would be deprived of the same amount of money, with no net benefit. As to the \$5 payment and an increase to 100% retiree coverage by the City, recourse to comparables is of no value, given the recent bargaining history. All City groups make such a contribution. Similarly, all City units have a two-tiered system.

Further, the City says, an examination of the comparables shows that Midland has low deductibles and low co-pay. Net overall compensation, wage and benefits together, place Midland near the very top of comparables. The City's proposal, which outstrips even the bargain

reached in the last contract, offers higher wages, a raised City cap, insurance options which include no employee contribution, and continued Union ability to restructure the package to stay below the cap.

The City has offered optional health plans in its last offer. The lower premiums in these options would require lower contributions from employees. The entire package, wages, increased cap, and options with lower contributions make the City's offer, it argues, more than fair.

In the face of rising health costs, argues the City, employers must either restrict wage increases, reduce the benefits of health plans, or obtain contribution from its employees. The parties chose the third option, with the employer providing excellent coverage, along with a high wage level. In light of what internal units receive and the recent bargaining history, the Union's proposal must be rejected.

The Union has objected that the City's proposal has come without support from either exhibits or testimony. That is not quite the case. Several exhibits, but most particularly City exhibit 208 were entered, and these reflected the City's proposal. There was some testimony with respect to exhibit 208, and the Union exercised the opportunity to cross-examine. Despite all this, there is some merit in the Union's objection. With respect to a proposed change in contract language, it was not the Union's burden to negative that change; rather it was the City's burden to demonstrate its preferability.

The dilemma facing the panel is this: while the City proffered exhibits outlining the elements of its proposal, it explained virtually nothing about them. There was both documentary and oral evidence given with respect to some of the costs. However, no attention was given to the extent of the coverage the various options presented by the City would provide to Union members. Presumably, at their leisure, were the City position to be adopted, each fire fighter could determine the extent of the coverage and which option was preferred. The panel, however, is not in that position. It does not have the luxury of after-the-fact assessment. In addition, there was testimony, although uttered in the midst of oral chaos, that there was a paucity of local physicians who would accept new patients covered by the non-traditional plans offered by the

City. While applying chiefly to future hires, the panel finds the testimony credible and probative.

The position of the comparables is a substantial factor in the decision of the panel with respect to this issue. The City is joined by only one other in its demands for participation, and that other receives, in essence, a pittance compared to a contribution made by Midland's fire fighters. Coupled with the paucity of explanation provided by the City with respect to its proposal, the position of the Union seems has more weight behind it.

Finally, it must be stressed that the panel is constrained to choose one of two proposals. Frequently, this comes down to selecting the less "unfair" proposal. Were the Solomonic wisdom of the panel to be given free rein, a different proposal might well emerge, but such latitude is not within its authority.

The panel adopts the position of the Union on this issue.

**RETIREE HEALTH INSURANCE (AGE ELIGIBILITY), ARTICLE 9,
Section (F) - ECONOMIC**

The Union seeks to replace the full-benefit age of 50 in the present contract with age 46. The City seeks the *status quo*. Internally, the police, both patrol and command, have age 46. Other internals require 50 or more. External comparables are split. Four appear to have no minimum retirement age, but generally require 25 years of service. In two, the age is 50. One is 53, with 20 years, one is 52. The remainder base eligibility on time in service, which results in wide variation, depending on age at time of hire; one has a combination of age and service which must total 75. Midland permits retirement after 23 years of service, but pays full benefits only at age 50.

The Union bears the burden of demonstrating a persuasive reason for change. Given the range among comparables, all relatively close to Midland's present position, some more favorable to the employee, some less so, and the substantial benefit reaped through prevailing on the major health issue, the panel finds it has not met that burden.

The panel adopts the position of the City on this issue.

**UNION ISSUE NO . 6: RETIREMENT COLA - ARTICLE 10-
RETIREMENT AND LONGEVITY, SECTION 1- ECONOMIC**

**UNION ISSUE NO. 7: RETIREMENT MULTIPLIER AND LONGEVITY
-SECTION 1 RETIREMENT, SUBSECTION B, MULTIPLIER -
ECONOMIC**

[The City has conflated its treatment of these two issues in its brief. We have chosen to combine the Union's arguments as well. Our discussion, therefore, deals with both issues concurrently.]

The Union has propose a post-retirement increase of 5% of the original pension benefit, computed at 5, 10, 15, and 20 years after retirement. The City has proposed maintenance of the *status quo*. There is currently no post-retirement adjustment.

The Union notes that all City employees, with the exception of fire fighters and police patrol, receive either Social Security benefits or a post-retirement adjustment. The Union points to data provided by the City. The City has portrayed the final average earnings for a Midland fire fighter as \$53,287. A fire fighter retiring after 25 years of service would received 67.5% of the FAC. The annual pension benefit for such a person would be \$35,969. Furthermore, the City has presented evidence of an increase in the CPI from the last 10 years of approximately 32%. Thus, argues the Union, assuming a continued inflation rate identical to the past 10 years over the next 10 years, the retired fire fighter's pension benefit would, in real terms, be reduced by more than \$11,000. The Union's proposal, which amounts to an additional \$1798, based on the above figures, would not eliminate, but only mitigate the reduction in purchasing power.

The Union maintains that the City can well afford its proposal. The pension fund was 131.5% funded as of December 31, 1999. The employer contribution at that time was 2.84% of payroll. One year later, the pension system was 139.5% funded with a recommendation of 0% employer contribution. It has been estimated that the overfunding could be eliminated over a period of 20 years with no contribution from the City. The police and fire pension system has realized substantial growth in recent years. Employer contribution has decreased to 0%. The employee contribution has remained at 8%. The Union maintains that the employer should not

be alone in realizing a benefit from the substantial growth in the pension system.

The Union disputes the reality of the concerns of the City that market activity might have a substantial upward impact on the City's contribution. It characterizes this as a typical "sky is falling" mentality of the City, and insists that the cost factor for the proposed pension escalator is minimal. During the current negotiations, the pension escalator was costed out by Gabriel, Roeder, Smith & Company. The cost was given as 2.81% of payroll. This was done when the pension fund had jumped to 119.8%, and the employer contribution reduced to 10.88%. Today, the fund is close to 140% funded and the employer contributes nothing. Since the Union's proposal is now for non-compounding of the escalator, (the figures above being arrived at calculating a compounding of the escalator), the Union asserts that it is reasonable to anticipate that the cost factor would be further reduced.

With respect to comparables, four communities provide a post-retirement adjustment. Three others units receive Social Security benefits. Of the four remaining communities, one, Battle Creek, has a clearly superior pension plan. The City of Jackson has a clearly inferior plan. The remaining two, Madison Heights and Port Huron might be characterized as *slightly* better than Midland. With respect to internal units, a post-retirement escalator is provided for all except the police patrol. However, members of the Police Department can retire after 26 years of service and the rank of Sergeant or above receives an escalator after 5, 10, 15, and 20 years of retirement. Thus, the Union argues, the escalator would apply to virtually all employees of the Police Department.

THE MULTIPLIER

The Union proposes an increase in the pension multiplier from the current 2.7% for the first 25 years of service to 2.8%. The Union reiterates its discussion of the financial condition of the pension system, repeating its "exceptionally fit financial condition." A valuation made in 1998 found an increase of 1.48% or \$29,437, for this proposal. Given the increase in the pension's size, the Union asserts that the actual cost would be much less.

Pointing to internal units, all, excluding police and fire, are covered by The Municipal Employees Retirement System (MERS). Their pension multiplier is 2.5% multiplied by years of service to a maximum of 80%, with a post-retirement escalator. This is in addition to Social Security benefits to which these employees will be entitled. Even the adoption of its proposal, says the Union, while raising the benefit to retirees, would still fall short of the percentage now applicable to the internal units; 77% at 32 years of service versus the 80% which the other units now receive. It is clear that these other units have superior pension benefits to those of the fire fighters.

Looking at the Union's exhibits with respect to the multiplier, it appears that four of the comparables have a higher multiplier than does Midland, while seven are lower. In looking to the percentage of FAC, after 25 years four comparables are higher than Midland, and seven are lower. After 30 years, seven are higher and four are lower. The Union indicates that implementation of its proposal would provide a 30 year employee with a 75% of FAC. This would bring that employee's percentage equal to that of eight communities and higher than three. No comparable figure is presented for a 25 year employee.

The Union is highly critical of the City's exhibits with respect to FAC. It makes an "apples and oranges" claim, charging, for example, that the City used overtime in reporting the Midland FAC, while not reporting actual overtime for comparable communities. Further, the Union charges that the City has omitted several categories such as COLA, sick leave pay, shift differential and out-of-class pay. As a result, the Union claims, the City's argument is unsupported by reliable data.

The City opposes the Union proposals. It first points out that Midland has the lowest retirement eligibility of all proposed comparables. In the City's hypothetical situation, a 21-year-old could retire at age 44. He could then draw a full salary at another position for up to six years before a fire fighter in a comparable community could do so. The City regards this as a substantial benefit to members of this unit.

The City regards the Midland multiplier as among the highest. As indicated above, four of the comparables have a higher multiplier than does Midland, while seven are lower. This puts Midland at five out of 11 communities. As to FAC, the City argues that Midland heads the list. It should be noted that the data relied on by the City to make this point are those strenuously challenged by the Union.

With respect to the proposed escalator payments, the City argues that one complement of a pension plan cannot be viewed in isolation. The City argues that its Appendix C demonstrates that Midland pension plan is by far the highest among comparable communities. Thus, no escalator clause is warranted.

Turning to internal comparables, the City insists that the fire fighters are more greatly advantaged than these other units. Other than the police, the retirement age in these other units is 55, and their multiplier is 2.5%. While these units do have an escalator, says the City, their lower pension benefits and higher retirement age means that it is unlikely that they will ever catch up to the fire fighters. Also, the total dollars received will be much lower. These are exactly the same circumstances that apply to external comparables.

The City rejects the Union's argument based on the solidity of the funding of the pension plan. First, current funding status is based on the assumption that there will be no changes in current benefits. As an example, the most recent valuation does not reflect the increased cost of the recently negotiated Police Officer contract. In addition, the City foresees a "whipsaw" effect, with other units demanding the benefits the Union seeks in its proposals, were they to be granted.

The City points out that the stability of the pension fund rests on the activity of the financial markets. This is particularly important, since the pension plan in Midland is a defined benefit plan -- the City bears all the risks in a market downturn. Finally, the City argues that retirement of employees entails two costs to the City: the pension plan and the cost of retiree health care. In this regard, the City insists that it is woefully underfunded. An increase in the pension plan will inevitably retard the City's efforts to shore up funding for retiree health. The City asserts

that none of the statutory criteria support the Union's position. Based on this, the City seeks adoption of its proposal on these two issues.

Based on comparables, it appears that the City of Midland stands slightly above or slightly below the median in most methods of calculation used by both parties. This is not an unreasonable place. Midland, despite its high SEV, is not required to be first among all the comparables, in every category. Additionally, the Union makes light of the City's concerns with respect to the possible future of the pension plan, despite its present solid condition. However, it must be noted that in the period of this Act 312 proceeding, *prior* to September 11, 2001, the market had already begun a serious downward spiral. After that date, the market declined dramatically, with losses of 30-50% not an uncommon experience. Perhaps the best that can be said of the market at this time is that its current condition is shaky, and its prospects uncertain. As of the date of this award, those expert in such matters have declared the country to be in a recession. Recovery is predicted anywhere from six months to two years. This will certainly have an effect on the performance of the pension fund. Finally, the City is correct in pointing out that a defined benefit plan puts the onus of any market instability and decline clearly, and solely, upon the City.

The figures supplied by the parties in both these areas are difficult to parse out. Apples and oranges indeed! Nonetheless, it can be reasonably asserted that in terms of comparables, both internal and external, Midland stands essentially at the median, \pm .

The panel adopts the position of the City on both these issues.

UNION ISSUE NO. 8: DENTAL INSURANCE, ARTICLE 9, PROPOSED NEW SUBSECTION 3- ECONOMIC

The Union's last offer proposes the inclusion of a new benefit, a Blue Cross/Blue Shield dental insurance – Group Dental Certificate Comprehensive Plan 3. The City's position is to maintain the *status quo*, without prejudice to the City's offer on City issue No. 4.

The City maintains that the Union has chosen the most expensive plan possible. The City,

in its issue No. 4, proposes an option available to employees which included Blue Cross Blue Shield dental coverage. The City maintains its proposal is supported by the comparables and internal units. The City contends that the overreaching of the Union's proposal is best exemplified by comparison between the Union proposal and the benefit received by the police officers. Moreover, the City maintains that its proposal under City issue No. 4 makes dental insurance available to members of the unit if they desire it.

The Union objects to the City proposal for the same reason it did with respect to the City's proposal on health insurance. The City has offered the *status quo* on the Union's proposal. If the City prevails, the panel must necessarily reject the City's last offer regarding its health insurance issue, because to do otherwise would negate the *status quo* awarded under this proposal. As with the health insurance, the City has left the panel no choice but to select the Union's proposal on this issue if the panel intends to abide by the statute. Moreover, regardless of the fatal flaw inherent in the City's proposal, the Union's proposal is the superior choice.

The Union argues that the City has offered an inferior dental insurance plan, which is provided for those employees who opt to select a downgraded health insurance plan. None of the health plans, including the option of dental insurance, will be fully paid by the employer. The Union points to the fact that of the comparable communities, virtually all provide some dental coverage. In fact, however, of the agreed-upon comparables in this proceeding, only one, Meridian Township, provides a 100% coverage for class 1. Within Midland itself, the MMEA and the M. P. O. A. receive 100%.

However, as the City points out, the Union has chosen quite broad coverage in its proposal. The Union's proposed Class 1 coverage exceeds that of any comparable except Meridian Township, and the two internal unions in Midland itself. The Union's proposed Class 2 coverage exceeds that of all but two of the comparables.

Beyond that, we are again faced with that portion of the statute dealing with overall compensation. Given the comparables, and particularly in light of the panel's preference for the

Union's health proposal, the panel is inclined to side with the City on the issue a dental insurance. Increasing the City's health-related obligations beyond that required in the Union's health proposal is unwarranted.

The foregoing analysis should not be taken to mean that is the panel's judgment that the Union, in asking for dental coverage, is substantially out of bounds relative to other comparable communities. Rather, its proposal is at the highest end, and within the context of the total compensation package, the City's proposal is deemed preferable.

The position of the City on this issue is adopted.

**UNION ISSUE NO. 9: PROMOTIONS VACANCY/ELIGIBILITY TO
COMPETE, PROMOTIONAL SCORES AND APPOINTMENT OF
VACANCY, ARTICLE 2, NON-ECONOMIC**

The Union has proposed fundamental changes in the promotional procedure contained in the prior contract. The Union summarizes its proposed changes in the following way:

1. Eligibility:

Permit all otherwise eligible employees who passed the written exam the opportunity to take either the oral board exam or the practical exam.

Permit employees on probation and (above the classification of fire fighter) to test for promotion if otherwise qualified.

2. Scoring Procedure:

Replace current criteria of "in addition to numerous other factors," with ½ point added for each year of service, 1 point for each Fire Officer I, II, & III and 3 points added for an Associate's Degree in Fire Science.

3. Selection procedure:

Revise current procedure enabling Fire Chief to select from top three candidates to provide the candidate with the highest total score with the promotion.

The Union's position is that its proposal addresses some problems in the current promotion

procedure. It regards as arbitrary and artificial the denial of an opportunity for promotion to one who is on probation, particularly where that person might have only weeks or days remaining in the probationary period. Further, it contends that its proposal replaces arbitrary factors with fair and objective measurements. The addition of points for seniority and education merely adds to the current requirements, and again, provide objective measurements. Finally, the Union's proposal eliminates the "rule of three" and provides for selection of the top scoring candidate, thereby eliminating any potential for abuse.

The City has agreed to change the language barring a Truck Operator on probation to test for Lieutenant. Beyond that, the City regards the Union's proposal as destructive of a system which has been in place for many years and which has operated well. The Union's proposal eliminates all discretion on the part of the Chief. Further, it makes all probationary employees eligible to test for promotion. The City contends that it must have time to evaluate the employee in one position before that employee can seek another. Moreover, the City argues, eliminating the "rule of three" and the "additional factors" language, present in the current contract, destroys the ability of the Chief to utilize evaluation of intangible factors which loom large in personnel decisions.

It is the panel's conclusion that the Union has failed to present a persuasive case for change. It is true that in an extreme situation the potential for abuse exists under the present system. However, no such abuse has been pointed to, and its remote potential does not provide adequate justification for changing a system which appears to be working well. The panel sees no justification for its fashioning new contract language.

The panel adopts the position of the City on this issue.

UNION ISSUE NO. 10: LIGHT DUTY, ARTICLE 6, SECTION 4, NEW (F)- ECONOMIC

The Union proposes language which would require the City to make light duty available on request for any employee unable to perform his or her normal duties. The City seeks the *status quo*.

The Union argues that its language leaves to the City discretion as to what duty is to be assigned. The role of the physician would be simply to describe the limitations forced upon the employee by his or her injury or illness. It further argues that testimony demonstrated that employees who perform light duty return to full duty more rapidly. This, the Union argues, is its sole purpose in seeking to have this language added to the collective bargaining agreement. While the Union concedes that it has been the City's practice in the past to provide light duty for employees with job-related injuries, the omission in offering light duty options for other than job-related injuries must be rectified.

The City argues that under the proposed provision, light duty assignment could be indefinite. None of the comparables have such a provision, with the exception of Bay City. There, the Fire Chief has the sole authority to grant or deny light duty. Finally, the City notes that its practice with respect to the fire fighters is identical to that employed with all internal units.

The Union has failed to make a persuasive case with respect to light duty inclusion in the contract. Comparables do not grant such coverage in their contracts. Moreover, no persuasive reason whatsoever is provided for the inclusion in the Union's proposal of employees suffering from injuries not related to the job.

The panel adopts the position of the City on this issue.

UNION ISSUE NO. 11: RESIDENCY, ARTICLE 4, SECTION 2-ECONOMIC

From the testimony adduced at the hearings in this matter, it seems clear that both parties acknowledge that an approach different from either of theirs would be preferable. However, the strictures of Act 312 prevent the panel from selecting such an approach. The comparables are evenly split with respect to such a requirement. The police in Midland have agreed to a 25 mile limitation.

The proposal for a change in the contract language is the Union's. It, therefore, has the burden of demonstrating persuasive reasons for such a change. While the idea of freedom of choice is indeed a powerful one, membership in an emergency service, of necessity, is likely to

require some limitation on that freedom. How the balance between freedom of choice and the demands of rapid response to emergencies is to be struck is not made manifest by the Union's proposal. Indeed, the Union's proposal strikes no balance. On the other hand, the City has made some movement away from the restriction that existed previously. Whether this is the proper balance, or even the best of approach to the solution of this problem, is not for this panel to say. But in light of the necessity of choosing between two alternatives, the panel finds that the City's approach more closely comports with the statutory criteria.

The panel adopts the position of the City on this issue.

**UNION ISSUE NO. 12: PERSONAL EMERGENCY LEAVE – ARTICLE
6 SECTION 4(B) AND (C) – ECONOMIC**

Both parties propose a change in personal emergency leave. The City proposes 12 hours, as in the expired program; the Union proposes 24 hours. In addition, the City proposes a minimum usage of two hours at a time; the Union proposes no minimum. The major discrepancy is whether an employee should be allowed to convert 12 hours of sick leave once a year, with a maximum bank of 16 hours as the City has proposed, or be allowed to convert 12 hours of sick leave twice a year with a maximum bank of 22 hours, as the Union has proposed.

For the City, the Chief testified that he felt personal leave time was unnecessary because fire fighters can trade shifts with each other or use sick leave in half-day increments. Moreover, personal time is expensive because often the person taking it must be replaced by someone on overtime. Nonetheless the City has proposed a continuation of the program.

An analysis of the comparable communities shows that four have sick leave plus personal emergency time. In addition, one community has 12 sick days and allows for conversion, one has seven days and allows for conversion, and one has six days and allows for conversion. Of the three that require conversion of sick leave for personal leave usage, Battle Creek, Bay City and Port Huron, only one limits the time to 12 hours.

Particularly telling, in terms of comparison, are the internal units within Midland. While the City notes that none of its internals is allowed conversion, only two are not granted personal emergency days. In terms of function, the panel is inclined to look most closely at the other

emergency service, the police officers. While sick leave in that contract is expressed in terms of hours rather than days, it would appear that the MPOA unit members receive at least as much sick time as the fire fighters, and have in addition 48 hours of personal emergency time. (The Police Officers Association receives 48 hours of P. E. L. in addition to 96 hours (12 days) of sick leave per year).

In addition, virtually all other internal units in Midland receive more work days/hours than the City proposes in its last offer here. Thus, the M. M. E. A. receives, in addition to their 12 days of sick leave and one P. E. L. day, an additional four personal leave days per year which may be used in four hour increments. The Steel Workers receive 12 for sick leave days and one additional P. E. L. day per year. Police Command receives 24 hours (three days) of P. E. L. time per year. As with the other units mentioned above, this Command P. E. L. time is in addition to accrued sick leave time. And, none of the employees listed above is required to transfer accrued sick time into a separate P. E. L. bank in order to have the benefits available for their use.

The City has indicated that personal emergency leave would be costly, since replacements might well have to be paid overtime. However, the same might well be true of the replacement for a fire fighter using sick leave. Moreover, as the Union points out, it is seeking conversion of time already provided for in the contract, and not, as is the case with internal units, additional time beyond sick leave time. In light of the comparisons with both comparable communities and internal units, the panel believes that the Union's proposal more closely meets the criteria of Section 9 of the Act.

The panel adopts the proposal of the Union on this issue.

CITY ISSUE NO. 1: MERIT SYSTEM BOARD - NON-ECONOMIC

The City proposes the deletion of all references throughout the agreement to the Merit System Board. The Union proposes that the *status quo* be maintained.

The City wants references to the Board the deleted from the contract because it is anachronistic and redundant. The Board is currently constituted of laypersons who must consider complicated labor issues, legal issues, insurance and workers compensation issues. Moreover, the collective bargaining agreement controls over the Merit System Board, rendering it

superfluous. No external comparable has any entity within its system possessing anything like the breadth of authority that the Board has. With respect to internal units, all have negotiated away the Board in their contracts.

The Union, in essence, concedes the present non-utility of the Board. Moreover, it acknowledges that the issues it presents as possible areas of Board action are also subject to the grievance procedure. Nonetheless, it wishes to retain the Board as a potential control over autocratic personnel decisions made by the Human Resource Department.

The position of the Union is essentially without merit. It wishes the protection of a virtually non-existent Board, against a hitherto unnoticed autocratic decision-making process, while having a contractual protective mechanism of much greater strength.

The panel adopts the position of the City on this issue.

**CITY ISSUE NO. 2: SECTION 9, SHIFT TRADES - ARTICLE 2-
PERSONNEL RULES, SECTION 9, TRADE TIME - ECONOMIC**

The City proposes that the trade time provision of the contract be amended to require trades to be completed within a 56 day period. Its reasons are that trades open for a longer period of time create administrative difficulties, since it is the City's obligation to monitor trades to ensure that they are paid back. The City argues that there is no burden being placed on the employees by its proposal, and that ease of administration will be greatly enhanced by its adoption.

The Union proposes maintenance of the *status quo*. It asserts that the City has failed to demonstrate any reason why the contract language should be changed. Indeed, it argues that the Chief's testimony made it clear that the City simply wished to reduce or eliminate time trading. The City's proposal at the time of this testimony was for a 28 day restriction; its last offer provides for a 56 day limit. The Chief expressed the opinion that a 28 day restriction would eliminate lengthy periods for completion of a trade, such as 60 days. Clearly, argues the Union, the City's revision of its position undermines the entire basis for the Chief's testimony. The Union further argues that, overwhelmingly, comparable communities place no time limit on trades.

The City has failed to do demonstrate a need for this change in contract language. Neither

by exhibit, nor in testimony, could it point to identifiable problems arising from the current practice.

The panel adopts the position of the Union on this issue.

CITY ISSUE NO. 6: FINAL AVERAGE COMPENSATION – ARTICLE 10, RETIREMENT AND LONGEVITY, SECTION 1, RETIREMENT, SUBSECTION D. – ECONOMIC

The City propose to alter the time period used to calculate the FAC. It is currently the three highest years out of the previous ten. The City seeks computation based on 36 consecutive months. This change, the City argues, will make calculations much easier. There was testimony that the office which handles this matter is small, and their work would be made much easier by effecting this change. It notes that a majority of the comparables require consecutivity. Indeed, seven of the 11 comparables adopted by the panel do so.

The Union regards this proposal as bringing about a reduction in pension benefits. The possibility exists that the standard final three years, usually the highest paid, might not be so; variations or availability of overtime could bring this about. The Union maintains that the City has dramatically failed to meet its burden in seeking to change the contract.

Essentially, the City's only argument is that the change will make things easier for the clerk's in the office which handles such matters. Potential reduction in pension benefits in order to ease the workload of these clerks can in no way be justified. While it is true that a majority of the external comparables require consecutive years, without more justification than easing the workload of those handling computation of the FAC, the City has not met its burden.

The position of the Union on this issue is adopted.

CITY ISSUE NO. 7: PAGERS – ARTICLE 11, SALARIES AND OVERTIME, SECTION 2, OVERTIME, SUBSECTION 6, EMERGENCY CALL - IN – ECONOMIC

The City proposes the adoption of a system of paging devices for purposes of call-in to cover emergency situations. It asserts that valuable time would be saved in getting off-duty personnel to report. The chief testified that virtually all Fire Departments utilize this or a similar system. Moreover, no employee would be required to wear a pager.

The Union argues that the system, if implemented, would pose greater difficulties in emergency situations than under the current system. It asserts that the lag time in discovering how many fire fighters were going to report to an emergency would be greater using pagers than using the current phone system.

The second reason asserted by the Union to oppose this proposal relates to overtime. Currently, employees residing within the City limits and those with the least amount of overtime are given the first opportunity for overtime. According to the Chief, this would be difficult to duplicate using a pager system. Finally, the Union has presented evidence that no comparables require the carrying a pager by an off-duty fire fighter.

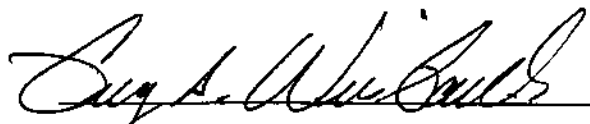
This proposal gives rise to a mixed bag of considerations. Ordinarily, one might think that the City would have relatively unfettered discretion to decide how emergencies were to be staffed. If the method chosen by the City proves to be counter-productive, that should fall on the heads of those who chose the method.

Apparently, what makes this an economic issue is distribution of overtime. The Union speaks to past practice, and several sections of the current language of Article 11 Subsection 2. It is clear from the testimony of the Chief that the pager system would not comport with at least some of the provisions of Article 11 cited by the Union. Thus the proposed new language for Article 11 would be inconsistent with other provisions of that same Article. Beyond that, the City has not made a case for the benefits to be derived by a pager system. Indeed, the Union's discussion of the matter is persuasive with respect to efficiency. Given that, there would seem no reason to adopt language which would create internal contractual inconsistency and alter the expectations of overtime, built into the present contract, and derived from past practice.

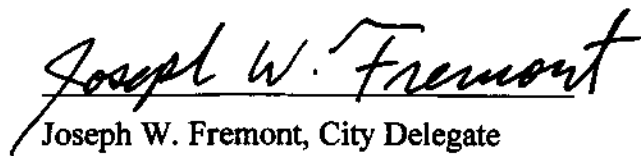
The position of the Union on this issue is adopted.

AWARD

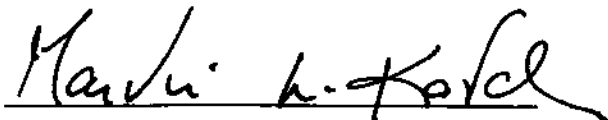
The panel has adopted the proposals of the parties as indicated in the body of the Award. The Union Delegate, Gregory A. Weisbarth, dissents from all decisions of the panel in which the proposal of the City is adopted. The City Delegate, Mr. Joseph W. Fremont, dissents from all decisions of the panel in which the proposal of the Union is adopted.



Gregory A. Weisbarth, Union Delegate



Joseph W. Fremont, City Delegate



Martin L. Kotch, Panel Chair

December 5, 2001