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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

*Ruid@more
Oct 28
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In the Matter of the Fact Finding
Between CITY OF TROY

and

MERC Fact Finding
Case No. D90 G-0970

MICHIGAN ASSOCIATION OF POLICE

FACT FINDING REPORT

INTRODUCTION

Pursuant to Section 25 of Act 176 of the Public Acts of 1939, as amended, and the Commission's regulations, the Employment Relations Commission appointed this Fact Finder on May 17, 1991 and requested that a hearing be scheduled and findings and recommendations be made so as to assist the parties in reaching an agreement. A hearing was conducted on August 27, 1991, at the City offices, 500 West Big Beaver Road, Troy, Michigan. The parties presented numerous exhibits and sworn testimony in support of their respective positions. The parties did not request briefs and the record was concluded.

APPEARANCES

For City of Troy:

Craig Lange
Peggy Clifton
Acting Director, Personnel
Lawrence R. Carey
Stephen Cooperrider

For Michigan Association
of Police:

Fred Timpner
Labor Relations Specialist
Henry Winokur

HISTORY

The Petition for Fact Finding was filed by the Union on March 25, 1991. Both the Petition and the testimony indicated that there are approximately seventy persons in the bargaining unit, including account clerks, clerk typists, data processing clerks, secretaries, all in the clerical district, and then animal control officers, Public Service Aide I, Public Service Aide II in the non-sworn police category. The present Union has represented these employees since November of 1989.

Apparently there had been a tentative agreement with the former AFSCME leadership on June 30, 1989 which was rejected by the members. After November of 1989, a new bargaining committee was established. Non-economic issues were received on January 25, 1990; economic issues received on February 6, 1990 from the Union. Extensive negotiations and mediations occurred which lead to tentative agreements, but there were sixteen unresolved issues. At the beginning of the hearing, the parties announced that there had been tentative agreement on Funeral Leave and Minimum Call-In and therefore those issues were removed from Fact Finding. The Union also agreed to withdraw the Bulletin Board issue. Thus, there were thirteen remaining issues.

The hearing was conducted pursuant to Rule 34 and this Report is prepared pursuant to Rule 35. The Report will be on an issue basis in the same order as presented at the hearing. The issue will be set forth, a general discussion regarding the

position of the parties, a recommendation with respect to each issue, and the reason and basis for the findings, conclusions and recommendations.

In that neither the Act, nor the Rules, set up written criteria to guide Fact Finders, this Fact Finder will consider the oral presentations at the hearing, the voluminous exhibits and the apparent reliance by the parties upon the contractual language in at least the four communities that the parties agree are comparable, namely, Farmington Hills, Royal Oak, Southfield, and Pontiac. Although not presented with the document, the parties indicated that a prior Act 312 Award Decision dated October 1, 1990 found those four communities to be comparable under Act 312. This Fact Finder will follow that award. In the absence of specific statutory criteria for Fact Finding, this Fact Finder does find it helpful to utilize some factors as set forth in Section 9 of Act 312. In particular, the interest and welfare of the public; financial ability of the unit to meet its obligations and the comparison of the issues in the communities seem to provide an appropriate background for Fact Finding.

It should be noted at the outset that the City does not suggest that non-ability to pay is an issue. There was no information provided on that aspect.

FINAL INTRODUCTORY COMMENT

REGARDING COMPARABLES

The Union has saw fit to include as comparable communities, Dearborn Heights, Taylor and Westland, all in Wayne County. The City, (Exhibit 8) has proposed the communities in the South Oakland Wage Survey, 1990-1991 (City Exhibit 8). This was prepared by the Water Authority to assist member municipalities in south Oakland County in developing wage scales and collective bargaining strategies. In addition to the south Oakland communities, the City has added Pontiac in their exhibits. Without doing an exhaustive Act 312 analysis of comparability, suffice it to say, as stated above, since the parties accept the prior Act 312 for Oakland County communities as comparable, I will do the same. I do not believe that the Wayne County communities are comparable because they are either smaller in population or have significantly less SEV than does Troy. The same is true of many south Oakland County cities that are significantly smaller in population and in number of employees and in SEV. For example, Troy's SEV is \$2.932 Million, Southfield's \$2.174 Million, Farmington Hills \$2.212 Million, and Royal Oak \$1.074 Million. None of the other south Oakland County communities even come close. For the foregoing reasons, to the extent it is necessary to refer to collective bargaining agreements and exhibits of comparable communities, I will essentially use Farmington Hills, Pontiac, Southfield and Royal Oak.

ISSUE #1

OVERTIME/COMPENSATORY TIME

Existing Section 77 of the contract states that bargaining unit members should be paid time and 1/2 for all overtime or granted compensatory time equal to the hours worked. The compensatory time must be taken during the work week in which the overtime was worked. If the employee does not select compensatory time during the same work week, the employee is paid for the overtime at the rate of time and 1/2.

The City's position is to retain the status quo.

The Union, as the moving party, proposes language found in Exhibit U10 that compensatory time could be accrued or banked up to 80 hours. If the employee chose not to bank compensatory time, the employee would be paid at the rate of time 1/2.

RECOMMENDATION

Maintenance of the status quo.

DISCUSSION

As with all matters, the party initiating change has the burden of proof. Here, the fundamental difference between the parties is whether the compensatory time must be taken in the same work week, or can be banked. The City offered Exhibit 10 to show that compensation time for FLSA overtime is not offered in Farmington Hills or in Royal Oak or at the clerical unit at Southfield. Apparently it is available in Pontiac and with a PSA unit in Southfield. The City argues that the Fair Labor Standard

Act, page 132, which was City Exhibit 11, only requires that overtime be paid at time 1/2 and the concept of compensatory time is not regulated by FLSA. The Union offered Exhibits 11 and 12, but even in the communities that have not been accepted as comparable, comp time is not prevalent. It is interesting that Troy Police and Troy Command apparently may bank comp time at time 1/2.

Similar to other recommendations that will follow, since the moving party has the burden, it would seem that there should be a fairly compelling demonstration that internal or external comparables suggests that a change should occur. Yet, there is no overwhelming compelling reason why a change should occur here. The City is not saying that the employee will not get paid, its simply a question of taking the overtime in cash immediately or comp time immediately. There is probably a legitimate management objective to have compensatory time taken in the same week as the overtime so that planning for vacations, etc. could be accommodated. On balance, there is no persuasive argument that the benefit is generally available in other communities. But there does appear to be a rational basis for management's position to retain the status quo.

ISSUE #2

VACATIONS

The present vacation schedule contained in Sections 91 of the contract is as follows:

Years of Service

1-5	Two Weeks
4-9	Three Weeks
9-18	Four Weeks
18 plus	Five weeks

The Union proposes to change vacation accrual effective 7/1/91 as follows:

Years of Service

1-3	Two Weeks
3-8	Three Weeks
8-13	Four Weeks
13-18	Four and 1/2 weeks
18 plus	Five weeks

The City proposes no change in the existing contract.

RECOMMENDATION

Retention of status quo.

DISCUSSION

As the moving party, the Union offered Exhibits 14, 15, 16 and 17. The principal argument in support is that change would place this unit in the same position as Troy Police and Troy Command. Over a 25 year career, that would be 485 days for this unit and 507.5 for the police and command units. However, for the AFSCME unit, for a 25 year career, they only earn 465 days. An analysis of City Exhibit 13, shows the number of days earned per year of service in the comparable communities. Southfield, Royal Oak, Pontiac and Troy all start off at the same for the first three years. Farmington Hills gives 12 days in years 2 and 3 versus 10 in Troy. In year four, Troy offers 15, whereas Farmington Hills has 12, Royal Oak 10, Southfield 10 and Pontiac 15. Farmington

Hills catches up in the 6th year, Royal Oak in the 6th and Southfield also. In the 6th year, Pontiac moves to 17 days. Troy moves to 20 days in the 9th year and Farmington Hills doesn't move to 20 days until year 18. Royal Oak moves to 20 days in year 11, Southfield in year 10. Pontiac which has the most aggressive schedule, starts 20 days in year 7, 21 in year 10, 22 in year 12, 23 in year 14. Troy offers 25 days after 18 years, Farmington Hills caps out at 23 days after 22 years and 23 days after 25 years. Pontiac goes to 25 years in year 18, Royal Oak goes to 25 days for clerical in year 21, but 25 days for service aides in year 15. Southfield goes to 25 days in year 16 for dispatch, but doesn't get the 25 days until year 20 for clerical and animal control.

This analysis suggests, that with the exception of Pontiac, Troy is generally ahead of the other comparables. As far as progressiveness, and in terms of a 25 year career, Troy has more days than Farmington Hills and both units in Southfield. The clerical unit in Royal Oak has slightly fewer days than Pontiac and Royal Oak Police Service aides.

There was no testimony regarding why the Troy Police and Command may receive slightly advanced schedules of vacation compared to this unit. There could have been trade-offs in those units unknown to the Fact Finder. Again, on balance, with the burden being upon the moving party, there doesn't appear to be any overwhelming evidence that comparable bargaining units have any

better program and in fact, the Troy program seems better for all except in slight degrees in comparison to Pontiac. Accordingly, there is no significant compelling reason to alter the status quo.

ISSUE #3

USE OF PERSONAL BUSINESS TIME

Section 108 allows an employee three regular work days as paid personal business time in any one calendar year. Presently, an employee must receive the department head approval in advance and the Union proposes to change the second sentence to read "in order to be eligible for personal leave days, the employee must receive his/her supervisors approval in advance".

The City proposes that the second sentence read "to use personal business days, the employee must submit the request at least 3 days in advance, unless mitigating circumstances prevent such notification, and obtain approval from the Supervisor". Additionally, the contract requires that the first 16 hours of personal business time not be deducted from accumulated sick leave, but the remaining hours are deducted. The Union proposes to delete this provision and the City wishes to retain it.

RECOMMENDATION

The second sentence of Section 108 should read as follows:

"To use personal business days, the employee must submit the request at least three (3) days in advance, unless mitigating circumstances prevent such notification and obtain approval from

the supervisor." Additionally, the second paragraph of Section 108 should remain in the contract.

DISCUSSION

The principal issues here are whether the approval of personal business time should be given by the Department Head or Supervisor and whether or not there should be a stated minimum time period for notice.

Although the Union had moved for the change, they simply said that changing from Department Head to Supervisor would be consistent with existing practice.

The City suggested that these are essentially three floating holidays and in order to accommodate scheduling, the City needs a minimum period of time, suggesting three day notice. The Union challenged the concept of mitigating circumstances and suggested those words gave too much discretion to the City. The internal comparables suggest that the Supervisor does the approval. The externals show that Farmington Hills has five working days' notice, Southfield 3 days notice for dispatch, 36 hours for animal wardens and apparently Pontiac and Royal Oak have no requirement. It would seem that the internal practice suggests that the approval should come from the Supervisor and it does not seem unreasonable based upon internal comparables and externals that some reasonable notice in advance is appropriate. Farmington Hills 5 days seems a little excessive and Southfield requires 3 days. Apparently Pontiac has department by department notice requirements.

The balance of the evidence suggests that it would be very appropriate to change the language to require approval of the Supervisor rather than the Department Head and that approval in advance should be three days. Although the Union has a legitimate argument that the word mitigating is not defined, it would relax the hard and fast three days prior notice and would accommodate those situations in which there are serious, legitimate reasons why the employee could simply not give three days notice and would prevent the City from arbitrarily denying an otherwise compelling request on the basis that it was not given three days advance notice. On balance, both sides should benefit by changing to the Supervisor and three days notice, subject to mitigating circumstances.

As it relates to the 16 hours being deducted from sick leave, there was little testimony. City Exhibit 15 is a list of personal days in comparable communities, but it doesn't say whether or not those are deducted from sick leave. Farmington Hills Section 707I says three personal days are taken from accumulated sick leave bank. Pontiac, Section 11, personal leave day, gives one leave day per year. Royal Oak, Section 32.3 provides 4 personal business days. Effective July 7, they are given a 5th personal business day which is deducted from the existing sick bank. Southfield has two leaves per year and not chargeable to any other leave, under Article 15. Thus, there is no clear pattern to change the existing language. It is not inconsistent with

comparable communities since there was no persuasive evidence as to why there should be a change, this Fact Finder would therefore opt for maintenance of the language in the contract.

ISSUE #4

HEALTH INSURANCE

City Exhibit 18 summarizes the present language which includes the caps for the various health plans and also includes the Union's proposal and the City's position. Exhibit 18 is reproduced hereafter to set the parameters of the discussion.

RECOMMENDATION

1. That the Blue Cross Preferred (PPO) be added as a specific coverage in Section 114 of the contract.

2. The contract should include the addition of the riders identified as ML and FAE, and reciprocity.

3. The existing \$2.00 co-pay should be increased to \$5.00.

4. The monthly premium caps that are set forth in the contract should be increased as follows:

<u>COVERAGE</u>	<u>PPOs</u> <u>HMOs</u>	<u>TRADITIONAL</u> <u>BLUE CROSS</u>
1 Person	\$170.00	\$145.00
2 Person	380.00	323.00
Family	410.00	350.00

5. It is the recommendation that if there is an increase in the family health insurance caps during fiscal year 1992-1993 for the classified employees for the City of Troy, the same increase will be instituted for the members of this bargaining

CITY OF TROY
ISSUE: HEALTH INSURANCE

Present Language:

Section 114.e. "The employer's unilateral responsibility of paying premiums for the above medical insurance shall be frozen at the following rates. Beginning July 1, 1987, any increase in the cost of medical insurance in excess of the following rates will be paid by deducting 50% of the premium increase from the employee's paycheck.

Coverage	Blue Cross	Health Alliance	Group Health	Health Care Network
1 Person	\$ 94.51	\$101.41	\$ 94.64	\$ 99.79
2 Person	210.71	234.46	227.13	230.43
Family	228.57	247.54	245.11	245.93

Union Position

- 1) Add ML, FAE, reciprocity
- 2) Should employee choose to elect like coverage through a less expensive carrier, the City will pay to the employee 50% of the money saved by such conversion.
- 3) Should an employee elect not to be provided with medical insurance through the City of Troy, the City will pay to the employee the equivalent of the average cost for single coverage of all medical plans offered to the employees
- 4) Increase the cap for Blue Cross family coverage to \$450/mo. effective 7/1/89, and to \$500/mo. effective 7/1/91. The remaining caps would be increased proportionately.

City Position:

- 1) Status quo, except add \$5 drug rider
- 2) Status quo
- 3) Status quo
- 4) Replace traditional Blue Cross insurance with Blue Preferred (PPO). Increase the cap for family coverage to \$393/mo. effective following ratification. The remaining caps ~~would~~ be raised proportionately.

unit and the caps for two person and 1 person premiums would be adjusted proportionately.

6. By virtue of the significant increases in caps, it is not recommended to add language proposed by the Union that employees not selecting City of Troy coverage be paid the equivalent of the average cost for single coverage for all medical plans. Nor is it recommended that if the employee chooses like coverage through a less expensive carrier, the City would pay the employee 50 percent of the money saved by such conversion.

DISCUSSION

As in all collective bargaining disputes involving health insurance issues, it is difficult to get a handle on the specifics of each proposal and the counter-proposals. Addressing first the addition of the Blue Cross Preferred, Exhibit 25 explains the current coverages under the traditional Blue Cross Blue Shield and Exhibit 27, explains the Blue Cross Preferred. It is obvious that with the rising health care costs, municipalities desire to shop around and try to find the best possible buy. That is, excellent coverage at the most cost-effective rate. PPOs and HMOs reduce costs by shifting some obligation to the employee to select a slightly more restrictive pattern of health care and usually including co-pays. With Blue Preferred, major services are provided with no out of pocket expenses, if secured from PPO hospitals, physicians and other professionals. To encourage use of PPO providers, the plan pays 85 percent, not 100 percent, of the

charge of a non-affiliated provider. The laboratory use program requires a 15 percent co-pay. Under the Blue Preferred, prescription drugs are covered minus the co-pay, but if you use a non-affiliated provider, only 75 percent minus the co-pay is paid. Thus, there is a clear incentive to use the PPO approved providers and those providers have agreed with Blue Cross to provide services at a more economical rate and thus there are potential savings across the board. It would be inconsistent with modern efforts at cost containment not to include the Blue Preferred plan since the existing contract already includes the Health Care Network, Health Alliance and Select Care. Thus, the concept of moving away from the traditional Blue Cross/Blue Shield program is not new and the addition of Blue Preferred makes sense.

With respect to adding ML and FAE riders, apparently the FAE rider is replaced by FAE-RC. Those benefits are already provided in Southfield, Royal Oak and in Pontiac and also the three internal comparables the police, the command and the AFSCME units. There seems to be no compelling reason why this unit should be singled out for anything less than the same coverage options that are available to other city employees. Apparently, the reciprocity rider is also available for other City employees, and assuming the parties are able to ascertain that that is correct, it would also seem logical that the reciprocity rider should also be made available to the members of this bargaining unit.

The replacement of the \$2.00 drug co-pay with a \$5.00 drug co-pay, makes sense as a way of sharing some of the increased costs and is not inconsistent with what happens with other comparable units. It is noted that although the police officers have a large cap, they also have a \$10.00 drug co-pay. Apparently, the family prescription drug \$2.00 co-pay costs \$55.13 per month and the \$5.00 co-pay would cost \$45.23 a month, or a \$10 increase. Given the enriched benefit of the riders and the increase in the cap, it would seem that the drug rider co-pay is a reasonable trade-off.

The proposed caps are probably at the heart of the issue. City Exhibits 19 through 23 demonstrate the computation of employee co-pays using the internal comparables in the existing plans. At the present time, the family cap of \$228.57 has a substantial contribution by the employee under the regular Blue Cross plan. A full family premium on 7/1/91 was \$470.35, which means that 1/2 over the cap, or \$120.89 must be paid by the employee and the other half by the City. Thus the City's total contribution at the present time is \$349.46. The City proposes to increase that to \$393 and the Union suggests \$450 in 1989 and \$500 in 1991. For persons selecting Blue Preferred it has an employee co-pay of \$88.46, for Blue Care Network, \$70.57, for Health Alliance, \$67.67, for Select Care, \$82.20. If the City's \$393 cap is adopted there would be no employee co-pay for Select Care, for the Alliance Plan, for Blue Care Network, approximately \$18.00 under Blue Preferred,

approximately \$44.00 under the regular Blue Cross. Union Exhibits 25, 26, 27 are comparisons of the employee contribution under the existing contract.

The most compelling reason to change the caps is the fact that the other classified and exempt positions are treated significantly different. The caps for this unit were set at rates which were in effect in 1986. Accordingly, they have been frozen for 5 years even though premiums have obviously risen. Union Exhibit 30 shows that classified and exempt employees only have to pay 50 percent of the premium in excess of \$410. Also, if the employee chooses a plan which costs less than \$410, the employee receives 50 percent of the money saved by such a conversion. According to Exhibit U31, under Blue Cross Traditional from 7/1/89 to 5/31/90, this unit employees paid \$843 compared to classified and exempts of \$453, and police and command of \$120. From 6/1/90 to 5/31/91, this unit paid \$992, classifieds and exempts paid \$238 and the police and command paid \$120. From 6/1/91 to 5/31/92 this unit paid \$1459, classified and exempts \$433 and the police \$120 and the command \$0. Persons who selected Health Alliance Plan, the most current one of 6/1/91 to 5/31/92, this unit pays \$811, classifieds and exempts pays nothing. Under Select Care, the same is true; \$986 for this unit and nothing for classifieds and exempts. There is obviously a striking disparity between this unit and other City employees. It was argued that trade-offs explain why the command has a more advantageous program. However, by any

analysis an increase in the cap is justified and it would appear that the City's proposal of \$393 is a little low and the Union's request is high. This Fact Finder has selected \$410 which is presently in the classified and exempt contract.

If a typical employee would select a PPO program and that premium was \$430 per month, the addition of the ML and FAE/RC riders is \$10.00 a month or \$440. That would be offset by a \$5.00 drug rider for a family which is \$10.00 meaning that the net cost of the premium is \$430. If the cap is \$410, the \$20.00 is shared equally so the employee would have a \$10.00 co-pay and the City would pay \$420 per month.

To illustrate traditional BC/BS, the rate is \$470 for a family. Add \$10 for riders, deduct \$10 for drug co-pay for a net of \$470. Deduct a cap of \$350 and each party shares 120 difference or a \$60 co-pay. City pays \$410, the employee \$60.

To further illustrate:

	<u>BC/BS</u>	<u>PPO</u>
Current Cost	\$470	\$430
Current co-pay	121	88
Current City Cost	350	342

As recommended

PPO Employee cost goes from \$88 to \$10 and employer cost goes from \$342 to \$420.

BCBS Employee cost goes from \$121 to \$60 and employer cost goes from \$350 to \$410

This is a substantial change, is well needed as a result of no change for five years. It would put this bargaining unit in

relatively comparable position with other City employees and other units.

Additionally, it makes sense that now that this unit is caught up that they not fall behind. Thus, if other units in the City negotiate and receive from the City an increase in the family health insurance cap during fiscal year 1992 or 1993, then the same increase should be made a part of this contract and the caps for 1 and 2 person rates should be proportionately adjusted to the family rate.

The Union has also requested that if an employee does not take the City health insurance, that the employee receive the equivalent of the average cost for single coverage for all medical plans offered to the employees. According to City Exhibit 24, there are 16 persons who do not have health insurance through the City as of 7/1/91. It is possible that the significant co-pay may have been a factor and why an employee did not select health insurance. To the extent that cost may have been a factor, the change in the cap and the fact that there will only be a \$10 or \$60 co-pay should be a significant encouragement to those persons to seek City of Troy health insurance should they so desire.

The fact that an employee does not select a fringe does not mean that they are entitled to compensation in lieu of accepting the fringe. It is just that, a fringe, freely negotiated to be elected if the employee so chooses. The fact that the City may save some money because the employee does not select has no

bearing on the issue. This is particularly true in a public agency, where we are dealing with tax dollars as opposed to private employment where assumptively profits are important.

In the comparable communities, City Exhibit 31 demonstrates that cash in lieu of insurance is not available in Farmington Hills, Pontiac or Southfield, nor in the clerical unit in Royal Oak. In the Royal Oak PSA unit, apparently employees receive 20 percent of annual premium.

There is a significant point that needs to be addressed as it relates to internals. According to Union Exhibit 45, Troy Police received the cash value of the single rate if medical is not taken and Troy Command has the same. Troy AFSCME bargaining unit members received the average value of the cash single rate if medical is not taken. Without knowing the history of the collective bargaining process for those units, it could well be that this economic benefit may have been obtained and concessions made on other items. Without that background information, the Fact Finder cannot recommend a parallel provision for this unit. In my view, it is better to look at the external comparables and we find that the benefit is not generally available. With the significant cap improvement, plus the riders, plus the availability of Blue Preferred, this bargaining unit is significantly in better position on this issue and those who elect not to take health or a cheaper plan, should negotiate across the table and decide whether there

are significant reasons to make an accommodation similar to that received by other City employees.

ISSUE #5

SHORT TERM DISABILITY

At the present time under Section 123, an employee may receive short term disability, but to receive the insurance coverage, the employee must supplement the insurance benefits by utilizing 8 hours per week be it holiday pay, accrued sick leave credits, vacation credits or floating holidays. The Union proposes to change the 8 hours from per week to per pay period and to add the following language:

"Together with this insurance and a supplement from the City, will provide approximately 80% of the employee's gross salary."

The City has proposed no changes to Section 123.

RECOMMENDATION

Maintenance of the status quo.

DISCUSSION

At the present time, employees receive 96 hours per year of sick leave based upon 8 hours per month. If the present language requires 8 hours per week and the new proposed language is 8 hours per pay period, and if you assume there are 4 weeks in each month and two pay periods, the employee's contribution of sick leave would be cut in half. Union Exhibit 50 shows that Pontiac, Royal Oak and Southfield have no short term disability, City Exhibit 34 says that those employees must use sick leave.

Apparently, in Farmington Hills after 13 weeks, an employee goes on medical leave without pay and apparently there is no short term disability at all for dispatch employees. Within the City, Troy Police have the same 8 hours per pay period as the AFSCME Unit. The command unit has 1 day per pay period. Apparently, the Union is trying to pattern their agreement after the police and the AFSCME Unit.

As with other issues, there was little explanation for the variance among the units within the City. Thus, it would be more reliable to look at the external comparables and what is happening to similar employees from other communities. The evidence is convincing that most externals did not have short term disability and have to use their sick leave. Accordingly, it would be recommended that the language remain as is. Having found that there ought not be a change, there is no reason to comment upon the Union request that the employee receive approximately 80 percent of gross salary. Suffice it to say that the requested City supplemental of 10 percent could be significant particularly when it is observed that the employee continues to accumulate 8 hours per month sick leave, even when they are in short term disability status.

ISSUE #6

LONGEVITY

Section 128 - for payments on or before December 20, based upon employees' longevity under the following schedule:

Five Years	2 Percent - max. \$560
Ten Years	4 Percent - max. \$1120
Fifteen Years	6 Percent - max. \$1680
Twenty Years	8 Percent - max. \$2240

The Union proposes to alter the schedule of longevity by reducing the number of years at each step and to increase the caps to the following schedule:

Four Years	2 Percent - max. \$875
Nine Years	4 Percent - max. \$1750
Fourteen Years	6 Percent - max. \$2625
Nineteen Years	8 Percent - max. \$3500
Twenty Five Years	9 Percent - max. \$3500
Thirty Years	10 Percent - max. \$3500

The City objects to any changes in longevity and requests the status quo.

RECOMMENDATION

Maintenance of the existing language.

DISCUSSION

The essential reason why the Union advocates a change is that Exhibit 55 demonstrates that the Troy Police and the Troy Command have the shorter longevity schedule through 19 years and this unit is adding two steps at 25 and 30 years. However, the Union is proposing higher caps than exist in the Police and Command units. Exhibit 55 also shows that the AFSCME unit has the existing longevity schedule.

Union Exhibit 56 demonstrates the purported rational based upon external comparables. The City has also compared the external comparables in Exhibit 36, 37, 38 and 39 and it is apparent that the longevity schedules in Pontiac and Royal Oak are

identical or almost identical to the existing language. In Southfield, longevity was eliminated for clericals on 11/2/82 and the schedule for PST employees is not as generous as the MAP contract. In Farmington Hills the contract is not as generous until the 10th year when it reaches 4 percent, and year 15 and year 20 are identical with MAP. An examination of these exhibits suggests that this unit has greater longevity benefits than the external comparables and that would be sufficient basis for the recommendation to maintain the status quo. As stated previously, the fact that other City employees may have a shorter schedule doesn't necessarily mean that this unit should have the same as there is no testimony as to what transpired in the negotiations and what trade offs there may have been to achieve the slightly shorter schedule. Also, this unit is adding two steps to the longevity schedule and it is also requesting an increase in the maximums and there doesn't appear to be any statistical basis, nor external comparables to suggest a rationale for what would be a most generous longevity program as compared to the other programs.

ISSUE #7

PENSION

Present Section 133.A outlines a pension program and requires an employee contribution of .015 of gross pay. The pension computation factor is set at 2 percent for early retirement and for retirement age 62 or older. The Union has proposed,

effective 7/1/89, that the pension multiplier be increased to 2.5 percent. The City's position has been to maintain the status quo.

RECOMMENDATION

After the first full paragraph, add the following language:

Effective 7/1/92, the employees' contribution will be .75 percent of gross pay. For employees retiring after June 30, 1992, pension computation factor will be 2.15 percent from ages 50-62.

DISCUSSION

During fact finding or 312 hearings, pension issues are usually complex, with highly technical testimony. Surprisingly, this issue was submitted essentially upon the exhibits with very little technical testimony. In support of its rationale for an increased multiplier, the Union offered Exhibits 58-62. As far as the external comparables of Pontiac, Royal Oak and Southfield are concerned, they have the identical multiplier as the existing contract -- 2 percent. Farmington Hills has 1.8 percent for dispatch, 2.25 percent (for the first 25 years) and 2 percent at age 65 (clerical and secretarial). Thus, strictly looking at the multiplier issue, external comparables don't present a picture of this unit being out of line. With respect to internal comparables, Exhibit 59 shows that Troy Police have 2.25 percent, age 50-62 and 2 percent age 62 on. Troy Command has 2.5 percent, age 50-62 and 2.25 percent age 62 on. The AFSCME unit has 2.15, age 50-62 and 2 percent age 62 on.

In response to a request for multiplier increase, the City stated that if the 2.25 percent were adopted, the increase in City's contribution, as a percent of active clerical unit payroll, would be 5.65 percent and the active clerical unit member annual payroll is equal to \$1,460,147. Thus, the cost of the City would be \$81,142.

In relationship to external comparables, it doesn't seem that there is a reason why the City should expend this amount of money, for a pension multiplier, irrespective of the healthy financial stability of the current fund. However, if you look at the internal comparables, there is a significant difference in the way the units are handled. MAP has 2.0, AFSCME has 2.15, police 2.25 and command 2.5. There may be some correlation or perception between the role and responsibility of the employees in providing essential municipal services in some units and their multiplier. Whatever the rationale, it would seem that this unit ought to be treated at least as well as the AFSCME unit, as each unit's contribution to support City services has some comparability. Assumptively, it can be argued that the Police and the Command have more hazardous positions and possibility that their pension multiplier might recognize that contribution. Thus, on balance, weighing all of the alternatives, it is the recommendation that the multiplier for this unit ought to be equal to AFSCME or an additional .15. If the Fact Finder's calculations are accurate, this would cost roughly \$21,542.

The City also raised the issue that if there is going to be change in the multiplier, possibly there should be a change in the contribution level. The City's current position is to retain the status quo. No change in the contribution, no change in the multiplier. Assuming there is acceptance of the increase in the multiplier of .15 percent, the exhibits suggest why there should be more than the nominal contribution of .015 by employees. If you look at the external comparables, Farmington Hills has a contribution rate of 4.5 percent. Royal Oak, 5 percent of FICA limit and 3 percent thereafter for clerical and three percent of FICA limit and 5 percent thereafter for PSA. In Southfield, apparently the contribution rate is a flat 5 percent. In both Royal Oak and Southfield, the multiplier is 2 percent. In Farmington Hills, the contribution rate is 4.5 percent and the multiplier is 2.25 percent for the first 25 years and 1 percent thereafter at age 65. In Pontiac, there is no contribution, the multiplier is 2 percent. These pension issues are always difficult. Many times it is comparing apples and oranges, as you also don't know what trade offs there may have been in the comparable communities. Suffice it to say that the pattern clearly seems to be that there is a contribution greater than the nominal .015 in this contract. The above recommendation suggests .75 as being an appropriate contribution, which can be said to be arbitrary. Since this is fact finding, the facts suggests that the external comparables have a greater contribution, but it would be

difficult to say that the average or the norm of those other communities ought to be applied here. Better to suggest something less than 1 percent which assumptively would indicate that the employees are willing to share slightly larger burden if they receive an increase in the multiplier of .15 percent. This is a compromise, each party getting less than they wanted. The City wanted no change and will have to pay for an increased multiplier. The Union wanted a greater multiplier, but not a larger contribution. It is hopeful that this recommendation can be accepted by both parties as a reasonable alternative.

ISSUE #8

UNIFORMS

Section 136 states that the type of uniforms and equipment to be purchased and used shall be determined by the employer, and the employee can use the allowance in Section 134 to purchase the clothing equipment as specified and approved in advance by the Chief of Police Department. Assumptively, this language pertains more to the aides than it does to the clericals. The Union proposes that if the employer changes uniform or required equipment, that should be at the employers expense. The same to be effective 7/1/91. The City proposes that language be added to Section 136 that for mandatory changes in uniform exceeding \$250, the employer will pay the cost in excess of \$250.

RECOMMENDATION

The following language should be added to Section 136.

"The amount of any mandatory changes in uniform which exceeds \$50.00 per year shall not be deducted from the employee's clothing allowance."

DISCUSSION

The current contract does not address mandatory changes in uniforms and this apparently is the purpose of the Union's proposal. They contend, if the City wants to change the requirements, the City should pay for them. The City counters by saying that PSAs already have \$325 per year clothing allowance under Section 134, and that should be enough even if there are mandatory changes. They also say that the AFSCME unit has no clothing allowance. Apparently the City's proposal is a compromise; if there are mandatory changes exceeding \$250, they will pay the cost in excess of \$250.

It was also pointed out in City Exhibit 44, the Police Officers contract, Section 40.A, second paragraph states "any mandatory changes in uniform and/or personal equipment over \$50 per year shall not be deducted from the officer's clothing allowance."

Union Exhibit 66 shows that the uniform or equipment changes are not paid by the employer in Farmington Hills, Pontiac or Royal Oak, but apparently some protective clothing is paid for in Southfield. But it was unknown whether there was a uniform allowance. Union Exhibit 67 shows that the uniform changes are

paid by the City if over \$50 for the Police, but not for the Command. The City language is a reasonable compromise based on the internal practice since the external comparables suggest no change should be made. Since the external comparables don't indicate whether or not these are mandatory changes, it would seem that this unit should probably adopt the identical police officers language, namely if there are mandatory changes which exceed \$50 per year, then the City would pick up those changes and assumptively the "deductible" of \$50 would be taken from the employees Section 134 account.

ISSUE #9

WAGES

The current contract provides wages as set forth in the attached table.

CITY OF TROY
ISSUE: WAGES

<u>CURRENT WAGES:</u>	<u>Classification</u>	<u>Step</u>	<u>7/1/88</u>
	Clerk-Typist	Start	\$15,263
		Step 1	15,885
		Step 2	16,609
		Step 3	18,087
		Step 4	20,262
	Account Clerk	Start.	16,898
		Step 1	17,522
		Step 2	18,246
		Step 3	19,679
		Step 4	21,855
	Data Processing Clerk	Start	16,465
		Step 1	17,088
		Step 2	17,812
		Step 3	19,245
		Step 4	21,275
	Secretary	Start	16,898
		Step 1	17,522
		Step 2	18,246
		Step 3	19,679
		Step 4	21,855
	Police Service Aide I	Start	17,700
		Step 1	18,309
		Step 2	18,960
		Step 3	20,408
		Step 4	21,133
	Police Service Aide II	Start	19,162
		Step 1	19,814
		Step 2	20,540
		Step 3	21,989
		Step 4	22,711
	Animal Control Officer	Start	20,610
		Step 1	21,118
		Step 2	21,842
		Step 3	23,292
		Step 4	24,566

The Union proposes a 3 year agreement with an 8 percent increase each year commencing 7/1/89, 7/1/90 and 7/1/91. The Union proposes additional language that after completion of the negotiations for 89-92 the City conduct desk audits for clerk/typist positions for determining proper classification. This would be a one year project and if new classifications are recommended, the language of the collective bargaining agreement would apply as to wages, hours and other terms and conditions of employment.

The City proposes a 4 year agreement, the first year increase would be retroactive to the certification date of the bargaining unit, which is 11/13/89. On 11/13/89, there would be \$400 roll-in for animal control officers, data processing clerk and secretary class; then 3.5 percent across the board. On 7/1/90 a \$300 roll-in for animal control officer, data processing and secretary classes; then 3 percent across the board. On 7/1/91 and 92, 3 percent.

RECOMMENDATION

That there be a 4 year wage package as follows:

7/1/89	add \$400 roll-in to animal control officer, data processing clerk and secretary and add 4 percent to base salary
7/1/90	add \$300 roll-in to animal control officer, data processing clerk and secretary and add 4 percent to base salary
7/1/91	add 4 percent to base salary
7/1/92	add 4 percent to base salary

DISCUSSION

Each side presented numerous exhibits purportedly demonstrating why their proposal was the one to select. The Union has essentially used Southfield as the more desirable comparable, because their wage structure is considerably greater than all other comparables, and even with an 8 percent increase, Southfield is generally at a higher base wage at the highest step in most categories. But, adding 8 percent each year, the Troy salary structure, by 1991, would outstrip even Southfield.

City exhibit 59, in comparing base salaries and consumer price index, the percentage increases at least from 1983 through 1988 for clerks, typists and secretaries and service aides were generally in the context of consumer price index changes. From 1989 to 1990, the consumer price index did jump from 331.9 to 336.2. This suggests that there should be significant increase in the early years of this contract to recognize that increase. Also, a review of the data suggests that the animal control officer, data processing clerk and secretarial classes as of 6/30/88 are significantly under funded. Thus, a roll-in to catch up, prior to establishing a new percentage makes sense. For those classes, the base would be increased to provide some parity with other members in the unit and with the comparable communities. That does not answer, of course, the question of what the appropriate percentage increase should be.

City Exhibit 52 through 57 shows the annual percentage increases for each subclass of employees in comparable communities. Farmington Hills is given a flat 4 percent across the board with some minor exceptions. Pontiac for 1989 was zero, 1990, 2.5 percent; Royal Oak apparently had 3.5 percent except for police service aides, which is slightly higher. As previously noted, Southfield, particularly in the first two years of their contract, had 7.1 and 5.9 for most of their categories, and 4 percent and 5 percent for PSA IIs, and 5 percent for the secretaries in 1989.

City Exhibit 58 represents an average of the average, but includes cities in South Oakland County, which I have not used for comparability purposes. That exhibit was used to support their proposal for 3.5 percent increase in 1989, 3 percent in 1990, 1991 and 1992. Quite frankly, that seems to be low. If you look at City Exhibits 46, 47, 48, 49, 50 and 51 they take each of the classes in comparison with the other communities. These exhibits show what new salaries would be at the City proposed rates. For 1989, for account clerks each unit would be below Southfield, Pontiac and above Royal Oak. In 1990, below Southfield, Pontiac and above Royal Oak. In 1991, below Southfield, above Royal Oak. Animal control officers even after the roll-in, in 1989, they would be below Southfield, significantly above Pontiac. In 1990, they would be below Southfield, and significantly above Pontiac. For 1991, they would be below Southfield. For police service aides IIs for 1989, Troy would be below Southfield, Royal Oak and Pontiac.

For 1990, the same would be true, and also for 1991. In the secretarial, after the roll-in, the City proposal is almost \$5,000 below Southfield, \$900 below Royal Oak and slightly above Pontiac and slightly above Farmington Hills. In 1990, they would be below Royal Oak, above Pontiac, about \$800 above Farmington Hills. In 1991, they would be below Southfield, below Royal Oak and \$600 above Farmington Hills.

All of this analysis suggests that something more than the City's proposal is justified, but significantly less than the 8 percent requested by the Union. The Fact Finder suggests 4 percent for 4 years, after the roll-ins in the first two years. This package provides significant competitiveness with comparable communities and will not put this unit behind as the external comparable units begin negotiations in 1991 or 1992 on new contracts.

As it relates to the 4th year, the Union said that they were not interested in a 4th year, but if a 4th year was being considered, it should be coupled with a guarantee that with respect to health insurance, the caps applicable to this unit would be equivalent with those for the exempt and classified employees. The Fact Finder has recommended on the health issue that if there is an increase in the family health cap for fiscal year 1992-1993 for classified and exempt employees, the same increase would be instituted for this unit. Picking up on that thought, there may also be a reason why the City should forego its position that the

salaries should start on November 13, 1989, rather than July 1, 1989. Although the City may have a persuasive legal position, citing the Huntington Woods case, this is not a Court of law, but rather a fact finding in an effort to reach compromises and settlements. The City wants a 4th year on wages. The Fact Finder is not recommending 8 percent, but half of that -- 4 percent. The City should agree to make wages retroactive to 7/1/89 as part of a total compromise. The City gives on that issue, but they get a 4th year. They also concede comparability of caps in the health issue, and hopefully there is enough common ground for the parties to agree.

ISSUE #10

DISCIPLINARY RECORDS

The present language in Section 54 says that the employer upon written requests from the employee, shall remove records of discipline from an employee's personnel file which are over 4 years old. The City wishes to change Section 54 by adding: "providing the employee has corrected the matter in question, and has received no other discipline within the 4 year period after receipt of the discipline. However, records of discipline more severe than a written reprimand, shall be retained permanently in the employees personnel file."

The Union proposes to maintain the status quo.

RECOMMENDATION

Replace existing Section 54 with the following:

The employer shall, upon written request of the employee, remove records of discipline from an employee's personnel file which are over 3 years old providing the employee has corrected the matter in question, has received no other discipline within a three year period after receipt of the discipline. However, records of discipline more severe than a written reprimand shall be retained permanently in the employee's personnel file.

DISCUSSION

The City produced only two Exhibits 61 and 62, the Union produced Exhibit 77. Essentially those show that in the external comparables, discipline is not removed from Royal Oak and Farmington Hills; is removed after 1 year for dispatch in Southfield; is removed after 2 years in Pontiac. Internally, AFSCME discipline records are kept indefinitely, but not taken into account if over 2 years old. The command officers have suspensions retained indefinitely, written reprimands and oral reprimands for 2 years if no other discipline. The police officers have suspensions indefinitely. Oral reprimands are 18 months, written reprimands 30 months. Currently, all discipline goes after 4 years. The City clearly wants to retain records of discipline more severe than a written reprimand permanently and doesn't want to have automatic expulsion after 4 years unless there is evidence that an employee has corrected the matter and has received no other discipline. This seems a bit harsh. The City did not present any horror stories or other justifications for the fairly restrictive language

they propose. The Fact Finder suggests a compromise which decreases the time frame to three years, on the assumption that the matter has been corrected, and there has been no other discipline within the three year period, after the receipt of that discipline. That provides an incentive to the employees of one less year of waiting and if the performance is good, the matter will be removed. However, if the more severe infraction is greater than a written reprimand such as a suspension, it would seem that the policy which appears to be in place for other internal units should also be adopted, namely the more severe penalties should be retained permanently in the personnel file. Hopefully, this suggested language would provide common grounds rather than the all or nothing current positions.

ISSUE #11

DRUG AND ALCOHOL TESTING

At the present time, there is no provision in the contract regarding drug and alcohol testing. The Union opposes any new contract provision. The City's position is to add the following language:

"The employer has the right to conduct drug/alcohol testing under the following circumstances: 1) applicants from the bargaining unit who apply for the positions of Police Officer, Communications Supervisor, Police Service Aide or Animal Control Officer; 2) Whenever an employee discharges a firearm; 3) Whenever an employee is involved in an accident while on duty; 4) as part of any regular physical examination required by the employer; 5) Whenever there is reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty,

or illegally uses/possesses controlled substances. Any positive results of drug tests shall be subject to confirmation testing.

All drug and alcohol tests, including confirmatory tests, shall be conducted according to the procedures and standards as approved by Michigan Law Enforcement Officers Training Council (MLEOTC) and as may be modified by the Council."

RECOMMENDATION

Add the following new language:

"The employer has the right to conduct drug/alcohol testing under the following circumstances: 1) applicants from the bargaining unit who apply for the positions of Police Service Aide or Animal Control Officer; 2) Whenever an employee discharges a firearm; 3) Whenever an employee is involved in an accident while on duty; 4) as part of a physical examination required by the employer upon return to work from disability leave; 5) Whenever there is reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty, or illegally uses/possesses controlled substances. Any positive results of drug tests shall be subject to confirmative testing.

All drug and alcohol tests, including confirmatory tests, shall be conducted according to the procedures and standards as approved by Michigan Law Enforcement Officers Training Council (MLEOTC) and as may be modified by the Council."

DISCUSSION

The genesis of the City's proposal is Section 37.C of the Police Officers contract (City Exhibit 64). Also, City Exhibit 65 is a copy of the administrative memorandum, a policy regarding drug and alcohol free workplace. City Exhibit 66 contains the rules of conduct. Exhibit 67 discusses mandatory drug testing as a result

of 1988 P.A. 303 involving Law Enforcement Officer Training Council, funding for enforcement officer candidates who have not tested negative on a drug test.

This issue is directed more toward service aides and animal control officers and has less impact upon clerical or other units and in fact the City specifically names police officers communications supervisors, police service aides or animal control officers. To the extent it mentions police officers and communications supervisors, it would appear not to address members of the unit and references to those two categories should be deleted and the provision only applicable to members of the bargaining unit and not for persons, in the unit, that might apply for police officer or communications supervisor.

Additionally, the City wants to be able to have testing as part of any regular physical examination. That appears to be broader than needed and the suggested language, "as part of a physical examination upon return to work from disability leave", protects the employer interest irrespective of the reason for the disability. To have a blanket ability to administer drug and alcohol testing as part of any regular physical examination seems excessive. Having administered a test upon application, it would seem to be sufficient and the ability to administer a test whenever there is reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty or illegally uses controlled substances provides sufficient safeguard for the

employer and would appear to be consistent with that which is applied to other employees in Troy. Additionally, the requirement that positive results be subjected to confirmative testing and that they be administered by procedures approved by MLEOTC seems reasonable.

The Union has pointed out that this provision does not exist in Pontiac, Royal Oak, Southfield or Farmington Hills. That it only appears in the police, but not the command officers contract. However, the City did demonstrate a reasonably persuasive argument that these are sensitive areas regarding lock up, property room and that there is some reason to be concerned regarding jeopardizing public safety. In my opinion, this is not random testing, there are safeguards. If adopted, and the policy becomes unworkable or flawed it obviously would be subject to extensive negotiation thereafter. As proposed, it is slightly more restrictive than the police officers and provides more certainty that it might not be abused. The requirement for MLEOTC procedures and standards should also be another safeguard. Given the City's policy regarding drug and alcohol free workplace as well as its rules of conduct, particularly Section 6.12, 6.13 and 6.14, this provision is a logical extension of the City policy. In fact, it may be the cursor of future provisions in almost all collective bargaining agreements. For the foregoing reasons, it is recommended that the parties accept the language as modified by the Fact Finder.

ISSUE #12

HOLIDAYS (FLOATING)

At the present time, Section 90 of the contract requires that to receive pay for a designated holiday, the employee must be paid for both the work day before and after the holiday. This provision does not address the conditions under which the employee may use floating holidays. The City proposes to add a new Section, after Section 90 which would read:

To use floating holidays, the employee must give three days notice to his supervisor and obtain approval from his supervisor.

The Union opposes any change.

RECOMMENDATION

Adopt the City's suggestion and add the paragraph:

To use floating holidays, the employee will give three days notice to his supervisor and obtain approval from the supervisor.

DISCUSSION

The Union presented one exhibit, Exhibit 69, that shows that there are no personal holidays in Southfield, Royal Oak, Pontiac or Farmington Hills. Thus, the notice requirement would not be applicable. The existing contract which provides for three holidays doesn't implicitly require the approval of the department head in advance. The Union in Exhibit 80 suggests that in Southfield there is no floating holidays for dispatch, but three days notice for the animal warden, in Farmington Hills they say there are no floating holidays in dispatch, but one to five days

for secretarial. The City suggests that the reason for the three day notice is for scheduling purposes, which on the surface is reasonable. In addressing a similar issue on personal business time, employees must submit a request at least three days in advance, unless mitigating circumstances prevent such notice. Here the recommendation is to have consistent application of personal business time and floating holidays since the rationale would appear to be the same. Since the employees have the discretion as to when they may take this time off, it seems reasonable that management should have some reasonable notice for planning purposes and three days seems to make sense. Since, at the present time, a supervisor could deny a floating holiday request, a requirement for three days advance notice may in fact give a supervisor additional time to do the scheduling and thereby approve the floating holiday. It is also noted on Union Exhibit 81, the AFSCME unit does have a three day notice requirement when taking a floating holiday.

ISSUE #13

OVERTIME (Double Time for Seventh Day)

Presently, Section 78 states that employees will receive double time on Sunday's or the employee's seventh consecutive work day. By a letter of understanding dated November 6, 1981, there was an understanding that the seventh consecutive work day arises when the employee's seventh day occurs when Sunday is part of the employee's regular work schedule. The City proposes that employees

be paid two times the regular hourly rate for overtime work on Sunday (when Sunday is not a part of the employee's regular work schedule) or the employees seventh day if the employee has worked the six previous consecutive days.

The Union proposes no change.

RECOMMENDATION

Replace old Section 78A with the following:

Sunday (when Sunday is not a part of the employee's work schedule) or the employee's seventh day if the employee has worked the six previous consecutive days.

The language says the employee's seventh consecutive work day and the City is attempting to clarify that the seventh day is paid double time, if the employee has worked the six previous consecutive days. In support, the City offered Exhibit 71 that double time for a seventh day is paid when it is not a Sunday, is applicable to Southfield PST, but not clerical. In Pontiac, it is not applicable. Union Exhibit 82 states that there is no Sunday/seventh day overtime clause in Farmington Hills, Royal Oak police service aides and Southfield dispatch. Apparently there is double time for animal wardens in Southfield. In Royal Oak, there is double time for Sunday, but the employee has to work both weekend days. Apparently, in the internal comparables there is a Sunday/seventh day overtime clause in the AFSCME contract but not the police and command.

In all candor, there appears to be little difference between the language proposed and existing language. The employee

will always be paid double time working on Sunday when Sunday is not part of the regular work schedule. That is no change. Under the City's proposal, Sunday can only be the seventh day if the employee has worked Monday through Saturday. To clear up the ambiguity as to what the seventh consecutive work day really means, it is recommended that the phrase "or the employees seventh day if the employee has worked the six previous consecutive days" be placed in the contract.

Respectfully submitted,

DATED: 12/24/98

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