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**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICE
EMPLOYEE RELATIONS COMMISSION**

In the Matter of Statutory Arbitration
pursuant to PA 312 of 1969, being
MCLA 423.231 et seq, as amended
between:

CITY OF FLINT,

Public Employer,

-and-

MERC CASE NO: L98 F-8012
Arbitrator: Mark J. Glazer

FLINT POLICE OFFICERS ASSOCIATION,

Union.

OPINION AND ORDERS

Date of Decision: July 14, 2002

APPEARANCES

PANEL

Mark J. Glazer, Chairperson
Fred B. Schwarze, Employer Delegate
James M. Moore, Union Delegate

FOR THE EMPLOYER

Dennis B. Dubay
Keller, Thoma, et al
440 East Congress, 5th Floor
Detroit, MI 48226-2917
313.965.7610

FOR THE UNION

James M. Moore
Gregory, Moore et al
The Cadillac Tower
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2388
313.964.5600

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DEPARTMENT OF CONSUMER AND INDUSTRY SERVICE
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BACKGROUND

This matter was held pursuant to PA 312 of 1969, as amended by Act 127, PA of 1972 (MCLA 423.231 et.seq.). The Petition for Act 312 arbitration was filed by the Flint Police Officers Association, representing the approximately 220 patrol officers, on June 29, 1998. I was appointed as the panel chairperson on April 29, 1999.

The first day of hearing was on April 5, 2000 and concerned whether residency was an economic or a non-economic issue, with the City contending that it was economic and the Union arguing that it was non-economic. On July 18, 2000 I issued the following Interim Order:

For the purposes of this Act 312 proceeding, residency is a non-economic issue.

There were eight additional hearings on June 4, 2001, June 6, 2001, June 18, 2001, October 2, 2001, October 3, 2001, November 19, 2001, December 6, 2001 and January 7, 2002. On April 13, 2001 the Union sought to modify its proposed list of comparables; this was objected to by the City on May 18, 2001. I issued the following Interim Order on August 23, 2001:

INTERIM ORDER

The City's motion to prohibit the Union from modifying its list of comparables is denied. However, the City, if it chooses, may make a commensurate change in its comparables upon receipt of this Interim Order.

Following the last day of hearing, the City moved to reopen the record to permit testimony and an exhibit concerning the most recent audit. It also sought to modify its last best offers. This was opposed by the Union. Pursuant to a verbal Order, the audit was admitted, with the Union receiving the opportunity to rebut it. The motion to reopen the hearing was denied. The parties were

permitted to make technical changes to their last best offers. Following the last day of hearing, there were two meetings of the panel. In addition to the nine days of hearing, there were numerous and lengthy exhibits submitted into the record. The parties have stipulated that the duration of the contract shall cover the four years from July 1, 1998 through June 30, 2002.

ISSUES

There are two joint issues:

JOINT ISSUE NO.1-RETROACTIVITY
JOINT ISSUE NO. 2-RESIDENCY

There are six Union issues, some of which have been withdrawn. They are:

UNION ISSUE NO.1-WAGES(ARTICLE 14/APPENDIX A)
UNION ISSUE NO.2-TUITION REIMBURSEMENT
(ARTICLE 26) (WITHDRAWN)
UNION ISSUE NO.3-LAUNDRY (WITHDRAWN)
UNION ISSUE NO.4-CLOTHING ALLOWANCE
(WITHDRAWN)
UNION ISSUE NO.5-PENSION/RETIREMENT-FAC BASED
ON 2 OUT OF 5 (ARTICLE 51/APPENDIX B)
UNION ISSUE NO.6-PENSION/RETIREMENT-WITH 23
YEARS OF SERVICE (ARTICLE 51/APPENDIX B)

There are ten City issues:

CITY ISSUE NO.1-SHIFT PREMIUM(ARTICLE 15)
CITY ISSUE NO.2-INJURIES(WITHDRAWN)
CITY ISSUE NO.3-PENSION/RETIREMENT-25 YEARS OF
SERVICE/AGE 55 (ARTICLE 51/APPENDIX B)
CITY ISSUE NO.4-PENSION/RETIREMENT-26 PAYS
CLARIFICATION(ARTICLE 51/APPENDIX B)
CITY ISSUE NO.5-HOSPITALIZATION (ARTICLE 56)
CITY ISSUE NO.6-NEW HIRES HEALTH INSURANCE
(WITHDRAWN)
CITY ISSUES NOS. 7A RETIREE HEALTH INSURANCE
7B (WITHDRAWN)
7C RETIREE HEALTH INSURANCE
CITY ISSUE NO. 8-COMP TIME(ARTICLE 70)
CITY ISSUE NO. 9A-LONGEVITY CAP AMOUNTS
9B-ADD A STEP(ARTICLE 14/APPENDIX A)

CITY ISSUE NO. 10-NEW HIRE WAGE SCALE(ARTICLE 14/APPENDIX A)

The last best offers of the parties are attached to the end of this opinion. These issues were listed at the pre-hearing conference, at which time the delegates were identified and the format for the last best offers and the procedure for the hearings was established. The parties agreed to waive all time limits, including the time for the preparation of the opinion and orders.

THE STATUTORY CRITERIA

The panel is to apply the provisions of Section 9 of Act 312. Pursuant to City of Detroit v DPOA, 408 Mich 410, 482, the panel need not afford equal weight to all factors. The Section 9 criteria are:

Sec. 9. Where there is no agreement between the parties or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable.

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

- (i) In public employment in comparable communities.
- (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

INTRODUCTORY COMMENTS

There is no question but that the dedicated members of the Flint Police Department deserve to be properly compensated for the difficult and important work that they perform. In the past, the parties have been able to achieve contracts through collective bargaining. Regretfully, a fiscal crisis of an unprecedented magnitude has placed the officers and the City in position where they are in Act 312, with the City facing over 27 million dollars of debt. This Opinion is reflective of the fiscal crisis, but represents a outcome that is determined by the statutory requirements of Act 312.

SUMMARY

Issue:	City	Union	Adopted
Retroactivity	None	All benefits	Moot
Residency	Modified statute	Abolish	Statute
Wages	4 year freeze	12%	Freeze
FAC-2 out of 5 for pre-1978 hires	Status quo	2 out of 5	2 out of 5 for pre-1978 hires
Reduce retirement service requirement	Status quo	23 years regardless of age	Status Quo
Shift Premium	Cap	Status Quo	Cap with grandfather
Pension eligibility	Age 55 and 25 years for post July 1, 1998 hires	Status Quo	Status Quo
Pension-26 pay	limit to 52 weeks for FAC	Actual earnings For FAC	26 pays for FAC
Hospitalization	changes+increases in employee pay	Status Quo	Employer changes
Future Retiree Health Costs	Cap	Status Quo	Status Quo
Active Employee Contribution for Retiree Health	1.5% of wages	Status Quo	Status Quo
Comp Time	Abolish accumulated	Status Quo	Status Quo
Longevity	Freeze at higher steps	Status Quo	New computation and freeze

Issue	City	Union	Adopted
Longevity--add 27 th step	Status Quo	Add Step	Add 27 th Step
New Hire Wage Scale	Create	Status Quo	New hire wage scale

COMPARABILITY

The Union offers the following communities as comparables: Ann Arbor, Grand Rapids, Lansing, Livonia, Southfield, Sterling Heights, Warren and Westland. The City proposes as comparables: Battle Creek, Jackson, Lansing, Muskegon, Saginaw and Pontiac. Detailed testimony and exhibits were presented in support of the respective positions of the parties.

Historically, the patrol officers and the City have resolved their contracts without a formal designation of the comparable communities. Even when Act 312 has been utilized, the panel has not designated the comparable communities. This leads to the conclusion that formal comparability has been de-emphasized by the parties, and that this panel should do so also. Further, because of the unprecedented nature of the fiscal crisis faced by the City, Flint has become *sui generis*, and comparability is of reduced importance for this proceeding.

Therefore, if necessary, a reference to cities from the entire list of proposed comparables will be made. However, a formal decision on comparability will not be made. As previously noted, this is consistent with the prior practice of this parties.

JOINT ISSUE NO.1-RETROACTIVITY

This issue pertains only to economic improvements that may be awarded. Accordingly, it will not be considered as a separate issue, but rather will be viewed in conjunction with the appropriate issues.

JOINT ISSUE NO. 2-RESIDENCY

Pursuant to the Interim Order, Residency is a non-economic issue, which means that Act 312 does not require the panel to accept a last best offer, if it feels that neither of the last best offers of the parties are appropriate. The panel may craft its own language on residency. All other issues in this proceeding are economic, which means that the panel must select one the last best offers.

The current contract provided that employees hired after May of 1986 shall live in the City and those hired prior to that date shall live within fifteen miles of City hall or within Genesee County. The contract says:

Employees hired after May, 1, 1986 shall, as a condition of their continued employment, maintain residence within the boundaries of the City of Flint. Employees hired prior to May 1, 1986 shall live within a fifteen (15) mile radius from the City Hall complex/or within Genesee County.

During this arbitration proceeding, 212 PA1999 (MCL 15.601 et. seq.), a law pertaining to residency requirements, was enacted by the legislature. That statute states in pertinent part:

Sec. 2. (1) Except as provided in subsection (2). A public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles.

Act 312 in Section 9(a) requires that the panel base its findings upon the lawful authority of the employer. This means that the Order on residency in this proceeding must comport with the new

residency law.

The Union asks that residency in its entirety be eliminated. Further, it contends that any distance requirement is inappropriate. The City asserts that residency requirement be adopted that is consistent with the new law; however, it would add the caveat that in the event that Flint-only residency is later permitted by law, the prior residency language would become effective again.

DISCUSSION

During Flint's recent history, there has been a residency requirement of some type. Therefore, Section (9h) of Act 312 would support a continuation of a residency requirement that complies with state law. Moreover, the legislature has established, as a matter of public policy, an allowance in the new residency law for a residency radius of 20 miles. This suggests that the interests and welfare of the public as set forth in Section 9(c) of Act 312 would be furthered by the 20 mile requirement.

As a result, a residency rule that follows the new law is appropriate. However, there shouldn't be a return to the old language if the law changes in the future, insofar as the contract before the panel is controlled by the existing statute. Further, the Act 312 factors would not favor at this time a return to the prior language. The panel awards the following language on residency:

All employees shall, as a condition of their continued employment, maintain residence within 20 miles of the nearest boundary of the City of Flint.

UNION ISSUE NO.1-WAGES(ARTICLE 14/APPENDIX A)

The Union requests a 3.0% wage increase for each of the four years of the contract. This amounts to 12.6 % increase, when the improvements are compounded. The City requests a wage freeze over four years. As of the last year of the previous contract, the wage for a five year patrol officer was \$43,578.68

POSITION OF THE UNION

It is asserted that the extraordinary work performed by the officers, under difficult and dangerous conditions, justifies the increase. The Union further maintains that its comparable communities would support the increase, and it notes that as of the year 2000, every City comparable will have a wage rate that is at or near Flint's. It is emphasized that a four year wage freeze will place Flint officers significantly behind their fellow officers in comparable communities. The Union also points out that command officers have received increases as well as fire fighters.

POSITION OF THE EMPLOYER

The City asserts that even with a wage freeze, Flint officers will be in line with its comparable communities, and slightly below average in the third year of the contract. It is further emphasized that no other City employee group received 12% in wage increases, and the City is

looking to roll back wages from all groups where increases were obtained, as part of a five year budget reduction plan. The City states, as an example, that it is seeking a 5% wage reduction from the AFSCME unit, which will place these employees below where they were on June 30, 1998. It maintains that it is seeking similar concessions from all the bargaining units within the City.

Flint further contends that its financial condition has placed it at the verge of being placed into receivership, and that its audited deficit as of June 30, 2001 was at \$28 million dollars. The City argues that the Union's offer will add another \$4 million dollars to the deficit and will create the need for a receivership, if the City is not already in that condition. It is suggested that if the Union's last best offer is awarded, the City will face the need to lay off another 70 police officers, which will jeopardize the safety of the remaining officers and the citizens of Flint.

DISCUSSION

The panel is required to award either the 12% in compounded wage increases requested by the Union or the wage freeze sought by the City. Flint is required by law to maintain a balanced budget, and if it is faced with a deficit, it must offer a plan to return to a balanced budget. The record supports that Flint currently faces a fiscal emergency, with a deficit of over 27 million dollars. An award of 12% plus would add millions of dollars to the deficit, and could have the effect of producing commensurate wage increases in other police and fire bargaining units.

Ability to pay is a factor in Act 312, and the record demonstrates that Flint lacks the ability to pay the wage increases without increasing its already significant deficit, at a time that it is legally required to take steps to reduce the deficit. Further, the interests and welfare of the public also

require an award of the employer's last best offer. Finally, the lawful authority of the employer, an Act 312 factor, requires Flint to take steps to balance its budget. It would appear that large scale layoffs would result from the Union's offer. This would increase the risk to the officers on the street, and would reduce the level of safety for the citizens of Flint.

Because of the unprecedented fiscal emergency, the Last Best Offer of the City should be awarded. This conclusion makes a reference to external comparability inappropriate and unnecessary. No other City was shown to face Flint's financial emergency, and this award on wages is solely based on the need control expenditures during an exigent circumstance.

This award will only be appropriate if it is supported by internal comparability: there must be equality of sacrifice throughout the City, and the patrol officers should not be asked to play a greater role than any other group of Flint employees. The City has represented that it is seeking concessions from its largest group, the AFSCME unit, to place it on a par with its offer to the patrol officers. So long as this occurs, an award for the employer will be consistent with internal comparability.

For the foregoing reasons, the wage freeze offered by City should be awarded.

**UNION ISSUE NO.5-PENSION/RETIREMENT-FAC BASED
ON 2 OUT OF 5 (ARTICLE 51/APPENDIX B)**

The current defined benefit pension plan provides for a 2.6% multiplier, calculated with the best three years of the final five years prior to retirement. In its offer, the Union seeks to have the pension benefit for pre-1978 hires based upon the best two years out of five. Currently, this benefit is enjoyed by the Sergeants and Lieutenants and Captains bargaining units.

The Union asserts that internal comparability supports its offer, and that this will be a low cost item to the City. The City contends that it lacks the financial ability to pay the increased benefit, and that its comparable communities support its position.

DISCUSSION

The Section 9 factor of internal comparability would favor the patrol officers, since the command units enjoy the benefit that it is being sought by the patrol officers. Further, it would be expected as a matter of collective bargaining, another Section 9 factor, that equity would be obtained among police officers concerning this issue. It is true that the City is facing a fiscal crisis; however, because of the pre-1978 nature of the offer, it would be expected that very few officers would be affected, at a very low potential cost to the City. Therefore, the last best offer of the Union on this issue should be awarded.

**UNION ISSUE NO.6-PENSION/RETIREMENT-WITH 23 YEARS OF SERVICE
(ARTICLE 51/APPENDIX B)**

The current contract requires a patrol officer to obtain age 50 with 25 years of service to receive a full retirement. The Union seeks to eliminate the age requirement, and to further allow a patrol officer to retire after 23 years of service. The City proposes to maintain the status quo.

Because of the dangerous nature of the job, the Union asserts that officers should be allowed to retire sooner. Further, it is maintained the encouraging officers to retire sooner will result in a cost saving for the City, since they either won't be replaced, or will be replaced by officers at a lower wage. The Union also argues that the comparables support its position.

The City argues that it cannot afford the increase in pension costs, which would result from the Union's offer. Also, the City asserts that an earlier retirement will require a longer period of time to pay for health care costs for the retiring officers. Finally, the City contends that internal comparability supports its last best offer.

DISCUSSION

In the prior 1996 contract, the parties voluntarily agreed on the present age and service requirement. Pursuant to Section 9(h) of Act 312, it would be expected that a benefit previously negotiated would be carried forward into the next contract, absent changed circumstances. Changed circumstances were not established on the record, and this suggests that the current contract should continue on this issue. Most importantly, none of the police units have the benefit sought by the Union, and this is also true of the AFSCME unit. Accordingly, the last best offer of the City to retain the status quo should be awarded.

CITY ISSUE NO.1-SHIFT PREMIUM(ARTICLE 15)

Flint currently pays a second shift premium of 6.5% of the base wage and a third shift premium of 7.0% of the base wage rate. In its last best offer, the City seeks to cap shift premium pay at \$1.50 per hour, except that those employees currently receiving more than that amount will be grandfathered, so long as they remain on the shift. The Union offers the status quo.

The City maintains that it lacks the ability to pay under the current plan, which in 1998 it says cost \$329,000 per year, exclusive of roll-up and overtime. The City says that its average cost for the second shift is \$1.386 and \$1.466 for the third shift. It suggests that its premium pay costs are much higher than any of the comparables. It is further noted that the Sergeants and Lieutenants receive \$1.00 per hour for the second shift and \$1.25 per hour for the third shift. The City also contends that is reducing the impact of its offer by grandfathering officers.

The Union argues that the current shift premium formula has been in effect for many years. Moreover, the strain of working the second and third shifts is said to justify the current premiums. The overall compensation received by the comparables is further said to justify the status quo.

DISCUSSION

This is another issue where the result is determined by the financial crisis faced by the City of Flint. A fixed shift premium, as opposed to a percentage, will enable Flint to manage costs at a time of a financial emergency. Therefore, the Section 9 factor of ability to pay favors the City as well as the interests and welfare of the public. Further, internal comparability supports the employer,

since other police units within the City to not enjoy the current benefit of the patrol officers. Moreover, officers will receive some measure of financial protection through the grandfather provision of the City's Last Best offer. Primarily because of the financial crisis currently faced by the City, the Last Best Offer of the City should be awarded.

**CITY ISSUE NO.3-PENSION/RETIREMENT-25 YEARS OF
SERVICE/AGE 55 (ARTICLE 51/APPENDIX B)**

The current contract provides for retirement after 23 years for employees hired prior to July 1, 1996. For those employees hired after that date, there is 25 year service requirement and an age 50 requirement. The City's offer would require officers hired after July 1, 1998 to achieve age 55, in addition to 25 years of service. The Union asks that this change be rejected.

The City maintains that its offer is predicated on its desire to save on retiree health care costs. It notes that only 32 current patrol officers will be affected by its offer. The employer also contends that the AFSCME unit has the age 55 requirement.

The Union emphasizes that until 1996, a 23 year retirement was the norm for many years. It reiterates its argument for a 23 year retirement.

DISCUSSION

The focus in this proceeding has been on an emergency response to the fiscal crisis faced by the City. The City's offer on this issue is more of a long-term solution, as opposed to an immediate request for relief: the offer pertains to post- July 1998 hires, and they will not be retiring for many years. As a result, the City's offer is not an immediate response to the fiscal emergency, and an inability to pay would not require an award to the City.

Internal comparability, in the form of the other police units, favors the Union. Further, the present retirement arrangement was achieved in collective bargaining for the prior contract, and the

record fails to support a change at this time. Most importantly, however, the City's offer does not immediately address its financial predicament, and consistent with the overall approach of this award, which is a response to a financial crisis, the Section 9 factors require that this issue be awarded to the Union.

**CITY ISSUE NO.4-PENSION/RETIREMENT-26 PAYS
CLARIFICATION(ARTICLE 51/APPENDIX B)**

The City's in its offer on the above issue asks the Panel to, "clarify the application of 'Final Average Compensation' to expressly prohibit FAC calculations which attempt to include compensation paid but not earned in the same year as one of the highest annual compensation years used." It requests language stating, "Compensation which was not earned in the year shall be excluded in the calculation of annual compensation paid so that only earning for 26 consecutive pays shall be included in each of the 3 years." The union asks that this offer be rejected, and that officers be allowed to continue to select years for FAC, which include 27 pay periods.

Since 1991, some City employees have selected years for FAC, which include 27 pays. This includes a former Police Chief and a former Labor Relations Director. The FPOA on April 7, 2000 filed an unfair labor practice charge with MERC, alleging that the City had refused to bargain in good faith when it changed the FAC calculation to prohibit the utilization of 27 pays in a year. This charge was dismissed by ALJ Lynch on February 28, 2002. Exceptions have been filed by the Union. This matter is also in litigation before the Genesee County Circuit Court.

The contract provides that final average compensation, "shall mean the average of the highest annual compensation paid said members during any period of three years of his credited service contained within his five years of credited service immediately preceding the date his employment with the City last terminates." The City's Labor Relations Director, Marcantonio Morolla, indicated that the present issue arose when the employer learned that some retiring employees had figured out a way of being credited for 55 weeks of pay in a year as opposed to 52 weeks of pay. The record

reveals that from January of 1991 through March 2000, 45 patrol officers used the 27 pay method when they retired, and 54 FPOA used the 26 pay method sought by the City. The use of 27 pay periods to compute FAC is worth more than 3% to retiring patrol officers, with the MERC proceeding indicating that the value is at least 3.7%.

POSITION OF THE CITY

The City initially argues that it lacks the ability to pay the enhanced pension benefit based upon 27 pays. Further, it is maintained that the ALJ's decision supports that the City is properly interpreting the contract to allow only 26 pays. Finally, it is asserted that it is contrary to the intent of the parties to allow 55 weeks of pay to count as a year of work, notwithstanding any mistakes that were made in the past.

POSITION OF THE UNION

It is maintained that the panel should refrain from taking action, absent a definitive ruling from the Courts and the MERC. Further, the past practice within the City is said to support the Union's position, as well as the language of the contract. The Union denies that the additional pension benefit was shown to have negatively affected the financial health of the pension plan, and it is maintained that there is a pension plan surplus. Because of the other concessions sought by the City, it is contended that this issue is properly awarded to the Union. The City is argued to have been well aware of the 27 pays in the past, and to have agreed to that method of computation.

DISCUSSION

It is important to recognize that the panel does not have the jurisdiction to determine if 27 pays is required by the language of the current contract: that type of decision is within the jurisdiction of a grievance arbitrator, not an Act 312 panel. Further, the panel does not have the jurisdiction to decide if there has been an Unfair Labor Practice by the City: that decision is for the MERC alone. The panel is required to base its decision solely on the Section 9 factors of Act 312.

The record indicates that slightly less than half of the patrol officers have retired over the past 10 years using the 27 pay method sought by the Union, and slightly more than half have retired using the 26 pays proposed by the City. Therefore, there isn't a clear past practice which supports either side.

The resolution of this issue is determined by the section 9 factors concerning ability to pay, and pursuant to Section 9 (h), other factors normally considered in Act 312 proceedings and in collective bargaining. Mr. Grady, of the City, testified that Flint is considering a change in the amortization schedule to reduce the City's pension obligations. A reduction in pension costs through the use of 26 pays will further enable the City to meet its present financial emergency, and it must be emphasized that in over half of the relevant cases, the City has been using 26 pays. Therefore, the ability to pay factor favors the City.

Also, the City is seeking concessions in retiree health care. Pursuant to Section 9(h) of Act 312, it is appropriate to award the 26 pay issue to the Employer, insofar as *infra*, the Union will avoid Act 312 mandated concessions on retiree health care. Therefore, the City should prevail on the 26 pay issue.

CITY ISSUE NO.5-HOSPITALIZATION (ARTICLE 56)

The current health care plan provides as the base plan the Blue Cross/Blue Shield MVF-I plan with a \$150/\$300 deductible, an 80/20 co-pay, a \$1,000 stop loss on master medical, and a \$5 preferred generic drug rider. There is also a PPO available, as well as a choice of five HMOs. The City pays the cost of the traditional Blue Cross plan except for \$50. The cost of a more expensive plan is borne by the bargaining unit members.

In its last best offer, Flint proposes: to increase the deduction on the prescription drug co-pay from \$5, to \$10 for generic drugs/\$20 for brand prescription drugs; to allow the City to use the Traditional Blue Cross or Health Plus HMO as the base plan, and to increase the employee co-pay on the base plan from \$50 to \$75 per month. The Union asks that the status quo be maintained. The City is paying \$7,140 per year for the traditional plan. Since June of 1998, health care costs have increased 41% and 47.5% under the two major plans offered to the bargaining unit.

The City argues that its offer will require officers to become more concerned about health care costs, and that the Section 9 factors support its offer. The Union argues that the increased costs of certain plans may require officers to relinquish established relationships with their doctors. It is also maintained that officers are being unreasonably asked to become responsible for more costs. The comparables are also argued to support the Union's LBO.

DISCUSSION

Importantly, the City has backed off from offering the Wellness Plan, which the bargaining unit finds unacceptable. The City's offer essentially affects officers by increasing the monthly co-pay by \$25, and by increasing the drug co-pay. This is significant for the bargaining unit, especially in consideration of the other concessions they have made. Therefore, Section 9 (h) favors the Union. However, the City has demonstrated that there have been significant increases in health care costs. This is at a time that the City's finances are in a precarious state. Consequently, the ability to pay factor favors the City.

Insofar as the City has stayed with acceptable plans as the base plans, the increases in employee costs are consistent with Section 9, in consideration of the financial crisis faced by the City. Therefore, the Last Best Offer of the City on Hospitalization should be awarded.

CITY ISSUE NO. 7A RETIREE HEALTH INSURANCE

In this issue, the City seeks to cap its obligation to pay for future retiree health care at the rate in effect on June 30, 2002, or the date of the Award, whichever is later. Subsequent increases in the premiums would be paid by the retiree. The Union asks for the status quo.

The two person rate for retiree health insurance is \$860 per month or \$9,792 per year. Health care costs have increased over 40% over the three year period from June 30, 1998 until July 1, 2001. During the 1989 and the 1992 negotiations, the City unsuccessfully sought changes in retiree health care coverage.

POSITION OF THE EMPLOYER

It is asserted that general fund revenues will be only 3 million dollars more than they were in fiscal year 1990, while the number of retirees, and the cost of health care for them has dramatically increased. The City strongly argues that it lacks the financial ability to pay for the health care coverage of future retirees. It is suggested that a change will encourage officers to continue to work for the City or to look for other employment, which provides health care coverage. It is emphasized that the private sector would never provide fully paid health care for an employee, who retires after 23 years, and that the City cannot afford to continue to pay health care increases averaging 14% per year.

POSITION OF THE UNION

It is asserted that prior Act 312 panels have refused to make the changes sought by the City, and it is argued that this precedent should be followed in this proceeding. The Union further argues that there is no support among the comparables for the City's proposal. The Union contends that after a long career with the City, officers should be permitted to enjoy decent and affordable health insurance.

DISCUSSION

The focus of this Opinion has been on the emergent financial crisis faced by the City of Flint, and the necessary and appropriate response to it, consistent with the requirements of Section 9 of Act 312. The City's offer, if granted, would offer it prospective relief, but would have no immediate impact. Retiree benefits, as a matter of law, cannot be taken away after an officer retires, so the City can only look to the future. However, there hasn't been a showing on this record that a large number of patrol officers are either eligible, or are looking to retire, subsequent to the date of this award. Consequently, there isn't an urgency to the City's offer, which makes the ability to pay factor particularly relevant.

Pursuant to Section 9(h) of Act 312, it would be expected as matter of collective bargaining and Act 312, that this issue would be deferred to the next contract. The City's last best offer will not become effective by its terms until the July, 2002 contract, and the issue is best considered in conjunction with that agreement. Moreover, there isn't any internal comparability at this time to

support the City's position.

Finally, pension relief was granted to the City on the 26 pay issue. It would be expected pursuant to Section 9 (h), as a matter of contract negotiation and Act 312, that retiree health would be awarded to the Union under the particular facts of this case. Accordingly, Issue 7A on retiree health care should be awarded to the Union.

CITY ISSUE NO. 7C RETIREE HEALTH INSURANCE

The City in this issue asks the active employees to contribute 1.5% of their earnings for the cost of retiree health care insurance. The City would amend Article 56 as follows:

Effective the date of this award, employees shall be required to contribute 1.5% of their annual earnings toward the cost of retiree health care. A payroll deduction is hereby authorized.

The Union seeks to maintain the status quo, which would mean that active employees would not have to contribute towards retiree health care costs. The City asserts that its proposal would produce \$129,000 in added revenue to defray the cost of health care for retirees.

POSITION OF THE CITY

It is asserted that it will require 35% of the General Fund Revenue to pay retiree health care costs, and that a 1.5% contribution is a modest amount to be asked of the patrol officers. The City cites its difficult financial position as justifying an award of its position.

POSITION OF THE UNION

The Union emphasizes that none of the comparables provide for the assessment sought by the City for retiree health care. It is emphasized that existing retirees already pay part of their health care coverage. Further, it is argued that it would be unfair to require current patrol officers to undertake another financial burden.

DISCUSSION

Again, the focus of this Award has been on an immediate response to the financial emergency within the City of Flint. The employer's offer on this issue does not represent an immediate financial assist for the City. More importantly, Section 9 (H) of Act 312 would not support the 1.5% payment sought by the City. The patrol officers are receiving a wage freeze over several years. An additional retiree health care charge would place the officers in a negative wage position since the last contract. That result would not be expected in either collective bargaining or Act 312, especially since there isn't any internal comparability to support the employer's offer. As a result, the status quo should be maintained, and the Last Best Offer of the Union should be awarded.

CITY ISSUE NO. 8—COMP TIME(ARTICLE 70)

The City seeks in this offer to delete Article 70 of the contract, which permits officers to accumulate up to 240 hours in their overtime bank, and further permits them to use 180 of the banked hours for pensions, as part of the FAC. The union asks that the status quo be continued.

The City argues that patrol officers should not be permitted to fold in 180 hours of comp time into FAC, because of the cost to the City. It is emphasized that none of the City or Union comparables permit comp time to be folded into FAC. The City argues that it will achieve significant cost savings as the result of its offer.

The Union argues that City has not proven that officers use all of their comp time for their FAC. Further, it is asserted that this proposal will cost the City money in the short- term. The Union also notes that some of its comparables permit a larger accumulation of comp time. Finally, it is emphasized that the present benefit was negotiated by the parties after the last Act 312 proceeding

DISCUSSION

There wasn't a showing that a large number of patrol officers are eligible or are contemplating retirement. Therefore, the City's offer will have a prospective effect, and will not immediately address its financial crisis. Moreover, the offer could have a deleterious effect in the short- term if officers use, rather than bank their sick time, which could cause additional short-term overtime costs. Also, the current benefit was negotiated by the parties.

Pursuant to the ability to pay and Section 9 (h) of Act 312, it would not be expected that the comp time provision would be changed at this time. Accordingly, the status quo should be

maintained on this issue and the LBO of the Union should be awarded.

CITY ISSUE NO. 9A-LONGEVITY CAP AMOUNTS

The City in this offer would freeze the longevity steps found at the 11th, 16th, and 21st years. Instead, it would offer the following formula:

Years 11 through 15	Years 15 thru 20	21 st Year
+\$872 over 5-Yr rate	+\$1,761 over 5-Yr rate	+\$2,781 over 5-Yr. Rate

It is asserted that the patrol officers exceed the longevity payments of the comparable communities. Further, the City argues that capping longevity payments at the July 1, 1998 rate will help the City financially, while keeping the officers competitive with other relevant communities.

The Union contends that the longevity steps were placed into the contract to encourage senior officers to remain within the department. It is further asserted that its comparables would not support a reduction in the benefit.

DISCUSSION

An award to the City on this issue will provide financial relief to the City at the time of a financial emergency. Therefore, the ability to pay factor under Section 9 of Act 312, as well as the interests and welfare of the public factor support the employer. While it is true that longevity pay is placed into a contract to encourage senior officers to remain with the department, the changes sought by the City are not of a magnitude to defeat that purpose. Because of the severe financial crisis faced by the City of Flint, the last best offer of the City on a longevity cap should be adopted by the panel.

UNION ISSUE 9B—ADD A STEP(ARTICLE 14/APPENDIX A)

This Union issue is properly considered in conjunction with City Issue 9A on longevity. In this issue, the Union seeks to add a new longevity step starting with the 27th year of service. The proposal would add a payment of \$925 over the 21 year step. The City contends that the status quo should be retained.

POSITION OF THE UNION

It is asserted that several of the Union comparables have an additional step at 25 years. Moreover, the Union contends that internal comparability supports its position. It is noted that the Lieutenants and Captains received a 27th step worth 2% in their 1995 contract and the Sergeants received a 2% longevity payment at the 27th step in their 1997 contract.

POSITION OF THE CITY

The City argues that it lacks the funds to provide this improvement. Further, it is maintained that the City is ahead of its comparables in reference to longevity pay, and that only four of the Union comparables have the longevity payment sought by the Union.

DISCUSSION

It was not definitively established how many officers would benefit from the new longevity step. As a result, it cannot be definitively established what the cost to the City will be. In contrast, it was shown that the two other police bargaining units have the benefit sought by the Union in this proceeding. Accordingly, the Section 9 factor of internal comparability strongly favors the Union. In the absence of strong proof that the City's current financial situation will be seriously affected by the improvement sought by the Union, internal comparability should prevail. Moreover, consistency

among the police bargaining units will improve the morale of the patrol officers. This will further the Section 9 factor of the interests and welfare of the public. Accordingly, the last best offer of the union on the additional step should be awarded.

**CITY ISSUE NO. 10-NEW HIRE WAGE SCALE(ARTICLE
14/APPENDIX A)**

The City seeks to establish a lower wage rate for new hires, that would eventually catch-up with the existing patrol officers at the end of five years. The Union asks that the status quo be continued.

The City proposes the following schedule:

"Wage Scale for New Hires- For employees hire on or after the date of the Award, the following wage shall be in effect.

New hires (those employees hired on or after date of the Award), will be placed on the following wage scale for their first four years of employment. Starting their fifth years, the shall receive the same rate as those hired prior to June 30, 2002.

Wage Scale for Employees Hired after the Date of the Award:

Start	\$26,000 (after Academy)
2 nd Year	\$29,000
3 rd Year	\$33,000
4 th Year	\$37,000
5 th Year	Same as employees hired prior to 3/1/99"

POSITION OF THE CITY

It is asserted that the City will be in a better position to control its personnel costs if new hires are brought in at a lower rate. The fiscal crisis is cited as justifying the employer's offer. The City further contends that the Fire Fighters bargaining unit has a similar new hire wage scale. The City also believes that comparability also favors its position.

POSITION OF THE UNION

It is asserted that the City will never be able to recruit qualified officers at the rate of \$26,000 a year. Moreover, it is contended that such a low wage rate is unfair to the officers, considering the type of work that they are required to perform. The Union also maintains that none of the external comparables would support such a low starting wage rate.

DISCUSSION

Insofar as the City is the throes of a fiscal crisis, the effect of a new hire wage scale may be more theoretical than real at the present time, since it has not been shown that the City has any plans to hire new patrol officers. As previously noted, the intent of this Award has been to address the immediate fiscal crisis, as opposed to dealing with long-term structural issues. However, internal equity has also been a concern. The City's Fire Fighters have a two tiered wage scale that is similar to the one sought by the City in this proceeding. Therefore internal comparability would support the City on this issue, and the last best offer of the City on new hire wage scale should therefore be awarded.

Date: July 14, 2002



Mark J. Glazer, Arbitrator

ORDERS

JOINT ISSUE NO.1-RETROACTIVITY

Pursuant to the other orders in this matter, retroactivity is a moot issue.

JOINT ISSUE NO. 2-RESIDENCY

The panel awards the following language on residency:

All employees shall, as a condition of their continued employment, maintain residence within 20 miles of the nearest boundary of the City of Flint.

UNION ISSUE NO.1-WAGES(ARTICLE 14/APPENDIX A)

The City's Last Best Offer of a wage freeze over the four years of the contract is awarded

UNION ISSUE NO.5-PENSION/RETIREMENT-FAC BASED ON 2 OUT OF 5 (ARTICLE 51/APPENDIX B)

The Union's Last Best offer of the best 2 out 5 years of service for pre-1978 hires is awarded.

UNION ISSUE NO.6-PENSION/RETIREMENT-WITH 23 YEARS OF SERVICE (ARTICLE 51/APPENDIX B)

The City's Last Best offer to maintain the status quo concerning the Union's offer pertaining to a 23 year service requirement for pensions is awarded.

CITY ISSUE NO.1-SHIFT PREMIUM(ARTICLE 15)

The City's Last Best Offer on shift premiums is awarded.

CITY ISSUE NO.3-PENSION/RETIREMENT-25 YEARS OF SERVICE/AGE 55 (ARTICLE 51/APPENDIX B)

The Union's Last Best offer to retain the status quo on the above employer issue is awarded.

**CITY ISSUE NO.4-PENSION/RETIREMENT-26 PAYS
CLARIFICATION(ARTICLE 51/APPENDIX B)**

The City's Last Best Offer concerning the 26 pay issue is awarded.

CITY ISSUE NO.5-HOSPITALIZATION (ARTICLE 56)

The City's Last Best Offer on Hospitalization is awarded.

CITY ISSUE NO. 7A RETIREE HEALTH INSURANCE

The Union's Last Best Offer to retain the status quo is awarded.

CITY ISSUE NO. 7C RETIREE HEALTH INSURANCE

The Union's Last Best Offer to retain the status quo is awarded.

CITY ISSUE NO. 8-COMP TIME(ARTICLE 70)

The Union's Last Best offer to retain the status quo is awarded.

CITY ISSUE NO. 9A-LONGEVITY CAP AMOUNTS

The City's Last Best Offer to cap longevity pay is awarded


UNION ISSUE 9B-ADD A STEP(ARTICLE 14/APPENDIX A)

The Union's Last Best Offer to add a longevity step is awarded.


**CITY ISSUE NO. 10-NEW HIRE WAGE SCALE(ARTICLE
14/APPENDIX A)**

The City's Last Best Offer to create a new hire wage scale is awarded.

SIGNATURES OF PANEL MEMBERS

Date: 7/14/02
Mark J. Glazer, ChairpersonDate: 7/14/02
Fred B. Schwarze, Employerelegate
(Concurs on all issues awarded to the
City; dissents on all issues awarded
to the Union.)

Date: _____


James M. Moore, Union Delegate
(Concurs on all issues awarded to the
Union; dissents on all issues awarded
to the Employer.)

SIGNATURES OF PANEL MEMBERS

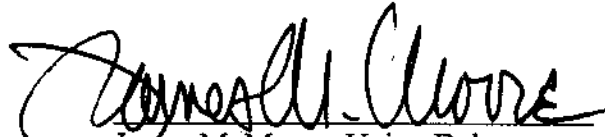
Date: 7/14/02


Mark J. Glazer, Chairperson

Date: _____

Fred B. Schwarze, Employerelegate
(Concurs on all issues awarded to the
City; dissents on all issues awarded
to the Union.)

Date: July 11, 2002


James M. Moore, Union Delegate
(Concurs on all issues awarded to the
Union; dissents on all issues awarded
to the Employer.)