

1876

STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION

*In the Matter between:*

**CITY OF HUNTINGTON WOODS**

**- AND -**

**MERC Case No. D96 D-1954**

**MICHIGAN AFSCME COUNCIL 25**

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**Panel**

Anne T. Patton, Impartial Chair  
Dennis DuBay, Employer Delegate  
Dennis Nauss, Union Delegate

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**For the Employer:**

**For the Union:**

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**Representatives**

Dennis DuBay, Attorney

Dennis Nauss, Staff Specialist

**Witnesses**

Amy Sullivan, former Asst. City Manager  
Alex Allie, City Manager  
Tom Dawidowicz, Actuary  
David Danaher, Director of Public Safety  
Kristine Hyre, Treasurer / City Administrator

Douglas Conciatu, Lieutenant  
Bob Marshall, Detective Lieutenant

**Also Present**

Richard Lehmann, Finance Director

John J. Bobrowski, Attorney  
Duane Hunt, Staff Representative  
John Kieleszewski, Lieutenant

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**INTRODUCTION**

Pursuant to Public Act 312 of 1969, as amended by Act 127, Public Acts of 1972 (MCLA 423.231 et seq.) (The Act), hearings were conducted before the Arbitration Panel on February 17 and 18, April 24 and June 1, 1998 at the offices of the City of Huntington Woods, Michigan.

The City of Huntington Woods (the City or Employer) and Michigan AFSCME Council 25 (the Union) seek to complete the successor to their January 1, 1993 to December 31, 1994 Collective Bargaining Agreement.

The Act 312 Petition was filed by the City on March 11, 1997 and received by the Michigan Employment Relations Commission (MERC) on March 12, 1997. The pre-hearing conference took place on November 11, 1997.

## **THE ISSUES IN DISPUTE**

The Act 312 Petition identifies the following issues:

1. Schedule: Department to be reorganized with 8 hours shifts.
2. Pensions: Overtime or compensatory time payout shall not be included in Final Average Compensation (F.A.C.)
3. Pension: Elimination of E Benefit.
4. Rank Structure: Rank of Sergeant to be integrated into 8-hour shift plan.
5. Rank Structure: Detective rank to be eliminated upon retirement of current Lieutenant. Detective work to be performed by PSO unit.
6. Overtime: Recalculation of overtime based upon F.L.S.A./ shift structure.

At the Pre-Hearing Conference, the parties agreed that all disputed issues, except number one pertaining to the work schedule, were economic issues. However, during the course of the Act 312 hearings, the Union took the position that the work schedule issue was an economic one. Whether the work schedule issue is economic or non-economic will be addressed below under the discussion of that issue.

By letter dated January 30, 1998, the Union offered the following clarification of its position on the outstanding issues:

The specific points needing clarification are items 2, 3, & 5 of the "Issues in Dispute" as outlined in your Pre-Hearing Conference Report. In particular, the pension issues in items 2 & 3 are, as proposed, a violation of Article 9, Section 24 of the Michigan Constitution and the question of the PSO unit doing the detective work in item 5 is a matter that is a permissive subject of bargaining. These issues should not be before the 312 panel.

During the first day of the Act 312 Hearing on February 17, 1998, the Union requested that the City submit a Position Statement with respect to each issue. By letter dated February 18, 1998, the City submitted its Position Statement indicating that its position was subject to the City's Last Best Offers. As to issue one, regarding the work schedule, the City proposed 12-hour shifts, in contrast to the Act 312 Petition indicating an 8-hour shift proposal.

## **RELEVANT BACKGROUND INFORMATION**

### **The Community of Huntington Woods**

The City of Huntington Woods is located in southern Oakland County in southeastern Michigan. It is considered part of the greater Detroit metropolitan area. The City consists of only 1.5 square miles, .5 square miles of which is occupied by the Detroit Zoo. Its 1990 population was 6,419 residents. Between 1980 and 1990, it suffered a 7.4% decrease in population. The City's financial resources are dependent upon residential real estate, rather than commercial real estate. Specifically, 95.62% of the City's SEV is residential.

### **The Huntington Woods Public Safety Department**

There are currently 14 sworn members in the City's Public Safety Department. The current Director of Public Safety is David J. Danaher. Members of the Department are responsible for both police and fire protection. The collective bargaining unit consists of one detective and three command lieutenants. The detective works an eight-hour shift while the command lieutenants work twenty-four hour shifts. At the time of the hearings, the average seniority of unit employees was 21 years and five months.

The ten rank and file Public Safety Officers (PSOs) are represented by the Police Officers Association of Michigan (POAM) in a separate bargaining unit

### COMPARABLE COMMUNITIES

The parties were not able to agree on which communities are comparable to the City. The City proposed the following communities as comparable:

Berkley  
Beverly Hills  
Centerline  
Farmington  
Fraser  
Grosse Pointe  
Grosse Pointe Farms  
Grosse Pointe Park  
Grosse Pointe Woods

The Union proposed the following communities as comparable:

Berkley  
Beverly Hills  
Bloomfield Hills  
Oak Park  
Royal Oak  
Southfield

In rebuttal, the City also proposed:

Highland Park  
Royal Oak Township

As evidenced by the Exhibits submitted by the Union regarding comparability, the Union withdrew Southfield as a proposed comparable.

Both parties agree that the communities of Berkley and Beverly Hills are comparable to the City. In view of this agreement, it is not necessary for the Panel to analyze their comparability. Instead, the Panel treats the parties' agreement as a *de facto* stipulation that Berkley and Beverly Hills are comparable communities.

The Panel must evaluate and decide the comparability of the remaining 12 communities proposed by the parties.

### Factors

The first step in determining comparability is establishing the factors for comparison. The City composed its list of comparables based upon the following factors: community similarity as shown by geographic size, population, and population density; financial resources as shown by Total Taxable Value, SEV, Percent of residential SEV, SEV per capita, SEV per sworn officer, per capita income, and median home value; departmental similarity as shown by whether the department combines public safety or keeps fire and police separate, size of workforce, and workloads, as indicated by the number of index and non-index arrests, the number of fire runs, and the number of arrests and fires per officer. The factors relied upon by the Union were: size of the community in square miles, population, budget, and departmental manpower.

Review of other comparability decisions establishes that the factors relied upon by each party are relevant. See, *Lapeer County Sheriff Department and Police Officers Labor Council*, Case No. D94 G-1627 and 1618 (Frost, 1997) [demographics, wealth, and geographic proximity]; *City of Big Rapids and International Association of Firefighters, Local 1776*, MERC Case No. L91 A0305 (Glendon, 1994) [population,

community population as a percentage of county population, land area in square miles, per capita personal income, median household income, percentage of population in poverty, level of unemployment, total SEV, residential SEV as a percentage of that total, and number of authorized positions for sworn fire fighting personnel]; *Alpena County Sheriff and POAM*, MERC Case No. L92 B0399 L92 B0399 (Sugarman, 1992) [population, geographical area, SEV, size, and structure of the work force]; and *City of Southfield and COAM*, 78 LA 153 (Roumell, 1982) [SEV, taxes, geographic proximity, per capita income].

### **Measuring Comparability**

In view of the parties' agreement that Berkley and Beverly Hills are comparable communities, the degree of similarity / difference between these communities and the City will be used as a measure of comparability. For example, the population of Berkley is 2.64 times that of the City and the population of Beverly Hills is 1.7 times that of the City. The parties' agreement that Berkley is comparable translates into an agreement that a difference of 2.6 times, rounded up to 3 times, the population of the City encompasses the appropriate range of comparability. Berkley's degree of difference establishes the outside parameter because it shows a greater degree of difference than Beverly Hills. Thus, any community whose population falls within the range of no more than three times that of the City will be considered comparable as to population. In other instances, data regarding Berkley and Beverly Hills will be used to establish the high and low points of the range of comparability.

### **Community Demographics**

**Land Area in Square Miles.** The City has a land area of 1.5 square miles. All the City proposed comparable communities are less than 4.0 square miles, with an average size of 2.7 square miles. All of the Union proposed comparables are much larger than the City with the average size being 7.23 square miles. The Union proposed comparable, Royal Oak, is eight times larger than the City.

Except for Grosse Pointe (1.1 square miles) and Royal Oak Township (0.7 square miles), no other proposed comparable includes less square miles than the City. The agreed upon comparables, Berkley (2.6 square miles) and Beverly Hills (4.0 square miles), contain 1.7 and 2.7 times the number of square miles than the City. Thus, the measurement for size comparability is any community whose square mileage is within 3 times more than the City. Stated differently, any community whose square mileage is 4.5 or less is considered comparable in size to the City.

All of the City's proposed comparables are less than 4.5 square miles in land area. In contrast, each of the Union's three proposed comparables is more than three times larger than the City: Bloomfield Hills has 4.9 square miles according to the City and 5 square miles according to the Union; Oak Park has 5 square miles according to the City and 5.4 square miles according to the Union, and Royal Oak has 11.8 square miles according to the City and 13.1 square miles according to the Union. Source: City Exhibit No. 7-1 and 4. Union Exhibit No. 8.

**Population.** Proportionate to its limited land area, the City has a small population of 6,419. All of the City proposed comparables, except Highland Park, has a population less than 18,000. The Union proposed comparables are more populous with an average population of 33,387. As the City notes, this is almost three times the average size of its comparables and 5.2 times the size of the City.

Except for Grosse Pointe (5,681 in population) and Royal Oak Township (5,011 in population), the City is the least populous of the proposed comparables with its population of 6,419. Berkley, with a population of 16,960, has 2.6 times more residents than the City and Beverly Hills with a population of 10,610, has 1.7 times more residents than the City. Thus, the measurement for population comparability is any community, which has a population no more than three times that of the City. This means that any community with a population of 19,257 or less is comparable in terms of population.

Applying this standard of measurement, all of the City's proposed comparables have a population less than 19,257. Of the Union's proposed comparables, only Bloomfield Hills with its population of 4,288 falls with the standard for measuring comparability. Oak Park is about five times more populous than the City and

Royal Oak is about ten times more populous than the City. Source: City Exhibit No. 7-2 and 4. Union Exhibit No. 9.

**Population Density.** The City's population density is 4,279. Using Berkley and Beverly Hills to define the parameters of comparability in the area of population density, comparability is shown by those communities whose population density falls between 2,653 (that of Beverly Hills) and 6,523 (that of Berkley). Each of the City's proposed comparables and each of the Union's proposed comparables, with the exception of Bloomfield Hills, fall within the defined range of comparability. Source: City Exhibit No. 7-4.

**Percent of Population Change.** The City showed a 7.47% decrease in population from 1980 to 1990. Similarly, all of the City proposed comparables and all of the Union proposed comparables, except Bloomfield Hills, also showed at least a 2% decrease in population from 1980 to 1990. The difference between the City's decrease of 7.47% and Berkley's decrease of 9.00% is 1.53%. Accordingly, comparability is shown whenever a community shows a % decrease in population in the range of 1.53% more or less than the City's decrease of 7.47 %. In short, the range for comparability is a decrease of 5.94% to 9.00%.

Thus, of the City's proposed comparables, Farmington and Grosse Pointe Woods fall within the comparable range. Center Line with a 2.87% decrease, Fraser with a 4.54% decrease, Grosse Pointe with a 3.73% decrease, Grosse Pointe Farms with a 4.35% decrease, Grosse Pointe Park with a 5.20% decrease, Highland Park with a 27.9% decrease, and Royal Oak Township with a 13.36% decrease fall outside the range of comparability. Similarly, of the Union's comparables, only Royal Oak falls within comparable range. Bloomfield Hills, with an increase of 7.6% in population, and Oak Park, with a decrease of 3.41%, fall outside the range of comparability. Source: City Exhibit No. 7-5.

Summary: The following chart summarizes the comparability findings regarding land area, population, population density, and percentage change in population from 1980 to 1990.

#### COMPARABILITY REGARDING LAND AREA AND POPULATION

CITY COMP.	LAND AREA	POPULATION	POP. DENSITY	POP. CHANGE
Center Line	Yes	Yes	Yes	No
Farmington	Yes	Yes	Yes	Yes
Fraser	Yes	Yes	Yes	No
Grosse Pointe	Yes	Yes	Yes	Yes
Grosse Pte. Farms	Yes	Yes	Yes	No
Grosse Pte. Park	Yes	Yes	Yes	No
Grosse Pte. Woods	Yes	Yes	Yes	No
Highland Park	Yes	Yes	Yes	No
Royal Oak Twp.	Yes	Yes	Yes	No
<b>UNION COMP.</b>				
Bloomfield Hills	No	Yes	No	No
Oak Park	No	No	Yes	No
Royal Oak	No	No	Yes	Yes

### Financial Resources

**Total Taxable Value.** The Total 1997 Taxable Value of each of the proposed comparables is set forth in the following chart:

<b>City Proposed Comparable</b>	<b>Total 1997 Taxable Value</b>
Berkley	\$ 316,508,670
Beverly Hills	372,987,074
Center Line	197,058,389
Farmington	297,865,090
Fraser	405,228,685
Grosse Pointe	267,183,990
Grosse Pointe Farms	560,287,479
Grosse Pointe Park	411,011,339
Grosse Pointe Woods	589,917,990
Highland Park	116,291,133
Royal Oak Township	52,264,570
<b>Union Proposed Comparables</b>	
Bloomfield Hills	577,602,830
Oak Park	442,665,860
Royal Oak	1,432,675,644
<b>Huntington Woods</b>	<b>199,751,460</b>

Source: City Exhibit No. 7 (2).

The standard for measuring comparability is established by computing the difference between the Taxable Value of Beverly Hills and that of the City. Beverly Hills is used instead of Berkley because the difference between its taxable value and that of the City is greater than the difference between Berkley and the City. The Taxable Value of Beverly Hills is about two times that of the City or \$399,502,920. Thus, communities comparable to the City are those with a Taxable Value no more than \$399,502,920.

Of the City proposed comparables, Center Line, Farmington, and Grosse Pointe meet the standard. However, Royal Oak Township falls too far below the standard to be considered comparable. All of the Union comparables exceed the standard.

**State Equalized Value (SEV) Per Capita.** The following charts the SEV Per Capita of the proposed comparables.

City Proposed Comparable	SEV Per Capita
Berkley	\$18,662
Beverly Hills	35,154
Center Line	21,832
Farmington	29,398
Fraser	29,155
Grosse Pointe	47,031
Grosse Pointe Farms	55,518
Grosse Pointe Park	31,968
Grosse Pointe Woods	33,300
Highland Park	5,780
Royal Oak Township	10,430
<b>Union Proposed Comparables</b>	
Bloomfield Hills	134,702
Oak Park	14,532
Royal Oak	21,903
<b>Huntington Woods</b>	<b>29,872</b>

Source: City Exhibit No. 7-2..

Berkley and Beverly Hills establish the parameters for measuring comparability. The low is \$18,662 (Berkley) and the high is \$35,154 (Beverly Hills). Any SEV within this range is comparable. Thus, on this basis, the City proposed communities of Center Line, Farmington, Fraser, Grosse Pointe Park, and Grosse Pointe Woods are comparable. The Union proposed community of Royal Oak is also comparable.

**Percent of Residential State Equalized Value (SEV).** The following charts the Total 1997 Taxable Value and Residential Homestead Taxable Value to compute the Percent of Residential SEV.

City Proposed Comparable	Total 1997 Taxable Value	Residential Homestead Taxable Value	Percent of Residential SEV
Berkley	\$ 316,508,670	\$271,392,110	85.75 %
Beverly Hills	372,987,074	339,660,824	91.07
Center Line	197,058,389	81,596,076	41.41
Farmington	297,865,090	196,034,980	65.81
Fraser	405,228,685	219,577,843	54.19
Grosse Pointe	267,183,990	239,415,640	89.61
Grosse Pointe Farms	560,287,479	528,784,829	94.38
Grosse Pointe Park	411,011,339	395,305,865	96.18
Grosse Pointe Woods	589,917,990	541,618,100	91.81
Highland Park	116,291,133	36,050,371	31.00
Royal Oak Township	52,264,570	7,208,990	13.79
<b>Union Proposed Comparables</b>			
Bloomfield Hills	577,602,830	445,177,750	77.07
Oak Park	442,665,860	296,170,850	66.91
Royal Oak	1,432,675,644	1,048,816,665	73.21
<b>Huntington Woods</b>	<b>199,751,460</b>	<b>183,353,250</b>	<b>95.62</b>

Source: City Exhibit No. 7-3.

The range of comparability as to the Percent of Residential SEV is established by Berkley, whose Percent of Residential SEV is lower than Beverly Hills and, for this reason, sets the outside parameter. Thus, any community whose percent of residential SEV fall between 85.75% (Berkley) and 95.62% (the City) is comparable. This means that the City proposed communities of Grosse Pointe, Grosse Pointe Farms, and Grosse Pointe Woods are comparable. Also Grosse Pointe Park should be considered comparable, even though its percentage is greater than the City's, because it features only a difference of only .56% from the City. None of the Union proposed comparables falls within the established range.

**State Equalized Value (SEV) Per Sworn Officer.** The following charts the SEV per sworn officer for each proposed comparable:

<b>City Proposed Comparable</b>	<b>Total 1997 Taxable Value</b>	<b>Total Sworn Officers</b>	<b>SEV Per Sworn Officers</b>
Berkley	\$ 316,508,670	29	\$10,914,092
Beverly Hills	372,987,074	24	15,541,128
Center Line	197,058,389	24	8,210,766
Farmington	297,865,090	20	14,893,255
Fraser	405,228,685	42	9,648,302
Grosse Pointe	267,183,990	23	11,616,695
Grosse Pointe Farms	560,287,479	29	19,320,258
Grosse Pointe Park	411,011,339	42	9,785,984
Grosse Pointe Woods	589,917,990	41	14,388,244
Highland Park	116,291,133	67	1,735,689
Royal Oak Township	52,264,570	57	916,922
<b>Union Proposed Comparables</b>			
Bloomfield Hills	577,602,830	22	26,254,674
Oak Park	442,665,860	67	6,606,953
Royal Oak	1,432,675,644	166	8,630,576
<b>Huntington Woods</b>	<b>199,751,460</b>	<b>14</b>	<b>13,696,533</b>

Source: City Exhibit No. 7-8.

Berkley establishes the low point of the range of comparability. The difference between Berkley's SEV per sworn officer and the City's is \$2,782,441. The high point of the range of comparability is established by adding this difference to the City's SEV per sworn officer. Thus, the range of comparability is \$10,914,092 (Berkley) to \$16,478,974 (the City's \$13,696,533 + \$2,782,441). The following City proposed communities fall within this range: Farmington, Grosse Pointe, and Grosse Pointe Woods. None of the Union proposed comparables fall within range.



**Median Home Value.** The following charts the medial home value of the proposed comparables:

<b>City Proposed Comparable</b>	<b>Median Home Value</b>
Berkley	\$ 64,700
Beverly Hills	170,400
Center Line	57,100
Farmington	107,300
Fraser	76,800
Grosse Pointe	174,800
Grosse Pointe Farms	174,900
Grosse Pointe Park	174,400
Grosse Pointe Woods	134,600
Highland Park	19,500
Royal Oak Township	25,700
<b>Union Proposed Comparables</b>	
Bloomfield Hills	495,000
Oak Park	48,000
Royal Oak	75,400
<b>Huntington Woods</b>	<b>116,100</b>

Source: City Exhibit No. 7-6.

The median home values in Berkley and Beverly Hills establish the range for comparability. In other words, the low point in the range is \$64,700 (Berkley) and the high point is \$170,400 (Beverly Hills). The City proposed communities within this range are: Farmington, Fraser, and Grosse Pointe Woods. The only Union proposed community within this range is Royal Oak.

**Per Capita Income.** The following charts the per capita income in the comparable communities:

<b>City Proposed Comparable</b>	<b>Per Capita Income</b>
Berkley	\$ 15,487
Beverly Hills	31,562
Center Line	12,993
Farmington	21,549
Fraser	14,846
Grosse Pointe	37,840
Grosse Pointe Farms	40,584
Grosse Pointe Park	26,994
Grosse Pointe Woods	26,992
Highland Park	19,500
Royal Oak Township	25,700
<b>Union Proposed Comparables</b>	
Bloomfield Hills	495,000
Oak Park	48,000
Royal Oak	75,400
<b>Huntington Woods</b>	<b>28,897</b>

Source: City Exhibit No. 7-6.

The range of comparability is established by using the per capita income in Berkley (\$15,487) as the low point. The difference between the per capita income in Berkley and that in Huntington Woods (\$28,897) is \$13,410. Adding \$13,410 to the City's per capita income of 28,897 establishes the high point of the range. Thus, the range for determining comparability is \$15,487 to \$42,307.

All of the City proposed comparables, with the exception of Center Line and Fraser fall within the range of comparability. As to the Union proposed comparables, none fall within comparable range.

**SUMMARY:** The following chart summarizes the comparability findings regarding financial resources: SEV per capita, percent of residential SEV, SEV per officer, median home value and per capita income:

#### COMPARABILITY REGARDING FINANCIAL RESOURCES

CITY COMP.	TAX. VAL.	SEV PER CAP.	% OF RESIDENT. SEV	SEV PER OFFICER	MEDIAN HOME VALUE	PER CAPITA INCOME
Center Line	Yes	Yes	No	No	No	No
Farmington	Yes	Yes	No	Yes	Yes	Yes
Fraser	No	Yes	No	No	Yes	No
Grosse Pointe	Yes	No	Yes	Yes	No	Yes
Grosse Pointe Farms	No	No	Yes	No	No	Yes
Grosse Pointe Park	No	Yes	Yes	No	No	Yes
Grosse Pointe Woods	No	Yes	Yes	Yes	Yes	Yes
Highland Park	No	No	No	No	No	Yes
Royal Oak Twp.	No	No	No	No	No	Yes
<b>UNION COMP.</b>						
Bloomfield Hills	No	No	No	No	No	No
Oak Park	No	No	No	No	No	No
Royal Oak	No	Yes	No	No	Yes	No

### Departmental Demographics

Each of the City proposed comparable communities operates a Public Safety Department. Of the Union proposed comparables, Bloomfield Hills and Oak Park also operate a Public Safety Department. However, Royal Oak maintains a separate police and fire departments.

**Staffing Levels.** The following charts the staffing levels of the proposed comparable communities:

City Comp.	Officers	Corporals	Sergeants	Lieutenants	Captains	Total
Berkley	21	0	5	3	0	29
Beverly Hills	15 (14)	0	4	4	1	24 (22)
Center Line	18	0	4	2	0	24
Farmingt.	6	0	4	0	0	20
Fraser	29	1	12	1	0	42
Grosse Pte.	16	0	4	3	0	23
Grosse Pte. Farms	21	0	3	5	0	29
Grosse Pte. Park	29	0	8	5	0	42
Grosse Pte. Woods	28	4	5	4	0	41
Highland Park	29	18	10	8	2	67
Royal Oak Twp.	50	2	3	2	0	57
<b>Union Comp.</b>						
Bloomfield Hills	18	0	4	0	0	22
Oak Park	54 (53)	0	8	5	0	67
Royal Oak Police	83 (67)	0	10	4	0	97 (81)
Royal Oak Fire	50 (48)	0	10	7	2	69 (66)
<b>Huntington Woods</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>14</b>

Source: City Exhibit No. 7-7 and Union Exhibit Nos. 12 and 13.

Note: Numbers in parentheses indicate numbers based on Union Exhibits, which differ from the numbers that appear in the City Exhibit.

The range of comparability regarding staffing is established by using Berkley's staff of 29 as the high point. Because the City has the smallest staff, it sets the low point of the range. Thus, the range is 14 to 29 sworn officers.

Of the City proposed comparables, Center Line, Farmington, Grosse Pointe, and Grosse Pointe Farms fall within range. Of the Union proposed comparables, only Bloomfield Hills falls within range.

**Residents Per Sworn Officer.** The following charts the number of residents per sworn officer in the proposed comparable communities:

City Comparables	1990 Population	# Sworn Officers	# Residents Per Sworn Officer
Berkley	16,960	29	585
Beverly Hills	10,610	24	442
Center Line	9,026	24	376
Farmington	10,132	20	507
Fraser	13,899	42	331
Grosse Pointe	5,681	23	247
Grosse Pointe Farms	10,092	29	348
Grosse Pointe Park	12,857	42	306
Grosse Pointe Woods	17,715	41	432
Highland Park	20,121	67	300
Royal Oak Township	5,011	57	88
<b>Union Comparables</b>			
Bloomfield Hills	4,288	22	195
Oak Park	30,462	67	455
Royal Oak	65,410	166	394
<b>Huntington Woods</b>	<b>6,419</b>	<b>30</b>	<b>459</b>

Source: City Exhibit No. 7-9.

The range of comparability is established with Berkley as the high point. The low point, 333, is arrived at by subtracting 126 (the difference between Berkley and Huntington Woods) from 459 the number of residents per sworn officer in Huntington Woods. Thus, the range for comparability is 333 to 585.

All of the City proposed comparables, except Grosse Pointe, Grosse Pointe Park, Highland Park, and Royal Oak Township fall within range. Fraser should also be considered comparable because it falls only two residents below the low point of the range (333), with its 331 residents per sworn officer. All of the Union proposed comparables, except Bloomfield Hills, fall within the range of comparability.

**Number of Index and Non-Index Arrests Per Officer.** The following charts the number of index and non-index arrests per officer in the proposed comparables. Index crimes include murder, rape robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson. Non-index crimes include all other crimes such as negligent manslaughter, non-aggravated assault, forgery and counterfeiting, fraud, embezzlement, stolen property, and vandalism.

City Comp.	Index Arrests	Non-Index Arrests	Total Arrests	# Sworn Officers	Total Arrests Per Officer
Berkley	30	271	301	29	10.38
Beverly Hills	8	182	190	24	7.92
Center Line	69	393	462	24	19.25
Farmington	79	694	773	20	38.65
Fraser	85	323	408	42	9.71
Grosse Pointe	34	100	134	23	5.83
Grosse Pointe Farms	39	137	176	29	6.07
Grosse Pointe Park	107	238	345	42	8.21
Grosse Pointe Woods	35	100	135	41	3.29
Highland Park	403	1,259	1,662	67	24.81
Royal Oak Township	4	57	61	57	1.07
<b>Union Comp.</b>					
Bloomfield Hills	12	104	116	22	5.27
Oak Park	436	1,018	1,454	67	21.70
Royal Oak	254	870	1,124	166	6.77
<b>Huntington Woods</b>	<b>5</b>	<b>62</b>	<b>67</b>	<b>14</b>	<b>4.79</b>

Source: City Exhibit No. 7-11, 12, 13, and 14.

The high point of the range of comparability is 10.38, Berkley's total number of arrests per officer. The low point of the range is 1.07 (Royal Oak Township) which falls within 5.59, the difference between the City (4.79) and the high point (10.38). Thus, the range of comparability is 1.07 to 10.38.

Of the City proposed comparables, Fraser, Grosse Pointe, Grosse Pointe Farms, Grosse Point Park, Grosse Pointe Woods, and Royal Oak Township fall within range. Of the Union proposed comparables, Bloomfield Hills and Royal Oak fall within range.

**Number of Total Number of Residents Per Arrest.** The following charts the total number of arrests (index plus non-index) per residents in the proposed comparable communities:

City Comp.	Index Arrests	Non-Index Arrests	Total Arrests	1990 Population	Total Residents Per Arrest
Berkley	30	271	301	16,960	56.35
Beverly Hills	8	182	190	10,610	55.84
Center Line	69	393	462	9,026	19.54
Farmington	79	694	773	10,132	13.11
Fraser	85	323	408	13,899	34.07
Grosse Pointe	34	100	134	5,681	42.40
Grosse Pointe Farms	39	137	176	10,092	57.34
Grosse Pointe Park	107	238	345	12,857	37.27
Grosse Pointe Woods	35	100	135	17,715	131.22
Highland Park	403	1,259	1,662	20,121	12.11
Royal Oak Township	4	57	61	5,011	82.15
<b>Union Comp.</b>					
Bloomfield Hills	12	104	116	4,288	36.97
Oak Park	436	1,018	1,454	30,462	20.95
Royal Oak	254	870	1,124	65,410	58.19
<b>Huntington Woods</b>	<b>5</b>	<b>62</b>	<b>67</b>	<b>6,419</b>	<b>95.81</b>

Source: City Exhibit No. 7-12.

The low point in the range for determining comparability is 55.84, Beverly Hills' total residents per arrest. The high point is 135.78, determined by adding the difference between the City and Beverly Hills (39.97) to 95.81, the City's total residents per arrest. The range of comparability is 55.84 to 135.78.

Of the City proposed comparables, Grosse Point Farms, Grosse Pointe Woods, and Royal Oak Township fall within range. Of the Union proposed comparables, only Royal Oak falls within range.

**Number of Fire Runs in 1996 and Number of Fire Runs Per Officer.** The following charts the number of fire runs, including fires rescues, non-fire emergencies, and false alarms in 1996 and the number of runs per officer in each of the proposed comparables:

<b>City Comparable</b>	<b>1996 # Fire Runs</b>	<b>Total Sworn Officers</b>	<b># Fires Per Officer</b>
Berkley	35	29	1.2069
Beverly Hills	19	24	0.7917
Center Line	41	24	1.7083
Farmington	24	20	1.2000
Fraser	63	42	1.5000
Grosse Pointe	4	23	0.1739
Grosse Pointe Farms	18	29	0.6207
Grosse Pointe Park	48	42	1.1429
Grosse Pointe Woods	26	41	0.6341
Highland Park	364	67	5.4328
Royal Oak Township	29	57	0.5088
<b>Union Comparables</b>			
Bloomfield Hills	4	22	0.1818
Oak Park	125	67	1.8657
Royal Oak	224	166	1.3494
<b>Huntington Woods</b>	<b>8</b>	<b>14</b>	<b>0.5714</b>

Source: City Exhibit No. 7-15, 16, and 17.

Berkley has 2.11 times the number of fire runs per officer than the City. Thus, the range for determining comparability is 2.11 times .5714, the City's number of fire runs per officer, or 1.21. Any community with the number of fire runs per officer, which falls in the range of .5714 to 1.21, is comparable.

Of the City proposed comparables, Farmington, Grosse Pointe Farms, Grosse Pointe Park, and Grosse Pointe Woods fall within range. Of the Union proposed comparables, none falls within range.

**SUMMARY:** The following chart summarizes the comparability findings regarding department demographics: number of officers, number of residents per officer, number of arrests per officer, number of residents per arrests, and fire runs:

City Comp.	# Officers	# Residents Per Officer	# Arrests Per Officer	# Residents Per Arrest	# Fire Runs Per Officer
Center Line	Yes	Yes	No	No	No
Farmington	Yes	Yes	No	No	Yes
Fraser	No	Almost	Yes	No	No
Grosse Pointe	Yes	No	Yes	No	No
Grosse Pointe Farms	Yes	Yes	Yes	Yes	Yes
Grosse Pointe Park	No	No	Yes	No	Yes
Grosse Pointe Woods	No	Yes	Yes	Yes	Yes
Highland Park	No	No	No	No	No
Royal Oak Township	No	No	Yes	Yes	No
<b>Union Comp.</b>					
Bloomfield Hills	Yes	No	Yes	No	No
Oak Park	No	Yes	No	No	No
Royal Oak	No	Yes	Yes	Yes	No



### Findings Regarding Public Employment in Comparable Communities

The proposed comparable communities have been evaluated in three areas regarding 15 factors: four factors relate to community demographics, six factors relate to financial resources, and five factors relate to departmental demographics. The following chart totals the number of times each proposed community has fallen within the range of comparability for a particular factor:

City Comparables	Community Demographics	Financial Resources	Departmental Demographics	TOTAL (out of 14)
Center Line	3	2	2	7
Farmington	4	5	3	12
Fraser	3	2	2	7
Grosse Pointe	4	4	2	10
Grosse Pointe Farms	3	2	5	10
Grosse Pointe Park	3	3	2	8
Grosse Pointe Woods	3	5	4	12
Highland Park	3	1	0	4
Royal Oak Township	3	1	2	6
<b>Union Comparables</b>				
Bloomfield Hills	1	0	2	3
Oak Park	1	0	1	2
Royal Oak	2	2	3	7

Overall-comparability is shown where a community has been found comparable in more than half of the 15 factors. Thus, any community, which has a total of 8 or more, is comparable.

Based on the above analysis, the Panel finds the following communities to be comparable:

1. Berkley
2. Beverly Hills
3. Farmington
4. Grosse Pointe
5. Grosse Pointe Farms
6. Grosse Pointe Park
7. Grosse Pointe Woods

### RELEVANT STATUTORY FACTORS

As to each economic issue, Section 8 of Act 312 directs the Panel to "adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9."

Section 9 of the Act directs the Panel to 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.

When finding Act 312 to be a constitutional delegation of legislative authority, the Michigan Supreme Court treated the existence of these factors as critically important. *City of Detroit v DPOA*, 498 Mich 410, 294 NW2d 68 (1980). Justice Williams discussed the Section 9 factors as follows:

[T]he panel's decisional authority has been significantly channeled by Section 9 . . . that section trenchantly circumscribes the arbitral tribunal's inquiry only to those disputes including wage rates or other conditions of employment embraced by a newly proposed or amended labor agreement, and commands the panel to base its findings, opinions and order relative to these narrow disputes on the eight listed factors as applicable . . . "

294 NW2d at 81.

Because of the inclusion of the Section 9 factors, the Court found that Act 312 satisfied the "reasonably precise standards" necessary for the delegation of legislative authority to be constitutional.

The Court went on to discuss how the Section 9 factors should be applied. It explained:

The legislature has neither expressly nor implicitly evidenced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in Sections 8 and 9. In effect, then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into

consideration those factors deemed relevant by the Legislature and codified in Section 9. Since Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are most important in resolving a contested issue under the singular facts of a case, although, of course, all 'applicable' factors must be considered.

294 NW2d at 97.

Section 10 of Act 312 provides that the decisions of the arbitration panel must be supported by "competent, material and substantial evidence on the whole record." Justice Williams explained:

In other words, the order of the panel must reflect the applicable factors and the evidence establishing those factors must be competent, material and substantial evidence on the whole record. It is only through this judicial inquiry into a panel's adherence to the applicable Section 9 factors in fashioning its award that effectuation can be given to the legislative directive that such awards be substantiated by evidence of, and emanate from consideration of, the applicable Section 9 factors.

294 NW2d at 96.

Finally, Section 12 reiterates the Section 10 mandate by providing that the only bases for reviewing an Act 312 award are that: 1) the panel was without or exceeded its jurisdiction; 2) the order is not supported by competent, material and substantial evidence on the whole record; or 3) the order was procured by fraud, collusion or other unlawful means.

## **EVIDENCE REGARDING THE SECTION 9 FACTORS**

### **(a) The Lawful Authority of the Employer**

The sole issue pertaining to the lawful authority of the City involves the pensions issues (numbers 2 and 3), i.e., the City's proposals to eliminate compensatory time payout from computation of final average compensation and to eliminate the E-2 Benefit. The Union contends that these proposals violate Article 9, Section 24 of the Michigan Constitution of 1963, which prohibits diminishing or impairing the "accrued financial benefits" of pension plans. The City responds that its proposals are not unconstitutional because no accrued financial benefits would be diminished or impaired. The constitutional issue will be addressed below, under discussion of the pension issues.

### **(b) Stipulations of the Parties**

In Joint Exhibit No. 2, the parties agreed to the following stipulations:

1. The Panel has **jurisdiction** to hear all issues placed before it.
2. The **contract duration** is January 1, 1995 to December 31, 1999.
3. The Contract will consist of:
  - a. Act 312 Panel resolution of all issues before it;
  - b. Tentative Agreements placed on the Act 312 record; and
  - c. Provisions of the January 1, 1993 to December 31, 1994 contract to the extent not changed by (a) or (b).

Additional stipulations pertaining to the issues in dispute will be discussed below.

**(c) Interests and Welfare of the Public and the Financial Ability of the City Government**

The Act requires consideration of the interests and welfare of the public because the public, as taxpayers, ultimately pay for the Award issued here. For this reason, as the City points out in its brief, the taxpayers must be considered a real party in interest in this proceeding.

The following facts are not in dispute: The City is subject to Public Act 2 of 1968, Uniform Budgeting and Accounting Act, PA 1968 and No. 2, Section 1 MCLA, Section 141.421, which mandates the use of fund accounting; the use of the standard classification of Municipal Accounts; the preparation of an annual financial report; the preparation of an annual audit; and the adoption of a balanced budget. In compliance with these requirements, the City adopts a budget each year for the following fiscal year. This budget and other financial reports, including the annual revenues and expenditures, are subject to audit by a certified accounting firm.

Public Act 2 also requires the City to use separate funds to account for restricted revenues and related expenses. Restricted funds are special revenue funds that may be used only for a specific purpose, and not to fund any improvements in this collective bargaining agreement. Unrestricted funds are accounted for in the general fund. Only general fund monies are legally available to support the public safety operations, including labor costs.

To be considered fiscally sound, a municipality should have an undesignated fund balance of between 10% and 15% of the total General Fund Budget. The City maintains that its efforts to maintain a properly balanced General Fund Budget is "hampered . . . by the fact that its employee pension fund is dramatically under funded." (City Brief at page 14.) City Exhibit No. 11-11 indicates that, as of 1996, the City's Pension Fund was only 75% funded. The same exhibit shows that, from 1981 to 1989, the Pension Fund was at least 100% funded.

The following chart shows that the City's funding deficit is greater than that of any comparable:

COMMUNITY	REPORT DATE	PERCENT FUNDED
Berkley	6-30-96	95.7%
Beverly Hills	12-31-96	122.0
Farmington	6-30-97	123.5
Grosse Pointe	12-31-96	138.0
GP Farms	6-30-97	140.0
GP Park	12-31-96	85.0
GP Woods	6-30-96	120.0

Source: City Exhibit No. 11-12.

The decrease in the percentage funded is not rooted in a decrease in the City's contribution. City Exhibit No. 11-10 demonstrates that the City's contribution in 1983 was \$100,973. In contrast, its contribution in 1996 was \$249,976, more than twice its 1983 contribution. During the period 1985 to 1993, the City's contribution ranged from a low of \$26,976 (1987 and 1988) to a high of only \$77,030 (1985).

City Manager Alex Allie testified that the increase in under-funding resulted from two factors. First, the inclusion of compensatory time in the computation of final average compensation (FAC) resulted in amounts higher than projected. (Transcript II, page 48.) According to Allie, the inclusion of compensatory time in FAC "amounted to effectively throwing the pension system off by 17 percent of the final average compensation." (Transcript II, page 48.)

The second cause, according to Allie, was the inclusion of the "E Benefit," a two percent cost of living adjustment, which increased the liability of the pension plan. Allie explained:

However, the way the City adopted - - the way the E benefit was agreed to was not a standard way in terms of the actuarial liability, so the City had not been pre-funding the E benefit. Therefore, every year the liability for the E benefit increased. So by increasing, it lowered the percent funded in the pension system and increased the overall pension liability.

Transcript II, page 49.

Thomas Dawidowicz, an actuary with the Municipal Employees' Retirement System (MERS) further explained that the City has a defined benefit plan, which guarantees a specific pension benefit level and places the entire risk of under-funding upon the employer. (Transcript II, pages 98-100.) MERS requires all members to allocate sufficient assets to fully provide for all current retirees. (Transcript II, pages 107-108.) Dawidowicz testified that the City is less than 50% funded for current unit members and its unfunded accrued liability amounts to \$605,649 as of December 31, 1996. See, also, City Exhibit No. 15-1, page 27. To make up for this level of under-funding, the City will have to contribute an amount equal to 10.5% of payroll, in addition to its normal contribution of 5.23% of payroll. City Exhibit No. 15-1, page 28. In short, the City will be contributing a total of 15.73% of payroll over the next 30 years. (Transcript II, pages 112-113.) See, also, City Exhibit No. 15-1, page 28. The City points out that its contribution will be further inflated if the current pension stays in effect. It maintains that because the E Benefit was intended as an ad hoc payment, not a regular benefit, MERS did not adjust for it. Thus, the provision of an E-2 benefit would mean an additional increase of 4.65% of payroll. See, City Exhibit No. 11-9.

#### Raising Revenues

City Exhibit No. 11-1 shows, as follows, that the City has the highest total millage rate of any of the comparable communities:

COMMUNITY	TOTAL 1997 LOCAL MILLAGE RATE
Berkley	16.3760
Beverly Hills	12.8499
Farmington	15.9900
Grosse Pointe	13.3600
GP Farms	11.7500
GP Park	14.2500
GP Woods	12.5865
Huntington Woods	19.4614

The City maintains that its efforts to raise revenues have been impaired by the relatively low total taxable value of the properties located within its boundaries. In fact, as shown by City Exhibit 11-3, the City has the lowest 1997 SEV taxable value of any of the comparables. See, also, the charts on pages 7 and 8 of this Decision. City Exhibit No. 11-5 shows that the amount of growth in the City's taxable value actually decreased in 1997 from 4.97% in 1996 to 3.85% in 1997. As a result, the average percentage increase in the City's total operating tax revenues has averaged 2.5% per year from 1993 to 1997. See, City Exhibit No. 15-6.

#### Expenditures

The following charts the increase in Public Safety expenditures vis a vis the increase in tax revenues:

YEAR	EXPENDITURES	% INCREASE	TAX REVENUES	% INCREASE
1983	\$1,025,255		\$1,863,169	
1993	1,547,104	50.90%	2,633,666	41.35%
1997	1,699,385	9.84%	2,825,924	7.30

Source: City Exhibit No. 11-7.

This chart shows that the City's expenditures have increased more than its tax revenues have increased.

Additionally, as shown below, the amount spent by the City on the Public Safety Department has increased.

YEAR	PERCENTAGE OF GENERAL FUND SPENT ON PUBLIC SAFETY
1973	40.86%
1983	46.98
1993	48.92
1997	50.92

Source: City Exhibit No. 11-8.

#### **(d) Comparison with Comparable Communities**

##### **(i) Public Employment**

As discussed above, the comparable communities in public employment are:

1. Berkley
2. Beverly Hills
3. Farmington
4. Grosse Pointe
5. Grosse Pointe Farms
6. Grosse Pointe Park
7. Grosse Pointe Woods

##### **Non-Unit Employees of the City**

Currently, there are two other collective bargaining units, in addition to the command unit. The rank and file sworn officers are in a unit represented by the Police Officers Association of Michigan (POAM). The employees in the City's Department of Public Works, excluding office clerical employees, temporary employees, supervisors and elected officials, are in a unit represented by American Federated of State County and Municipal Employees (AFSCME). There is also a group of non-unionized employees employed by the City.

##### **(ii) Private Employment**

Comparing public safety command officers with private sector employees is problematic because no employees in private sector perform the same job functions as the command officers of a public safety department.

#### **(e) Consumer Price Index**

The Consumer Price Index increased 3.207% in 1995 (City Exhibit No. 10-2); 2.67% in 1996 (City Exhibit 10-3); and, at the time of arbitration, was projected to increase 2.21% for 1997 (City Exhibit No. 10-4). As the City notes in its brief, the actual increase in CPI for 1997 was 1.54%.

#### **(f) Overall Compensation Received by Unit Employees**

All members of the collective bargaining unit are lieutenants. Article XII, Section C of the expired Collective Bargaining Agreement indicates that, for the purposes of an Act 312 proceeding, unit members

are to be compared to sergeants in other communities. The following charts the total cash compensation of Sergeants in the comparable communities:

**SERGEANTS  
TOTAL CASH COMPENSATION**

	Salary	Holiday	Uniform	Cleaning	Longvty. 20 years	COLA	Other	TOTAL
Berkley	\$53,301	\$2,563	\$600	\$550	\$4,264	None	\$250	\$61,528
Bev Hills	50,479	2,524	400	350	4,038	\$749	None	58,540
Farm	49,435	380	None	None	1,300	None	None	51,115
GP	47,485	2,087	275	200	850	1,000	None	51,897
GPF	48,236	1,500	None	125	600	750	None	51,211
GPP	49,508	900	350	250	1,485	None	None	52,493
GPW	52,225	2,412	400	None	1,000	1,200	None	57,267
<i>Average</i>	<i>50,096</i>	<i>1,767</i>	<i>405</i>	<i>295</i>	<i>1,934</i>	<i>925</i>	<i>250</i>	<i>54,864</i>
<b>CITY</b>	<b>56,598</b>	<b>2,612</b>	<b>125</b>	<b>350</b>	<b>INC.</b>	<b>0</b>	<b>440</b>	<b>60,125</b>

Source: City Exhibit No. 12-9.

**TOTAL NON-CASH COMPENSATION**

	Value of Sick Leave	Value of Personal Days	Value of Vacation Days	TOTAL
Berkley	\$2,460	\$615	\$6,560	\$9,635
Beverly Hills	2,524	582	4,854	7,960
Farmington	2,282	380	4,563	7,225
Grosse Pointe	2,152	None	6,262	8,414
GP Farms	2,226	371	5,380	7,977
GP Park	1,813	544	5,440	7,797
GP Woods	2,412	None	6,029	8,441
<i>Average</i>	<i>2,267</i>	<i>498</i>	<i>5,584</i>	<i>8,207</i>
<b>City</b>	<b>2,612</b>	<b>986</b>	<b>6,313</b>	<b>9,911</b>

Source: City Exhibit No. 12-13.

**TOTAL COMPENSATION**

	Total Cash Compensation	Total Non-Cash Compensation	TOTAL COMPENSATION
Berkley	\$61,528	\$9,636	\$71,163
Beverly Hills	58,540	7,960	66,500
Farmington	51,115	7,225	58,340
Grosse Pointe	51,897	8,414	60,311
GP Farms	51,211	7,977	59,188
GP Park	52,493	7,797	60,290
GP Woods	57,267	8,441	65,708
<i>Average</i>	<i>54,864</i>	<i>8,207</i>	<i>63,071</i>
<b>City</b>	<b>60,125</b>	<b>9,911</b>	<b>70,036</b>

Source: City Exhibit No. 12-14.

The above charts reveal that the overall compensation paid by the City is well above the average for all comparable communities. In fact, the City's overall compensation package ranks second, after Berkley.

Although the Article XII, Section C provision was not challenged during this proceeding, the City also prepared an analysis of the overall compensation received by lieutenants employed by the comparable communities. The following charts set forth the details of the total cash and non-cash compensation of lieutenants in the comparable communities:

### LIEUTENANTS

#### TOTAL CASH COMPENSATION

	Salary	Holiday	Uniform	Cleaning	Longvty. 20 years	COLA	Other	TOTAL
Berkley	\$58,444	\$2,810	\$600	\$550	\$4,676	None	\$250	\$67,330
Bev Hills	53,721	2,686	400	350	4,298	\$749	None	62,204
Farm	No Lts.	--	--	--	--	--	--	--
GP	50,954	2,224	275	200	850	1,000	None	55,503
GPF	58,366	1,500	None	125	600	1,330	None	61,921
GPP	52,091	900	350	250	1,563	None	None	55,154
GPW	54,469	2,514	400	None	1,000	1,200	None	59,583
<b>Average</b>	<b>54,674</b>	<b>2,105</b>	<b>405</b>	<b>295</b>	<b>2,165</b>	<b>1,070</b>	<b>250</b>	<b>60,283</b>
<b>CITY</b>	<b>56,598</b>	<b>2,612</b>	<b>125</b>	<b>350</b>	<b>INC.</b>	<b>0</b>	<b>None</b>	<b>60,125</b>

Source: City Exhibit No. 13-9.

#### TOTAL NON-CASH COMPENSATION

	Value of Sick Leave	Value of Personal Days	Value of Vacation Days	TOTAL
Berkley	\$2,697	\$674	\$7,193	\$10,565
Beverly Hills	2,686	620	5,165	8,471
Farmington	No Lts.	--	--	--
Grosse Pointe	2,310	None	6,719	9,029
GP Farms	2,694	449	6,510	9,653
GP Park	1,908	572	5,724	8,205
GP Woods	2,514	None	6,285	8,799
<b>Average</b>	<b>2,468</b>	<b>579</b>	<b>6,266</b>	<b>9,120</b>
<b>City</b>	<b>2,612</b>	<b>986</b>	<b>6,313</b>	<b>9,911</b>

Source: City Exhibit No. 13-13.

#### TOTAL COMPENSATION

	Total Cash Compensation	Total Non-Cash Compensation	TOTAL COMPENSATION
Berkley	\$67,330	\$10,565	\$77,895
Beverly Hills	62,204	8,471	70,675
Farmington	No Lts.	--	--
Grosse Pointe	55,503	9,029	64,532
GP Farms	61,921	9,653	71,574
GP Park	55,154	8,205	63,359
GP Woods	59,583	8,799	68,382
<b>Average</b>	<b>60,283</b>	<b>9,120</b>	<b>69,403</b>
<b>City</b>	<b>60,125</b>	<b>9,911</b>	<b>70,036</b>

Source: City Exhibit No. 13-14.



The above charts show that, even when the overall compensation of unit members is compared with that of lieutenants in the comparable communities, the City's compensation package is above average. Moreover, the City ranks fourth among the comparables, paying only \$7,859 less per year than Berkley, the first ranking comparable.

The City calculates the gross wages for Command Officers for 1996 and 1997 as follows:

NAME	1996	1997
W. Allen	\$ 76,500.50	\$ 82,960.04
D. Conciatu	77,785.41	78,972.88
R. Marshall	72,244.19	82,781.35

Source: City Exhibit No. 9.

**(g) Changes in Comparable Circumstances**

The only change is the tabulation of the actual CPI for 1997.

**(h) Other Factors**

The other factors taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, and arbitration will be discussed, as relevant, under the discussion of issues in dispute.

## CITY ISSUE NO. 1

### ARTICLE X – HOURS OF WORK

#### City Last Offer of Settlement

Revise Article X – Hours of Work by adding the following new Section E and add the following Letter of Understanding to the contract:

#### E. Twelve Hours Shifts

1. Effective January 1, 1998, the City will have the right to assign all Officers to 12-hour shifts, picked by seniority. Schedule as agreed (see attached letter of understanding). On short-staffing days under the schedule no paid leave time will be scheduled or approved.
2. Effective the date the City reschedules to a 12-hour shift structure, Section 22.2 shall be revised to provide a shift premium of three (3%) percent of base hourly rate for all hours worked between 7:00 p.m. and 7:00 a.m.
3. Effective the date the City reschedules to a 12-hour shift structure, all leave time will be recalculated from days to hours.
4. The City will maintain the exclusive right to assignment and to determine the level, if any, of Fire standby.
5. Effective the date the City reschedules to a 12-hour shift, overtime will be paid for all hours worked in excess of twelve (12) hours in any one work day or in excess of the work schedule as agreed (see attached letter of understanding).

The following letter of understanding shall be added to the contract:

#### Letter of Understanding

It is hereby agreed that in the event the City implements 12-hour shifts the attached schedule shall be utilized: (The schedule in the Letter of Understanding appears on page of this Decision.)

#### Union Last Offer of Settlement

Retain the current 24-hour shift system.

#### Background

For as long as anyone can remember, the bulk of the City's Command Officers have worked a 24-hour shift. The 24-hour shift was originally designed as a fire-fighting shift at a time when the fire departments of most municipalities were larger than the police departments.

Currently, three of the Command Officers work a 24-hour shift and one Command Officer, the Detective Lieutenant, works an 8-hour shift. The 24-hour shift starts at 7:00 a.m. and ends at 7:00 a.m. on the following day. The 8-hour day shift starts at 7:00 a.m. and ends at 3:00 p.m. The 8-hour afternoon shift starts at 3:00 p.m. and ends at 11:00 p.m. The 8-hour midnight shift starts at 11:00 p.m. and ends at 7:00 a.m. The three Command Lieutenants on the 24-hour shift schedule work on a nine-day rotational basis: one day on, one day off, one day on, one day off, one day on, and four days off. During the day shift and up until about 7:00 p.m. of the afternoon shift, the 24-hour Lieutenant performs administrative functions and goes on free patrol. At about 7:00 p.m., the 24-hour Lieutenant goes on standby, monitoring the radio and telephone, and performing other duties relating to special assignments, such as training or checking on equipment. From about 11:30 p.m. to about 6:00 p.m., the 24-hour Lieutenant, although remaining on standby, is typically sleeping in the dormitory.

Of the ten public safety officers represented by the POAM, three currently work a 24-hour shift schedule and seven work an 8-hour shift schedule. The following diagrams the scheduled attendance on a typical day under the current shift schedule:

DAYS	AFTERNOONS	MIDNIGHTS
One 24-hour Lieutenant	The same 24-hour Lt.	The same 24-hour Lt.
One 24-hour PSO	The same 24-hour PSO	The same 24-hour PSO
Two 8-hour PSOs	Two 8-hour PSOs	Three 8-hour PSOs

During the negotiations, which preceded the filing of this Act 312 Petition, the City proposed changing Article X by switching to eight hours shifts. Thus, the Petition, filed on March 11, 1997, indicates that an issue in dispute is the 8-hour shift. On July 7, 1997, the City and the POAM executed a collective bargaining agreement effective July 1, 1994 to June 30, 1999. In Article 11.8 of that agreement, the parties agreed that, effective January 1, 1998, the City has the right to assign all Public Safety Officers to a 12-hour shift. Command Officers were given a copy of the POAM contract and the City had informal discussions with the Command Unit regarding a 12-hour shift. Apparently to coordinate with the provision in the POAM contract, the City's Position Statement, dated February 18, 1998, indicates that its proposal is to revise Article X by going to a 12-hour shift schedule.

#### Analysis of Evidence

Two witnesses for the City, Department Director David Danaher and City Manager Alex Allie, provided testimony explaining why the City wants to change to a 12-hour shift schedule.

Danaher testified that there is a need for an immediate command response on the midnight shift, when the 24-hour Lieutenant is typically asleep. He explained that there are many "fluid tactical situations," such as police pursuits, which require command intervention. (Transcript II, page 192.) Danaher stated that immediate focus cannot be attained when a Lieutenant is awakened in the middle of the night to make a tactical decision. (Transcript II, page 193.) While the Lieutenant is sleeping, the Department is staffed by the least experienced PSOs, whose low seniority typically dictates that they work the midnight shift. Danaher also testified that the 24-hour shift does not "lend to a team organizational structure," but "breeds more of a 15-man / one-man Department rather than a Department of three distinct or four distinct shifts." (*Id.*) He explained that the one day on and one day off pattern followed by four days off is "not conducive to forming regular, regulated work plans." (Transcript II, page 194.) Danaher also testified that efficiency is impaired because logs, citations, and reports are not reviewed as carefully as they would be on a 12-hour or 8-hour shift. Danaher maintained that continuity of operations suffer because of lack of focus. (Transcript II, page 196.) Finally, Danaher pointed out that the only other jurisdiction featuring a shift with sleeping command is Bloomfield Hills. (Transcript II, page 203.)

Allie testified that the 24-hour shift structure originated as a schedule designed to suit the fire fighting needs of a municipality. He explained that with improved technology and electricity, fires are less of a problem than they used to be. For this reason, municipalities can no longer justify the amount of time spent on fire standby. (Transcript III, page 10.) Instead, Allie maintained that it makes more sense to deploy manpower on the road. (Transcript III, page 1.) He explained that a 24-hour shift is designed more for fire protection and the City wants to redesign the shifts more for police protection. (Transcript III, page 20.) According to Allie, the 24-shift schedule has outlived its useful life. (Transcript III, page 21.) Another problem, perceived by Allie, is that employees on an 8-hour shift tend to resent that their command is on a 24-hour shift. (Transcript III, page 12.) Allie also testified that the City would like to implement the 12-hour shift as soon as possible and planned to hire additional manpower upon implementation. (Transcript III, pages 11 and 14.)

The testimony of Danaher and Allie was not contradicted by any other evidence, except for the testimony of Lt. Douglas Conciatu that, from 11:30 p.m. to 6:15 a.m., he may be sleeping or reading but there are also times he has been out on the road. (Transcript III, page 39.) He also testified that command is not notified of a chase unless a Departmental vehicle is involved. (Transcript III, page 43.) Finally, Conciatu testified

that even the least senior PSOs have had prior police experience with other departments. (Transcript III, page 58.)

The evidence regarding the shift schedule of external comparable communities is depicted in the following chart:

**Regular Work Schedule**

Department	8-Hour Shift	12-Hour Shift	24-Hour Shift
Berkley	X		
Beverly Hills	X		
Farmington	X		
Grosse Pointe	X		X
GP Farms	X		
GP Park	X	X	
GP Woods	X		
Huntington Woods	X – 1 Detective Lt.	X – 3 Lieutenants	

Source: City Exhibit No. 14-2

The following charts show the number of leave days and scheduled workdays in the Department and the comparable communities:

**Total Work Days / Hours – Departments with 8 Hour Shifts**

Department	Total Paid Leave Days	Total Paid Leave Hours	Days Scheduled	Days Scheduled After Leave Days	Hours Scheduled After Leave Hours
Berkley	59.5	476	260	200.5	1,604
Beverly Hills	54	432	260	206	1,648
Farmington	50	400	260	210	1,680
GP Farms	54	432	260	206	1,648
GP Woods	54	432	260	206	1,648
Royal Oak	52	416	260	208	1,664

Source: City Exhibit No. 14-3

**Total Work Days / Hours – Departments with 24 Hour Shifts**

Department	Total Paid Leave Days	Total Paid Leave Hours	Days Scheduled	Days Scheduled After Leave Days	Hours Scheduled After Leave Days
Grosse Pointe	22.5	540	121	98.5	2,364
Huntington Woods	33	792	121	88	2,112

Source: City Exhibit No. 14-3

According to these charts, the Command Officers receive more hours of paid leave than the Officers of any other comparable community. In response to these charts, Detective Lieutenant Bob Marshall testified that 33 was merely the optimal number of paid leave days because Command Officers have sometimes taken only about 25 total leave days.

### The City's Position

The City takes the position that its proposal is justified for very practical reasons. It points out that the 24-hour shift schedule is "antiquated and terribly inefficient." The City notes that the great majority of the Department's operations involve police work, not fire work. For example, in 1996, there were only 9 fire runs. (See, page 15 of this Decision.) In contrast, during the same year, there were 639 index and non-index offenses leading to 67 index and non-index arrests by Department personnel. (See, page 13 of this Decision.) The City also asserts that the current schedule creates numerous operational problems: First, during the midnight shift the Command Officer is typically asleep, having the effect of slowing command responses, which is particularly serious in the event of a police pursuit. Additionally, because shifts are picked by seniority, the midnight staff of PSOs is usually the least senior. Second, the City maintains that the current schedule prevents effective management because it fosters lack of continuity in supervision and impairs the formation of team structure. The City submits that having all Department members on the same shift structure would alleviate each problem generated by the 24-hour shift schedule. It notes that its proposal is identical to that recently negotiated with the POAM. The City cites a number of Act 312 decisions where the panels have granted the employer's final offers to change shift schedules on the basis that the change would increase the employee's contact with the Department. *City of Ann Arbor and Ann Arbor Police Officers Association*, MERC Case No. D83 D1376 (G. Alexander, January 29, 1985); *City of Southfield and Southfield Police Officers Association*, MERC Case No. D87-123 (J. Canham, January 16, 1986); *City of Pontiac and Police Supervisors Association*, MERC Case No. D87 L-2575 (G. Grenadier, December 3, 1990); and *City of Pontiac and Pontiac Police Officers Association*, MERC Case No. D88 G-1785 (R. Browning, February 17, 1992).

### The Union's Position

The Union takes the position that the City's proposal for a 12-hour shift schedule should be disallowed because it was not identified in the original Petition, which only identified an 8-hour shift issue. It maintains that the 12-hour shift proposal was not made during negotiations or discussed during mediation. In the event the Panel finds that this issue is properly before it, the Union maintains that the proposal should be rejected on the basis that only one comparable community, Grosse Pointe, has a 12-hour shift. The Union further insists that the 12-hour shift proposal is an economic issue. It notes that the proposal encompasses more than just a shift change but also involves restrictions upon the use of paid leave time, modification of shift premiums, recalculation of all leave time from days to hours, management's exclusive right to determine the level of fire standby, modification of overtime payment calculation, and the introduction of a 12-hour shift schedule. In view of all items encompassed by the 12-hour shift proposal, the Union asserts that the issue is an economic issue because it impacts leave time, shift premium and overtime.

### Threshold Considerations

#### Properly Before the Panel

The first threshold consideration is whether the City's proposal for a 12-hour shift schedule is properly before the Panel. The facts pertinent to this consideration are not in dispute. The City proposed an 8-hour shift schedule during negotiations and this proposal went to mediation. There was no 12-hour shift proposal on the table during negotiations or before the mediator. The Petition identifies the hours of work issue as an 8-hour shift. Only after the City and POAM agreed that the City could institute a 12-hour shift did the City alter its proposal from an 8-hour shift to a 12-hour shift. Prior to this arbitration, members of the Command Unit had reason to know of the 12-hour shift agreement with the POAM because the POAM contract was distributed to them. Also, the City informally discussed the 12-hour shift with members of the Command Unit. The City's February 18, 1998 Position Statement was the first written verification that the City was proposing a 12-hour shift schedule. The bulk of the evidence regarding the shift change proposal was placed on the record during the hearing on February 25, 1998.

Based on this evidence, the proposal for a 12-hour shift schedule is properly before the Panel. See, *City of Pontiac and Police Supervisors Association*, MERC Case No. D87 L-2575 (G. Granadier, December 3,

1990). First and foremost, one of the characteristics of Act 312, for better or worse, is the provision in Section 8 which permits the parties to submit last offers of settlement on each economic issue "at or before the conclusion of the hearing." This arrangement enables either party to change its last offer at the end of the proceeding. Critics have commented that the last offers should be made at the start of the hearing. While this criticism has merit, the fact remains that the statute permits each party the flexibility to change its proposal during the course of the Act 312 proceeding.

Second, the Union's position throughout bargaining and mediation was consistent and fixed – it did not want to change the 24-hour shift schedule. Its opposition to changing the 24-hour schedule was not based on any particulars regarding the 8-hour proposal. Rather, the Union wanted no other schedule but the 24-hour schedule. This is made clear by the fact that the Union did not change its opposition once it became clear that the City's proposal was to go to a 12-hour schedule. In view of the Union's continuing opposition to any change in schedule, there was no point in remanding the issue for further negotiations between the parties. Second, although the City's modification of its proposal came late, it came in time to provide the Union the opportunity to respond on the record with testimonial evidence. Third, the 12-hour proposal was not a surprise. The City had approached members of the unit with the 12-hour proposal, prior to February 1998, when the Act 312 hearings commenced. Fourth, even though the Petition identifies an 8-hour shift proposal, the description of the issue, i.e., revising Article X – Hours of Work, was sufficiently broad to encompass the City's proposal as modified. Fifth, the Union had full opportunity to present rebuttal evidence regarding the 12-hour shift proposal before the close of the Act 312 hearing.

#### Economic or Non-Economic Issue

The second threshold consideration is whether the shift change proposal constitutes an economic or a non-economic issue. As discussed above, during the November 11, 1997 Pre-Hearing Conference, the parties agreed that the issue regarding the shift change was a non-economic issue. At that point, the proposal at issue was an 8-hour schedule. As of the City's Position Statement, dated February 18, 1998, the shift change proposal was changed to a 12-hour schedule. During the third day of hearing on February 25, 1998, the Union took the position that this proposal, as modified, was an economic issue because it implicated the payment of overtime. The parties stipulated that under the existing 24-hour shift structure, the Command Officers automatically receive "Firemen's overtime" in the amount of 9 hours of overtime every three weeks. The parties further stipulated that under the proposed 12-hour shift, the Command Officers would no longer automatically receive this "Firemen's overtime." In view of this stipulation and the fact that the proposal itself includes provisions regarding paid leave time, shift premiums, and the calculation of overtime, the shift proposal has a potential impact on wages. For this reason, the Panel Chair will treat the 12-hour shift proposal as an economic issue.

#### Findings

The Arbitration Panel finds that the City's last offer more nearly comports with the applicable Section 9 statutory factors, in particular:

**Section 9(c).** The majority of the Panel is persuaded by the preponderance of the evidence that a 12-hour shift schedule will better serve the interests and welfare of the public. Although the 24-hour shift structure has been in effect for many years, the evidence is persuasive that this structure is outdated and not designed to best protect the public's foremost interest in police protection. It was designed to maximize fire protection, not police protection. Fire run and arrest data from 1996 indicate a greater need for police protection than fire protection. (See, pages 13-15 of this Decision.) The 12-hour shift schedule is better designed to insure the most efficient deployment of available manpower towards the purpose of police protection.

Additionally, the evidence demonstrates that a 12-hour shift would provide greater continuity in command. The Panel agrees with Arbitrator Gabriel Alexander's analysis of the relationship between shift schedules and continuity of command in *City of Ann Arbor and Ann Arbor Police Officers Association*, MERC Case No. D83 D1376. He reasoned as follows:

While the four/ten schedule has been in effect in Ann Arbor for many years, I am satisfied by the proofs that it is not a type of schedule that is in wide use in municipal police departments in comparable Michigan cities, or more broadly in police administration in the United States. I think there is merit in the argument that a three day hiatus between tours of duty contributes to a loss of continuity of awareness and contact with police department affairs. The number of hours of work per day is not the only measure of effective work as a police officer, I believe. The number of days per week that the officer is on active duty is also significant. The notion is one of degree, of course. But five days activity of the seven day calendar week is measurably more beneficial than four days activity, I believe. And the evidence does not persuade me to agree with the Association's assertion that a ten hour work day provides more and better police patrol coverage than an eight hour work day.

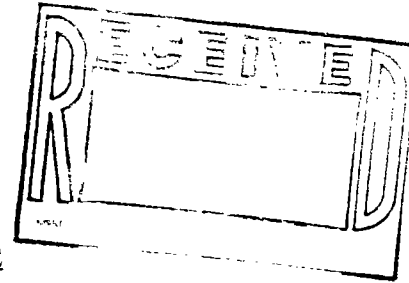
Page 16.

Finally, public interest and welfare is better served by assigning to the midnight shift a Command Officer whose duty is to be actively present with the PSOs on duty, and not merely on standby in the dormitory where he may be asleep.

**Section 9 (d).** A 12-hour shift comports more closely with the departments in comparable communities, than a 24-hour shift. Only Grosse Pointe has a 24-hour shift structure, further evidencing that the 24-hour shift structure is a thing of the past. The remainder of the comparables have modernized by abandoning the 24-hour shift schedule in favor of an 8-hour shift schedule.

As to the internal comparables, the PSO members of the POAM unit have already agreed to a 12-hour shift schedule. Having the Command Unit on a 12-hour schedule would mean that all sworn officers of the Department would be working the same schedule.

**Section 9 (f).** As discussed above, the members of the Command Unit are very well compensated. The total cash and non-cash compensation paid by the City ranks second among all the comparable communities. To whatever extent the 12-hour schedule might negatively affect leave time, the evidence shows that the Command Officers currently receive more leave hours than officers in any of the comparable communities.



SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 1 – Article X – Hours of Work that the City's last offer more nearly complies with the Section 9 factors. Article X is modified to incorporate the City's last offer regarding a 12-hour shift schedule and the Letter of Understanding.

Dennis B. DuBay

Dennis DuBay, Employer Delegate  
CONCUR ~~/ DISSENT~~

Dated: 10-4-99

Dennis Nauss

Dennis Nauss, Union Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-13-99

Anne T. Patton

Anne T. Patton  
Impartial Chair

Dated: 9/30/99



**THE PENSION PROPOSALS – ARTICLE XXVIII**

**CITY ISSUE NO. 2**

**ARTICLE XXVIII – RETIREMENT (FAC)**

**City Last Offer of Settlement**

Revise Article XXVIII – Retirement by adding the following new Section E:

E. Compensatory time payout shall not be included in Final Average Compensation (FAC).

Effective Date: January 1, 1998

**Union Last Offer of Settlement**

No change to the current language in Article XXVIII.

**CITY ISSUE NO. 3**

**ARTICLE XXVIII – RETIREMENT – “E” BENEFIT**

**City Last Offer of Settlement**

Revise Article XXVIII – Retirement, Section D to provide as follows:

D. For all Command Officers retiring after July 1, 1989 and before January 1, 1995 the City shall each and every year maintain the MERS Plan E, for purposes of adjusting pension benefits. Employees entering into the bargaining unit after January 1, 1995 shall be ineligible for the MERS Plan E post-retirement adjustments. Employees in the bargaining unit as of January 1, 1995 shall be grandfathered and receive the MERS Plan E post-retirement adjustments on that portion of the retirement allowance payment which is attributable to the employee's credited service time accrued prior to January 1, 1995. The MERS Plan E post-retirement adjustment shall not be paid on that portion of the retirement allowance payment which is attributable to the employee's credited service time accrued after January 1, 1995.

Effective Date: January 1, 1995

**Union Last Offer of Settlement**

No change to Article XXVIII, Section D.

**Background**

**Pension Benefits**

The City is a member of the Municipal Employees Retirement System of Michigan (MERS), which provides the pension benefits to all City employees. City Exhibit No. 15-1, page 3 sets forth the retirement benefits currently received by members of the Command unit. First, they receive the B-4 benefit multiplier, which is 2.5% for each year of service up to a maximum of 80% of final average compensation (FAC). (Transcript II, page 101.) All other City groups receive the B-3 benefit multiplier, which is 2.25% for years of service up to a maximum of 80% of FAC. The Command Officers also have the FAC-3 benefit, which means that the average of the last three years salary is used in determining the FAC. (Transcript 11, page

101.) The Command Officers receive the F-55 benefit, which is a provision for early retirement at age 55 with 25 years of service. (Transcript II, page 102.) Finally, Command Officers have the "E-2" benefit, a 2% cost of living increase to retirees. The amount of the retirement benefit is the product of FAC times the 2.5% benefit multiplier.

The following charts the features of the pension plan provided by the comparable communities:

	Multip.	FAC	Max.	Eligibility	EE Cntrb.	ER Cntrb.	COLA	Soc Sec	Type
Berkley	2.5 1 <sup>st</sup> 25 years 1.0 after	3 hiest of last 10 years	85% of base wage	25 or 60/10	5%	25.88%	No	No	A 345
Bev H.	2.25 up to age 62 2.0 at 62	2 consecu tive of last 5 years	None	50/25 or 55/10	o	8.76	No	Yes	Ord
Farm	2.25 until age 62 1.7 at 62	3 hiest of last 5 years	None	0/25 or 55/10	3% under \$4800 5% over \$4800	13.98	No	Yes	Ord
GP	2.5 1 <sup>st</sup> 25 years 1.5 after	4 hiest of last 5 years	70%	55/10	5%	0	Yes	No	Chart.
GP Farms Sgt.	2.5 1 <sup>st</sup> 25 years 1.5 after	3 hiest of last 5 years	70%	55 yrs.	5%	0	Yes	No	Ord
Lt.	Same	5 hiest of last 10 years	70%	55 yrs.	5%	0	Yes	No	Ord
GP Park	2.5	3 hiest of last 5 years	80%	50/25	6%	11.12%	No	No	MERS
GP Woods	2.5 1 <sup>st</sup> 25 years 1.5 after	Hiest 4 years	75%	50/25 or 55/20 or 60/10	6%	12.46%	Yes	No	Ord
Hunt Woods	2.5	3 hiest of last 10 yrs	80%	55/25	5%	18.48%	Yes	No	MERS

City Exhibit No. 16-1.

The following charts the components included in FAC in the City and comparable communities:

	Longvty	Unused Vacation Pay	Holiday Pay	COLA	Unused Sick Pay	OT	Comp Time	Shift Differ.
Berkley	X	X	X	X			0	
Bev Hills	X		X	X			0	
Farm	X	X	X			X	40	X
GP	X			X		X	40	
GP Farms	X	X	X	X		X	0	X
GP Park	X		X	X		X	0	
GP Woods	X		X	X		X	0	
<b>Hunt Woods</b>	X	X	X			X	480	

City Exhibits Nos. 16-1 and 17-4.

The following charts the total yearly pension benefit in the comparable communities:

Community	Total Wages	Additional Items	Years in FAC	Total FAC	Multiplier	Pension Benefit
Berkley	\$155,290.00	\$13,387.00	3	\$56,225.67	67.5%	\$37,952.55
Beverly Hills	96,669.00	7,311.00	2	52,490.00	67.5	35,430.75
Farmington	145,071.00	10,446.00	3	51,839.00	67.5	34,991.33
GP	182,087.00	7,590.00	4	47,419.25	70.0	33,193.30
GP Farms	185,742.00	11,622.00	4	49,341.00	68.75	33,921.94
GP Park	145,119.00	6,058.00	3	50,392.33	75.0	37,794.00
GP Woods	200,071.00	7,628.00	4	51,924.75	75.0	38,943.75
<b>Huntington Woods</b>	<b>\$164,898.00</b>	<b>\$24,449.00</b>	<b>3</b>	<b>\$63,115.67</b>	<b>75.0%</b>	<b>\$47,337.00</b>

City Exhibit Nos. 17-5, 17-6, 17-7 and 17-8.

As shown in the above chart, the pension benefits paid by the City are higher than those paid by any comparable community.

The Command Officers not only receive the best pension benefits of officers in any comparable community, they also receive the best pension benefits of any other employees employed by the City. All other City units have the B-3 (2.25%) multiplier. City Exhibit 15-1, page 3. The total multiplier after 30 years is 67.5% for all other unit employees, as compared to the 75% multiplier for Command Officers. City Exhibit No. 17-11.

The following charts the differences between the pension benefits of Command Officers and those of other employee groups employed by the City:

	Total Wages	Additional Items	Total FAC	Years in FAC	Pension Multiplier	Pension Benefits
Admin.	\$152,780.00	\$ 4,021.00	\$52,267.00	3	67.5%	\$35,280.23
DPW	169,312.00	5,073.00	34,877.00	5	67.5	23,541.98
PSO	143,388.00	22,484.00	55,290.67	3	67.5	37,320.75
<b>Command</b>	<b>\$164,898.00</b>	<b>\$24,449.00</b>	<b>\$63,115.67</b>	<b>3</b>	<b>75.0%</b>	<b>\$47,336.25</b>

City Exhibits Nos. 17-15 and 17-16.

The above chart shows that Command Officers receive the highest pension of any group of City employees. Additionally, as shown by the chart below, the Command Officers' 20 year payout is well above that received by any other City employee group:

	30 Year Pension Benefit	Payout – 20 Years No COLA	Payout – 20 years With COLA
Administration	\$35,280.00	\$705,600.00	\$ 705,600.00
DPW	23,542.00	470,840.00	470,840.00
Public Safety Officer	37,321.00	746,420.00	746,420.00
<b>Command</b>	<b>\$47,336.00</b>	<b>\$946,720.00</b>	<b>\$1,150.165.00</b>

City Exhibit No. 17-17.

#### Funding of Pension Benefits

An Annual Actuarial Valuation of the plan is prepared each year by the MERS actuaries. The most recent valuation, at the time of these hearings, is dated August 1997. As discussed above at page 20 of the Decision, the City has a defined benefit plan, which guarantees the amount of the pension benefits and places the investment risk entirely on the City. For these reasons, the City's contribution is not fixed, but varies with the investment markets and other factors. (Transcript II, page 98.) Tom Dawidowicz, an actuary and Vice President of Segal Co., described how the City's contribution is calculated:

The first step is to receive participant data from MERS. We receive a file which includes a record for each member, each individual plan member. It's reported to us what their current service credit is to date and their current compensation level, and the benefit plan that is currently in effect for those members.

Once we receive that data, we make a projection for each individual plan member to the date they're expected to retire, estimate their benefit at that point in time based on their estimated salary, their service at that point in time, assuming that the benefit formula does not change between now and the retirement date, estimate that benefit that will be payable at the future date, and then make an estimate, using the actuarial assumptions that the MERS board has adopted regarding how long we expect the individual to live after retirement, and essentially estimate how many dollars of benefit will be paid from the retirement date to the date of death, and then, using the interest discount, estimate today, in today's dollars, how many dollars would it take today -- on December 31 of 1996, for this valuation -- to fund that future obligation; what is the total cost of those future benefits.

Once that estimate is made, we then use that total value of future benefits and determine how much of that should be funded in each year in the future, and that is the normal cost component that you'll see in the valuation report.

Everything that is not expected to be funded through future contributions is called the actuarial accrued liability. That is, in a sense, all the cost allocation for all years prior to

the valuation date. We compare that to the assets on hand to determine are the assets equal to, less than, or greater than the liability. If the assets are less than the liability, then that would indicate that additional funding is required to bring the assets up to the current level of the plan liability. That contribution rate is shown as the amortization of unfunded liability component.

Transcript II, pages 103-105.

As Dawidowicz testified, two separate cost calculations are performed when calculating the contributions that the City must make to fund pension benefits. The first is the normal cost, i.e., the cost of benefit rights accruing on the basis of current service. (Transcript II, page 109.) The second is accrued actuarial liabilities, i.e., that amount of liability exceeding current assets. The unfunded accrued liability is amortized and funded over a 30-year period. (Transcript II, page 105.)

The following chart details the accrued liabilities, valuation assets, percent funded, and unfunded or overfunded accrued liabilities of the pension plans maintained by the City:

	ACTUARIAL ACCRUED LIABILITIES	VALUATION ASSETS	PERCENT FUNDED	UNFUNDED (OVERFUNDED) ACCRUED LIABILITIES
<b>Reserve for ER Contributions:</b>				
General Non-U	\$2,288,204	\$1,139,366		\$1,148,838
Public Safety	1,259,845	617,283		642,562
General – DPW	153,910	143,380		10,530
Command	1,070,012	464,363		605,649
Totals	\$4,771,971	\$2,364,392	49.5%	\$2,407,579
<b>Reserve for EE Contributions</b>				
General Non-U	\$ 144,574	\$ 144,574		
Public Safety	197,467	197,467		
General – DPW	5,870	5,870		
Command	139,371	139,371		
Totals	\$ 487,282	\$ 487,282	100.0%	\$ 0
<b>Reserve for Retired Benefit Payments</b>	\$4,287,960	\$4,287,960	100.0%	\$ 0
<b>Municipality Totals</b>	\$9,547,213	\$7,139,634	74.8%	\$2,407,579

City Exhibit no. 15-1, page 27.

As Dawidowicz testified, this chart shows that the plan is 100% funded for current retirees, but only 49.5% funded for all active employees. (Transcript II, page 108-109.)

This chart also indicates that the per capita unfunded accrued liability is greater for Command Officers than for any other employee group. The unfunded accrued liability for the four active Command Officers is 43.4% (\$464,363 divided by \$1,070,012). The four Command Officers equal 10% of the 40 employees employed by the City, but the per capita unfunded accrued liability for Command Officers amounts to 25.2% of all the unfunded accrued liabilities (\$605,649 divided by \$2,407,579). The per capita unfunded accrued liability for each Command Officer is \$151,412.00 (\$605,649 divided by 4).

In contrast, the 20-member general non-union group has a per capita unfunded accrued liability of \$57,442.00 (\$1,148,838 divided by 20). The 10 member Public Safety group has a per capita unfunded accrued liability of \$64,256.00 (\$642,562 divided by 10). The six member DPW group has a per capita

unfunded accrued liability of \$1,755.00 (\$10,530 divided by 6). The average per capita unfunded accrued liability for all non-Command employees is \$41,151.00.

In short, the per capita unfunded accrued liability for each Command Officer is 3.7 times greater than the average per capita unfunded accrued liability for all other City employees.

As discussed above on pages 19-20 of this Decision, the City's pension plan was 100% funded in 1990. After exhaustion of the accelerated funding credit in 1990, the City's required contribution to the plan rose from 4.6% in 1990 to 15.73% in 1996. City Exhibit No. 15-1, page 30-D, Table 10-D.

The following charts the City contributions to the retirement system for the fiscal year beginning July 1, 1998:

Valuation Division	Normal Cost	Unfunded Accrued Liability	Totals	Number in Group	Per Capita Contribution
<b>Cost as % of Payroll</b>					
General Non-U	6.87%	7.23%	14.11%	20	0.71%
Public Safety	8.93	6.19	15.12	10	1.51
DPW	6.24	0.24	6.48	6	1.08
Command	5.23	10.50	15.73	4	3.93
<b>Annual \$ Contributions</b>					
General Non-U	\$ 61,978	\$ 65,243	\$127,221	20	\$ 6,361
Public Safety	52,642	36,492	89,134	10	8,913
DPW	15,804	598	16,402	6	2,734
Command	17,147	34,395	51,542	4	12,886
<b>Totals</b>	<b>\$147,571</b>	<b>\$136,728</b>	<b>\$284,299</b>	<b>40</b>	<b>\$30,894.00</b>

City Exhibit No. 15-1, page 28, Table 8.

This chart shows that the annual per capita contribution for each Command Officer (\$12,886) is twice the average contribution of all other City employees (\$6,003). This chart also makes clear that two-thirds of the required contribution for Command Officers is based on the unfunded accrued liability (10.5% of the total of 15.73%).

However, the above-charted City contributions for the Command unit do not include any cost for either the compensatory time payout in FAC or the E-2 Benefit. Obviously, the inclusion of these costs would increase the City's contribution.

### Analysis of Evidence - Compensatory Time Payout

Dawidowicz testified that the typical MERS member does not include payment for compensatory time in the computation of FAC. Transcript II, page 127. He also testified that the annual valuation reports prepared for the City have not included the cost of including compensatory time. Transcript II, page 146.

The following chart shows that the City permits unit employees the highest accumulation of compensatory time as compared to the comparable communities:

Community	Contract Language	Departmental Policy
Berkley	80 hours	
Beverly Hills	None	Ees allowed to accumulate up to 40 hours, which is paid off on 12/31 each year
Farmington	40 hours	
Grosse Pointe	None	No maximum but comp time must be used by 6/30 or lost
GP Farms	None	No comp time earned
GP Park	"On June 30 <sup>th</sup> , employees with accumulated compensatory time will be allowed to carry 24 hours over to the fiscal year, the balance will be paid in full."	
GP Woods	None	No comp time earned
Huntington Woods	No cap	

City Exhibit No. 16-4.

As of July 1, 1996, the dollar value of the compensatory time inclusion for the City was \$13,060.00. City Exhibit No. 17-6. In contrast, the dollar value of the comp time inclusion in those comparable communities, which include compensatory time in FAC is as follows:

Farmington	\$ 950.00
Grosse Pointe	\$ 913.00
Grosse Pointe Park	\$ 952.00

Thus, no other comparable community pays nearly as much as the City for the inclusion of compensatory time in FAC. City Exhibit No. 17-6.

The following charts the pension benefits of Command Officers with and without compensatory time (480 hours) rolled into FAC:

	With Compensatory Time	Without Compensatory Time
Years in FAC	3	3
3 year wages	\$164,898.00	\$164,898.00
Additional income	24,449.00	11,389.00
Total	189,347.00	176,287.00
FAC	63,115.67	58,762.33
Multiplier	0.75	0.75
Pension Benefit	\$ 47,336.75	\$ 44,071.75

City Exhibit No. 16-5.

This shows that the difference in pension benefits, without compensatory time, is \$3,265 per year. The 20-year payout difference would be \$65,300.

Even when the compensatory time payout is excluded from the City's pension benefits, the resulting pension of \$44,072 is still higher than the pension benefit paid by any comparable community. See, chart on page 34 of this Decision.

### **The City Position**

The City maintains that its Last Offer is fair and reasonable. It notes that, even without the inclusion of compensatory time in FAC, the Command Officers have the highest pension benefit of all the comparables and of all other City employees. Second, the City points out that "inclusion of compensatory time which may have been accumulated over a five or ten year period artificially inflates the last three years compensation." City Brief at page 52. Third, it stresses that MERS has not recognized, or included in past funding requirements, the inclusion of compensatory time in FAC. The City argues that including these additional costs would impose a substantial, unjustified burden.

### **The Union Position**

As more fully discussed below, the Union takes the position that the City's Last Offer regarding the exclusion of compensatory time from FAC violates Article 9, Section 24 of the 1963 Michigan Constitution.

### **Analysis of Evidence - Elimination of E-2 Benefit**

MERS provides three types of E-benefits. The first is a one-time increase to present retirees and beneficiaries equal to 2% of the present benefits times the number of years since the later of retirement or the last Benefit E increase. The Benefit E may be readopted. The second type of benefit is the Benefit E-1 which provides an automatic 2.5% annual non-compounded benefit increase to those who retire before the effective date of Benefit E-1. Cumulative increases are limited to increases in the consumer price index. The third benefit is the E-2, which provides an automatic 2.5% annual non-compounded benefit increase to persons and their beneficiaries retired on or after the effective date of the E-2 benefit. Cumulative increases are limited to increases in the consumer price index. See, City Exhibit No. 15-1, page 8.

The benefit at issue, as described in the collective bargaining agreement does not fit the description of any of the benefits provided by MERS. Article XXVIII, Section D provides:

- D. Effective July 1, 1989, for all command officers retiring after that date, the City shall each and every year maintain the MERS Plan E, for purposes of adjusting pension benefits.

Dawidowicz testified that very few of the 520 jurisdictions in the MERS plan include the E-2 Benefit. Transcript II, page 126.

Dawidowicz prepared the following summary of the contributions necessary to support the E-2 Benefit:



	Current Benefits	Improved Benefits	Difference
1. Number of Active Members	4	4	0
2. Annual Payroll	\$297,186	\$297,186	0
3. Actuarial Accrued Liability			
a. ER portion	1,070,012	1,253,998	\$182,986
b. EE portion	139,371	139,371	0
c. Total	1,209,383	1,392,369	182,986
4. Percent Funded	74.8%	73.4%	-1.4%
5. Cost as % of Payroll			
a. Normal cost	5.23%	6.71%	1.48%
b. Unfunded Accrued Liability	10.50	13.67	3.17
c. Total	15.73	20.38	4.65
6. Annual \$ Contributions			
a. Normal cost	\$17,147	\$21,990	\$ 4,843
b. Unfunded accrued liability	34,395	44,787	10,392
c. Total	51,542	66,777	15,235
7. Accelerated Funding Credit	0	0	0
8. MERS ER contribution for fiscal year beginning 7/1/98	\$51,542	\$66,777	\$15,235

City Exhibit No. 15-1 page 3.

In short, with the E-2 Benefit, the actuarial accrued liabilities for the 4-man Command unit would be \$182,986.00, a percentage increase of 4.65 each year. These amounts are not included in the valuation report and would have to be added to the City's current costs. Transcript II, page 118.

According to Dawidowicz, the only costs built into the funding plan are for the E benefits that have already been adopted and granted to the retirees. Transcript II page 119.

Providing the E-1benefit to retirees in the future would impose additional costs, not currently reflected in the pension plan, in the amount of \$14,093 the first year, increasing the contribution rate by 4.3% of payroll. Transcript II, page 119. City Exhibit No. 11-9, page 3.

Adding the additional cost of \$15,235 for active employees (4.65% of payroll) to the additional cost of \$14,093 for retirees (4.3% of payroll), the total cost would be \$29,238 or 8.95% of payroll. This would increase the percentage of payroll contribution for Command Officers from 15.73% to 24.68%. City Exhibit No. 11-9, page 2.

The following charts the additional costs over a 20-payout and a 30-year payout:

30 Year Pension Benefit	Payout-20 years / No COLA	Payout-20 Years With COLA
\$47,337.00	\$946,740.00	\$1,150,165.00

City Exhibits Nos. 17-9 and 17-10.

As shown on the following chart, only three of the comparable communities (Grosse Pointe, Grosse Pointe Farms, and Grosse Pointe Woods) provide a post-retirement benefit. One of those three, Grosse Pointe Woods limits the benefits to 10 years.

<b>Community</b>	<b>Automatic Post Retirement COLA</b>
Berkley	None
Beverly Hills	None
Farmington	None
Grosse Pointe	2% compounded
GP Farms	Each member retired after 1/1/92 who has been retired at least 54 months, shall receive 2.5% non-compounded for a maximum of 10 years.
GP Park	None
GP Woods	2.5% or original benefit
Huntington Woods	<b>"The City shall each and every year maintain the MERS Plan E benefit"; (a one time benefit increase equal to 2% of the present benefit times the years since the last benefit E increase or the later of retirement.)</b>

City Exhibit No. 16-4.

No other employee group employed by the City has a post-retirement benefit.

#### **The City Position**

The City maintains that its Last Offer is fair reasonable because of the substantial costs of the E-2 Benefit, which have not been calculated in the past valuations because MERS recognizes no such benefit. It points out that the City pays unit employees the highest pension benefits paid by any of the comparable communities. Further, no other City employees receive post retirement benefits.

#### **The Union Position**

As more fully discussed below, the Union takes the position that the City's Last Offer regarding the exclusion of compensatory time from FAC violates Article 9, Section 24 of the 1963 Michigan Constitution.

### Constitutionality

The Union challenges the constitutionality of the City's Last Offer regarding Issues Nos. 2 and 3 on the basis that they violate Article 9, Section 24 of the 1963 Michigan Constitution. Neither party cites to the Panel a case in which a Michigan court has specifically addressed the constitutionality of eliminating compensatory time payouts from FAC or the constitutionality of eliminating the post-retirement E-2 benefit.

#### I. Paragraph I of Article 9, Section 24 of the 1963 Michigan Constitution

##### A. The Arguments

The Union challenges as unconstitutional the City's Last Offer regarding Issue No. 2 (elimination of compensation time payout from FAC) and Issue No. 3 (elimination of the E-2 Benefit). The Union argues that these Last Offers violate the Article 9, Section 24 of the Michigan Constitution of 1963, which states, in relevant part:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

The Union maintains that the test for determining whether this provision has been violated is a "comparison of the value of the pension benefits before and after the proposed change." Union Brief at page 8. While the Union does not concede that pension changes, which apply only to future services, are permissible, it asserts that diminution of pension benefits for years of service already rendered is an obvious Constitutional violation. *Id.* The Union further contends that the financial benefits of a pension plan accrue while the employee performs his work for the employer. Further, it argues that the Constitution protects more than the amount of pension payments, citing precedent that age of eligibility, health insurance benefits, and yearly fees are also included within the protection against diminution and impairment. In short, the Union maintains that the slightest adverse impact is constitutionally impermissible.

The City responds that the Panel has no authority to address the constitutional issue. It asserts that the phrase "the lawful authority of the employer" contained in Section 9(a) does not include the legal obligation of the employer. Constitutional mandates, according to the City, fall within the employer's legal obligation but have no impact on its "lawful authority" within the meaning of Section 9(a) of Act 312.

In the alternative, the City argues that its Last Offer regarding the E-2 Benefit does not violate the Constitution because it has no effect upon any accrued financial benefit. It maintains that the Constitution only protects "accrued" benefits, which refers to benefits already earned through work performed. The City points to a passage in the debates of the delegates to the Constitutional Convention, which, it contends, makes clear that the drafters intended accrued financial benefits to refer to work performed in prior years of service. It notes that this interpretation has been adopted by the courts and the Attorney General, who has also determined that accrued benefits can only be based upon past performance. The City cites a Michigan Supreme Court decision where the Court found that a prospective increase in the contribution paid by public school employees did not violate the Constitution because the legislature could "properly attach new conditions for earning financial benefits, which have not yet accrued." The City maintains that its proposal to eliminate the E benefit does not diminish or impair any accrued benefits because it would not affect any benefit based on work performed prior to the effective date of the contract. Rather, the proposal includes a protection for all unit members who retired before January 1, 1995 and grandfathers current unit members up until the effective date of the contract, January 1, 1995.

The City further argues that the two benefits at issue cannot be considered "accrued financial benefits" because they are contractual benefits, which employees only earn during the duration of the contract creating the right to those benefits. In other words, the City maintains that upon expiration of the 1993-1994 Agreement, the employees' right to accrue the benefits at issue terminated. Thus, from January 1, 1995 to the present, the employees could not have accrued any right to either the inclusion of comp time in FAC or the E-2 benefit because no contract was in effect to maintain those benefits. The City contends that no

rights accrue until the Panel issues an Award, effective January 1, 1995, defining benefits. Any other interpretation, according to the City, would ignore or abrogate the Panel's authority under Section 10 of Act 312 to issue retroactive awards.

## B. The Analysis

### 1. The Panel's Jurisdiction:

At the outset, the Panel must consider whether it has authority to address the constitutional issue raised by the by Union. Act 312 does not specifically grant the Panel jurisdiction to resolve constitutional issues. That jurisdiction resides in the courts of this State. Nevertheless, Section 9(a) of the Act requires the Panel to consider the lawful authority of the employer. The Act nowhere defines what is meant by this term. However, common sense indicates that this phrase directs the Panel to consider whether the employer's last offer is legal, i.e., whether it comports with its legally defined authority and whether it is consistent with its obligations under the law. Thus, the Chair interprets the phrase "lawful authority of the employer" to include consideration of whether the employer's last offer is consistent with the State Constitution, State statutes, and court decisions interpreting state statutes.

No court to date has determined the precise constitutional issue before the Panel, whether compensatory time payouts and E-2 benefits are "accrued financial benefits" within the meaning of Article 9, Section 24 of the 1963 Michigan Constitution. If a court had already decided these issues, the Panel's role would be obvious - - apply that precedent. Absent precedent, the Panel's role is to predict what a court of law would likely conclude based on existing precedent.

For the above reasons, the majority of the Panel concludes that it has jurisdiction, pursuant to Section 9(a) of the Act, to determine whether there is a reasonable basis, given existing precedent, to predict that a court would likely find the City's last offers regarding Issues Nos. 2 and 3 to be unconstitutional.

### 2. Accrued Financial Benefits under Article 9, Section 24 of the 1963 Michigan Constitution:

Article 9, Section 24 of the 1963 Michigan Constitution clearly protects the "accrued financial benefits of each pension and retirement system" from being "diminished or impaired." The first inquiry is to determine what the drafters meant by "accrued financial benefits" or, stated differently, what items they intended to include within the protection afforded "accrued financial benefits."

The foremost clue regarding the intent of the drafters appears in the following excerpt from the debates of the delegates to the Constitutional Convention:

Now it is the belief of the committee that the benefits of pension plans are in a sense deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan, which should not be diminished by the employing unit after the service has been performed.

Delegate VanDusen, 1 Official Record, Constitutional Convention 1961, 770-771.

This quote makes clear that the intent of the drafters was to protect from diminishment and impairment benefits of pension plans with respect to work or service, which the employee has already performed.

The Michigan Supreme Court relied upon this excerpt in an *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich 624 (1973). In that case, the question before the Court was whether the statute increasing the contribution of public school employees to a retirement fund from 3% to 5% of their compensation violated Article 9, Section 24 of the Michigan Constitution. In holding that the statutorily increased contribution did not violate the Constitution, the Court reasoned:

Under this constitutional limitation [Article 9, Section 24] the Legislature cannot diminish or impair accrued financial benefits, but we think it may properly attached new conditions for earning financial benefits which have not yet accrued. Even though compliance with the new conditions may be necessary in order to obtain the financial benefits which have accrued, we would not regard this as a diminishment or impairment of such accrued benefits unless the new conditions were unreasonable and hence subversive of the constitutional protection.

389 Mich at 663-664.

The Court concluded that increasing the employee contributions by \$84 per year to equalize their contribution with those of other employees in the retirement system did not have the effect of subverting the constitutional provision

The Court has not wavered in its definition of "accrued financial benefits." In *Kosa v State Treasurer*, 408 Mich 356, 370-371; 292 NW2d 452 (1980), the Court once again defined "accrued financial benefits" as "the right to receive certain pension payments upon retirement, based upon service performed." Similarly, in *Retirement Board v Charter Township of Shelby*, 438 Mich 247, 254 n 3; 475 NW2d 249, 252 n 3 (1991), the Court, citing *Kosa*, noted that it had defined "accrued financial benefits" as the right to receive certain pension payments on the basis of service performed."

The Michigan Court of Appeals applied this definition in *Halstead v. City of Flint*, 127 Mich App 148, 154; 338 NW2d 903, 906 (1983) recognizing that "accrued financial benefits" as defined by the Michigan Supreme Court in the *Advisory Opinion* and *Kosa* cases meant "the right to receive certain pension payments upon retirement based on service performed." Next, in *Association of Professional and Technical Employees (APTE) v City of Detroit*, 154 Mich App 440,446; 398 NW2d 436 (1986), the Court of Appeals clarified that the financial benefits of a pension plan accrue while the employee performs his work for the public employer. In view of this, the court found that the unilateral imposition of a minimum age of 65 for retirement diminished and impaired plaintiff's "accrued financial benefits" because it would "substantially delay the receipt of pension benefits related to work already performed by plaintiffs." *Id.* By so holding, the court rejected the defendant's argument that benefits did not accrue until an employee retires.

More recently, the Michigan Court of Appeals, in *Seitz v Retirement System*, 189 Mich App 445 (1991), applied the following principle of law:

[T]he Legislature may increase pension benefits but not reduce them with respect to those individuals who have accrued rights under the pension plan at the time of the legislative enactment. . . . Thus, while the Legislature may change public pensions plans from time to time, including adding restrictions on benefits, the state may not reduce the pension benefit of any state employee or official, or local employee or official, once a pension right has been granted.

*Id.*, 189 Mich App at 456.

In the *Seitz* case, only retirees, not active employees, were at issue.

In 1991 the Attorney General determined that accrued financial benefits are based upon past performance. In a decision, which addressed whether certain statutory provisions exempting pension benefits from state income tax could be repealed or limited, the Attorney General found that:

[I]t is clear that, inasmuch as Constitution 1963, Article 9, Section 24, encompasses only benefits payable for work, already performed, no contractual right to a prior benefit structure could arise to those who become members of a retirement system subsequent to the enactment of changes in the benefit structure.

OAG, 1991-92, No 6697, p 116.

In *Musselman v Governor*, 448 Mich 503 (1995), the Supreme Court addressed whether health benefits are "accrued financial benefits" within the meaning of the first paragraph of Article 9, Section 24. The Court held that the term "financial benefits" must include "retirement health care benefits." *Id.* at 513.

In summary, the clear and unambiguous language of 1963 Michigan Constitution Article 9, Section 24 protects the accrued financial benefits of a pension system from being diminished or impaired. The courts have repeatedly defined this term as the right to receive certain pension payments on the basis of **services performed**. The courts have clarified that accrual takes place as services are performed, not at the time of retirement. The Court has included retirement health care benefits within the phrase "accrued financial benefits." Additionally, the courts have barred certain changes, interpreted to have the effect of diminishing and impairing the accrued financial benefits, such as imposing a minimum age of 65 for retirement. However, the Supreme Court has held that this constitutional provision does not bar all changes to a pension fund. For example, in *Advisory Opinion* case, the Court held that the Legislature may properly attach new conditions for earning financial benefits which have not yet accrued. Similarly, in the *Seitz* case, the Court specifically stated that the Legislature may change public pension plans and add restrictions on benefits as long as it does not reduce the pension benefit of any employee once a pension right has been granted. Thus, an employer may not diminish or impair benefits based on services already performed, but it may impose new conditions for earning financial benefits which have not yet accrued, i.e., the services upon which such benefits are based have not yet been performed.

In view of this precedent, the test for determining violation of Article 9, Section 24 is whether the change diminishes or impairs a financial benefit, which has accrued based on services already performed.

### 3. Continuance of Contractual Benefits:

The Panel must also consider the City's argument that the benefits at issue cannot be considered "accrued financial benefits" within the meaning of the Michigan Constitution because, as contractual benefits, they ceased with expiration of the 1993-94 Agreement and employees had to right to accrue them since January 1, 1995.

Including compensatory time in FAC and the E-2 benefits are without question contractual benefits and would be considered to be mandatory subjects of bargaining. Under classic labor law analysis, mandatory subjects of bargaining survive contract expiration. The Michigan Court of Appeals has explained this as follows:

At contract expiration, those 'wages, hours, and other terms and conditions of employment' established by the contract which are 'mandatory subjects' of bargaining survive the contract by operation of law during the bargaining process. The public employer, thus, has the continuing obligation during the bargaining process to apply those 'wages, hours, and other terms and conditions of employment' so designated as 'mandatory subjects' until such time as impasse is reached in the bargaining process. . . .

Neither party may take unilateral action on a 'mandatory subject' of bargaining absent an impasse in negotiations. . . . An employer taking unilateral action on a 'mandatory subject' of bargaining prior to impasse in negotiations has committed an unfair labor practice. . . . this prohibition against unilateral action prior to impasse serves to foster labor peace and must be liberally construed, particularly in light of the prohibition against striking by public employees. . . .

*Local 1467, IAFF and City of Portage*, 134 Mich App 466; 352 NW 2d 284 (1984).

Here, there is no evidence that the parties had reached impasse on or before January 1, 1995. This means that the benefits at issue remained in effect and have accrued since January 1, 1995.

Additionally, Section 13 of the Act bars unilateral change of existing benefits during the pendency of Act 312 proceedings. There is no evidence that the parties reached impasse between January 1, 1995 and on or before March 11, 1997, when this Petition was filed commencing the Act 312 proceeding. This means that the benefits at issue have continued to accrue to date.

This conclusion should not be taken to mean that the Panel lacks authority to issue an Award retroactively. Section 10 of Act 312 specifically provides:

Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding.

The Panel notes that this language speaks in terms of retroactive increases in pay or benefits. It is silent regarding the Panel's authority to issue retroactive decreases in benefits.

#### 4. Elimination of Compensatory Time Payout from Calculation of FAC

Under Article X, Section D, Command Officers are allowed to accumulate and use compensatory time consistent with the Fair Labor Standards Act (FLSA). Under FLSA, an employee who works overtime may elect to accumulate paid time off at the rate of one and one-half times the hours worked in lieu of receiving a cash payment. The employee may then elect to take compensatory time off with pay, up to the amount of compensatory time accumulated. FLSA permits an employee to accumulate up to 480 hours of compensatory time.

Section D of the expired contract provides:

D. The City in recognizing the advantage to employees to allow greater selection in the use of compensatory time will allow employees to use compensatory time subject to the following provisions and the Fair Labor Standards Act:

1. Compensatory time may be used in accordance with Department needs. The Department will make every effort to accommodate the officer's request.
2. The use of compensatory time is not to be used as a scheme to create other overtime situations.
3. Upon termination of employment, if the employee is unable to utilize all of his compensatory time, the unused compensatory time as computed under the Fair Labor Standards Act, will be paid at the hourly rate at time of termination.

Under Section D (3), unused compensatory time, as computed under FLSA, is paid at the hourly rate at the time of termination. The rate at the time of termination is used because compensatory time may be accumulated over many years at different hourly rates.

The City's proposal does not include any change to Section D (3). Nor does it include elimination of overtime from computation of FAC. Thus, if a unit member wants overtime included in FAC, he/she need only elect the cash overtime payment instead of compensatory time.

There is no question that compensatory time payouts, like retirement health benefits, are a financial benefit. Because compensatory time may be accumulated, there is every likelihood that the Command Officers have accumulated from their date of hire to the date of this Award some amount of compensatory time. Obviously, this accumulation is based on services already performed. Under the precedent discussed above, there is a reasonable basis for predicting that a court would likely find constitutional the prospective aspect of the City's Last Offer which pertains to compensatory time not yet accumulated, i.e. compensatory time accumulated after the effective date of this Award.

However, to pass constitutional muster, the City's Last Offer must not diminish or impair whatever amount of compensatory time has been accumulated for services already performed. The City's last offer protects

only that portion of compensatory time accumulated as of the effective date of its proposal, January 1, 1998. It leaves unprotected, and thus subject to diminishment and impairment, any compensatory time accumulated from January 1, 1998 to the date of this Award. As concluded above, Command Officers accumulated compensatory time from January 1, 1998 to the date of this Award. For this reason, there is a reasonable basis to predict, given the precedent discussed on pages 43 to 46 of this Decision, that a court would likely find the City's Last Offer to be unconstitutional as to that part which fails to include the accumulation of compensatory time based on services already performed from January 1, 1998 to the date of this Award.

#### 5. Elimination of the E-2 Benefit

Similarly, there is no dispute that the E-2 Benefit is a financial benefit. Under the precedent discussed above, there is a reasonable basis for predicting that a court would likely find constitutional the prospective aspect of the City's Last Offer which pertains to the E-2 Benefit based on services in the future, not yet performed. The critical question is whether the Last Offer impairs or diminishes the E-2 benefit based on services already performed.

The City, by the terms of its Last Offer, recognizes that a certain portion of the E-2 Benefit is based on services already performed. The Last Offer, in fact, is designed to protect that portion of the E-2 Benefit "attributable to the employee's credited service time accrued prior to January 1, 1995." Thus, the Last Offer grandfathered employees in the unit as of January 1, 1995 and allows them to receive the E-2 benefit earned on the basis of services performed prior to January 1, 1995. However, the protection is not sufficiently comprehensive because it excludes that portion of the E-2 benefit attributable to the services already performed by grandfathered employees from January 1, 1995 up until the date of this Award. There is no question that Command Officers performed services during this time frame and, as concluded above, continued to earn the E-2 benefit based on those services. Thus, there is a reasonable basis for predicting, based on discussed precedent, that a court would likely find that portion of the City's Last Offer which excludes January 1, 1995 to the date of this Award, to be unconstitutional because it has the effect of diminishing and impairing an accrued financial benefit.

### II. Paragraph Two of Article 9, Section 24 of the 1963 Michigan Constitution

The Union raises a second constitutional challenge to the City's proposal to eliminate the E-2 Benefit. It asserts that the City has failed to properly fund the E-2 Benefit for Command Officers contrary to Article 9, Section 24 of the 1963 Michigan Constitution. That section provides, in relevant part:

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

According to the Union, this provision requires the City to fund, each fiscal year as services are rendered, the E-2 increases which current Command Officers will receive after retirement. It also means that contributions made to fund this benefit cannot be diverted to any other purpose. The Union asserts that the evidence establishes that the City failed to fund Benefits E-1 and E-2 for Command Officers each fiscal year as required by Article 9, Section 24 of the 1963 Constitution. It notes that Dawidowicz gave undisputed testimony that the City failed to even report the Benefits E-1 and E-2 for Command Officers. Because of this failure by the City, the actuary calculated the City's pension contributions without regard to this benefit. The Union submits that, it is improper for the City to attempt to shift the consequences of its own constitutional violation on the Command Officers. The Union asserts that, had the City met its constitutional obligation to fund the Benefits E-1 and E-2 each fiscal year, as Command Officers rendered their years of service, the "funding crisis" now claimed would be non-existent. The Union maintains that the City, not the Command Officers, must suffer the consequences of the City's constitutional violations by making up for its own funding deficiencies.



The Union also asserts that the evidence proves that pension contributions made to pay for the pensions of current Command Officers have been "diverted" to pension reserves set aside for other purposes by the method of reserve accounting. Union Brief page 12. The Union explains as follows:

When it does reserve accounting, MERS makes no effort to "trace" the portion of pension plan receipts attributable to the normal cost contributions and contributions made to amortize unfunded actuarial liability. It ignores the purpose of the contribution (i.e., what liabilities account for the contributions made to the fund) and simply assures that the reserves for retiree benefits and employee contributions are fully funded. By placing contributions in the reserves established for retirees and employee contributions in an amount necessary to fully fund those reserves, all unfunded pension liabilities (whether attributable to retirees or current employees) necessarily appear as unfunded amounts needed to pay pension benefits to current employees. This misleading reserve accounting treats new liabilities that arise because of retirees as if they were part of the cost of providing benefits to current employees.

Union Brief at pages 12-13.

The City's response to the Union's challenge is that "the City has absolutely no control over the actuarial methods used by MERS, nor has it any means of affecting these methods." City Brief at page 53. It notes that the automatic 2% increase provided in the E-2 Benefit is not recognized by MERS as a plan feature because under MERS there is no such benefit.

Resolution of this constitutional question turns upon the interpretation and application of the second sentence in Article 9, Section 24 of the 1963 Michigan Constitution. It provides:

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

According to one Delegate to the Constitutional Convention, this provision is designed "to see that money that is put into a pension fund to service currently accruing benefits is used for no other purpose." 1 Official Record, Constitutional Convention 1961, p. 775.

In case of *Shelby Township Police and Fire Retirement Board v. Charter Township of Shelby*, 438 Mich 247; 475 NW2d 249 (1991), the Michigan Supreme Court held that the 1963 Michigan Constitution expressly requires an employer to maintain the actuarial integrity of a pension system to include unfunded accrued liabilities. The Court further clarified that:

We conclude that MCL 38.559(2); MSA 5.3375(9)(2) mandates the township to annually contribute to the retirement system an actuarially determined amount, which will ensure that funds are available to cover pensions earned by active members for services to be performed (in the current year) earned by active members for services already performed, and actual pensions to be paid to retirees.

438 Mich at 264.

By so holding, the Court disallowed a borrowing scheme, known as "back door spending." In *Jurva v Attorney General*, 419 Mich 209, 224-225; 351 NW2d 813 (1984), the Court had defined "back door spending" as the practice of using current pension funds to finance pension liabilities accrued on account of past services rendered by employees. *Id.*

The Panel concludes that it lacks jurisdiction to address this constitutional challenge, which is not so much directed against the City's Last Offer as it is directed against the MERS's actuarial methods. The City pays into the pension system according to the actuarial determinations made by MERS. The Panel has the jurisdiction to determine the constitutionality of the City's Last Offer because it relates to the lawful

authority of the employer, a consideration mandated by Section 9 (a) of the Act. However, Act 312 nowhere grants jurisdiction to the Panel to inquire into the constitutional validity of the MERS actuarial methods.

#### Conclusion Regarding Constitutionality

The Panel concludes that a reasonable basis exists to predict that a court of law would likely find a portion of the City's Last Offers as to Issues Nos. 2 and 3 to be in violation of Article 9, Section 24 of the 1963 Michigan Constitution as impairing and diminishing an accrued financial benefit.

#### Findings

##### Issue No. 2 – Elimination of Compensatory Time Payout

##### Issue No. 3 – Elimination of the E-2 Benefit

The Panel finds that the Union's Last Offer more nearly comports with the applicable Section 9 statutory factors. The factor most critical to this determination is Section 9(a), the lawful authority of the employer.

As discussed above, there is a reasonable basis for predicting that a court of law would likely find a portion of the City's Last Offers regarding Issues Nos. 2 and 3 to be unconstitutional. As explained above, the effective date of each Last Offer has the effect of impairing and diminishing accrued financial benefits by excluding compensatory time accumulated from January 1, 1998 up to the date of this Award and by eliminating the E-2 benefit for services performed from January 1, 1995 up until the date of this Award. In view of this reasonable basis for predicting that the City's Last Offers would be found unconstitutional, as least in part, the City lacks lawful authority to make the Last Offers.

However, were it not for this fatal flaw, the majority of the Panel would find that the overwhelming bulk of the evidence demonstrates a compelling case for eliminating both the compensatory time payout and the E-2 benefit.

**Section 9(c).** The evidence shows that funding the inclusion of these two items, particularly the E-2 benefit, constitutes a considerable additional expense, an increase of at least 4.65% of payroll. Moreover, it increases the City's already sizeable unfunded accrued liability. The evidence proves that the City's ability to maintain a properly balanced General Fund Budget is undermined by the unfunded accrued liability of the pension plan, particularly that portion traceable to the Command Officers, which is 3.7 times greater than the average unfunded accrued liability of all other City employees. The City's ability to raise revenues to decrease the unfunded accrued liability is limited. It has the lowest SEV taxable value of any comparable community and it has experienced a decreased growth in the SEV taxable value. Moreover, the City's increase in expenditures is greater than its increase in revenues and Departmental expenditures have increased from 40.86% in 1973 to 50.92% in 1997. Given the financial status of the City, the Command Officers cannot realistically expect to continue indefinitely the compensatory time payout and the E-2 benefit.

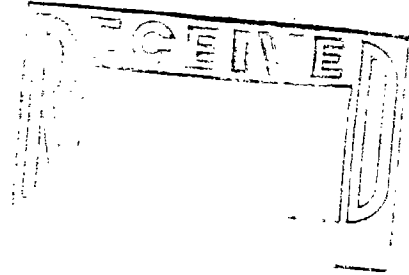
**Section 9(d).** The evidence shows that the City's inclusion of compensatory time in FAC and its inclusion of the E-2 benefit go beyond what is provided by most comparable communities. Although three of the external comparable communities (Farmington, Grosse Pointe, and Grosse Pointe Park) allow the inclusion of compensatory time in the computation of FAC, each has a lower cap on hours that can be accumulated. Thus, the dollar value of the compensatory time inclusion for each of these three comparables is less than one thousand dollars, in contrast to the \$13,060 paid by the City.

Only three external comparable communities (Grosse Pointe, Grosse Pointe Farms, and Grosse Pointe Woods) provide a post-retirement cost of living adjustment. Grosse Pointe Farms limits its benefit to a maximum of 10 years.

As to the internal comparables, no other employee group employed by the City has a compensatory time inclusion or an E-2 benefit.

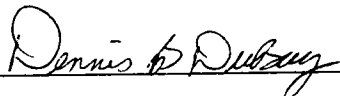
**Section 9(f).** Even without inclusion of these two items, the City pays the highest pension benefits of any external comparable community and the second highest wage package.

The Panel Chair would like to have the authority to modify the City's Last Offer to remedy that aspect likely to be found unconstitutional. However, the Chair lacks any authority to alter the Last Offers, as submitted. Section 8 of the Act forces the adoption of that last offer of settlement, which more nearly complies with the Section 9 factors. It does not permit the Chair or the Panel to redesign the Last Offer. Furthermore, Act 312 contains no savings clause, whereby the Panel has authority to excise what it believes to be the flawed aspect of a last offer, such that the remainder can be adopted.



SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 2 – Article XXVIII – Retirement that the Union's last offer more nearly complies with the Section 9 factors. Article XXVII remains unchanged.




Dennis DuBay, Employer Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-4-99



Dennis Nauss, Union Delegate  
CONCUR / ~~DISSENT~~

Dated: 10-13-99



Anne T. Patton  
Impartial Chair

Dated: 9/30/99


SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 3 – Article XXVIII – Retirement that the Union's last offer more nearly complies with the Section 9 factors. Article XXVIII remains unchanged.



Dennis DuBay, Employer Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-4-99



Dennis Nauss, Union Delegate  
CONCUR / ~~DISSENT~~

Dated: 10-13-99



Anne T. Patton  
Impartial Chair

Dated: 9/30/99

## **CITY ISSUE NO. 4**

### **ARTICLE XII – EMPLOYEE CLASSIFICATION (SERGEANTS)**

#### **City Last Offer of Settlement**

Revise Article XII – Employee Classifications by adding the following new provision as Section F:

The City reserves the right to create the rank of Sergeant. In the event a Sergeant rank is created, the City agrees that the salary rate set by the City for the position shall be subject, upon Union request, to negotiation. The City shall have the right to appoint an Acting Sergeant in the event a Lieutenant is not on duty. An acting Sergeant shall receive the Sergeant's salary.

Effective Date: Date of the Award.

#### **Union Last Offer of Settlement**

No change to Article XII.

#### **Background**

All members of the unit hold the title of Lieutenant. Currently, there is no Sergeant rank. Article XII, Section C of the expired Collective Bargaining Agreement provides:

- C. Effective July 1, 1989, the command officers holding the rank of sergeant shall be considered lieutenants and the City shall provide appropriate insignias and patches for the lieutenant rank. Further, the job description for "sergeants" shall be changed to the applicable job description for "lieutenants." The parties recognize that the change in designation involves no substantive changes in job responsibilities or assignments.

Towards that end, the parties agree, for the purposes of further collective bargaining negotiations and Act 312 arbitrations, "lieutenants" in the Huntington Woods Public Safety Department shall be compared to "sergeants," not "lieutenants" in public safety departments in comparable communities.

The City maintains a policy of having one supervisory officer on duty at all times. In the past, it has become difficult to effectuate this policy. For example, in August 1996, when there were five Command Officers on the payroll, one retired, one was on injury leave, and at least one of the remaining three was scheduled for vacation time. With only two lieutenants available, it was not possible to cover the seven days per week, 24-hours per day schedule. The Union filed a grievance, which was resolved by posting General Order No. 28, dated August 28, 1996. According to GO 28, the City had the right to appoint one of the PSOs to be an acting Lieutenant. This order expired on February 28, 1997.

#### **Analysis of Evidence**

City Manager Alex Allie testified that the Department is paying a high price to maintain its policy of assigning one supervisory officer on duty at all times because of the high rate of wages paid Lieutenants. He explained that the proposal would allow the City to create a Sergeant position, which would likely be paid a lesser rate than the Lieutenant rank but a greater rate than the PSO position. With the rank of Sergeant and the ability to appoint an acting Sergeant, the City could reduce its cost of maintaining one supervisory officer on duty at all times. Allie assured that the proposal would not have the impact of reducing the

number of Lieutenant positions. He stressed that no Lieutenant would be demoted. However, Allie cautioned that there is no guarantee that the City will always have four Lieutenants.

Detective Lieutenant Robert Marshall testified that the City's proposal was flawed because PSOs, who would be appointed as acting Sergeants, do not have an adequate level of expertise and knowledge. Marshall also stated that appointing an acting Sergeant would not solve the problem of who would take over the long-term projects currently assigned to Lieutenants.

The following chart demonstrates that all of the comparable communities have a command structure featuring the rank of sergeant:

#### **Comparison of Rank Structure**

<b>Department</b>	<b>Corporal</b>	<b>Sergeant</b>	<b>Lieutenant</b>	<b>Commander</b>
Berkley		X	X	
Beverly Hills		X	X	
Farmington		X		X
Grosse Pointe		X	X	
GP Farms		X	X	
GP Park		X	X	
GP Woods	X	X	X	
<b>Huntington Woods</b>			X	

Source: City Exhibit No. 18-2.

#### **The City's Position**

The City contends that its proposal is reasonable and makes legal and economic sense. It points out that the first aspect of its proposal, recognition of management's right to create the rank of sergeant and to negotiate, upon demand of the Union, the salary rate, simply conforms with the state of the law. As to the economic merit of the its proposal, the City asserts that the cost of continually maintaining one Lieutenant on duty has proven to be "extraordinary," given the high level of gross wages paid Lieutenants. It notes that Lieutenants, on average, receive \$80,000 a year in gross wages. This amount is greater than that paid to the Director of Public Safety (\$70,831.02) and to the City Manager (\$74,657.52). City Exhibit No. 9. The City stresses that its proposal would have no adverse impact upon current unit members. The reasonableness of the proposal, according to the City, is confirmed by a review of the rank structures of the comparable communities. The City asserts that the Union's objection regarding the lack of supervisory training among the PSOs is without merit because additional training would be provided. The City submits that the Union wishes to force the City to abandon its policy of one supervisory officer on duty at all times or to force the City to pay huge amounts in overtime.

#### **The Union's Position**

The Union opposes the City's proposal for several reasons. First, it notes that the City's last offer differs from its statement of the issue on the Petition. The Petition states that "the rank of Sergeant to be integrated in to the 8-hour shift plan." Second, the Union points out that the City has added to its position as stated on the first day of hearing. Specifically, the proposal now features an acting sergeant aspect. Third, the Union contends that the proposal creates a serious conflict with Article XII, Section C of the contract.

### Findings

For the reasons discussed above under Issue No. 1, the Panel finds that Issue No. 4 is properly before it, even though the Petition states the City's proposal differently than the City's Position Statement and the City's Last Offer of Settlement. The Petition stated the issue as integrating the Sergeant rank into the 8-hour structure. "Integrating" necessarily includes "creating" where, as here, no Sergeant rank has existed. The City's February 18, 1998 Position Statement set forth the proposal with language identical to the City's Last Offer. The differences are not critical. Moreover, as discussed above, either party has, until the submission of Last Best Offers, the opportunity to change the language of its proposal.

The Panel finds that the City's proposal more nearly complies with the Section 9 factors, in particular:

**Section 9(b):** The Panel notes that language of the City's proposal tracks MERC law regarding management's right to create positions and its duty, upon the Union's demand, to negotiate the salaries of those positions. See, *City of Westland and Council 25, AFSCME, Local 1602, 1988 MERC Lab Op 790, 795.*

**Section 9(c).** The interests and welfare of the public are always served by any cost cutting measure that does not reduce services or manpower. The beauty of the City's proposal is that it enables the Department to maintain the same level of supervisory manpower at a lesser cost to the taxpayers. Additionally, reducing this cost will contribute to the Department's efforts to minimize expenditures, thus improving its overall financial ability.

**Section 9(d).** The rank structures of each of the comparable communities include the position of Sergeant. Permitting the City to create the rank of Sergeant brings the Department in line with its comparable departments.

**Section 9(f).** Although the City's proposal may reduce the amount of overtime received by Lieutenants, the overall compensation received by the Lieutenants ranks second among the comparable communities.

**Section 9(h).** An important consideration in collective bargaining, mediation, and arbitration is the impact upon the bargaining unit. The City's proposal would have no significant negative impact on the unit. The City has assured that it has no intent to reduce the number of Lieutenants.

The Panel is not troubled about what the Union characterizes as a "serious conflict" between the City's proposal and Article XII, Section C of the Agreement. Paragraph two of Section C states that lieutenants in the Department shall be compared to sergeants in departments in comparable communities. However, this equation is limited to "collective bargaining negotiations" and "Act 312 arbitrations." It does not require that current Lieutenants be compared to whatever Sergeant rank the City may create pursuant to its proposal. The parties can easily add language to, or modify the language of, Section C, in the event the Sergeant rank is created.

Additionally, the Panel is not overly concerned about the training issue raised by the Union, in light of the City's assurances that it would train PSOs so that they are qualified to become acting Sergeants.



SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 4 – Article XII – Employee Classification - that the City's last offer more nearly complies with the Section 9 factors. Article XII is modified to add Section F, as stated in the City's last offer.

Dennis B. DuBay

Dennis DuBay, Employer Delegate  
CONCUR ~~DISSENT~~

Dated: 10-4-99

Dennis Nauss

Dennis Nauss, Union Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-13-99

Anne T. Patton

Anne T. Patton  
Impartial Chair

Dated: 9/30/99

**CITY ISSUE NO. 5**

**ARTICLE XII – EMPLOYEE CLASSIFICATIONS AND MAY 9, 1989 LETTER OF UNDERSTANDING**

**City Last Offer of Settlement**

Article XII – Employee Classifications and May 9, 1989 Letter of Understanding (Detective):

The \$2,000 payment for the Lieutenant who performs Detective duties shall be discontinued.

Effective Date: Date of the Award.

**Union Last Offer of Settlement**

No change to current contract language.

**Background**

Under the Article XXX of the expired Agreement, the Command Officer holding the position of detective receives a \$2,000.00 allowance, less applicable deductions and taxes as required by law. For as long as anyone can remember, the Detective Lieutenant has received this allowance. The detective assignment is not a permanent assignment, but rather handled as a shift selection under the Letter of Understanding dated 1995 and attached to the Agreement. Shift selections are made no later than December 1<sup>st</sup> for the upcoming year.

The current Detective Lieutenant, Robert Marshall, was appointed to that position on March 24, 1997, after the retirement of Detective Lieutenant Morrison. Morrison's retirement occurred during the negotiations preceding this Act 312 proceeding.

At the time of Marshall's appointment, Allie sent him the following letter, dated March 21, 1997:

I have received a copy of the Special Order of the Director of Public Safety dated March 14, 1997 assigning you to the Detective Bureau as of March 24, 1997. The assignment is temporary pending the outcome of a collective bargaining agreement with the Huntington Woods Command Officers Association and an ultimate formal procedure for the promotion or assignment of an Officer to the position of Detective. As you are aware, it has been the bargaining position of the City that the rank of Detective was to be reduced upon the retirement of Lieutenant Morrison. Further, the Huntington Woods Command Officers Association has proposed, as part of their bargaining position, the Memorandum of Understanding regarding shift assignment being eliminated from the contract. The retirement of Lieutenant Morrison was not anticipated prior to reaching an agreement.

It is mutually agreed that the assignment to Detective is subject to formal resolution of all of the outstanding issues related to pay, benefits, rank, assignment, promotion procedures and other areas of dispute. The agreement that we are operating under expired on December 31, 1994. Future agreements (which may require an arbitrator's decision) will be retroactive for the Detective position.

If you or the Huntington Woods Command Officers Association have an opinion contrary to issue presented in this letter, I suggest a letter be forwarded immediately to the Director of Public Safety.

City Exhibit No. 19-4.

There is no evidence on this record that the Union or Marshall forwarded any letter to the Director objecting to what Allie set forth in the above letter.

The City's original proposal, as stated in the Petition and the Position Statement, was as follows:

Article XII Employee Classification to be revised by adding a new Section E:

- D. The Detective rank shall be eliminated from the unit upon retirement of the current Lieutenant. Detective work shall be performed by the PSO unit.

#### Analysis of Evidence

The following charts the detective allowance in comparable communities:

#### Comparison of Detective Allowance in Comparable Communities

Department	Detective Allowance
Berkley	None
Beverly Hills	None
Farmington	None
Grosse Pointe	None
GP Farms	\$1,500
GP Park	Command officers assigned to the Detective Bureau shall receive a clothing allowance of \$600 – no additional salary allowance is paid.
GP Woods	None
<b>Huntington Woods</b>	<b>\$2,000</b>

Source: City Exhibit No. 19-2

This chart demonstrates that the City has been paying the highest Detective allowance of all comparable communities. In fact, none of the comparables have such an allowance, except for Grosse Pointe Farms. The allowance paid to Detectives in Grosse Pointe Park is for clothing.

The following charts the salary paid to Detectives in the comparable communities:

#### Detective Salary as of July 1, 1996 in Comparable Communities

Department	Detective Salary	Detective Rank	Detective Differential
Berkley	\$50,028	PSO	Detective Salary
Beverly Hills	50,479	Sgt.	None
Farmington	44,092	PSO	None
	49,935	Sgt.	None
Grosse Pointe	43,365	PSO	None
	47,485	Sgt.	None
	50,954	Lt.	None
GP Farms	49,736	Sgt.	\$1,500 bonus
	59,866	Lt.	\$1,500 bonus
GP Park	46,064	PSO	7% differential
GP Woods	44,238	PSO	None
<b>Huntington Woods</b>	<b>\$58,598</b>	<b>Lt.</b>	<b>\$2,000 bonus</b>

Source: City Exhibit No. 19-3

This chart shows that the City ranks second among the comparables in the amount of salary paid to Detectives in the Lieutenant rank. Only the City of Grosse Pointe Farms pays its Detective Lieutenant more. Even then the difference is only approximately \$1,268.00. Additionally, the City pays its Detective Lieutenants more than average salary (\$55,264.00) paid by the three comparable communities whose lieutenants may also perform detective duties.

City Manager Allie testified that the City has no intention of laying off the current Detective Lieutenant.

#### **The City's Position**

The City maintains that its proposal is reasonable because it would eliminate "an expensive and unjustified bonus payment" with only a minimal impact upon unit members. It notes that, because of Allie's letter to Marshall, there is no surprise or unfair change in working conditions. The City points out that it pays Detective Lieutenants more than any of the comparables and that the Department is the only community that limits the performance of detective work to Lieutenants.

#### **The Union's Position**

The Union submits that the City's offer should be rejected because it is a "completely new proposal" and "purely regressive" when compared to the Position Statement and Petition. Additionally, the Union contends that the City offered no evidence to establish any relationship to the factors required under Section 9 of the Act.

#### **Findings**

The Panel is not persuaded to reject the City's last offer on the basis that it is completely new and regressive. It is not completely new in that it pertains to the position of Detective Lieutenant. The original proposal would have taken the work from the unit and, with the loss of this work, the unit would also lose the \$2,000 allowance. The last offer proposes to keep the work in the unit but without payment of the allowance. For the reasons discussed above, under Issue Nos. 1 and 4, the City's alteration of its original proposal is within the range of change in proposals permitted both parties under Section 8 of Act 312. The fact that a proposal may be regressive does not bar its consideration by the Panel.

The Panel finds that the City's last offer more nearly complies with the Section 9 factors, in particular the following factors:

**Section 9(c).** Given the City's financial restraints, it is not in the public interest to pay a Detective allowance greater than that paid by any comparable community.

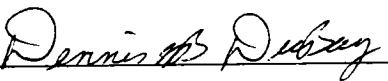
**Section 9(d).** No other comparable community pays a Detective allowance, with the exception of Grosse Pointe Farms, which pays an allowance of \$1,500, less than that paid by the City.

**Section 9(f).** The City pays the second highest overall compensation of all the comparable communities. The elimination of the Detective allowance will not affect this standing.

**Section 9(h).** In the realities of collective bargaining, mediation and arbitration, the impact upon unit employees is given serious consideration. Here, the elimination of the Detective allowance affects only one unit member. That individual has held the position for a relatively short period of time and was cautioned when taking the position that the City was proposing elimination of the Detective allowance. For these reasons, the adverse impact upon the unit is minimal.

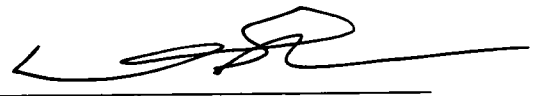
SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 5 – Article XII – Employee Classifications and May 9, 1989 Letter of Understanding (Detective) that the City's last offer more nearly complies with the Section 9 factors. Article XII and the May 9, 1989 Letter of Understanding are modified to discontinue the \$2,000 payment for the Lieutenant who performs Detective duties.



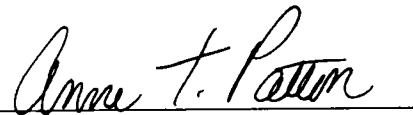
Dennis DuBay, Employer Delegate  
CONCUR. ~~DISSENT~~

Dated: 10-4-99



Dennis Nauss, Union Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-13-99



Anne T. Patton  
Impartial Chair

Dated: 10/15/99

CITY ISSUE NO. 6

ARTICLE XI – OVERTIME

City Last Offer of Settlement

Revise Article XI – Overtime to provide as follows:

- A. For employees working forty (40) hours each week, time and one-half pay shall be paid for all hours worked in excess of eight (8) in any one work day or forty (40) in any one work week.
- B. For employees working on a twenty-four (24) hour shift basis the following overtime payments shall apply:
  - 1. In order to figure the overtime rate for employees assigned to 24-hour operations, the employee's salary shall be divided by 2,912 hours per year and the result will be the hourly rate multiplied by one and one-half times.
  - 2. Employees shall be paid an additional one-half (1/2) times their hourly rate (annual salary divided by 2,912) for the hours between 53 and 56 averaged over a three week period consistent with the Fair Labor Standards Act, 29 U.S.C.A. 201, et. seq., as amended. The work week shall start at 8:00 a.m., Monday for the purpose of overtime.
  - 3. Employees shall be paid time and one-half for all hours worked in excess of twenty-four (24) consecutive hours.
- C. Officers called to duty or required to appear in court outside their scheduled shift hours shall receive two (2) hours minimum work and pay at time and one-half. However, this two hour minimum shall not apply if an Officer is called in prior to his regular shift, or is kept beyond his regular shift. In such cases fractions of hours shall be reported as overtime and the following schedule shall apply for the purpose of wage computations with the exception as noted under Command Officer Briefing Pay.

Less 15 minutes	No pay
16 to 30 minutes	30 minutes pay
31 to 45 minutes	45 minutes pay
46 to 60 minutes	60 minutes pay
- D. The above proration shall also be applicable for periods where over one (1) hour is worked.
- E. Employees called to duty or on a twenty-four (24) hour shift outside their scheduled shift hours shall be paid time and one-half for all hours worked. This method of computation shall not affect Section C for computing overtime hours for those Command Officers attending court, training, etc.

Effective Date: Date of the Award.

Union Last Offer of Settlement

No change to Article XI.

Background

Article XI, Sections A and D of the expired Agreement set forth the following formula for calculating overtime for Command Officers working a 24-hour shift:

- A. [C]ommand Officers working a fire shift . . . shall be paid time and one-half for all hours worked in excess of twenty-four (24) consecutive hours or fifty-three (53) hours per week, averaged over a three week period consistent with the Fair Labor Standards Act, 29 U.S.C.A. 201 et seq., as amended. . . .

\* \* \*

- D. Command officers called to duty or on a twenty-four (24) hour shift outside their scheduled shift hours shall have their rate of pay for the 24 hour shift based on a 53 hour work week at one and one-half time. . . .

Command Officers on the 24-hour shift are routinely scheduled for 56 hours per week. This means that after 53 hours of work, they receive the next three hours of work at the overtime rate of 1.5 times the hourly rate. This three hours of overtime is known as the "Firefighter's overtime."

Under the Fair Labor Standards Act, 29 USCA 201 et. seq. (FLSA), an employer only needs to pay one-half time pay for hours worked between 53 and 56 and the hourly rate is calculated by dividing salary by 56 hours per week.

#### **Analysis of Evidence**

The City introduced the following chart to show that unit members receive more total leave days than any other command unit of the comparable communities, with the exception of Berkley and Grosse Pointe:

**Total Paid Leave Days for a 20 Year Command Officer**

<b>Department</b>	<b>Vacation Leave</b>	<b>Holiday Leave</b>	<b>Sick Leave</b>	<b>Personal Leave</b>	<b>Total Leave</b>	<b>Total Leave in Days</b>
Berkley (8 hours)	32 days	12.5 days	12 days	3 days	59.5 days	59.5 days (8 hr.)
Beverly Hills	25 days	13 days	13 days	3 days	54 days	54 days
Farmington	24 days	12 days	12 days	2 days	50 days	50 days
Grosse Pte.	384 hours	10 days	5.5 (24 hrs.)	None	756 hours	63 (12 hr.) days
GP Farms	29 days	11 days	12 days	2 days	54 days	54 days
GP Park (12 hours)	29 days	9 days	80 hours	24 hours	560 hours	46.6 (12 hr.) days
GP Woods	30 days	12 days	12 days	None	54 days	54 days
<b>Huntington Woods</b>	<b>29 days</b>	<b>12 days</b>	<b>12 days</b>	<b>48 hours</b>	<b>55 days</b>	<b>55 days</b>

Source: City Exhibit No. 20-4.

As this chart makes clear, only the City pays 55 24-hour days of leave. Berkley provides 59.5 8-hours days and Grosse Pointe pays 63 12-hours days.

The following charts the computation of overtime in comparable communities:

**Comparison of Computation of Overtime in Comparable Communities**

<b>Department</b>	<b>Shift Length</b>	<b>Computation of OT Rate</b>
Berkley	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Beverly Hills	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Farmington	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Grosse Pointe	24 hours	"Officers will be paid at the rate of 1.5 times their base hourly wage for all hours worked in excess of 160 hours, but less than 224 hours, in the 28 consecutive day work period. This shall be defined as scheduled overtime. Officers shall normally be scheduled to work 2,912 hours annually. Officers will be paid at the rate of 2.4 times their base hourly wage for all hours worked in excess of 224 hours in the 28 consecutive day work period or for all hours worked continuously in excess of a 24 hour shift assignment. This shall be defined as premium overtime."
	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
GP Farms	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Sergeant	24 hours	Annual salary divided by 2,756 hrs. times one and one-half.
Sergeant	working fire	Annual salary divided by 2,080 hrs. times one and one-half.
Lieutenant	8 hours	Same.
GP Park	12 hours	Annual salary divided by 2,184 hrs. times one and one-half.
GP Woods	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Royal Oak	8 hours	Annual salary divided by 2,080 hrs. times one and one-half.
Huntington Woods	24-hours	Annual salary divided by 2,756 hours times one and one-half

Source: City Exhibit No. 20-2



The following chart sets forth the overtime provisions for employees in comparable communities who work a 24-hour shift:

**Comparison of Overtime Calculation for FLSA Compliance for 24 Hour Shift Employees**

<b>Department</b>	<b>Overtime Computation</b>
Beverly	N/A
Beverly Hills	N/A
Farmington	N/A
Grosse Pointe	"Officers will be paid at the rate of 1.5 times their base hourly wage for all hours worked in excess of 160 hours, but less than 224 hours, in the 28 consecutive day work period."
GP Farms Sergeant Lieutenant	No Sergeants work a 24 hour shift. N/A
GP Park	"Employees on the payroll July 1 <sup>st</sup> , assigned to the 12 hour schedule shall receive the below compensation. This time and pay shall be considered compensation for the hours worked during the upcoming fiscal year and is not considered a part of the regular rate of pay. Furthermore, only employees on the payroll on July 1 <sup>st</sup> will qualify for this benefit and there shall be no pro-ration for the either newly promoted command officers of those who retire thereafter: A. 40 hours of compensatory time credited on July 1 <sup>st</sup> ; and B. 40 hours of pay paid in a lump sum during the first 2 weeks of July."
GP Woods	N/A
Huntington Woods	<b>Every 21 days, the employee earns 9 hours of overtime which is paid at time and one-half in the following payroll.</b>

Source: City Exhibit No. 20-3

City Manager Allie testified that officers on the 24-shift receive overtime pay far in excess of what is required by FLSA. (Transcript IV, page 72.) He explained that the City's intent with this proposal is to bring the contractual overtime provisions into conformance with federal law. (*Id.*) In short, the City proposal, according to Allie, would parallel FLSA by dividing total hours worked per year by 2,912 (56 hours per week x 52 weeks per year). Under the current contractual provision, the total hours worked is divided by 2,756 (53 hours per week x 52 hours per year). Allie clarified that the City's proposal applies only to the 24-hour shift schedule. The proposal does not include any changes to the 8-hour schedule or to a 12-hour shift schedule, if that is adopted by the Panel. According to Allie this overtime proposal would be a "moot point" if the Panel agrees to the City's proposal on Issue No. 1, that is, permit the City to implement a 12-hour shift schedule. (Transcript IV, page 75.)

### **Findings**

In view of Allie's testimony, the City's Last Offer regarding changing the calculation of overtime for 24-hour Command Officers is mooted by the Panel's adoption of the City's Last Offer on Issue No. 1, which permits the City to implement a 12-hour shift. However, according to the City, the 12-hour shift cannot be implemented immediately. For this reason, the Panel must determine which offer more nearly complies with the Section 9 factors.

The Panel finds that the City's last offer more nearly complies with the Section 9 factors, in particular the following factors:

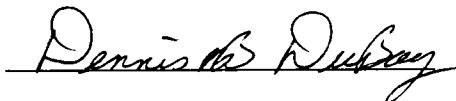
**Section 9(c).** Coordinating the calculation of overtime with FLSA requirements is in the public interest and serves the public welfare. Under the current system, employees receive more than is required under federal law. In view of the Employer's limited ability to pay and the constraints upon its ability to raise additional revenues, it should not be required to pay more than is required under FLSA.

**Section 9(d).** Unit employees receive more total leave days than any command unit in any other comparable community, except for Berkley and Grosse Pointe. However, these two communities, unlike the Employer, do not provide fifty-five, twenty-four hour days of leave, but rather leave based on either an eight or twelve hour day. Because of the number of leave days scheduled, unit employees have far fewer days and hours scheduled after their leaves are taken than any community with a 24-hour shift system.

**Section 9(f).** The City pays the second highest overall compensation of all the comparable communities.

SIGNATORY PAGE

**AWARD:** The Panel finds on Issue No. 6 – Article XI, Sections A and D – Hours of Work that the City's last offer more nearly complies with the Section 9 factors. Article XI is modified to incorporate the City's last offer regarding the calculation of overtime.



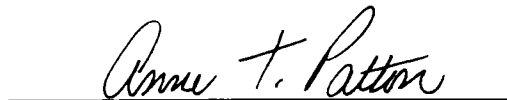
Dennis DuBay, Employer Delegate  
CONCUR ~~DISSENT~~

Dated: 10-4-99



Dennis Nauss, Union Delegate  
~~CONCUR~~ / DISSENT

Dated: 10-13-99



Anne T. Patton  
Impartial Chair

Dated: 9/30/99