1817

AWARD

CITY OF IRONWOOD

AND

POLICE OFFICERS ASSOCIATION OF MICHIGAN

MERC CASE D82C - 148

AWARD

I. Issues presented by the City at the March , 1983 meeting (excepting those withdrawn or stipulated to by the parties) are properly before this Arbitration Panel.

II. Wages:

April 1,1982-March 31,1983	0% no increase.
April 1,1983-March 31,1984	5% increase.
April 1,1984-March 31,1985	5% increase.

III. The addition of a Dental Plan is denied.

IV. Modification of the last sentence in Article XLIII Section 43.2 to read: " In the event such training is taken outside the employee's regularly scheduled working hours, said trainee shall be compensated at the employee's straight time rate of pay." is denied.

V. The addition to Article XI of Section 44.5:" effective April 1,1984 employees shall assume fifty percent (50%) of any increase in hospitalization insurance premiums incurred beyond premiums incurred on April 1,1983." is denied.

VI. The modification of Article VI, Section 6.2 by adding at the conclusion of the Section: "provided that such time is reasonable and does not unreasonably interfer with the operation of the Deparment." is denied

VII. The elimination of Article XI, Section 11.2 "If an officer is disciplined for just cause, the penalty may be a written reprimand or up to three day suspension without pay in the discretion and judgement of the City Manager, or his appointed delegate, the Chief of Police. For any subsequent offense within one year of the first offense the penalty may be the same or may in addition involve longer suspension without pay or deprivation of employment fringe benefits and priviledges or discharge, in the discretion and judgement of the City Manager, or his appointed delegate, the Chief of Police." is denied.

VIII. The revision of Article XIII,Section 13.4 to read: "Department Seniority commences the date of original appointment to either the Police or the Fire Department of the City. This class of seniority shall govern layoff and recall, which shall be by job classification and rank, provided that the more senior employee has the necessary experience, qualifications and present ability to perform the required work." and the deletion of ArticleXIII, Section 13.5 is denied.

IX. The replacement of Article XIV, Section 14.1 with: "The employer agrees that all conditions of employment relating to wages, hours of work and general working conditions shall be maintained at not less than the highest standards ineffect at the time of the signing of this Agreement unless said conditions are not provided for in the Agreement, in which case the employer shall have ten (10) days after receipt of written notice from the Association that it deems a condition to exist, in which case, the Employer may unilaterally revoke or ratify said condition. It is further agreed that the provisions of this Section

of this Agreement shall not apply to inadvertent or bona fide errors made by the Employer." is denied.

X. The addtion to the Agreement that:"Management reserves the right to establish dispatching methods different than in the past, including but not limited to consolidating with oter law enforcement or governmental units." is denied.

Shirley T. Schwimmer

SHIRLEY T. SCHWIMMER, CHAIRPERSON

February 1, 1984

CITY OF IRONWOOD

-AND-

POLICE OFFICERS ASSOCIATION OF MICHIGAN

MERC CASE NO. D82C-148

HEARINGS IN this Michigan Employment Relations Commission Case No. D82C-148, Act 312 Arbitration, in the Matter of City of Ironwood and the Police Officers Association of Michigan took place on April 12 and 13, 1983 in the City of Ironwood, Michigan.

The panel was composed of Shirley T. Schwimmer, Chairperson, Mr. Fred Timpner, Union Representative, and Mr. Jack R. Clary, City Representative.

Testimony was heard from Mr. Warachek, Mr. Cayer, Mr. Eshenroder, Mr. Best and Mr. Clary.

There were 175 pages of Transcript and thirty-five (35) Exhibits.

FACTS

THE CITY of Ironwood, located in the western upper peninsula of Michigan on the border of Wisconsin, has a population of 7,741 (1980 census). The Public Safety Department is a bargaining unit of fifteen (15) employees which provides both police and fire fighting services.

The last Collective Bargaining Agreement was for the period April 1, 1980 to March 31, 1982. After bargaining and mediation the Police Officers Association of Michigan (POAM) filed a petition for arbitration under Act 312 Public Act of 1969 as amended (Act 312). This petition listed the unresolved issues as: (1) Wages, (2) Dental Insurance, (3) Shift Differential.

A pre-arbitration meeting of the parties was held at the MERC Lansing offices on January 19, 1983. At this meeting Chairperson, Shirley T. Schwimmer, remanded the dispute for further bargaining as provided in MCLA 423.237a.

> "At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 3 weeks. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the employment relations commission of the remand."

Members of the bargaining unit and representatives of the City met on March 3, 1983. The City submitted a list of twelve (12) issues which had not previously been on the table. The parties met on April 6, 1983 at which time the City submitted a list of forty-five (45) issues of which thirty-three (33) were new. On April 11, 1983 the day before arbitration hearings were to commence the parties met again. At this meeting Mr. Fred Timpner, the representative of POAM who was not at the April 6, 1983 meeting, was first made aware of forty-five (45) changes in the contract the City desired which included economic and non economic issues. None of these issues had been subject to mediation. (Due to the geographic location of the City of Ironwood the representatives and the mediators were unable to schedule mediation before the commencement of the arbitration hearings on April 12 and 13, 1983.)

At the beginning of the Hearing on April 12, 1983 Mr. Fred Timpner, POAM representative, objected on the record to the inclusion of the forty-five (45) Employer issues in the Arbitration Hearing.

The Chairperson reserved ruling upon the jurisdiction of the panel to consider the issues raised by the City representative until briefs were submitted by the parties and the award issued. The Chairperson directed the taking of proofs on the issues presented by the City even though the Union had little or no time to prepare opposing exhibits or witnesses. The Union objection was preserved on the record.

APRIL 6, 1983
ISSUES SUBMITTED BY EMPLOYER
CITY OF IRONWOOD
PUBLIC SAFETY OFFICER NEGOTIATIONS

1. '3' year agreement effective April 1, 1982 thru March 31, 1985.

2. The provisions of the current contract shall remain in the new agreement except as modified by this settlement proposal.

3. Modify Article 2.1 by replacing at the end of the first sentence, the words "of Chief" with "of Deputy Director".

4. Correct Article 3.2 to read:...enforcement of the provisions of this agency shop "dues checkoff" clause.

5. Modify Article 6.2 by adding at the end of the Section, "provided that such time is reasonable and does not reasonably interfere with the operation of the Department".

6. Delete the words "for reason of economy" in Articel 7.1, line 6.

7. Modify the definition of a grievance by deleting sub-paragraph three (3) and four (4) of Article 9.2.

8. Eliminate Step I of the Grievance Procedure in Article 9.3 because it is an internal Association matter. Step II then becomes Step I.

9. Modify the first sentence of Article 9.3, Step 2 (old) to read: "The aggrieved officer shall present the written grievance to the Director of Public Safety within fifteen (15) working days from the date of the events which caused the grievance.

10. Replace the words "by either party" in Article 9.3, Step 4, with "by the Association within 30 calendar days of the City Manager's answer in Step 3".

11. Wherever present in the Agreement, the words "Chief of Police" should be replaced with Director of Public Safety: or "Public Safety Director". Also, the words "Deputy hief" should be replaced with "Deputy Director" wherever applicable.

12. Replace subparagraphs A and B of Article 9.4 with the following: "The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written, and he shall have no power or authority to amend, alter or modify this Agreement in any respect. The Association acknowledges that the Employer retains all rights not otherwise abrogated under the express terms of this Agreement, and the arbitrator shall have no authority to rule on the Employer's reserved rights as generalized in Article 7. Any award of the arbitrator shall nct be retroactive more than fifteen (15) days prior to the time that the grievance was first submitted

in writing. The arbitrator's decision shall be final and binding on the Union, the Employer and its employees, provided however, either party retains all legal rights to challenge arbitration and the decisions thereof if the award was the result of unlawful means or where the arbitrator has exceeded his powers of jurisdiction. The fees and expenses of the arbitration shall be shared equally by the Union and the City."

13. Add Article 9.7 TIME LIMITS: "The time limits established in the grievance procedure shall be followed by the parties hereto. If the time procedure is not followed by the Union, the grievance shall be considered settled in accordance with the last disposition. If the time procedure is not followed by the Employer, the grievance shall automatically advance to the enxt step, including arbitration, upon notice of such by the Union. The time limits established in the grievance procedure may be extended by mutual agreement in writing."

14. Modify Article 11 by eliminating Section 11.2. This matter is adequately covered in Section 11.1 (Act 78 provisions).

15. Clarify Article 11.3 by adding the words "for informational purposes only" at the end of the first sentence.

16. Replace Article 11.5 with "an officer subject to disciplinary action shall be entitled to all rights and procedures as set forth in the Grievance Procedure or the rights as provided by Act 78, PA of 1935, as amended, but not both. An employee who invokes Act 78 shall be deemed to have waived his rights under the Grievance Procedure.

17. Amend Article 11.6, the second sentence to read: "All official entries steming from disciplinary action taken against an officer, shall, at the officer's request, be removed from said employee's personnel file "after two years, provided, the employee maintains an intraction-free record".

18. Article 12.1 and 12.2 should be eliminated in view of the State Right to Know Statute enacted by the State of Michigan.

19. Add to Article 13.1, the words, "with the City".

20. Amend Article 13.4 to read: "Department Seniority commences the date of original appointment to either the Police or the Fire Department of the City. This class of seniority shall govern layoff and recall, which shall be by job classification and rank, provided that the more senior employee has the necessary experience, qualifications and present ability to perform the required work".

21. Eliminate the first paragraph of Article 13.5 (because it provides for a double standard, second class seniority).

22. Amend Article 13.7 to read: "An employee entering into the military service of the US Government because of conscription shall, upon honorable discharge, be entitled to all rights under the Veterans Re-Employment Rights Act".

23. Replace Article 14 with: "The Employer agrees that all conditions of employment relating to wages, hours or work and

general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement unless said conditions are not provided for in the Agreement, in which case the employer shall have ten (10) days after receipt of written notice from the Association that it deems a condition to exist, in which case, the employer may unilaterally revoke or ratify said condition. It is further agreed that the provisions of this Section of this Agreement shall not apply to inadvertent or bona fide errors made by the Employer".

24. Eliminate Article 15, the Adoption by Reference Article.

25. Modify Article 18.1 to read: "The City shall establish the work schedule and shall post the schedule at least sixteen (16) days in advance of the start of a new schedule".

26. Add to the end of the first sentence in Article 24.1 "to a maximum of base salary of $20,000".

27. Modify Article 26 to read, "Trading will be permitted upon approval by the Chief".

28. Replace the work "complete" in Article 27.1 with the actual face value of the City's liability policy.

29. Amend Article 28.1 by adding the following sentence after the existing first sentence: "Such personal property shall not include intems of unusual financial value or those which have unique or intrinsic value".

30. Add after the end of the first sentence in Article 30.1: "provided however, that the City retains the right to establish different shifts upon advance notice to the Association."

31. Add to the end of the second to the last sentence in Article 32.1 to read "at the rate of pay in effect at the time that the vacation was credited".

32. Amend Article 38.1 to read: "All employees covered under this Agreement shall receive time and one-half or shall receive compensatory time and one-half off his regular schedule, at the discretion of the Public Safety Director, for any hours worked over eight (8) hours in a single day or over forty (40) hours in a work week as adjusted with compensatory days. All overtime shall be rotated among the available employees within each rank, whenever possible. A list of overtime worked will be posted and kept up to date and averaged out on a monthly basis. Those employees working over the average number of hours per month shall be credited with the number of hours that the employee has exceeded the average in order to begin the next month. All overtime hours refused or for which employee was not available to work shall be charged".

33. Revise Article 41.1 to read: "The City shall furnish the weapon that is required to be carried".

34. Modify Article 43.2 to be consistent with 43.1 that training duty shall be compensated for "at a straight time rate".

35. Add Article 44.4 to read: "The City reserves the right to choose another insurance carrier or adopt other funding vehicles provided that the benefit level, excluding administration, is comparable with the current Blue Cross-Shield MVF-1 Policy".

36. Add Article 44.5 to read: "Effective April 1, 1983, the Association or the employees, shall assume one-half the cost of any increases in the Blue Cross-Blue Shield Insurance Coverage".

37. Add Article 44.6 to read: "Any employee working as a temporary, part-time, or less than full-time employee of the Department shall not be entitled to the fringe benefits, including hospitalization insurance, as otherwise provided in this Agreement. This provision shall not apply to those full-time employees that may be effected by a temporary cutback in hours for a period of 26 weeks or less".

38. Combine Article 46.1 and 46.2 together to read: "This Agreement shall remain in full force and effect until March 31, 19__. A notice of desire to modify, amend or change this Agreement shall be served on the other party not later than sixty (60) days prior to the termination of this Agreement".

39. Modify the wording in Article 45.6 to read: "All uniforms or equipment that are worn or damaged may be reissued to any employee if they can be repaired" without...

40. Replace old Article 46.2 (or add another section, whichever may be the case) with: "It is the intent of the parties hereto that the provisions of this Agreement, which supercedes all prior agreements and understandings, oral or written, express or implied, between such parties, shall govern their entire relationship and shall be the sole source of any and all rights or claims which may be exerted in arbitration or otherwise".

"The provisions of this Agreement may be amended, supplemented, rescinded or otherwise altered only by mutual agreement in writing and signed by the parties hereto".

"The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter not specifically referred to or governed in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement".

41. Rates of pay. Effective April 1, 1983, increase all rates by 5%. Effective April, 1984, increase all rates by 2½%.

42. The Association hereby agrees to withdraw all unfair labor practice charges against the City.

43. Add to Appendix A, the Salary Schedule, a Classification for Dispatcher-Clerk at the rate of pay as follows:

Effective April 1, 1983	$5.20
Effective April 1, 1984	$5.36

said dispatcher-clerk rate shall be sued to supplement the operations of the Department and may be less than a full time position.

44. Add a separate Article to the Agreement whereby "Management reserves the right to establish dispatching methods different than in the past, including but not limited to, consolidating with other law enforcement or governmental units."

45. Federal Mediation and conciliation service for the list of arbitrators.

After some discussion by the parties off the record, the City agreed to the withdrawal of certain of the issues and the parties stipulated to the following:

1. The length of the new agreement shall be for three (3) years from April 1, 1982 through March 31, 1985.

2. All provisions of the prior collective bargaining Agreement shall be retained in any new Agreement except as modified by the awared in this case;

3. The first sentence of Section 2.1, Article II, shall be modified by substituting the words "Deputy Director" for the words "of Chief";

4. Section 3.2 of Article III of the prior Agreement shall be modified by inserting the words "and/or dues checkoff" after the words "agency shop" in that Section;

5. The words "for reasons of economy" will be deleted from item (6) of Section 7.1 of Article VII of the prior Agreement;

6. Wherever applicable, the words "Chief of Police" will be replaced with either "Director of Public Safety" or "Public Safety Director" and the words "Deputy Director" will replace the words "Deputy Chief";

7. Section 11.5 of Article XI shall be revised to read as follows:

   "An officer subject to disciplinary action shall be entitled to all rights and procedures as set forth in the Grievance Procedure for the rights provided by Act 78, P.A. of 1935, as amended, but not both. An employee who invokes Act 78 shall be deemed to have waived his right under the Grievance Procedure."

8. The second to last sentence in Section 26.1, Article XVI will be revised to read:

   "Trading will be permitted upon approval by the Director or his designee."

9. Section 41.1 of Article XLI shall be revised to read:

   "The City shall furnish the weapon that is required to be carried, provided the weapon passes State Police safety inspection."

10. In Section 9.4 of Article IX to substitute the Federal Mediation and Conciliation Service for the American Arbitration Association.

11. Section 13.7 of Article XIII shall be revised to read:

"An employee entering into the military service of the United States Government shall, upon honorable discharge, be entitled to all rights under the Vetrans Re-employment Act. He shall suffer no loss of seniority for periods of compulsory military duty, or for periods of military reserve training."

The Arbitration Hearing heard testimony on the economic issues presented in the Unions 312 petition as well as the remaining issues raised by the Employer (subject to the objection raised by the Union).

DISCUSSION AND FINDINGS

The final opinion and order of this Panel are made after a careful consideration of all of the testimony exhibits and arguments of the parties and in conformity with the criteria enumerated in Act 312.

a) The lawful authority of the employer.

b) Stipulation 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 proceedings 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.

I. JURISDICTION

UNION POSITION

SECTION 3 of PA 312 of 1969, as amended, being MCLA 423.32, states:

> Section 3. Whenever in the course of mediation of a public police or fire department employees dispute, except a dispute concerning the interpretation or application of an existing agreement (a "grievance" dispute), the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefore, in writing, to the other, with a copy to the Employment Relations Commission. (Emphasis supplied).

As is self evident from the explicit language of the statutory provision, the phrase "whenever in the course of mediation" indicates that a prerequisite to the jurisdiction of a compulsory arbitration panel is the requirement the dispute which exists have been previously submitted to mediation and to the Employment Relations Commission. A state appointed mediator, Gerald Kendziorski, met with the Employer and the Union on May 10 and 11, 1982 and mediated a dispute between the parties relating solely to the Union issues which were ultimately carried forward in the Petition for Arbitration. At no time during the course of the mediators presence, did the Employer present any issues. As such, in the absence of presenting issues in dispute before a mediator, the Employer is prohibited by Section 3 of the Compulsory Arbitration Act from requesting that this arbitration panel consider any of the issues which it submitted one day before ititiation of the arbitration hearing on April 11, 1983.

Additionally, Section 3 of the Compulsory Arbitration Act makes reference to the aforesaid emphasized language that "employees or employer may initiate binding arbitration proceedings by prompt request therefore". The language of the statute, therefore, speaks not only to the right of the employees to file petition for arbitration, but also speaks to the right of the employer to initiate arbitration. It is beyond comprehension that the Employer could assert that it has a right to submit various issues to the panel when, in fact, it did not file a Petition for Arbitration upon any issues which it felt were in dispute. Notwithstanding the failure to file a petition, the employer would be prohibited from such action by the failure to have mediated the issues which it contends are in dispute. Additionally, the aforesaid quoted phrase makes reference to a "prompt request" hence, the Employer has again violated Section 3 by waiting nearly one year after the POAM Petition for Arbitration was filed to make known the issues which it contends are allegedly in dispute between the parties.

The multiple pre-requisites to arbitration found in Section 3, being mediation of issues in disputes and, thereafter, a petition filed by either the employer or the employee regarding issues which the respective party contends are in dispute, creates a jurisdictional bar to the employer submitted issues.

The Employer should be equitably estopped from the presentment of its issues to the arbitration panel by virtue of its unclean hands in delaying the submission of issues until one day prior to commencement of the arbitration hearing.

Reading the Public Employment Relations Act in conjunction with the Compulsory Arbitration Act, requires a negotiation of issues pertaining to wages, hours and other terms and conditions of emplcyment. The Employer has attempted to bypass such a requirement and to directly submit issues in an arbitration proceeding already in progress. For the Employer to state that the numerous employer related issues should be then submitted to further remand, violates the express public policy upon which the Compulsory Arbitration Act was founded. Section 7(a) of the Act, which authorizes the remand, does not authorize multiple remands by the aribtrator, hence, the Employer's statement is statutorily deficient. It is the intent of the Compulsory Arbitration Act, as found in Section 1 thereof, that an "alternate, expeditious, effective and binding procedure for the resolution of disputes" exist. The Employers action runs contrary to that dictate and therefore an equitable basis also exists for prohibition of the employer related issues.

While Section 7(a) of the Act authorizes a remand, the purpose is clearly to reduce the number of issues presented to arbitration. Instead, the Employer has misused the statutory mechanism in an attempt to slide in the back door, its numerous issues. The purpose of the remand section has, therefore, been patently abused by the Employer.

It is significant to note that the Michigan Employment Relations Commission, in POAM Ottawa, 1981 MLO 441, indicated that it is for the Commission to determine whether or not upon a petition filed for arbitration, a dispute is ripe for presentment to a compulsory arbitration panel. The

commission states at page 448:

> Section 3 of Act 312 provides that the employees or employer may initiate binding arbitration proceedings by request, whenever in the course of mediation the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation. By making such a request, a party does not automatically set Act 312 procedures in motion. The Commission, in consultation with the mediator, evaluates whether or not a dispute is ripe for arbitration. If further bargaining is warranted, the parties are so notified and further meetings are required before the request is processes. Therefore, it is virtually impossible for a union to simply declare impasse and move immediately into Act 312 arbitration proceedings.

In Ottawa, the Commission held that the POAM's Petition was valid. In the present matter, in the absence of the Employer having presented issues in the mediation stage, and, in the absence of the Employer having petitioned for arbitration, the Commission has not been afforded the opportunity to rule upon whether the Employer issues create a dispute ripe for arbitration. To the degree that the Commission stated in Ottawa it is "virtually impossible for a Union to simply declare impasse and move immediately into Act 312 Arbitration proceedings", it is likewise impossible for the Employer, in the present matter, to simply assert, on the day before the arbitration hearing, that it is entitled to include its submitted issues for consideration by the neutral arbitrator in her award. For the arbitrator to rule that the employer issues are proper and that the arbitrator has jurisdiction to consider such issues, would usurp the authority of the Employment Relations Commission in its initial determination as to the propriety of a Petition for Arbitration.

Based on the explicit statutory language of Section 3 of the Compulsory Arbitration Act, in conjunction with the authority of the Michigan Employment Relations Commission as

stated in the Ottawa decision, it is respectfully requested that the arbitrator rule that the employer submitted issues are jurisdictionally improper.

EMPLOYER POSITION

THROUGHOUT the course of this proceedings, the Union has rejected virtually all of the Employer 's proposals on the basis the Panel lacked jurisdiction to consider those issues since the proposals were not subject to mediation. MCLA 423.237a provides:

> "At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 3 weeks. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the Employment Relations Commission of the remand."

The chairman is granted broad discretion to determine whether a remand would be useful or beneficial to the parties. During the course of the remand the Act 312 Panel does not lose jurisdiction of the dispute, but merely suspends hearings on the dispute until the parties have had an opportunity to resolve the issues through further collective bargaining. It would be inherently unfair and contrary to the statutory provisions quoted above to adopt the Union's thesis in this case. The record before the Chairman clearly demonstrates that.

There is no basis for the Union's argument either in law or fact, and the Panel may properly exercise its jurisdiction with respect to each of the Employers economic proposals. Interests of flexibility and fairness are also addressed in the City's non -economic proposals.

FINDINGS:

A jurisdictional issue must be addressed and ruled upon by the Chairperson before a determination can be made as to the issues which are properly before this Panel for binding arbitration under Act 312.

On January 19, 1983 a pre-arbitration hearing took place at the Lansing offices of the Employment Relations Commission. Hearing dates for the arbitration were set to be held in the City of Ironwood on April 13 and 13, 1983.

At this meeting the City stated it wished to resume megotiations. The terminated City Manager had been replaced, there had been a change in the complexion of the City's bargaining group. The City wished to resume bargaining on Wages, Dental Insurance and Shift Differential as well as other issues. The City stated it could find no copies of any Tentative Agreements. The only notes it could find were of the one mediation session.

The Union objected to further bargaining on any issues except those listed on the Act 312 petition by the Union; Wages, Dental Insurance, and Shift Differential.

The Act 312 petition lists the unresolved issues by the Union as:

"1. Wages.....

2. Dental Insurance.....

3. Shift Differential.....

ALL TERMS AND CONDITIONS OF EMPLOYMENT TO CARRY FORWARD IN FULL FORCE AND EFFECT.

ALL CONTRACT LANGUAGE FROM PRIOR CONTRACT TO CONTINUE IN FULL FORCE AND EFFECT.

All T/A'sBETWEEN THE PARTIES TO BE STIPULATED TO FOR INCLUSION IN NEW CONTRACT."

As Chairperson I remanded this dispute for further collective bargaining as provided by MCLA 423.32a and notified the Employment Relations Commission of such remand.

The issue here is not what procedures are prerequsite to the filing of an Act 312 petition or the certification of the petition by the Employment Relations Commission.

The issue here is whether during the remand for further collective bargaining the Union had the right to restrict bargaining to the issues of Wages, Dental Insurance, and Shift Differential?

On March 3, 1983 a meeting of the bargaining teams of the Union and City took place in the Cioty of Ironwood. The City presented a list of 12 issues (page 4). Of these 12 issues #10 referred to wages. At the arbitration hearing the parties stipulated as to #1, 2, and 7, and #12 was withdrawn.

On April 6, 1983 another bargaining session took place in the City of Ironwood at which the City presented a list of 45 issues (pages 5-9) it wished to have addressed. Thes 45 issues included the 12 issues presented by the City at the March 3 meeting.

Although the City on several occassions requested the services of a mediator, because of various factors these issues were not mediated.

The POAM representative had at the January 19, meeting stated that only the issues listed on the Union Act 312 petition was not notified by the local bargaining committee on the issues presented by the City on March 3 and April 6. The POAM representative was not made aware of these issues until he arrived in the City of Ironwood on April 11. The POAM representative met with the local bargaining committee and also with the representatives of the City. As a result of these meeting certain issues were withdrawn, and other were stipulated to by the parties.

The Union is incorrect in its position that because there was no mediation of the issues the issues cannot properly be before the Panel. While it is most desireable for mediation to take place the gepgraphic distances and the time limits made it impossible for mediation to take place.

The fact that the issues were not listed on the Union Act 312 petition does not prevent the City from rasing issues in further collective bargaining.

The issues presented at the March 3 meeting by the City (those not having been withdrawn or stipulated to by the parties) are properly before this panel.

It is true the POAM representative did not learn of the issues of the March 3 meeting until April 11 therefore he did not have reasonable time to engage in collective bargaining with the City or prepare a case in opposition to the Case presented by the City. However the failure of communication was an internal Union failure. This

Panel connot be deprived of jurisdection because of an internal Union lack of communication. If the Union representatives had kept each other informed of what was happening there would have been ample time for collective bargining and prperation of the Union position for the arbitration hearing.

The new issues raised by the City at the April 6 meeting are not properly before this Panel. Whatever the reaseon for the delay between the March 3 and April 6 meeting the City must have been aware that 4 days before the arbitration hearing would not give the Union sufficient time to explore its position on such important issues that went to the very heart of the relation between the parties. Even if there had been a realistic attempt to bargain the Union would have insufficent time to prepare its case on these issues for presentation to the Arbitration Panel.

II COMPARABLES

THE UNION established as their comparables all cities in Michigan's Upper Peninsula with a 1980 population twice as great and half as small as the City of Iron wood. The City of Marquette was also included as a benchmark.

The The Employer included cities in the western half of the Upper Peninsula and one city Hurley, in the State of Wisconsis, just over the Michigan boundry line. There is agreat deal of overlap in the lists of city comparables of the parties with the exception that the Employer excluded Sault Ste. Marie and did include Munising and Hurley which the Union did not.

The Union asserts the Employer failed to include Sault Ste. Marie merely because it was located in the eastern most third of the Upper Peninsula and this is not sufficient basis for exclusion. The City of Munising included by the Employer was not included by the Union because it did not fall within the population parameters of twice as large or half as small as Ironwood.

I have dropped the City of Hurley, Wisconsin from the list of comparables. The City has not presented sufficient information to permit me to include Hurley as a comparable. The City has presented no evidence of a historic or any other relationship between Ironwood and Hurley employee wage rates. It has presented no

evidence of any linkage between the cities other than they are in close proximity on opposite sides of the state boundary line.

	Pop. 1980	
Escanaba	14,355	PSO*
Gladstone	4,533	PSO
Hancock	5,122	P&F**
Houghton	7,512	P***
Iron Mountain	8,341	P&F
Ishpeming	7,538	P&F
Kingsford	5,290	PSO
Manistique	3,962	PSO
Marquette	23,288	P&F
Minominee	10,009	P&F
Munising	3,083	P
Negaunee	5,189	P
Sault Ste. Marie	14,448	
Ironwood	7,741	PSO

* Public Safety Officer

** Police and Firefighter

*** Police

III UNDISPUTED ECONOMIC ISSUES

I. WAGES

	April 1, 1982	1983	1984
UNION	5%	5%	5%
CITY	0%	5%	4%

Union Position

How long must the employees of Ironwood Public Safety Department continue to subsudize the City of Ironwood?

It is unfair for the employer to impose a freeze on wages while at the same time reducing the employees' current salary by unilaterally reducing the hours in the work week.

The City has borrowed money, interest free from the employees pension fund, then expects the employees to further sacrifice by freezing wages.

The City has deliberately for many years operated both the water department and the cemetery at low rates and made up the deficit from general monies.

The City has a history of deliberately and negligently keeping the costs of local government artifically low by

taking advantage of the City employees to subsidize City operations.

The union proposes a first year 5% wage increase retroactive to April 1, 1982 for all employees covered under the agreement. An additional 5% across the board increase is requested for the second year of the contract retroactive to April 1, 1983 with another 5% for the third year effective April 1, 1984.

The Employer offers no wage increase for the first year commencing April 1, 1982, 5% for the second year commencing April 1, 1983, and 4% for the third year commencing April 1, 1984.

In terms of percentage increases, both parties are equal with 5% in the second year and very close at the third year with the Union proposing 5% and the Employer proposing 4%. Actual dollar amounts for salaries are significantly impacted however, by the difference in position for the first year, i.e. Union at 5%, Employer at 0%.

A comparison may be made as follows, assuming the Panel were to award all three years' final offers for wages for one side or the other.)Public Safety Officer who has completed two years of service is used for the example.)

	Union	Employer
Present April 1, 1981	$8.11 ($16,869)	$8.11 ($16,869)
April 1, 1982	$8.51 ($17,701)	$8.11 ($16,869)
April 1, 1983	$8.93 ($18,574)	$8.51 ($17,701)
April 1, 1984	$9.37 ($19,490)	$8.85 ($18,408)

The difference in hourly or annual straight time salary is significant in the above example. The Panel must therefore look to comparable salaries to enable an objective evaluation of each of the two offers. Using corrected figures from Union Exhibit 26 for Public Safety Officers and Police Officer (if that is the only existing classification) the following averages may be computed.

	7/1/82	7/1/83	7/1/84
	18,577 (Average of 12 settled contracts)	19,215 (Average of 5 settled contracts)	20,842 (Average of 3 settled contracts)
	4/1/82	4/1/83	4/1/84
Union	17,701	18,574	19,490
Employer	16,869	17,701	18,408
	Deviation from Average		
Union	-876	-641	-1,352
Employer	-1,708	-1,514	-2,434

Using the above evaluation which recognizes that the majority of comparables make wage adjustments on July 1 fiscal year dates, neither the Union's offer nor the Employer's offer

reaches the average of the comparables. Even if the one disputed comparable of Sault Ste. Marie were eliminated and the above table was adjusted for the three month difference in effective dates (April 1 for Ironwood, July 1 for most other cities), both parties' offers would continue to fall below the average. In 1982 and 1983, a sufficient number of comparables have settled on wages to make a meaningful comparison. In 1984, only three cities have settled which makes comparison more difficult but which cannot be avoided. Notwithstanding, any of the above ccnsiderations, <u>both the Union's and Employer's offers fall short.</u> The question to the Panel must be -- which offer comes <u>closest</u> to the average? It is clear that only the Union's Final Offers of Settlement for all three years of the contract can accomplish this.

The Panel, in its deliberations on wages, must also carefully note Section 9(e) of the Act which mandates the Panel to consider "The average consumer prices for goods and services, commonly known as the cost of living." Union Exhibit 27 explicitly depicted the loss of purchasing power which has accrued to bargaining unit members over the life of the last contract. Because the graph is drawn on a dollar scale, the Union's final offers of $17,701, $18,574 and $I9,490 may be sketched at the appropriate time intervals, as may the Employer's final offers. Again, it becomes abundantly clear that neither party's offers will make employees whole, but <u>the Union's final offers most nearly accomplishes this goal.</u>

During the hearings, the Employer's advocate had some difficulty with the concept of loss of purchasing power depicted

by a comparison of wages and the Consumer Price Index as measured from the beginning point of the last contract, that is, the point of prior voluntary agreement of the parties as to wages. The Union directs the Panel to Elkouri and Elkouri, How Arbitration Works, at page 764 for relevant case citations and the discussion of standards for interest arbitration stating that the first day of the last contract is a correct starting point.

The Union believes that its Final Offer of Settlement regarding the issue of Wages best meets the criteria specified by the Act and is wholly supported by competent evidence on the record. The Union therefore, urges the Panel to adopt its Final Offers of Settlement for all three years of the contract on the issues of Wages.

CITY POSITION

In recent years, the City of Ironwood has, in the words of one witness, found itself in "a constant battle to stay afloat". From fiscal year 1977 to 1978 through fiscal year 1981-82, the City's general fund balance had a net deficit cf $388,988. In only one of those years, 1979-80, was there a positive fund balance which amounted to only one hundred fifteen dollars ($115).

Moreover, at the time of the hearing in this matter, the City anticipated that its general fund would suffer an additional deficit of approximately one hundres seventy-two thousand ($172,000) for the fiscal year 1982-83.
Virtually every fund subject to the City's direction is in

a deficit posture. For example, as of July 1, 1981 the General Fund had a deficit of $83,853; the Library Fund had a deficit of $13,338; the Water/Sewer Fund had a deficit of $542,605; the City's Equipment Fund had a deficit of approximately $40,000; and the City's Retirement Plan had a deficit of approximately $255,000.

By April of 1982, the City was virtually out of money to pay salaries. At this point it was forced to lay off employees in the Public Works Department and to eliminate its regular Fire Department.

The City was therefore obligated to file a Deficit Elimination Plan with the State of Michigan.

Nonetheless, the employees in the Public Safety Department turned down a City proposal for a 5% reduction of wages to attempt to stem the tide of the City's crumbling financial position. The City did, however, reach agreement with its other labor organization to freeze wages through April of 1983.

Although the City has put surcharges on its water/sewer rates, and increased its cemetery rates, the prospects for recovery in the short run appear to be dim. Increased revenues are not available by keeping the millage at constant rate because of the impact of the Headley Amendment.

Furthermore, increased millage rates do not appear to be a solution to Ironwood's fiscal difficulties since the City has the highest total millage rate of any comparable municipality in the Upper Peninsula.

It is against this dreary financial background that the respective proposals of the parties must be tested. If

the City of Ironwood is to move forward, it will take cooperative endeavor from all concerned.

One can readily see that the parties disagree in their last offers with respect to only the first (1st) and third (3rd) years of the new Agreement's term. Presumably, the Union bases its first (1st) year increase upon the comparables which it has submitted to the Chairman. The benchmark City used by the Union is Marquette, a municipality which is more than three (3) times as large as Ironwood. The Union's comparables, in fact, encompass a population range of nearly 700%. The Government Employee Relations Reporter recently reported that the City of Marquette had settled with its police department for a wage freeze in the first (1st) year of that labor Agreement. Here, too, it would be indefensible, given the state of Ironwood's finances, to grant a wage increase effective April 1, 1982. This point is particularly interesting when one remembers that the City has successfully concluded a wage freeze with their other collective bargaining representative. The City, bluntly put, is out of money and it has been running a deficit for the last six (6) fiscal years.

This need for fiscal restraint will continue throughout the duration of the collective bargaining term. The upward struggle toward financial self-sufficiency will be a long one. Accordingly, the City's proposal for a four percent (4%) increase in the third (3rd) year of the Agreement is more fitting to the Employer's particular circumstances. In summary, the City believes that its wage offer is a fair one which compares favorably with other Cities in the Upper Peninsula

area and its other employees. Adoption of the City's last offer will enable Ironwood to operate its Public Safety Department at a reasonable cost based upon other cities similarly situated.

The City of Ironwood currently is suffering from both the State's economic plight and a long bout of deficit spending. The Employer's economic proposals have been carefully designed to enable the City to place itself on a sound financial footing in the future while simultaneously granting employees of the Public Safety Department increases in the second (2nd) and third (3rd) year of the Agreement which are both reasonable and consistent with what is being paid in comparable communities. Keeping in mind the extremely high millage the citizens of Ironwood must pay compared with other municipalities, the City's economic package is a generous and fair one. By granting the City a bigger degree of freedom to manage its own affairs, the Panel will assist the City in adjusting to the realities of the current difficult times.

FINDINGS:

In coming to my decision I have after careful study and weighing all of the evidence and arguments of the parties. I have carefully applied all of the criteria of the statute. I have paid particular attention to the wages paid by comparable communities, wages paid to other City employees, the cost of living and the ability of the City to pay.

AS to the cost of living, there is no doubt that the employees purchasing power has been eroded by inflation. The recent recession has slowed the growth inflation rate so that at this time it is not a major consideration in this case.

Comparison of the wage increase requested by the Union of 5% for the year 1982 - 83 with the wage rates of other employees show the other bargaining units have settled for a wage freeze for the year 1982-83.

It is difficult to determine the relationship of the City of Ironwood with the other comparable cities. Of the thirteen comparable communities only six have Public Safety Officiers, these are; Escanaba, Gladstone, Kingsford, Manistique, Sault Ste Marie and Ironwood. Of these six cities the [illegible] for Manistique of $16,745. is of 1-1-82. If that salary is paid for the full year of 1982 then a comparison of the other cities places Ironwood as fourth out of the 6 cities for the period 1-1-82 thru 7-1-82. There are no comparables for the period 1982-83 except for the City of Escanaba which is listed as $23,714 for the period starting 7-1-83.

If Iwere to find the Union request is more reasonable than the City request for a wage freeze for the first year

I must still consider the City's ability to pay an increase of 5%.

The City has been in a deficit position sicne 1977-78 except for the year 1979-80 when it had a positive Fund Balance of $115.00.

Whatever the past causes of the deficit were there is no doubt the City cannot continue along this road. The State has required the City to file a Deficit Elimination Plan. In order to implement this plan the City has increased fees for water and sewer and the cemetery.In previous years these were subsidized from the General Fund.

There are no other areas that the City can increase revenue. There is no projected increase in Federal or State Revenue Sharing. The most that can be hoped for presently is that the State will promptly paid to the City the revenue sharing due the City.

There can be no increase in the millage without putting the increase to a vote. The City has been required by the Headley Amendment and the Truth in Taxation Act to reduce its millage from 25.20 in 1981 to the present 22.80.

The City also has a debt it owes its Pension Funds which it has undertaken to pay.

I am therefore brought to the conclusion that the City is unable to pay a 5% increase to the bargining unit for the year 1982-83.

Fiscal Year 1983-84 there is agreement by the parties to a 5% increase.

Fiscal Year 1984-85 the last year of the agreement the City offers 4%, the Union offers 5%. The evidence supports a finding of 5% to be within the criteria of the statute.

There is a 1% differance between the Union and the City. Hopefully the City will follow its Deficit Financial Elimination Plan and will beable to pay the employees the 1% increase above their final offer.

II DENTAL INSURANCE

Union Proposal:

Blue Cross/Blue Shield Dental Plan

50/50/50

$800.00 MBL Cap

Employer to pay full premiums for employees and their dependants.

Effective date of September 1, 1984.

Union Position:

The Union wishes to add a minimum level dental plan to the already existing Blue Cross/Blue Shield plan. This would provide for 50% of allowable basic services (not orthodontics) with an $800.00 cap per person per year. Employer would pay full premiums for employees and their depandents. The plan would become effective on Septemberl,194 which would allow the Employer a reasonable time to plan for its implementation.

Of the twelve comparable communities seven of them have a dental plan. The average of these plans are above the level being requested by the Union.
It is clear that dental insurance is a widespread benefit, and the time has come for the Ironwood PSO to be afforded this benefit for themselves and their families.

Employer Position:

No dental plan be implemented.

It would be inappropriate to add Dental Insurance coverage during the term of this agreement.

The Union was unable to provide any cost figures relating to its dental insurance plan. The Employer submits it would be entirely inappropriate to add a new benfit at this time.

FINDINGS:

I find that without any evidence as to the costs of this benefit, even if widespread, the Union has not borne its burden of proof.

The granting of the dental plan is denied.

IV DISPUTED ECONOMIC ISSUES

Employer Proposal:

Modify the last sentence in Section 43 .2 of Article XLIII to read

" In the event such training is taken outside the employee's regularly scheduled working hours, said trainee shall be compensated at the employee's straight time rate of pay."

Union Position:

No change in present contract language.

Employer Position:

There is a direct conflict currently in the greement between the provisions of Section 43.1 and 43.2 of Article XLIII. Section 43.1 states training time shall be compensated at straight time rates, while Section 43.2 mandates training time for new employees will be compensated at overtime rates. There is no sound basis upon which a distinction ahould be drawn between newly fired employees and more senior individuals with respect to the rate they receive for undergoing training.

FINDINGS:

The City in presenting it's case presented no evidence as to the present cost, projected future costs, and/or projected future savings. The City presented no evidence concerning comperability with other city employees or other Public Safety Officers or Police Officers in the comperable cities.

The City is seeking to alter language that was mutually agreed upon by the parties. In order for the Arbitration Panel to alter mutually agreed upon language

the party seeking such change must bear the burden of proof. The City has not met it's burden of proof . It has not as stated above provided any financial proofs. It has not proved any conflict between Section 43.1 and 43.2. The fact that different classes of employees are paid at different rates is not necessarily a conflict.

Employer Proposal:

Add the following as Section 44.5:

" effective April 1,1984, employees shall assume fifty percent (50%) of any increase in hospitalization insurance premiums incurred beyond premiums incurred on April 1, 1983.

Union Position:

No change in present contract language.

Employer Position:

To reduce costs attributable to increased insurance premiums, the Employer has proposed that bargaining unit members share on an equal basis with the Employer any future increases in premium rates. The City has already concluded an Agreement with its other bargaining representative peoviding for a shared basis for future hospitalization rate increases.

FINDINGS:

The City is seeking to alter language in the contract that was mutually agreed upon by the parties. In order for the City to succeed in altering language mutually agreed upon by the parties the City must bear the burden of proof.

The City has presented evidence of past increases in insurance premiums. It has presented no evidence as to the projected future increases.

The City has stated it has concluded an Agreement with another bargaining representative providing for shared basis for future hospitalization. There is no evidence on the record as to which bargaining unit and how many employees are in this bargaining unit.

The City has not presented convincing evidence for change in the language of Section44.5.

V DISPUTED
NON ECONOMIC ISSUES

Employer Position

Modify Section 6.2, Article VI, by adding at the conclusion of the Section: "provided that such time is reasonable and does not unreasonably interfere with the operation of the Department".

The Union's negotiating representatives did not have any particular objection to the proposal itself, but rather, insisted that it be part of a "package". One should note that the present collective bargaining Agreement does not contain any restriction on the number of Association's representatives which may be present during collective bargaining negotiations. The City's proposal does not attempt to limit the size of the Association's bargaining team, but focuses instead on the City's unquestioned need to insure that the Department's operations are not adversely impacted by the absence of an unreasonable number of employees. As such, this proposal should be adopted by the Panel.

Union Position:

Retain Section 6.2, Article VI without change.

FINDINGS:

The Union objected to the Panel's consideration of this proposal on the ground that the proposal had not been presented to the Association until after the time the parties had met pursuant to the remand for further collective bargaining.

The Union also on cross examination ascertained there had never been unreasonable interference with the operation of the Department. Officers attending while on duty have their radios with them and respond to any calls.

The City as the party requesting a change of language has the burden of proof which it has not sustained. The City has presented no evidence of an unreasonable use of time or an unreasonable interference with the operation of the Department.

Employer Position

> The Employer proposes that Section 11.2 of Article XI be eliminated.

The City of Ironwood Public Safety Department employees are covered by the protections of Public Act 78, a civil service statute. It is the Employer's position that Section 11.2 of Article XI creates ambiguity between the provisions of Act 78 and the language contained in Section 11.1 of Article XI and that Section 11.2 is redundant. Public Act 78 establishes procedures, standards and conditions under which employees may be disciplined or terminated. The Employer desires to avoid duplication of forums and possible remedies by eliminating the ambiguity problem. This position is consistent with the stipulation of the parties to revise Section 11.5 of Article XI to provide for an election of remedies by a disciplined employee.

Union Position:

Section 11.2 of Article XI should be retained in its present form.

The Panel is without jurisdiction to consider this issue.

FINDINGS:

I find no evidence of ambiguity between the provisions of Act 78 and Section 11.1 of Article Xi or that Section 11.2 is redundant.

The parties have stipulated (page 10, #7)for a right of election by the Grievant under Act 78 or the Grievance provisions of the Contract.

The City has the burden of proof which it has not sustained. The labguage of Section 11.2 Article XI will remain in the Contract.

Employer Position:

Revise Section 13.4 of Article XIII to read:

> "Department Seniority commences the date of original appointment to either the Police or the Fire Department of the City. This class of seniority shall govern layoff and recall, which shall be by job classification and rank, provided that the more senior employee has the necessary experience, qualifications and present ability to perform the required work."

Delete Section 13.5 of Article XIII.

Section 13.4 of the parties' present collective bargaining Agreement deals with departmental seniority with respect to matters of layoff, recall, Act 78 and all other matters other than those relating to benefit entitlement. Because the Department has several classifications and ranks, the Employer believes that it is appropriate to apply seniority to both classification and rank as well as on a departmental basis. Furthermore, the Employer's proposal expressly recognizes that if a senior employee is to be retained in preference to a junior employee the senior employee must have

the experience, qualifications and present ability to be able to perform the remaining required work. This proposal must be considered in conjunction with the Employer's proposal relating to Section 13.5 of Article XIII. As noted above, the Employer has proposed that Section 13.5 be deleted from the future contract between the Employer and the Association.

Section 13.5 grants what amounts to a super-seniority preference for layoff purposes for all individuals who were public safety officers as of August 1, 1980. The Employer's proposal would base departmental seniority on the date upon which the employee was appointed to either the Police or Fire Department. The City of Ironwood no longer has either a Police Department or a Fire Department. Instead, it has a Public Safety Department composed of former firefighters and former police officers. There is no justification for treating employees in the same classification differently based upon the artificial device of which department they had worked for previously. All public safety officers working for the City have been cross-trained in both firefighting and police skills, although certain firefighters have received more hours of firefighting training than certain former police officers. Potentially then, Section 13.5 requires the City of layoff individuals who are competent in firefighting skills and retain individuals who did not possess those skills even though both individuals were hired into their former departments on the same date and are currently working within the same job classification.

Unlike its position on much of the Employer's non-economic proposals, the Union made an effort to contest the Employer's proposals on these subjects on a direct basis. However, the Union's own witness on this point, the Association

President, Captain Cayer, testified that the original purpose behind Section 13.5 was to insure that the City would have certified police officers working during the period of time in which former firefighters were being cross-trained to become certified law enforcement officers. Furthermore, Captain Cayer conceded that the most senior employee should have priority for job security, and in addition acknowledged that he himself would rely on an individual's experience, together with any specialized training to carry out particular job assignments. In essence, then, the Union's efforts at rebutting the Employer's position fall far short of the mark. Nonetheless, in its presentation of its final position on this topic, the Union has once more invoked its jurisdictional argument.

Union Position:

Section 13.4 and 13.5 of Article XIII should be retained without change.

FINDINGS:

Although there is one Public Safety Department there are two seniority lists. The change proposed by the City would result in one seniority list which would fundamentally effect seniority in the Department.

Combination of the seniority list would grant seniority in the bargaining unit to cross trained fire fighters who have recently become members of the bargaining unit. The rational underlying the creation of separate seniority list still exists.

The City the party seeking a change in mutally agreed upon language has the burden of prof.which the City has not sustained. The merging of different seniority lists is usually a difficult problem requireing input from all the parties concerned.

Section 13.4 and 13.5 of Article XIII shall be retained in the contract without change.

Employer Position:

Replace Section 14.1 of Article XIV with:

> "The Employer agrees that all conditions of employment relating to wages, hours of work and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement unless said conditions are not provided for in the Agreement, in which case the employer shall have ten (10) days after receipt of written notice from the Association that it deems a condition to exist, in which case, the Employer may unilaterally revoke or ratify said condition. It is further agreed that the provisions of this Section of this Agreement shall not apply to inadvertent or bona fide errors made by the Employer.

From an Employer's perspective, three (3) possible approaches suggest themselves concerning a clause such as Section 14.1 of Article XIV: (1) nothing on the subject should be in the labor agreement at all; (2) the labor organization should present to the Employer a detailed listing of the accrued rights that it wishes to retain and those items would then be incorporated into the contract specifically by the parties; or (3) the contract could contain language which would permit the Employer an examination of a claimed right if and when the matter was raised by the Union at a later date. Here the Employer has opted for the last approach. The difficulty, if course, with any maintenance of standards provision is that it "locks in" the Employer to a set of conditions which are not embodied in a collective bargaining agreement itself, thereby creating ambiguities as to the parties rights and responsibilities which may not be easy to resolve. In this particular case, the Association did not indicate to the Employer any particular rights that it thought existed which must be preserved and in fact refused to supply

or identify any such rights when asked directly. This sort of "cat and mouse" approach to the collective bargaining relationship is certainly not a sound one. The Association's principal defense to inclusion of the new language in the agreement appears to be that that matter had not been submitted to mediation prior to the date of hearing.

Union Position:

Retain Section 14.1 of Article XIV in its present form.

FINDINGS: The City has the burden of proof which it has not sustained. The City desires a fundamental change in the relationship between the parties. This I cannot grant upon the proofs submitted by the City.

Employer Position:

Add to Contract:

> "Management reserves the right to establish dispatching methods different than in the past, including but not limited to, consolidating with other law enforcement or governmental units."

The rationale behind the City's proposal on this topic is to provide it with greater flexibility in utilizing existing manpower. A number of Upper Peninsula cities already have their disparch function performed by outside police agencies. During negotiations, the Union was willing to give the City a limited right to use outside sources for dispatching services but "tied" the concession to a promise of no layoffs. Hopefully by using an outside source for our dispatching, the Emplcyer would be able to reduce its costs of performing this function--which currently are approximately One Hundred Sixty Thousand Dollars ($160,000) a year--and to put more personnel into active service. The Union's objection to inclusion of this clause in the collective bargaining contract is not clear, particularly in light of the Employer's assurances that the intent of this proposal was not to reduce current manpower levels. Nonetheless, the Union also opposes the proposal on jurisidctional grounds.

Union Position:

> The new language should not be included in the Agreement.

FINDINGS:

The City has the burden of proof which it has not sustained. If the City had presented a comprehensive plan

for changes in the dispatching system I would have given it serious consideration.

This the City did not do. It wishes broad power to change the dispatching system but has offered nothing in evidence as to how such changes would be made and what effect it would have on the bargaining unit.