

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Statutory Arbitration Between:

CITY OF TRAVERSE CITY,

Employer,

-and-

TRAVERSE CITY FIRE FIGHTERS  
ASSOCIATION, LOCAL 646,

Union.

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MERC Case No. G 93 G-3002

**ERRATA TO:**

**OPINION OF**

**THE ARBITRATION PANEL**

Dated: February 3, 1995

The Parties have authorized the Panel to issue the following errata to the Opinion, Findings, and Order dated January 25, 1995.

Opinion p. 18: **RETIREE'S HEALTH INSURANCE**

City's Offer is hereby corrected to read:

*Effective July 1, 1994, employees who retire after July 1, 1994 shall be afforded the same health insurance package as active employees.*

Opinion p. 18: **RETIREE'S HEALTH INSURANCE PREMIUMS**

City's Offer is hereby corrected to read:

*The City will pay retirees' health insurance premiums for each covered category in effect on July 1, 1995, for employees who retire after July 1, 1995. Any premium increases above the rates in effect on July 1, 1995, are to be the responsibility of the retiree.*

Appendix p. 4: The last paragraph on the page is corrected to read:

*Continuation of group coverage for dependent, unmarried children of the subscriber between the ages of 19-25 as defined by the U.S. Internal Revenue Code. (FC)*

Appendix p. 9 is amended to read as follows at Item 15 (g):

*The City retains the right to review alternate health care coverage and implement such programs provided that the carrier is licensed to do business in the State of Michigan, provides equivalent or greater benefits and coverage, and is accepted by the health care community.*

Appendix p. 20 is amended so that following the second full sentence at the top of page 20, there appears this sentence:


*Emergency scheduling shall be permitted on the approval of the shift commander on a first-come basis.*

Appendix p. 13. The Panel notes that there is NO CHANGE in the text of Article XVI, Section 2, in the portion appearing at the bottom of p. 13. The language following the words "upon the occurrence of death in the employee's immediate family as follows:" is intended to be the language of the parties' 1990-93 contract.

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The Chair has consulted with both parties and has received the express approval of the parties' representatives to execute these Errata to the Opinion, Findings, and Orders of the Panel dated January 25, 1995. The above-noted changes in the original Opinion and Appendix are hereby adopted.

  
Benjamin A. Kerner, Chair

  
Walter Schroeder, Union Delegate

  
Richard I. Lewis, City Delegate

2-8-95

APPENDIX A

TENTATIVE AGREEMENTS

RECEIVED  
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1. V pg. 2.

Revise last sentence to read:

" this may be done through the Treasurer of the Association."

2. V a) pg. 3.

Revise to read:

"Amount of initial fees and dues will be certified to the City by the Treasurer of the Association."

3. XII pg. 11.

Delete:

" Washington's Birthday"

Add:

" President's Day"

Revise second paragraph to read: (incorporates attached Holiday Pay Agreement).

" Each employee working a regular schedule for 24-hour operations shall work their days according to their schedule and shall receive the equivalent of:

The employee's hourly rate (calculated as a 40-hour employee) x 8 Hours x 1 1/2

The additional pay shall be paid in the payroll period in which the Holiday falls."

The Fire Chief may schedule vacation leaves for employees with particular regard to seniority of those employees and to enable efficient and effective operations within the Department. Requests for vacation leave shall be approved by the Fire Chief or his representative. Vacations scheduled and approved in advance are subject to cancellation in the event of an emergency in the Department. Employees may use vacation time on an hourly basis, in accordance with department and contract provisions. No employee shall be entitled to paid vacation until they have served the City for one (1) continuous year. Department procedure shall prevail, which permits one (1) employee per 24-hour shift to be off on vacation leave at any given time. Seniority shall prevail in scheduling vacation, except in the case of emergency scheduling. Emergency scheduling shall be permitted on the approval of the shift commander on a first come basis. Annual vacation leave hours may be accumulated by an individual employee, assigned to 24-hour shifts, not to exceed 288 hours carried over into a new fiscal year. Annual vacation leave hours may be accumulated by an individual employee, assigned to a 40-hour work week, 160 hours carried over into a new fiscal year. Upon separation from service, employees will be entitled to compensation for any unused portion of accumulated annual leave."

5. XIV, Section 5, pg. 17, 18

Revise to Read: (incorporates the attached Medical Leaves during Leaves of Absences Agreement.)

"Section 5 - Medical Insurance During Leaves of Absence: and through mutual agreement between the City and the Association, the Section shall read:

An employee who has extinguished all sick leave and vacation leave, but who continues to remain off work, shall be deemed to be on medical leave of absence. A medical leave of absence resulting from non-occupational injury or illness, may be granted for no longer than one (1) year. During such leave, the City shall continue to pay group hospital, medical, and surgical coverage for a period of one (1) month following the month in which the leave of absence begins. For employees who suffer an occupational injury or illness, group hospital, medical, and surgical coverage will be extended for either six (6) months following the month in which the absence begins or until the employee terminates his/her employment with the City, whichever is a lesser duration. Upon discontinuance of the City's payment of insurance premiums, an employee shall assume responsibility for the full cost of the required insurance premiums to maintain coverage."

6. XXI, Section 3, pg. 24

Add to a):

"During each July"

7. **Article VIII. Association Activities, Section 2 - Released Time**; pg. 6, Rewrite: Officers and other representatives of the Association shall be afforded reasonable time during regular working hours, with the permission of the Public Safety Director/Fire Chief or his/her designee, without loss of pay, to fulfill...etc.
8. **Article XI., SALARIES, Section 1 - General**; pg. 10, Rewrite:  

The salary schedule attached hereto as "Schedule A: shall be effective for the term of this agreement. A twenty-four (24) hour shift employee, upon request, temporarily assumes the duties and responsibilities of a position that is greater than his regularly scheduled responsibility, and classified in a higher salary schedule, shall be paid an additional \$10.00 per shift day (\$5.00 per twelve (12) hour shift) for this service. An eight (8) hour per day employee shall be paid an additional \$.42 per hour.
9. **Article XVI., LEAVES OF ABSENCE, Section 4 - Personal Leave**; pg. 21, in sub-section "a) & "b)" add the word "calendar" following reference to "sixty (60)".
10. **Article XXII., RESIDENCE**; pg. 24, Rewrite paragraph:  

Employees of the Fire Department may retain a residence within fifteen (15) miles of work as measured from the nearest city limit. Prior to making a change in residence, the new location shall be reported to the Public Safety Director/Fire Chief for approval.

11. SCHEDULE "A" - FIRE DEPARTMENT SALARY RATE ATTACHMENT, pg. 31, 32 & 33, Add:

Pay increase to commence on the first day of a pay period which falls closest in time to the date scheduled for the increase.

12. Article XIII, pg. 11,  
Add to end of paragraph 3:

.....vacation pay or leave pay for that day. This is in lieu of double time pay for those affected shifts working the Holiday, so that all 24-hour shift employees have an equal share.

13. XIV, pg. 13, 14, 15

**INSURANCE:**

**Section 1 - Medical Insurance:** The City shall provide to Association members and their eligible dependents/family members the following health benefits, which defined by the current provider, Blue Cross/Blue Shield, are identified by the following codes: MVF-1 Certificate; D45NM; FC & SD; PD \$2.00; MMC Option 1; ML; FAERC; Pre-100; PCES I. A partial description of this coverage is as follows:

- Full cost of comprehensive hospital care providing 365 days of hospital care for general health conditions with full renewal of days after at least 60 consecutive days of being out of a hospital, with up to 45 of these days used for mental conditions, in a semi-private hospital room.

(Comprehensive Hospital Care, MVF Preferred Group & D45NM)

- Continuation of group coverage for dependent, unmarried children of the subscribed between the ages of 19-25 as defined by the U.S. Internal Revenue Code. (FC)



- Continuation of group coverage for sponsored dependents who are related by blood or marriage, or who reside with the employee as a member of his/her household as the employee's dependent as defined under the U.S. Internal Revenue Code.

(SD)

- Federal legend drugs at a cost of \$2.00 per prescription or refill. (PD \$2.00) A rider to provide the generic equivalent drug at a cost of \$2.00. (PD-MAC) The rider does not remove the availability of brand-name drug but does require that the physician indicate brand name only be dispensed on the written prescription. This is done by noting "dispense as written" (DAW) on the prescription.

- Master Medical Catastrophic coverage which adds to the basic coverage which protects the employee and dependents against the costs of unusual or lengthy illness. MMC benefits are available after a \$100 for one person or a total of \$200 for a family deductible in a calendar year. The plan will pay 80% of the approved amount for health care expenses. (MMC Option 1)

- Waiver of member liability of \$5.00 or 10% (whichever is greater) of the approved payment scheduled amount of the physician's charge for: diagnostic laboratory, radiology, pathology, and EKG's. (ML)

- Emergency First Aid provides benefits based on usual, customary and reasonable charges for the initial examination and treatment for emergency first aid and life threatening medical emergencies. (FAE-RC)

- Pre-authorization coverage requires physicians to initiate procedures for all inpatient admissions to hospitals, except those related to emergencies, prior to admission. (Pre 100)
- Precertification of Elective Surgery - Voluntary Second Surgical Opinion coverage provides benefits of second opinion consultations prior to any inpatient elective surgery in hospitals. Surgeries requiring a second opinion: Cataract, Fallopian Tubes, Tonsils, Heart valve, Gall bladder, Ovaries, Nasal, Adenoids, Hysterectomy, Hernia, Heart bypass & Prostate (PCES I)

It shall be a requirement of the insurance carrier to provide benefit guides/descriptions fully explaining covered benefits.

There may be other plans or insurance carriers offered as options to the employees.

It shall be the responsibility of the employee to report changes in status to the Personnel Office within thirty (30) days of such change. Such changes include: birth or death of a family member, marriage of a dependent, divorce, or election of coverage under a spouse's policy of hospitalization.

There shall be a City of Traverse City Group Health Insurance Committee consisting of representatives from each union and administrative group. Two (2) members of the Association will be part of this committee. The committee shall periodically examine the health insurance program including, but not limited to, alternate provider, benefit

levels, and premiums and shall make recommendations to the City regarding such.

The City retains the right to review alternate health care providers and to implement such programs provided that the carrier is licensed to do business in the State of Michigan, provides equivalent or greater benefits and coverage, and accepted by the health care community.

New employees shall be entitled to hospitalization insurance as soon after completion of the first six (6) months of service as allowed by the health carriers agreement.

**Health, Medical and Surgical Insurance Cost Cap:** Effective July 1, 1990, the City shall be responsible for one hundred percent (100%) of the applicable premium.

- A. Single Person Coverage.....\$146/month
- B. Double Person Coverage.....\$330/month
- C. Family Coverage.....\$346/month
- D. Family Dependent.....\$ 74/month

Once the applicable premium exceeds the above limits, the City shall also be responsible for fifty percent (50%) of the excess amount, and the employee shall be responsible for the remaining fifty percent (50%) of the excess amount.

14. XIV, Section 2, pg. 15

**Section 2 - Retiree Hospitalization:** Any retiree of the fire department receiving hospitalization benefits prior to July 1, 1993, shall continue to receive the benefits as described in the applicable collective bargaining agreement

in effect on the date of their retirement. The City acknowledges that the Association does not represent these retirees for any amendments made to hospitalization benefits under this section.

15. XIV, Section 3, pg. 16-17

d) The Traverse City ACT 345 Board shall be responsible for obtaining an annual audit of this trust fund by a qualified public accounting firm and for obtaining an annual actuarial analysis by a qualified firm.

e) If upon or after retiring an Association member becomes eligible for hospitalization insurance coverage through a new employer, a spouse's employer, Medicare, long-term disability, or some other governmental or private hospitalization program, that retiree must report to the Personnel Office this potential source of hospitalization coverage. If such coverage is equal to or superior to the previously described plan, the retiree must utilize the coverage offered by that source instead of the retiree's hospitalization program described in this contract. Should the alternate coverage require an employee contribution, or be inferior to the previously described coverage, a determination shall be made by the Traverse City ACT 345 Board regarding the most cost effective method to the trust fund for the retiree and his/her dependents to receive the level of coverage previously described. Failure to comply with this reporting requirement is grounds for suspension of coverage for the retiree until the retiree reimburses the

trust fund for the excess costs incurred.

f) Hospitalization coverage under this section shall be terminated to any retiree's spouse who is divorced from the retiree or who remarries after the death of the retiree.

g) The City retains the right to review alternate health care coverage and to implement such programs contained within the current Collective Bargaining Agreement under Article XIV.

16. XVI, Section 3, pg. 21

Add to end of Section 3

..... The Association shall endeavor to insure that staffing requirements are met in the selection of representatives for conventions.

17. Schedule "A", Section III, pg. 35

SECTION III - Meal Allowance

The City shall provide to the Fire Department six dollars and fifty cents (\$6.50) per shift day for each employee in the bargaining unit scheduled to work a twenty-four (24) hour shift. Payment shall be provided on a monthly basis.

18. XXVII, pg. 27-28

Replace Section 2(a) with the following:

a) A fitness committee shall be established. Members shall include: Management Person

Chief Officer

Representative from Fire Officers

Representative from Firefighters Association

Medical Doctor

Physical Education Instructor

**Section 3 - Physical Fitness Standards:**

a) The minimum physical fitness standard shall be Fifty (50) percent, as determined by Vital Choice. The testings shall be annual.

b) Physical handicaps and testing procedure incompatibilities shall be considered by the Physical Fitness Committee. Alternate tests may be approved by the committee in determining an employee's fitness score.

**Section 4 - Physical Maintenance Insignia Recognition:**

There are three (3) insignias recognized for personnel that qualify under the program:

a) Gold Commendation - Gold outline with red-white-blue enamel background. This insignia is recognized for those personnel that complete the physical readiness testing with a minimum of excellent or above (score of 70% or above).

b) Silver Commendation - Silver outline with red enamel background and silver star in middle. This insignia is recognized for those personnel that complete the physical readiness testing with a minimum of good (score of 60% or above).

c) Participated - Silver outline with blue enamel background. This insignia is recognized for those personnel that complete all phases of the physical readiness testing with a minimum of 50%.

**Section 5 - Personnel Actions:**

Effective the first Vital Choice test (one (1) year from date of signing contract) all Traverse City Fire Department

Employees must maintain a minimum of 50% score on Vital Choice testing. Failure to meet the minimum will result in:

- a) First Failure: Written Reprimand
  - b) Additional Failures: Two (2) days off without pay.
- When an employee who increases his/her score to above 50% they shall be considered (for punishment purposes) as if they had never failed.

**Section 6 - Repeal of Punishment:**

Section 5 in its entirety shall be eliminated and considered invalid if the Fire Chief/P.S.D. fails to meet the 50% minimum standard.

**19. XXIII, Section 1, pg. 25**

**Replace Section 1 with the following:**

Section 1 - The retirement provisions shall be governed by Public Act 345 of the Public Acts of 1937, as amended, unless that Act is specifically amended by the agreement of the parties. The City encourages any member retiring to notify the Act 345 Board Secretary at least sixty (60) days in advance of their retirement date in order for the processing of all necessary related paperwork to be completed prior to the employee's retirement. Notifications to the Act 345 Board Secretary of less than sixty (60) days will be processed as expeditiously as possible, however, all related paperwork may not be completed prior to the retirement date.

20. **XX, pg. 22, 23**

**Replace Article XX with the following:**

The work schedule of employees shall be prescribed by Act 125, Public Acts of 1924, as amended by H.B. 2457 of 1965 and as may be amended from time to time.

For those employees assigned to an eight (8) hour shift, the work schedule shall consist of forty (40) hours of work contained within a seven (7) day period. The work days shall be Monday through Friday unless agreed upon by the Public Safety Director/Fire Chief and the employee.

For those employees assigned to a twenty-four (24) hour shift, the work schedule shall consist of a twelve (12) calendar day cycle as follows: On, off, on, off, off, on, off, on, off, off, off, off, with "on" denoting twenty-four (24) hour consecutive hours on duty and "off" denoting twenty-four (24) consecutive hours off duty. Provided, that one employee may work the shift of another while the other is engaged in Association business, including negotiations and the processing of grievances with City management representatives, or attending state and national association conference as a local elected representative thereto. Such standby system may also be used for other purposes subject to the approval of the Public Safety Director/Fire Chief or his/her designee. Under no circumstances shall such standby system be approved for the purpose of performing outside employment.



Any member may "stand by" for another, as provided for above, shall be qualified to assume all the duties and responsibilities of the member who is absent, and shall be held responsible for reporting to work as agreed to.

While the previously described work schedule is acceptable to the City at this time, changes in the demands for the Fire Department's services may require revisions in the scheduling of personnel to meet these needs. In the event that the City believes a change in work schedules is advisable, the City and the Association may bargain in good faith over the proposed change. No change shall be made until the full bargaining process is completed.

21. XVI, Section 2, pg. 20

Replace the first paragraph of Section 2 with the following:

Section 2 - Bereavement Leave: An employee will be permitted, upon proper notice to the Public Safety Director/Fire Chief, to be absent from work, without loss of pay, for up to three (3) shift days for twenty-four (24) hour shift employees, between the death and funeral, if needed, upon the occurrence of death in the employee's immediate family as defined below. For eight (8) hour shift employees, three (3) shift days, or up to five (5) days, if the funeral is more than 300 miles from the City, if needed, upon the occurrence of death in the employee's immediate family as follows:

22. XV, pg. 18, 19

**Replace Article XV with the following:**

Regular full-time employees of the Fire Department who are assigned to a twenty-four (24) hour shift shall accrue twelve (12) hours per month sick leave. Regular full-time employees assigned to an eight (8) hour shift shall accrue eight (8) hours per month sick leave. This leave may not be used until the employee is given regular status by successfully completing the probationary period. Sick leave shall be charged on an hourly basis for the time an employee is on sick leave. Hours shall be computed to the nearest half (1/2) hour. Effective December 1, 199\_\_, the City shall provide each regular full-time employee with Sickness and Accident Insurance coverage which shall provide, at a minimum:

- a) Up to twenty-six (26) weeks of coverage per occurrence.
- b) Coverage which shall be effective upon the first (1st) day of an accident and the eighth (8th) calendar day of illness.
- c) A weekly benefit guarantee of 66 2/3% of the employee's gross wage up to one thousand dollars (\$1,000) per pay period.

Effective December 1, 199\_\_, and on December 1 of each year thereafter, each regular full-time twenty-four (24) hour shift employee shall receive ninety-six (96) hours for short term leave. Each regular full-time eight (8) hour shift employee shall receive fifty-six (56) hours for short

term leave. Short term leave may be taken in increments of one (1) hour or greater upon advance approval of the Public Safety Director/Fire Chief or his/her designee. In no case shall a request for short-term leave in increments less than six (6) hours be approved if such leave would cause overtime or call-in of another employee. Where an employee requests short term leave for an illness, such prior notice is not required. The Public Safety Director/Fire Chief may require such evidence of illness as he/she deems necessary to justify the request for paid sick leave. Where deemed necessary, he/she may request a certificate of illness from the attending physician or make whatever investigations are necessary to be assured that leave is granted only for bona fide illness. Short term leave may not be accumulated. New hires shall receive an initial pro-rata amount of short term leave days based on their date of hire and a benefit period from December to November 30.

Effective the first full pay period following December 1, 199\_\_\_, and on the first full pay period following December 1 of each year thereafter, each regular full-time employee shall receive payment for all unused short term leave, at the employee's regular rate of pay. Such payment shall be made separate from the employee's regular payroll check.

Employees shall retain all sick leave accumulated through November 31, 19\_\_\_. Accumulated sick leave may be used by the employee for a bona fide illness or injury only

as follows:

a) In lieu of Sickness and Accident insurance coverage where the employee would otherwise qualify for benefits under the terms of the policy.

b) For all days not covered by the Sickness and Accident insurance, provided the length of time lost, due to the illness or injury, would qualify the employee for benefits under the terms of the Policy.

c) Following exhaustion of short-term leave days for all bona fide sick leave. Where an employee requests sick leave for an illness following use of all short-term leave available to him/her, the Public Safety Director/Fire Chief may require such evidence of illness as he/she deems necessary to justify the request for paid sick leave. Where deemed necessary, he/she may request a certificate of illness from the attending physician or make whatever investigations are necessary to be assured that leave is granted only for bona fide illness.

d) In the event a member of the employee's immediate family living in the same household is ill, sick leave may be granted; provided a doctor's recommendation that the employee remain at home may be required by the Public Safety Director/Fire Chief.

e) Where the illness or injury arised out of or in the course of employment with the City; to provide the difference between the employee's regular pay, based on their normal work week, and the weekly benefit provided

through Workers' Compensation insurance. Provided, however, only the amount of sick leave required to make up this difference shall be deducted from the employee's sick leave bank.

f) To provide the difference between the employee's regular pay, based on their normal work week, and the weekly benefit provided through Sickness and Accident insurance. Provided, however, only the amount of sick leave required to make up this difference shall be deducted from the employee's sick leave bank.

An employee eligible for and on sick leave who has exhausted all leave to his/her credit and who is not on other authorized leave or providing standby service, shall be deemed to be on a leave of absence without pay. (See description of leave of absence without pay.)

An employee who dies while employed as a full-time employee of the Fire Department, or who retires with pension privileges from the Fire Department, shall receive 50% of his/her accrued and unused sick leave bank up to a maximum of 50% of 2,160 hours. Employees who, as of July 1, 1983, have a sick leave bank in excess of 2,160 hours, but less than 2,800 hours shall have as their maximum for cash-out 50% of either 2,800 hours of their particular bank on July 1, 1983, whichever shall be lower. Individuals hired or recalled from layoff after July 1, 1983, who subsequently die while employed as a full-time employee of the Fire Department, or who retire with pension privileges from the

Fire Department shall receive 50% of his/her accrued and unused sick leave bank up to a maximum of 50% of 1,344 hours. For the calculation of all sick leave cash-outs upon retirement or death, the hourly rate effective at that time for that employee shall be used.

23. XIII, pg. 12, 13

Replace Article XIII with the following:

ANNUAL VACATION LEAVE:

Each permanent, full-time twenty-four (24) hour shift employee of the Fire Department shall be allowed annual leave, with pay, in the following manner:

- a) Three (3) twenty-four (24) hour shift days after one (1) year of service. Employees will earn 2.77 hours per pay period beginning the first year of service.
- b) Six (6) twenty-four (24) hour shift days after two (2) years of service. Employees will earn 5.54 hours per pay period beginning the second year of service.
- c) Nine (9) twenty-four (24) hour shift days after eight (8) years of service. Employees will earn 8.31 hours per pay period beginning the eighth year of service.
- d) Twelve (12) twenty-four (24) hour shift days after seventeen (17) years of service. Employees will earn 11.08 hours per pay period beginning the seventeenth year of service.

Each permanent, full-time eight (8) hour shift employee of the Fire Department shall be allowed annual leave, with pay, in the following manner:

- a) Five (5) eight (8) hour shift days after one (1) year of service. Employees will earn 1.54 hours per pay period beginning the first year of service.
- b) Ten (10) eight (8) hour shift days after two (2) years of service. Employees will earn 3.08 hours per pay period beginning the second year of service.
- c) Fifteen (15) eight (8) hour shift days after eight (8) years of service. Employees will earn 4.62 hours per pay period beginning the eighth year of service.
- d) Twenty (20) eight (8) hour shift days after seventeen (17) years of service. Employees will earn 6.15 hours per pay period beginning the seventeenth year of service.

Provided, however, that no employee shall be entitled to paid vacation until they have served the City for one (1) continuous year.

The Public Safety Director/Fire Chief may schedule vacation leaves for employees with particular regard to seniority to those employees and to enable efficient and effective operations within the Department. Requests for vacation leave shall be approved by the Public Safety Director/Fire Chief or his/her designee. Vacations scheduled and approved in advance are subject to cancellation in the event of an emergency in the Department.

Employees may use vacation time on an hourly basis, in accordance with department and contract provisions with advance approval of the Public Safety Director/Fire Chief or his/her designee. In no case shall a request for vacation

time off in increments less than six (6) hours be approved if such leave would cause overtime or call-in of another employee.

Department procedure shall prevail, which permits one (1) employee per twenty-four (24) hour shift to be off on vacation leave at any given time.

Seniority shall prevail in scheduling vacation, except in the case of emergency scheduling.

Annual vacation leave hours may be accumulated by an individual employee, assigned to twenty-four (24) hour shifts, not to exceed two hundred eighty-eight (288) hours carried over into a new fiscal year. Annual vacation leave hours may be accumulated by an individual employee, assigned to an eight (8) hour shift, not to exceed one hundred sixty (160) hours carried over into a new fiscal year. Upon separation from service, employees will be entitled to compensation for any unused portion of accumulated annual leave.

24. XI, Section 3, pg. 10

Replace Article XI, Sec. 3 with the following:

Section 3 - Overtime Pay: Overtime work for twenty-four (24) hour shift employees held over their normal duty day or called back from their day off, at the rate of one and one-half (1 1/2) times their hourly rate, provided that a minimum amount of pay for those called back shall be the equivalent of two (2) hours at one and one-half (1 1/2) times the hourly rate. An eight (8) hour per day employee shall receive one and one-half (1 1/2 times their hourly



rate for all hours worked over forty (40) hours per workweek, provided however, that a minimum amount of pay for those called back after their normal work day during their normal work week shall be paid the equivalent of two (2) hours at one and one-half (1 1/2) times the hourly rate.

25. Proposal to establish the structure for the up-dating and participation in a SPECIAL COMMITTEE FOR MASTER PLANNING LIFE SAFETY SERVICES PROVIDED BY THE TRAVERSE CITY FIRE DEPARTMENT. The committee would be charged the following responsibilities:

- a) Updating the current Master Plan report.
- b) Inventorying the available fire suppression resources in the community.
- c) Evaluate alternative fire prevention strategies.
- d) Evaluate alternative systems for delivery of fire suppression services, including the impact of expanding the utilization of mutual aid within the City, and analyze the cost/risk factor of each.
- e) Evaluate emergency medical services for City residents.
- f) Evaluate hazardous material emergency services.
- g) Evaluate water rescue services.
- h) Evaluate public and City employee life safety education.
- i) Evaluate fire department inspection services.
- j) Recommend an ultimate system for life safety with the optimum cost/risk balance.

k) Examine strategies for the reduction of standby time by on-duty fire personnel.

l) Develop implementation strategies for the committee's recommendations.

The committee structure shall consist of nine (9) members as appointed by the City Manager with approval of the City Commission representing the following interests:

- a) Two members of the Traverse City Commission.
- b) Two members of the T.C. Firefighters Association, with one member being a command officer and both to be selected by the firefighters.
- c) Two citizens at large.
- d) Traverse City Public Safety Director/Fire Chief
- e) The City Manager or designate, and one other administrative staff member to be appointed by the City Manager.

The Committee members from the firefighters shall serve a term of not more than three (3) years with the initial term a three (3) year for one member and a two (2) year for the second member.

1906

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Statutory Arbitration Between:

CITY OF TRAVERSE CITY,

Employer,

-and-

TRAVERSE CITY FIRE FIGHTERS  
ASSOCIATION, LOCAL 646,

Union.

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MERC Case No. G 93 G-3002

FINDINGS, OPINION AND ORDERS  
OF  
THE ARBITRATION PANEL

Benjamin A. Kerner, Neutral Arbitrator  
Richard I. Lewis, Employer Delegate  
Walter Schroeder, Union Delegate

Appearances: For the Employer: Thomas L. Drenth  
Sondee, Racine & Doren

For the Union: Geno D. Salomone  
Logan, Huchla & Wycoff, P.C.

Testifying: Ralph Soffredine, Police, Fire Chief;  
Bill Twietmeyer, Treasurer;  
Paula Helminiak, H.R. Administration;  
Mike C. Brown, Firefighter

Also Present: Bill Tomlinson, Jim Tuller, Gerry Cholger

Dated: Jan. 25, 1995

## INTRODUCTION

Pursuant to 1969 P.A. 312 and its amendments, MCL 423.231 et. seq., an arbitration hearing was held at Traverse City on November 11, 1994. At the hearing, thirteen issues were submitted to the Panel for resolution (one of which has since been resolved). Of these issues, ten were determined to be economic issues; the remaining two issues [management rights, employee assistance and drug policy] were determined to be non-economic.

The parties also stipulated at hearing that all agreements reached during negotiations would be included as part of the Panel's Award in this matter. Those agreements are contained herein at Appendix A, and, utilizing the designation Tentative Agreements No. 1-25 will be incorporated herein as orders of the Panel.

The format of this Opinion will be as follows: each issue will be set forth, together with the last best offers of both parties. The Panel's rationale for adopting one or the other last best offer (in the case of economic items) will be set forth together with findings applicable to the Panel's determination. The endorsement of each Order by a majority of the Panel will be indicated only on the final page of this Opinion.

Some introductory information about the characteristics of the municipality and the employees are appropriate to set forth for the general reader. The City of Traverse City employs roughly 150 employees in several different

bargaining groups. In addition to the present unit composed of all fire fighters (22 individuals), there is a police patrol unit, a police sergeants unit, and a police captains unit (composed of two individuals). In addition, the City has a General Municipal Employees (GME) unit of 71 employees who work in other-than-critical service functions. Finally, there is a non-represented group of employees called the Administrative, Confidential, and Technical employees, who are treated by the City as a group although they are not members of a bargaining unit. This group numbers approximately 27.

The GME bargaining unit has a two year collective bargaining agreement that expires in 1996; that bargaining unit has agreed to a wage freeze for the 1994-95 year, with a wage reopener for 1995-96. The police patrol officers have a two year collective bargaining agreement which calls for a 3.4% increase on January 1, 1994 and a wage freeze for 1995. The police sergeants do not currently have a collective bargaining agreement. The police captains have a three year collective bargaining agreement that called for a 1.5% increase in 1993 and no wage increase in 1992 or 1994. The Administrative, Confidential, and Technical non-bargaining group has achieved a 4.1% increase on July 1, 1993 but obtained no wage increase for 1994.

The population of Traverse City is approximately 15,000. Its property wealth was valued (for 1994) at

\$341,800,000, which valuation constitutes a 8% increase over the City's 1993 State Equalized Valuation.

The current tax load is 13.7575 mills. The revenue raised by the property tax is approximately 55% of the City's total revenues. The City argues consistently throughout the pendency of these proceedings that relatively modest growth in SEV (averaging 4.54% over the last 5 years) combined with restrictions currently applicable Statewide on account of Proposal A<sup>1</sup>, are factors that will have a seriously dampening effect on the ability of the City to raise money from the property tax. However, at the same time, expenditures have increased approximately 7% per year on average.

With these figures in mind as well as many others developed by the parties for specific presentations in support of their positions on specific issues, the Panel deliberated in regard to the supportability of each party's final offer in view of the factors governing this proceeding. Those factors are set forth at Section 9 of P.A. 312, MCL 423.239 as follows:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.

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<sup>1</sup>Under Proposal A, the City's imposition of new taxes is limited by a new system of assessing property. Under that system, generally, the annual increase in the taxable value of each land parcel is limited to the lesser of 5% or the rate of inflation.

- 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 with those 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...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....

On all economic issues, of course, the Panel is permitted to choose one final offer or the other. Ten of the twelve issues were deemed to be economic, the exceptions being Item #11 [Management Rights] and Item #12 [Drug Testing and Employee Assistance Policy].

1. **DURATION OF CONTRACT**

**CITY'S OFFER:**

A three-year contract.

**UNION'S OFFER:**

A five-year contract.

The parties' last collective bargaining agreement expired on June 30, 1993. By the time the Panel's award in

this case issues, by the time the parties have adjusted their rules and their accounting, and by the time they have incorporated the language and working conditions into their consciousness and written agreements, approximately 16 months will remain in a three-year contract. On the other hand, if the Panel were to select a five-year term of contract, approximately 3 1/3 years of that contract term would remain.

The Union argues for the longer term on the basis that there are significant transactional costs incurred by both sides in bargaining [and in conducting an Act 312 proceeding]. Secondly, the Union believes that economic changes of potential importance to the City are already known, that a reasonable prediction of the City's economic condition can be made for the next 3 1/3 years, and that those predictions should be utilized to stabilize labor relations over the remaining three years of this contract, as proposed by the Union.

The City, by contrast, has offered a three year contract term beginning July 1, 1993. The City's rationale is that certain economic conditions, in view of State political retrenchments now beginning to occur, cannot be accurately predicted. Thus, a shorter rather than a longer term of contract would allow the parties increased flexibility to meet the contingencies that may arise in later years.



The City claims its projections show that expenditures will outstrip revenues within the three year term of contract which it proposes. This is true both under its "most likely scenario" and its "average scenario," says the City. Furthermore, future revenues from property taxes, in view of Proposal A, will be severely limited as compared with increases experienced in the past. Thus, prospects for any significant increases in this principal source of revenue look dim at best, or non-existent at worse.

The Panel has considered the issue of duration of contract with all deliberate care. The City's proffered three-year duration of contract has the advantage of conforming to the widely accepted practice of bargaining new collective bargaining agreements for 3-year periods. In addition, the City's proposal has the advantage of allowing greater flexibility to both parties under this State's new public sector economic scenario. According to the City, in its "average" and "most likely" 5-year scenarios, total expenditures will outstrip total revenues within the next year. If so, certain wage cost containment features may be in order.

However, the Union takes issue with the City's forecasts saying that the City's presentations have ignored the Fund balance minimum traditionally and continually maintained by the City (15% of operating costs) as well as the rainy day fund that is continually replenished from investments. Under the Union's scenario, both these funds

should be considered available to pay for wages, salaries, vacation pay, retiree medical insurance premiums and other personnel costs, as part of the normal operating budget of the Fire Department.

However, the evidence is that the City has not budgeted in the way the Union would like to see happen. Thus, the constraints of City budgetary policy must be recognized as one of the features of this case properly informing us what is available, what might be available, and what is definitely not available for wages or other personnel costs.

On the "supply side," it is apparent that different projections of future income as related to or constrained by Proposal A are quite possible. The Arbitration Panel is not in a position to crystal-ball what will happen in one local jurisdiction when the implications of Proposal A for the entire State have not yet been worked out, nor indeed, has the legislative process necessitated by Proposal A been completed. Under these circumstances, flexibility remains the hallmark of wisdom. The Panel has opted for a 3-year term of contract.

## **2. WAGES**

### **CITY'S OFFER:**

Effective on the first day of a pay period which falls closest in time to the dates indicated below, increase all classifications and rates by the following percentages:

July 1, 1993	3%
July 1, 1994	0%
July 1, 1995	2%

**UNION'S OFFER:**

On July 1, 1993, July 1, 1994, and July 1, 1995 [or the 1st day of the pay period which falls closest to these dates] increase rates of pay for all fire fighters as follows: 3% 4% 4%.

There are three essential factors to be reviewed in assessing wages, given the evidence submitted in this case. One is the cost of living as reflected in the Bureau of Labor Statistics' All Cities' Urban Wage Earners and Clerical Workers Index. [CPI-W]. The second factor is the internal factor related to wage increases granted to other employees of this Employer, i.e., employees performing similar services and "other employees generally in public employment in comparable communities." [MCL 423.239(d)(i)]. The third factor is the overall level of compensation received by the Traverse City fire fighters compared to fire fighters in comparable communities [MCL 423.239(d) and (f)]. The overall level of compensation is deemed to be more significant than a comparison merely of wages, because individual portions of the total compensation package available to fire fighters in different communities are greatly affected by the history, traditions, and bargaining history. However, when one views the total compensation package, going well beyond base wages, including the subject of wage supplements (such as longevity pay, shift differential pay, overtime, and the like); the subject of pension contributions; the issue of other benefits of employment (including medical and hospitalization

insurance); and, the not inconsequential factor of the continuity and stability of employment, then one realizes what the total value of the employment package is to the individual, and one has a more meaningful basis for comparison with the other communities.

When viewing the data corresponding to the above-described factors, the Panel is aware that it does not have complete data as it might wish to have in an ideal world. The Panel is constrained by the data presented to it.

A. Given these constraints, it appears that the cost of living data clearly support the City's offer. There was no evidence to suggest that in any near future time up to June 1996, the cost of living as shown on the All Cities' CPI-W Index will rise to a steady 4% annual level. [It has been consistently less than 3% for over a year.] Yet the Union requests a wage award of 4% in the current year and in the last year (1995/96) of the proposed contract. The data currently available indicates that at most something on the order of a 2.6% wage increase or less would be in keeping with the actual cost of living increases experienced by wage earners across the nation and in Traverse City.

B. In the area of internal comparables, likewise, the data lend considerable support to the City's offer. That is because three significant groups of City employees, the Administrative, Confidential, and Technical Employees, the General Municipal Employees, as well as the Police Patrol have settled contracts or had wages imposed in the amount of

0% for the current year. The likelihood appears great, given the position statements and projections of the City and the testimony of its Treasurer regarding anticipated receipts, that the City will be successful in restraining wage increases and offers to its non-represented employees to the 0% to 3% range for the year beginning July 1, 1995.

Among the represented groups, only the Police Patrol Unit achieved the significant wage increase of 3.4% on January 1, 1994, pursuant to its negotiations. It should be noted however that this significant wage increase was followed by a 0% wage increase on January 1, 1995. Thus, in view of the internal comparables of what other employees are being paid by this municipality, the data appear to support the City's position that a 3% increase in 1993/94, followed by a 0% increase for the current year, followed by the modest increment of 2% in the 1995/96 year is commensurate with City policy in dealing with its represented as well as non-represented employees and is more in keeping with the municipality's fiscal realities than the 3%, 4%, 4% offer of the Union.

C. Finally, looking at the data on total compensation of other fire fighters in the comparable communities previously determined to be relevant, we see, most interestingly, that for 10-year fire fighters, the overall compensation currently enjoyed by the employees of the City of Traverse City is 5% higher than the average of the other six communities. (This is after taking account of Union-

requested amendments to Employer figures on Employer Exhibit #42). The total compensation, of course, takes into account the fact that the entire value of pensions that benefit Traverse City fire fighters is contributed by the Employer, whereas in most of the comparable communities, pension monies are partially or wholly contributed by employees.

Going further and looking at the cost to the Employer of fire fighter wages and benefits (not strictly the value of benefits to fire fighters), and referring to Employer's Attachments A and B, it is apparent that the structure of wage increases proposed by the Employer is more reasonable than the structure of increases proposed by the Union. Looking at the proposed increases as originally proposed by the Union to the Panel for a 5-year contract, the percentage increase above the base year (1993) for 3 years is 25.97%, or an average annual increase of 8.66% over 3 years. Although the average annual increase that would be experienced under the Union's 3-year actual offer [3% in 1993/94; 4% in 1994/95, and 4% in 1995/96] has not been accurately computed and made available to the Panel, a little extrapolation shows that the Union-proposed increases would exceed 9% average annual cost increases to the Employer. By contrast, the Employer's wage offer generates cost increases of 8.59% in 1994; 1.79% in 1995; and 3.71% in 1996 for an average annual cost increase of 4.88%.

Given the overall restrictions on City budget increases; given the limitations on receipts from property

taxes; and given the uncertainties inherent in the portions of Proposal A that have not yet been fully implemented by the Legislature, it appears that the course of wisdom is to accept a wage structure that has an average annual cost increase of under 5% per year, rather one that has an average annual increment exceeding 9% per year. Most significantly, the figures available to the Panel in relation to the total benefit package available to fire fighters in other cities as compared to Traverse City would indicate that currently fire fighters in the City of Traverse City are provided pay and benefits that cost on average 5% more than the total compensation provided to fire fighters in comparable communities. Furthermore, the increases proposed by the City indicate it will experience an overall increased cost of 4.88% per annum; that cost, when broken down as a wage increase of 3%, 0%, and 2% over the three years of this proposed contract, is considerably more reasonable than the wage proposal of the Union for 3%-4%-4% wage increases. Therefore, the Panel accepts the City's wage offer for the three year time period. [The wage item will be retroactive to July 1, 1993.]

### 3. PENSION COST OF LIVING ADJUSTMENTS

#### **CITY'S OFFER:**

Maintain current pension program - No COLA.

#### **UNION'S OFFER:**

Effective July 1, 1995, an annual post-retirement cost of living adjustment increase equal to the annual percentage increase in the CPI, but not to exceed 2.5% of the original pension amount (not compounded), for twenty (20) years, commencing on one (1) year after the member's date of retirement. This COLA shall not be applicable to persons who retired on or before June 20, 1995, and who have previously received a pension-COLA by decision of the City Commission.

The City shows that the current cost of indexing pensions to the cost of living would be 9.4% of payroll (amortized over 18 years) or 7.62% (amortized over 30 years). In comparable cities the total pension costs are as follows:

	<u>City Contrib.</u>
Adrian	9.7%
Alpena	4.91%
Cadillac	20.71%
Marquette	12.77%
Owosso	9.51%
Sault St. Marie	16.45%
<b>6-City Average</b>	<b>12.34%</b>
<b>Traverse City</b>	<b>23.76%</b>

In terms of current benefits, only two municipalities have any cost of living adjustment to basic pension



benefits: Owosso permits a 1.4% adjustment for up to 10 years; Adrian has adopted a statutory program called MMERS E-2 that permits pension adjustments. None of the other comparable municipalities were shown to have inflation-adjusted pension benefits.

In terms of other employee groups of significant interest under the heading of "other employees generally" in the public service [See MCL 423.239(d)(i)], there are only two other groups of Traverse City employees who enjoy any adjustments for pensions: the General Municipal Employees negotiated such protection recently at a cost to the City of 3.1% in current payroll; the Police Captains' unit also negotiated an adjustment for pensions at a cost of 12.6% of payroll (while giving up the potential for wage increases for 2 full years).

By contrast, the Union's offer seeks to instate a benefit which the Union says the fire fighters have always received. However, the history shows that prior to June 30, 1993, the City Commission entertained individual retirees' requests for pension COLA-adjustments on a case-by-case basis. There was no collectively bargained provision in effect. There was no general policy effective as to all retirees. Rather, the City's consideration of these issues was piecemeal.

In March 1993 effective June 1993, the City Commission passed a resolution indicating that in the future retiree requests for pension COLA-adjustments would be considered

only through the collective bargaining process. Thus, we have the demand and final best offers in contention on this issue today.

The Union's offer is supported to the extent that two comparable communities' fire fighters enjoy COLA-adjustments. The Union's offer is also supported by the data on General Municipal Employees of Traverse City.

However, the Panel is persuaded that the cost of pension COLA adjustments is excessive in view of (a) the current pension benefits, (b) the overall compensation enjoyed by Traverse City fire fighters. Therefore, the Panel adopts the City's offer on Pension-C.O.L.A.

#### **4. LONGEVITY**

##### **CITY'S OFFER:**

Employees hired after July 1, 1993, would have the following longevity schedule: \$300, \$500, \$600 and \$700 after 8, 12, 16, and 20 years.

##### **UNION'S OFFER:**

The Union's offer is the same as the City's offer except that the new longevity schedule would apply to employees hired after July 1, 1995.

The proposals of the parties are very close; in fact, they differ only insofar as the new schedule might or might not apply to the one employee hired in the interim period between July 1, 1993 and July 1, 1995.

The traditional factor of according equality of treatment to all bargaining unit employees similarly situated argues in favor of the Union's position.

Accordingly, the Panel adopts the Union's proposal on longevity.

5. STEP INCREASES FOR NEW OFFICERS

**CITY'S OFFER:**

Maintain one-year step increases.

**UNION'S OFFER:**

Provide six-month step increases to new officers.

The City says that there is nothing in the record to support the requested change from a one-year step increase to a six-month step increase. However, the Panel finds that there is record evidence in the contracts of comparable communities (specifically those of Alpena, Cadillac, Sault Ste. Marie, Owosso and Marquette) that supports the Union's position. Officers in five of the six comparable communities grant new fire fighting officers the pay of their new rank immediately at the times of their promotions.

In Traverse City, the practice under prior collective bargaining agreements has been to keep newly promoted officers at slightly lower levels of pay for a period of one year; thereafter (and upon successful completion of probation) to grant new officers their full pay.

The Union proposes a sensible change in the current practice. The change is in the direction of the working conditions evidenced by the contracts of comparable communities. Therefore, the Panel adopts the Union's proposal on step increases for new officers. [This term of employment will be retroactive to July 1, 1993.]

6. RETIREES' HEALTH INSURANCE

**CITY'S OFFER:**

Effective July 1, 1994, employees who retire after July 1, 1994 should be afforded the same health insurance package as active employees.

**UNION'S OFFER:**

Maintain present benefit levels.

The evidence shows that health insurance premium costs for fire department retirees in some years has exceeded the equivalent premiums for active employees. The reason for this, according to the City, is that fire retirees enjoy an exceptionally good benefit package, whereas active employees have only a "good" benefit package. In addition, the evidence shows that five out of six comparable cities have more conservative health insurance contributions for retirees than does the City of Traverse City.

In view of these factors, the Panel adopts the City's proposal on Retirees' Health Insurance.

7. RETIREES' HEALTH INSURANCE PREMIUMS

**CITY'S OFFER:**

City to pay premiums in effect on July 1, 1995. Any premium increases to be paid by the retiree.

**UNION'S OFFER:**

Effective July 1, 1995, the employer shall pay for each retiree a monthly premium equal to the monthly premium in effect on July 1, 1995; providing however, that the amount of that premium shall be increased by five (5%) percent each year and compounded each year thereafter. Any excess cost of premium over the amount of the cap shall be paid by the Retiree.

The current (1991--93) contract between the parties calls for payment by the employer of the entire premium cost of retiree health insurance. That provision has in recent years resulted in premium costs for retirees in the range of 8--11% of payroll.

In an effort to control these costs, the City has proposed the above-stated limit to its contributions. While the Union generally subscribes to the concept of some limit, it proposes annual compounded increases of five (5%) percent over and above the amount of the City--recommended increases.

A careful examination of the data submitted to this Panel, including both the data relevant to fire fighters in other communities and the data relevant to other public employees of this municipality<sup>2</sup> indicates that the more conservative position of the City is better supported by the data.

Thus, the Panel awards the City's offer on Retiree Health Insurance Premiums.

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<sup>2</sup> Police patrol officers in Traverse City enjoy an escalating cap, but the cap was set at the premium dollars paid by the City as of 7/1/91, presumably significantly less than the dollars currently paid to fire fighters. Similarly, Police Captains, a unit of two individuals, enjoy an escalating cap, but their base premium dollars are figured on an even older premium level, the premium dollars paid as of 7/1/90.

Otherwise, employees of this municipality who retire have enjoyed flat rate contributions or escalating contributions based on the State's statutory programs, in which the retiree only but not the spouse or other dependents are eligible for benefits.

8. **FAMILY CONTINUATION OFFER:**

**CITY'S OFFER:**

Employees who elect the family continuation rider in the future will pay the premiums. The two employees who presently have the FC Rider will continue to receive this benefit according to the terms of the 1990/93 agreement.

**UNION'S OFFER:**

Only employees hired after July 1, 1995, will be required to pay for the FC rider. All current employees will be eligible for City-paid FC rider.

The rider here referenced is the Family Continuation Rider available under many health insurance programs for dependent young adults (aged 19 or older). Under the Traverse City Fire Fighters' 1991-93 contract, employees are entitled to be paid up to \$74/month towards the cost of the "FC rider." This benefit is not available, except as an employee-paid item, to other unionized or non-unionized employees of the City of Traverse City. There is no evidence that employees of other municipalities (those deemed comparable) have any employer-paid FC rider as an option.

In view of these data, the Panel will recommend that the City's offer be adopted.

9. MEDICAL INSURANCE WHILE OFF ON WORKERS' COMPENSATION.

**CITY'S OFFER:**

Maintain current six months' period.

**UNION'S OFFER:**

One-year period.

The status quo is to allow injured workers six months of continued payment of medical insurance premiums. The Panel has considered the evidence, including the evidence of "no policy" in regard to this subject [and no collective bargaining provisions in regard to it] on the part of four comparable cities. In addition, the Panel notes that in two comparable cities, Adrian and Cadillac, health care coverage remains in effect for significant periods of time after duty-related injury. Since in most cases, an injured fire fighters' medical care and rehabilitation will be unambiguously covered by the Workers' Compensation insurance carrier, the benefit here in dispute is largely aimed at the well-being of a fire fighter's family.

The Panel has studied this issue and it appears that even in those cities where no contract provision governs, the collective bargaining parties have not ruled out the possibility of continuing medical coverage when a worker is injured. Rather, it appears more than likely that such circumstances simply have not been presented or have not been presented in sufficiently focused manner to cause the city administrations in these cities to take a position or to give the Union an occasion to contest their

municipalities' positions in regard to this benefit. Thus, in sum, it appears more likely that the lack of collective bargaining agreement provisions on this subject signifies a lack of consideration of the policy issue, and not a conscious policy choice to afford or deny benefits.

However, in view of the evident peace of mind that this provision will bring the injured worker, and the relatively low cost of the item to the City, the Panel is of the view that this proposal is a needed and worthwhile improvement in working conditions. Thus, the Panel awards the Union's offer on Medical Insurance While on Workers' Compensation leave.

10. RETIREEES' HEALTH INSURANCE FOR DUTY DISABILITY

**CITY'S POSITION:**

Maintain current program.

**UNION'S POSITION:**

Health care coverage for disability retirees, to begin immediately upon disability retirement.

Under present contractual provisions, health care coverage for the disability retiree begins when the retiree reaches normal retirement age. The Union proposal would step up that effective date of full family health-care coverage (as provided for retirees generally) to the date of declared permanent disability or disability retirement. Statistics submitted by the Union show that in recent years 9-14% of all fire fighter retirements are due to occupational disease (and are not normal service-related



retirements). Another 20-24% of retirements are due to injury in the line of duty (and are not normal service-related retirements). Looking at these figures together, it is apparent that a substantial portion of all retirements (consistently averaging over 1/3rd) are due to duty-related injuries or illness. The statistics also show that such retirements occur at relatively early ages.

The protection afforded by the Union's proposal is "gap protection" to the workers who retire early for disability reasons when they still have family coverage needs and may have no place else to turn. The figures provided to the Panel indicate that the cost to the City will be approximately 0.1% of payroll.

For these reasons, the Panel has decided to adopt the Union's offer on Health Care Coverage for Disability Retirees.

**11. MANAGEMENT RIGHTS [NON-ECONOMIC ISSUE]**

**CITY'S OFFER:**

If the City in its sole discretion, decides to enter into integration of emergency services, it will notify the Union in advance of entering such integration. The Union agrees to participate in discussion and to bargain about the effects of such integration on the bargaining unit personnel. This shall not constitute a contract re-opener or a waiver by the Union of any bargaining rights.

**UNION'S OFFER:**

No change in current language.

The parties are in substantial agreement about the requirement of the City's negotiating with the Union

concerning the possible future integration of Police and Fire Departments into one department of public safety. However, the manner or the style in which negotiating will occur has been presented in slightly different ways. The City would like to reserve "in its sole discretion" the opportunity to make the fundamental decision about integrating emergency services. The Union would prefer not to add any language to the collective bargaining agreement whatsoever, relying instead upon its bargaining rights under the Public Employment Relations Act and 1969 Public Act 312 to protect its legal right to bargain. Thus, while the Union is certainly interested in participating as a full party to any talks considering the possible integration of the fire department with the police department, it may be reserving to itself a right to protest such decision through legal channels in the event that it does not at such time as the City makes an integration decision concur in such decision.

The Panel has determined that it is not its job to define and decide the legal rights of the parties in regard to some future event. If and when the City decides "in its sole discretion" to implement a plan such as may be considered advantageous to the City, then it will need to do so in full recognition of the bargaining rights of all concerned unions. It is premature at this time to judge how the City may make such a decision, and what will be this Union's rights at that time.

However, it is not premature to recognize that the City does generally retain management prerogatives in this area. Nor is it premature to recognize that the Union retains significant bargaining rights under State law. Therefore the proposed City language will be adopted with the modification to show that the initial clause does not amount to a waiver of Union bargaining rights.

The Panel recommends and adopts the following language to be added to the parties' management rights clause:

If the City in its sole discretion, decides to enter into integration of emergency services, it will notify the Union in advance of entering such integration. The Union agrees to participate in discussion and to bargain about the effects of such integration on the bargaining unit personnel. **This shall not constitute a contract re-opener or a waiver by the Union of any bargaining rights.**

12. **EMPLOYEE ASSISTANCE POLICY [NON-ECONOMIC ISSUE]:**

**CITY'S OFFER:**

Add City Exhibit No. 50 as a Letter of Understanding to the Collective Bargaining.

**UNION'S OFFER:**

Make Exhibit No. 50 part of the collective bargaining agreement and delete Letter of Understanding attached to City Exhibit 50.

Exhibit No. 50 is a comprehensive drug policy and plan of employee assistance. It covers the issues of when management may properly insist upon drug testing, the procedures for drug testing, what specific managers may request it, the availability of second opinion testing, the impact of test results on potential disciplinary action, and

other relevant matters. The policy as drafted by a union-management team including Ralph Soffredine and Mike Brown concludes with a Letter of Understanding as follows:

The parties agree that an Employee Assistance Police Statement applies to bargaining unit members.

The attached Policy is not a part of the collective bargaining unit agreement, but has been negotiated between the parties. It shall not be changed by the City except after notice to the Union and then subject to collective bargaining permitted by law regarding changes. The meaning, application, and affect [sic] of the policy are not subject to the grievance procedure or other contract or labor remedies, but discipline imposed under the policy is subject to the grievance procedure of the collective bargaining agreement then in effect.

/S/

Richard I. Lewis

/S/

Mike Brown

The City's proposal before this Act 312 Panel is an attempt to provide for continuing flexibility in the implementation of this jointly bargained policy. According to the City, retaining the stature of the policy as a policy (or appending it as a Letter of Understanding) together with the letter above-quoted would indicate that the parties intend to continue fine tuning its provisions, amending the policy as experience dictates, and in general treating the drug testing and employee assistance policy as a living

document to govern that subject matter as it pertains to employees of the Traverse City Fire Department.

The Union objects to the document's being included in the collective bargaining agreement or to the continuation of the Letter of Understanding as a portion of it for the reason that the Union believes that the policy as written allows for unilateral imposition of changes by the City. This prospect, according to the Union, is all the more daunting when "the meaning, application, and affect [sic] of the policy" are not grievable matters.

All considered, the Union's proposal is more palatable and more in keeping with traditional factors applicable in collective bargaining. [See MCL 429.239(h).] Enshrining the policy as part of the collective bargaining agreement to permit appeal of enforcement decisions to the parties' designated neutral decision-maker would provide stability in the application and interpretation of the drug policy; and would afford predictability in the development of any changes needed or desired by either party.

Accordingly, the Union's offer in regard to the employee assistance policy will be adopted by the Panel.

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In view of the foregoing findings and conclusions, a majority of the Panel hereby subscribe to the decisions and orders on all issues, as shown above.

Benjamin A. Kerner

Benjamin A. Kerner  
Neutral Arbitrator

Richard I. Lewis

Richard I. Lewis  
City Delegate

The undersigned delegate, while he subscribes to some decisions and orders of the Panel does not subscribe to all of them.

Walter Schroeder

Walter Schroeder  
Union Delegate

Dated: January 25, 1995