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STATE OF MICHIGAN EMPLOYMENT RELATIONS COMMISSION

LABOR RELATIONS DIVISION

IN THE MATTER OF STATUTORY ARBITRATION

Between:

WYOMING FIRE FIGHTERS ASSOCIATION,  
LOCAL 2758, IAFF, AFL-CIO,

Union,

and

MERC No. G 92-K-0218

CITY OF WYOMING,

CITY

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APPEARANCES:

For the Union: Ronald R. Helveston, Esq.

For the Employer: Michael Snapper, Esq.

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

Dated: August 29, 1994

Richard L. Kanner, Arbitrator

## INTRODUCTION

The Wyoming Fire Fighters Association, Local 3758, IAFF, AFL-CIO, hereinafter the "Union", is the recognized exclusive bargaining representative of all full time uniformed employees of the Wyoming Fire Department, with the exception of the Fire Chief and Deputy Chief, under applicable Michigan law (Act 336, Public Acts of 1965, as amended, being MCLA 423.201 et seq; MSA 17.455(1), et seq).

The Union has initiated binding arbitration proceedings pursuant to Act 312, Public Acts of 1969 as amended (being MCLA 423.231, et seq; MSA 17.455(31), et seq) to resolve certain issues in dispute between the parties. The issues to be considered herein must be decided pursuant to Section 8 of Act 312, which states in pertinent part:

At or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.... As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

Subsection 9 recites the applicable criteria as follows:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of

government to meet those costs.

- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.  
(MCL 423.239)..

Section 8 of Act 312 provides for a decision of the Arbitration Panel "as to each economic issue" separately. Thus, the Panel may adopt the last best offer of one party on a particular economic issue.

With respect to the issue of wages, the Union and City submitted their last best offers for each year of a three year contract term separately; thus the panel may adopt the last offer of one party on the issue for one or more years of the contract, and the last offer of the other party for the remaining year(s).

The parties were unable to reach an agreement on the duration of the successor agreement. The term of the new agreement begins July 1, 1992, expiring on either June 30, 1994 (City) or June 30, 1995 (Union) depending upon whether a two or three year contract is awarded by the Panel. While the Union's proposals are the same regardless of whether a two or three year contract is awarded, the City varies its last best offers in certain instances dependent on the contract term.

The issue of appropriate comparable communities to the City of Wyoming and the Wyoming Fire Department has been resolved pursuant to an Interim Opinion and Award dated August 17, 1993. These are the comparable communities to which the panel must look pursuant to Section 9 of Act 312 to determine its award on each issue as follows:

Battle Creek, East Lansing, Grand Rapids,  
Jackson, Muskegon, Portage, Ypsilanti Township

As provided by Act 312, the Arbitration Panel is comprised of a delegate chosen by each party to the dispute, and an impartial chairperson selected by the parties or by the Michigan Employment Relations Commission. The instant Panel is comprised of Chairperson Richard L. Kanner, Michael A. Snapper, panel member

selected by the City of Wyoming (hereinafter the "City"), and Ronald R. Helveston, panel member selected by the Union. Hearings were held in this matter on November 8, 9, and 10, 1993.

#### THE CITY'S ABILITY TO PAY-CITY POSITION

The City argues that during the past 13 years payments out of the City's general operating fund have significantly exceeded revenues. During the past 13 years the City has financed this deficit by transferring monies from other reserve funds into the general fund. These reserve funds are essentially depleted and are, therefore, no longer available to finance the operating deficit. In sum, the City asserts that its financial situation has deteriorated to the point that it is now facing a crisis.

The City's financial circumstances were described at the hearing by Joseph Bommarito, the City's finance director. He stated that the City's general fund is its day to day operating fund. It is the fund out of which employee wages and benefits, including firefighter salaries and benefits are paid. (Tr. 375). Since 1980 the general fund has expended nearly \$13,600,000 more than it has received in new revenues. (City Exhibit 41). City Exhibit 42 sets forth new revenues in and expenditures out of the general fund by year since 1980 and demonstrates that nearly every year since 1990 more money was expended from the general fund than was received. The difference between revenues and expenses has been made up by transferring funds from reserve accounts into the general fund. As shown by Exhibit 44, these reserve funds included a debt service account, a revolving loan account, a revenue sharing

account, an improvement revolving account, and a motor pool account. Of these accounts, debt service and the revolving loan account no longer exist. (Tr. 378-9). Federal revenue sharing is no longer available because the federal government has discontinued that program. (Tr. 379).

The improvement revolving account was a fund of money established to provide front end financing for City construction projects. (Tr. 380). Since 1985, \$5,688,300.00 has been transferred from the improvement fund to the general fund to finance the operating deficit. (City Exhibit 45). That fund has now been depleted to the point that there is barely enough left to provide the front end financing for which the fund was established. (Tr. 380).

The motor pool fund is a reserve fund used for the purchase and maintenance of the City's fleet of motor vehicles. By the end of fiscal year 1994, Mr. Bommarito projects that almost 1.7 million will have been transferred from the motor pool fund to finance the general fund deficit. This will reduce the motor pool fund to approximately 2.5 million dollars, an amount which Mr. Bommarito describes as "barely adequate" to maintain the City's fleet. (Tr. 381 - Tr. 382).

The final source of money available to finance the general fund deficit is the general fund balance. The fund balance is essentially the surplus that had accumulated since 1962 because before 1980 revenues generally exceeded expenditures. (Tr. 382) The City asserts that the Union's Exhibit 20 shows that in 1980 the

fund balance was \$1,863,989.00. By the end of fiscal year 1992, the last audited year, the fund balance had dropped to \$1,145,573.00. At the conclusion of fiscal year 1993, the fund balance had dropped below \$1,000,000.00 dollars. (City Exhibit 46) Mr. Bommarito projects that by the end of fiscal year 1994 the fund balance will have dropped to \$250,000.00. (Tr. 383)

In the sum the City contends that more than \$13,000,000 in reserve funds have been transferred into the general fund which, as stated, will be \$250,000 by the end of 1994, only enough to operate the city for five days.

#### ABILITY TO PAY-UNION POSITION

The Union contends that the City of Wyoming's financial outlook is favorable. The Comprehensive Financial Report for fiscal year end June 30, 1992 (hereinafter the 1992 Audit) indicates that the fund balance of the General Fund of \$1,145,573, up \$24,714 from the previous year. (U. Ex. 33, p. xiv). A fund balance is the sum of all revenues over the total amount of expenditures necessary to pay for general fund activities. (Tr. Vol. III, p. 382)

According to the Union the City's inability to pay claim must be analyzed in light of the data it uses to support its claim. The City presented data on 1993 general fund balance and 1993 expenditures in City Exhibits 42, 43, 44 and 46. The City utilized internal City records to arrive at these figures. The Union asserts that these are unaudited figures. (Tr. Vol III, p. 374) Unaudited figures are subject to change and are not verifiable.

Exhibits relying on such data cannot be considered relevant.

The City predicted a 1994 general fund balance of \$250,000 based upon the 1993 unaudited figures. (Tr. Vol III, p. 383, C. Ex. 41) The City did not put into evidence the data upon which it relied in arriving at its predicted 1994 general fund balance.

The Union argues that the City predicted that its 1992 general fund balance would be \$154,995. But the actual general fund balance was \$1,145,573. (Union ex. 20). The City predicted a 1991 general fund balance of \$370,282. But the Actual fund balance was \$1,129,859. (U. Ex. 20). The City predicted a 1990 general fund balance of \$18,968. But the actual general fund balance was \$1,454,722. Actual annual fund balances in the period from 1980-1992 exceeded the City predicted fund balances by a minimum of 185.54% and a maximum level of 7,569.35%. City Finance Director Joseph Bommarito stated that the City has a history of actual fund balances exceeding predicted fund balance by 100% or more. (Tr. Vol. III, p. 399).

As to 1992, the City predicted it would expend \$16,354,416 from the general fund. Actual expenditures of \$15,173,196 were lower than predicted levels by 7.78%. (U. Ex. 20). In both 1990 and 1991, the City's predicted expenditures exceeded actual expenditures by more than 10%. (U. Ex. 20). Finance Director Bommarito acknowledged that the City historically budgets for expenditures at a higher rate than is actually expended. (Tr. Vol. III, p. 398) Therefore the Union argues that reliance on these City predicted expenditures must be tempered by the City's



historical predictions.

As to the fund transfers, the Union contends that the general fund is not dependent on interfund transfers for revenue. In 1990, 1991 and 1992 no revenues from other City funds were transferred into the general fund. (U. Ex. 33, p. 139). In both 1990 and 1992 revenues exceeded expenditures resulting in gains in the general fund balance. (U. Ex. 20). Moreover, in years in which the general fund received transfers from other funds, the revenue was minor in comparison to other sources of revenue for the general fund. For example, in 1989, the most recent year in which there was an interfund transfer into the general fund, property taxes accounted for 35.3% of the revenue, state shared revenues were 30.9%, fees and service charges were 6.5% and transfers from other funds accounted for only 3.8% of general fund revenues. (U. Ex. 33, pps. 138-139)

The Union points out that property taxes and state shared revenues are a growing source of revenue for the City. From 1991 to 1992, the City experienced 6.67% increase in SEV which helped account for a 4.1% increase in revenue over the previous year. State shared revenues were up 11.5% or \$777,000 due to the use of the 1990 census figures reporting Wyoming's population up 7.17%. (U. Ex. 33, p. XIV). These forces will impact on the City's revenues favorably throughout the 1990's.

As to reduced future revenues, the City predicts that it will receive \$752,900 less in 1994-95 fiscal year than otherwise due to the effects of P.A. 145. The Union states that should the City's

prediction come true, its 1994-95 revenue loss is a small matter. It amounts to 3.39% of 1992 revenues. Accordingly, as a function of 1994 revenues, its impact will be even less significant.

Therefore the Union argues that the City cannot show that it has an inability to pay the Wyoming Fire Fighters the wages and benefits necessary for their provision of valuable fire fighter service to the City.

#### DISCUSSION AND OPINION

The panel finds that the City did have to deplete reserve funds in order to enable it to meet general revenue short-fall. Further it does appear that the City will lose approximately \$752,900 due to the effect of P.A. 145. On the other hand the City's predictions of reductions in general fund balances and in expenditures in the past has been less than accurate. Given such discrepancies and particularly in view of the minimal cost of the wage package in relation to the total budget, as hereinafter discussed, the panel does not find an inability to pay factor.

Further, the city's ability to pay has to be weighed against the fact that the firefighters are near the bottom of the comparables as hereinafter discussed. When such occurs, it appears that the bargaining unit, in effect, is partially subsidizing the City by accepting low wages. In the subject case the Panel does not find the City's financial condition so egregious as to warrant the poor position of the Union relative to the comparables.

#### WAGES

The City's final offer on wages is as follows:

Two Year Contract. July 1, 1992 - 3.25%  
increase, July 1, 1993 - 2.75% increase.

Three Year Contract. July 1, 1992 - 3.25%  
increase, July 1, 1993 - 2.75% increase, and  
July 1, 1994 - 2.25% increase.

The Union's final offer on wages is as follows:

Three Year Contract. July 1, 1992 - 5%  
increase; July 1, 1993 - 0% increase; and July  
1, 1994 - 5% increase.

#### CITY POSITION-FOOD ALLOWANCE

The panel agrees with the City that the above wage offers have to be analyzed by comparison with the total compensation of firefighters in the City and in the comparable cities. Preliminarily the parties disagree as to whether certain items should be added to and deducted from the base salary in order to determine total compensation. The City asserts that the inclusion by the Union of food allowances paid by the comparables should not be included in total compensation. (U. Ex. 43b) This is because such allowance is an expense reimbursement for firefighters who work a 24-hour shift and therefore incur extra food costs. For instance, the Battle Creek contract, Joint Ex. 11, at Section 18.2 states that the food allowance is "\$4.75 per 24 hour duty day" and that it is paid only for those duty days "actually worked." The East Lansing contract, Joint Ex. 12, at Article 22, refers to the payment as a "food reimbursement allowance." (Emphasis added). The Grand Rapids contract, Joint Ex. 13, at Article 47, states that the payment is a reimbursement to firefighters "for expenses they have incurred for food purchases for on duty meals." The Jackson contract, Joint Ex. 14, states at Article 13 that the payment is a

subsistence allowance and it is paid to those employees who are "required to take their meals at the engine house."

The Wyoming firefighters work a 12-hour shift and do not receive a food allowance as they do not incur such expense for the additional 12 hours worked by comparable city firefighters.

#### UNION POSITION-FOOD ALLOWANCE

The Union contends that, notwithstanding the fact that the City firefighters work a 12-hour shift, the food allowance paid in the comparable cities to firefighters on 24-hour shifts should be included in their total compensation. This is for the reason that the City firefighters must undertake the same type of food expense during their 12-hour shift as these other firefighters.

#### DISCUSSION AND OPINION

It is clear that, whether on a 12 or 24-hour shift, firefighters have to purchase food and prepare it at the Engine House. But firefighters on a 24-hour shift have to do so to a greater extent than those on a 12-hour shift. It is because of the recognition of such extra expense that all the comparable cities provide a food allowance as they are on a 24 hour shift.

The question at hand is whether such allowance is, in fact, income to be added to total compensation. The panel is persuaded to the Union position. Whatever the nomenclature appended to such "reimbursement allowance" or reimbursement of "expense", the receipt thereof is income to the firefighter. Such conclusion is made apt by the fact that the City firefighters do not receive such reimbursement, but do expend monies for food. Thereby the City

firefighters are "out of pocket" said expenses. But firefighters in comparable cities are reimbursed. Accordingly, such allowance is a financial benefit (income) and cannot be distinguished simply because it is only paid because on a 24-hour shift firefighters have to purchase more food than those on a 12-hour shift.

Put another way, both the City and comparable firefighters are on an equal footing relative to not being reimbursed for food expenses for the first 12 hours. The food allowance is only paid to comparable firefighters for the second 12 hours of a 24-hour shift. But as to such expenditure, the comparable firefighters receive reimbursement income which increases their total compensation. The fact that the City and firefighters work on a 12-hour shift and comparable firefighters work a 24-hour shift is a fortuitous circumstance which does not impact on the fact that such reimbursement of food expenses is income. In the same fashion, if the City's 12-hour shift firefighters were reimbursed for food expenses, they would then be receiving additional income.

#### UNIFORM ALLOWANCE

The City further contends that the inclusion of a uniform allowance for Muskegon, Portage, and Ypsilanti Township is inappropriate for the same reasons. In addition the City points out that it provides uniforms for firefighters. Hence, no allowance is given to them.

The panel adopts the same reasoning and conclusion as pertaining to the food allowance issue. But in fairness it should be noted that the providing of uniforms by the City is, in fact,

income to the subject bargaining unit in the same fashion as a money allowance is income to the said three comparables. The average allowance paid to said three comparables is \$310 per year. Therefore, said amount will be added to the total compensation figure for the City as hereinafter discussed.

#### **CAREER INCENTIVE PAY**

The City also contends that Union Exhibit 43b does not include in the total compensation figure the City's Career Incentive Pay bonus (CIP). The average amount paid for CIP per firefighter per year is \$156.

The Union argues that the CIP payments are contingent on the use by the firefighter of less than three sick days per year. (Article XVI, Subsection 10, Joint Exhibit 10). The Union points out that only 11 out of 25 in the bargaining unit received any CIP payment in the period November 1, 1992 through October 25, 1993.

The panel is persuaded to the City position. Whether contingent or not, so long as the CIP is paid to a substantial percentage of the bargaining unit, said payment is income.

#### **SOCIAL SECURITY**

Finally the City argues that the Union incorrectly deducted from total compensation the 7.65% social security payment made by firefighters to the Pension Fund. The social security contribution of Wyoming firefighters is qualitatively different than the pension and social security contributions of the firefighters of the comparables. This is because Wyoming firefighters, unlike the comparables, receive a fully paid pension benefit and the social

security benefit. The 7.65% employee contribution is essentially "money in the bank" which the employees collect at a later date. Since it is over and above the pension benefit, it is not fairly excluded from total compensation.

As hereinafter discussed relative to the pension issue, the panel considers that social security payments ultimately do increase pensions received by firefighters. But during the average term of 30 working years (which the panel finds in connection with the pension issue) such 7.65% payment does, in fact, lessen the firefighter's paycheck in the same fashion as the direct percentage contribution firefighters make to the pension fund. Hence the panel concludes that the social security contribution is properly deducted from the total compensation on Union Exhibit 43b.

#### TOTAL COMPENSATION

The panel relies upon Union 43b which sets forth total compensation figures for July 1, 1993 incorporating the Union and City's last best offers as adjusted by the above \$156 CIP allowance and the average \$310 uniform allowance as follows:

Grand Rapids		\$39,439.00
East Lansing		\$38,250.00
Portage		\$37,183.00
Ypsilanti Township	(Median)	\$35,507.00
Battle Creek		\$34,615.00
Jackson		\$33,690.00
Muskegon		\$31,353.00
Wyoming (Union offer incorporated July 1, 1993)		\$32,760.00
Add: (CIP)		\$ 156.00
Uniform Allowance		\$ 310.00
	Total	\$33,226.00
Wyoming (City offer incorporated July 1, 1993)		\$33,091.00
Add: CIP		\$ 156.00
Uniform Allowance		\$ 310.00

Total

\$33,557.00

It is noted that the above Union Exhibit 43b recites that in the second year of the contract, July 1, 1993, because of the zero wage offer by the Union and the City's 2.75% offer in the second year, the City's total compensation is \$331 higher than the Union's. This places the City in 7th place and the Union in 8th place in terms of total compensation with Muskegon in the 9th and last position.

In the panel's view the object of PA 312 is to cluster all comparable cities and the subject city close to the median. This furthers the underlying rationale of PA 312 of "equal pay for equal work." In this connection it is noted that, even awarding the Union the City's second year offer of 2.75%, the Union is still placed lower than the median by \$1,950 per year and is in 7th place.

#### HOURLY WAGE-CITY POSITION

But notwithstanding such low placement among the comparables, the City argues that the hourly rate paid to firefighters and not the yearly total compensation should be the predominant consideration. In this respect the City points out that the firefighters work 624 hours less than the median of hours worked in the comparables. (City Exhibit 21).

If one divides the median of the comparables of 2808 hours into the median total compensation of \$35,507 (Union ex. 43b), the median hourly wage is \$12.64. The 2184 hours worked by the City



firefighters divided into their total compensation of \$33,557<sup>1</sup> results in an hourly wage of \$15.36 or about \$3 per hour higher than the median among the comparables.

The City emphasizes that the 624 fewer hours which its firefighters work allows them greater recreational time and time with their families.

#### HOURLY WAGE-UNION POSITION

The Union asserts that the firefighters are compensated on a yearly basis - not hourly - and have to meet their living expenses based upon their total yearly compensation. The Union notes that Grand Rapids firefighters earned the highest yearly base wage, but worked fewer annual hours than any other comparable except Wyoming. The Union further points out that police officers earn 13.2% higher annual salaries than firefighters but worked 104 less hours. (Joint Exhibit 18a).

#### DISCUSSION AND OPINION

The panel is persuaded to the Union's position. As the chairperson of the panel stated in City of Hamtramck and Hamtramck Firefighters Association, Local 750, MERC D82 I - 3792, August 20, 1986:

First, the per hour earnings figure has more efficacy in a situation where the employees are paid by the hour and where layoffs are common. In such a case, the yearly earnings directly relate to hourly rates and number of hours worked. But in the instant situation, the firefighters depend upon a yearly, not hourly wage, and are not subject to frequent

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<sup>1</sup>The \$33,557 figures represents the Union's first year offer of 5% and the City's second year offer of 2.75%.

layoffs. It is their yearly total compensation - not their hourly rate that provides sustenance for their families. (p. 10)

The panel concludes that the Union offer of 5% as of July 1, 1992 and the City offer of 2.75% for July 1, 1993 should be accepted. Further the City offer for the year July 1, 1994 of 2.25% should also be awarded as hereinafter discussed in connection with the issue of the duration of the contract.

In connection with the ability to pay issue heretofore discussed the panel is of the opinion that the net cost to the City of such awards will have minimal effect on the budget. The net cost figures, as hereinafter compiled, represents the cost difference between the City's and the Union's last best offers. The Panel has taken into account the year to year carry-over of increased wage costs but not fica costs.

#### CITY OFFERS

<u>Base Salary</u>	<u>Cost</u>
\$31,217.00	
3.25% First Year City Offer July 1, 1992	
<u>\$ 1,014.00</u> x 25 firefighters	\$ 25,350.00
 \$32,231.00	
2.75% Second Year City Offer July 1, 1993	
<u>\$ 886.00</u> x 25 firefighters	22,150.00
Plus carry over from 1992	<u>25,350.00</u>
Two year City total cost	72,850.00
 \$33,117.00 (base wage for the year starting July 1, 1994)	
 \$33,117.00	
2.25% Third year City Offer July 1, 1994	
<u>\$ 745.00</u> x 25 firefighters	\$18,625.00
Plus carry over from first 2 years	<u>72,850.00</u>
Three Year City Total Cost	<u>\$91,475.00</u>

# UNION OFFERS

\$31,217.00	
.05% First Year Union Offer July 1, 1992	
<u>\$ 1,561.00</u> x 25 firefighters	\$39,025.00
\$ 0 Second Year Union Offer July 1, 1993	0
Add carry over from first year	<u>39,025.00</u>
Two Year Union Total Cost	\$78,050.00
\$32,778.00	
.05% Third Year Union Offer July 1, 1994	
<u>\$ 1,639.00</u> x 25 firefighters	\$40,975.00
Add carry over from first 2 years	<u>39,025.00</u>
Three Year Union Total	<u>\$158,050.00</u>
Three Year Difference	
Between City and Union Offers	<u>\$66,575.00</u>

The panel finds that the sum of \$66,575.00 representing the net additional cost of the above wage package for three years in relation to the City and Union's last best offers, is inconsequential when the total budgeted income of \$22,519,683.00 in 1992 is considered. (Union Exhibit 33).

There are many combinations of offers which can be accepted by the Panel in order to improve the Union's status among the comparables. The Panel had decided to limit its comparison of offers to the following two:

A.	Base	\$31,217.00
	Union first year 5%	\$32,778.00
	City second year 2.75%	<u>901.00</u>
		\$33,679.00
	Union third year 5%	<u>1,684.00</u>
	Salary at third year	\$35,363.00

B.	Base	\$32,217.00
	Union first year 5%	\$32,778.00
	City second year 2.75%	<u>901.00</u>
		\$33,679.00
	City third year 2.25%	<u>758.00</u>
	Salary at third year	\$34,437.00

As stated, the Union is in a very low position relative to the comparables. Therefore, awarding the Unions first and third year offers and the City's second year offer will bring the Union closer to the median of the comparables as set forth on page 15 of this opinion.<sup>2</sup>

#### AWARD OF WAGES

The panel awards the above Union last best offer of wages as as of July 1, 1992 and the City offer as of July 1, 1993 and the Union offer as of July 1, 1994.

#### DURATION

Union last best offer:

Amend Section 1 and 2:

Section 1. Term. The term of this Contract shall be three years commencing July 1, 1992 and terminating June 30, 1995.

Section 2. Effective Date. All provisions of this Contract shall become effective July 1, 1992; unless otherwise provided.

City's Proposal:

Amend Sections 1 and 2:

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<sup>2</sup>Page 15 of this opinion sets forth the median of the comparables at \$35.507 as of July 1, 1993. It is assumed that the comparable cities will receive a wage increase as of July 1, 1994.

Section 1. Term. The term of this Contract shall be two years commencing July 1, 1992 and terminating June 30, 1994.

Section 2. Effective Date. All provisions of this Contract shall become effective July 1, 1992; unless otherwise provided. (City Exhibit 65).

#### DISCUSSION AND OPINION

The Panel is persuaded to the Union's offer. As it points out, the parties present contract expired on June 30, 1992. The parties have been in extended negotiations for the subject contract. If the Panel awarded a contract which expired on June 30, 1994, the parties would have to again start negotiations. Such a continual and lengthy negotiating period is taxing on both parties physical and financial resources.

Also, it appears that the last five contracts entered into between the parties since 1977 are for three year periods. (Union ex. 34) Further, it is noted that, while most of the internal comparables have two year contracts, the Police Command Unit has had three and four year contracts since 1986 and the Supervisor and Administrator Unit has had two three year contracts since 1988. (City ex. 66)

The City further asserts that all other contracts are currently open for negotiations. It therefore has an opportunity to negotiate a single health insurance package putting all employees in one large pool. Thereby it will be able to achieve lower health insurance costs. But the Panel is of the view that, if through negotiations all other bargaining units are included in a health insurance package, it is probable that the subject

bargaining unit will be included in fiscal 95/96.

#### AWARD AS TO DURATION

The panel awards the above union offer as to the duration of the contract.

#### PENSION ISSUES

- (A) Current Contract:  
Article XIV; Section 2. Pension-Retirees Blue Cross-Blue Shield

Retirement age of 55 cited when discussing when benefits begin.

Union's Proposal:

Add to Section 2: Effective July 1, 1992 and applicable to employees retiring on or after July 1, 1992, the age requirement for retirement eligibility shall be reduced from age 55 to 50.

City's Proposal:

No change. (City Exhibit 24).

- (B) Current Contract:  
Article XIV; Section 2. Pension

No such language.

Union's Proposal:

Add to Section 2: Effective July 1, 1992 and applicable to employees retiring on or after July 1, 1992, the monthly pension, after age 60, shall be increased each January by forty percent (40%) of the average of the annual increase in the Consumer Price Index (CPI) of Detroit and Chicago through October of the previous year as published by the U.S. Department of Labor, Bureau of Labor Statistics. The annual adjustment shall be limited to five percent (5%).

City's Proposal:

No change. (City Exhibit 29).

(C) Current Contract:

Article XIV; Section 2. Pension-Retirees Blue Cross-Blue Shield

Effective July 1, 1989 and applicable to employees retiring on or after July 1, 1989, the pension multiplier shall be modified to 2.2%.

Union's Proposal:

Add to Section 2: Effective July 1, 1992 and applicable to employees retiring on or after July 1, 1992, the pension multiplier shall be modified to 2.5% for each year of credited service.

27). City's Proposal: No Change. (City Exhibit

**TOTAL PACKAGE OF PENSION BENEFITS  
SOCIAL SECURITY INCLUSION-CITY POSITION**

Preliminarily the City argues that the total package of subject bargaining unit pension benefits puts it near the top among the comparables. Therefore it is not necessary to analyze each of the above three pension issues in reference to the City's status among the comparables.

The City presented a comparison of total package pension benefits with other comparables (City Exhibit 33a-d) denoting retirement of firefighters at age 55 with 25 years of service and 62 with 30 and 35 years of service. These exhibits base the pension on final average compensation (FAC) and add the medical benefits, social security at age 62 and the medical benefit at age 55. At age 62 with 30 years of service the median of the comparables is a pension of \$2,425 per month. (City Exhibit 33a). A Wyoming firefighter receives a pension of \$2,909 including social

security of \$775 and a medical insurance benefit of \$240. This places the City at number two for age 62 among the six comparables.<sup>3</sup>

At age 55 with 25 years of service, the City firefighters pension is \$1,578. (City Exhibit 33c). At age 62 when social security of \$1,135 is received, the firefighters pension is \$2,913 including a \$240 medical payment. The median of the comparables is \$2,246. Hence the City is at number two rank among six other comparables when a firefighter reaches age 62 after retirement.

The Union attacks the City's methodology by first arguing that social security benefits should not be included in the total pension figure. The Union asserts that social security benefits are contingent upon reaching age 62. According to the Union, given the physical hardship imposed by firefighting activities, it is not probable that most firefighters will live to age 62. In the panel's view, there being no evidence to support such conclusion, the panel is persuaded to take judicial notice of the fact that at age 55 the average person lives well beyond age 62.

Further, there being no evidence as to when the average firefighter retires in the City<sup>4</sup>, the panel is persuaded that many if not most will retire at age 62 or thereafter. In this respect the City points out that the large majority of members of the bargaining unit will have 30 or more years of service at age 62.

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<sup>3</sup>Portage has a defined contribution pension plan and therefore has been deleted from the comparables.

<sup>4</sup>There is only one firefighter who has retired.



Specifically, 19 out of 25 will have 30 or more years of service. Furthermore, 16 out of 25, or 64%, will have 35 or more years of service. Of the six firefighters who will not have 30 or more years of service at age 62, it is significant that two of them will have 29 years; one will have 28 years; one, 27 years; one, 25 years; and one, 24 years. In other words, all of these firefighters as well will have significant levels of service if they work until age 62. Given the fact that the pension at age 62 with 30 years of service is \$2,909 and at age 55 is only \$1,778, in the panel's view it is not probable that a firefighter would retire at age 55. Therefore the panel accepts age 62 with 30 years of service as a benchmark for retirement of City firefighters.

As to the social security factor, it appears that Wyoming, Portage, and Ypsilanti Township are the only cities where firefighters contribute 7.65% towards social security benefits in addition to a contribution to the pension fund. In other comparables, however, firefighters contribute 5 to 7% to the pension fund, but do not also pay social security. In both situations these payments ultimately result in increasing the firefighters pension. Therefore, as argued by the City, the social security payment is actually a forced saving as is the pension contribution and ultimately produces additional pension benefits at retirement. Accordingly, the panel concludes that social security benefits should be included in the total retirement benefit package. In addition it is noted that Wyoming's cost of funding its pension plan, including its own social security contribution of

7.65%, ranks it second among seven other comparables. (City Exhibit 32).

But as to total pension benefits, the Union further contends that the methodology is flawed whereby the FAC of Wyoming is compared to the FAC of other comparables. The Union points out that the City used its base salary of \$31,217 for all of the comparables in figuring FAC instead of using these other cities respective base salaries. (Vol. 2, p. 224, 225) For example, the base salary in East Lansing is \$36,375 and Battle Creek is \$34,531. Therefore the FAC, using that base, would have resulted in a larger pension than by using the Wyoming base of \$31,217.

The panel agrees with the Union that the correct FAC for each comparable should have been based upon that city's base salary when comparing total pension benefits. Therefore the city's exhibit relative to total pension benefits for all comparables cannot be used. Therefore it becomes necessary to address the status of the City in relationship to the comparables relative to each of the above pension issues.

But first a word should be added in reference to the above s/s 9h of the statute. The Union argues that it proposed its offer of zero increase in wages for the second year because it desires that priority be given to its several pension offers as hereinafter discussed. Thereby, the Panel can "take into consideration" such "factor" under s/s 9h. The Panel has done so in connection with the above pension offers and also in connection with all offers hereinafter discussed wherein fairness is argued as a basis for

adopting either party's offer.

The argument usually made in connection with the application of s/s 9h is that the Panel should adopt either party's offer which would probably have been agreed upon, in the light of all issues, had the parties negotiated the contract. Such s/s 9h factor, as are all other s/s 9 factors, has to be considered as is set forth in the Michigan Supreme Court case of City of Detroit vs Detroit Police Officers Association, 408/410, 1980. But the Panel gives it little weight when compared to the weight to be given external and internal comparables and the other s/s 9 factors. To base an award the s/s 9h factor when inopposite to the comparables is to give the PA 312 Panel license to pick and chose among the respective offers based upon an amorphous concept of fairness and upon conjecture.

Therefore, the Panel concludes that the fact that the Union chose to forgo a demand for a wage increase in the second year as a quid pro quo for gaining its pension offers will not be given weight under s/s 9h particularly in view of the comparables as hereinafter discussed.

#### THE PENSION ELIGIBILITY ISSUE

The City contends that age 60 with 10 years of service is the median retirement minimum age and service among comparables. (City Exhibit 26). The City, however, has a 55 year with 10 year service requirement.

Further the City points out that, although three comparables have an age 50 minimum retirement age, these cities have 25 and 20 year service requirements (Battle Creek, East Lansing and Portage).

(City Exhibit 25). In addition Jackson and Ypsilanti have no minimum age requirement if firefighters achieve 25 years of service.

The panel agrees with the City that, given the widespread divergence in minimum age requirements when combined with varied service requirements, the comparables do not support the Union. The City appears favorably positioned relative to comparables.

#### **AWARD ON THE ELIGIBILITY ISSUE**

The panel awards the above City offer.

#### **THE PENSION ESCALATOR ISSUE-CITY POSITION**

The City asserts that the social security benefit included in the pension serves to protect the firefighter against cost of living increases albeit only to the extent of such social security benefit.

As to the comparables, the City argues that only one of the seven comparables, East Lansing, has a true escalator provision, i.e., a provision which automatically increases pension benefits based upon the rate of increase in the Consumer Price Index, i.e., the rate of inflation. In East Lansing, the cap on the annual adjustment is 2.5%, whereas the cap in the Union's proposal is double that, 5%. (City Exhibit 30).

Muskegon and Grand Rapids have a form of escalator. In Grand Rapids the escalator is tied to excess funding in the pension fund. If sufficient excess is achieved, a firefighter receives a thirteenth pension check in that year. In like fashion in Muskegon when the "Reserve for Retirement Benefit payments exceed the 8%

assumed rate of return. . . the supplemental pension payment will be made." But also by City ordinance such payment is "for existing retirements." (Union Exhibit 62). Therefore, according to the City, Muskegon and Grand Rapids do not have an automatic escalator tied to increase in the CPI. Neither Portage nor Ypsilanti have an escalator as they provide social security benefits.

As to internal comparables, the City points out that the police non-supervisory unit does not have such an escalator benefit.

#### **PENSION ESCALATOR ISSUE-UNION POSITION**

The Union contends that the police command officers unit, administrative unit and supervisors unit have an escalator on their pensions. (Union Exhibit 60).

#### **DISCUSSION AND OPINION**

The panel is persuaded to the City position. The external comparables do not support the Union. Further to at least a partial extent the firefighters benefit from the fact that their social security benefit is subject to an escalator paid by the federal government.

#### **AWARD AS TO THE ESCALATOR ISSUE**

The panel awards the above City offer.

#### **THE ANNUITY FACTOR ISSUE-CITY POSITION**

The City admits that the comparables' annuity factor (multiplier) ranges from 2.3% to 3% as compared to the City's 2.2%. However, all of the comparables that have a higher annuity factor have caps on the number of years of service or on the maximum

benefit. For example, in Jackson, where the annuity factor is 2.5%, that factor is limited to the first 25 years of service. All years of service beyond 25 years are subject to a much lower annuity factor, 1%. The same is true in Ypsilanti Township, i.e., 2.5% for the first 25 years only and 1% thereafter. Somewhat higher caps on the annuity factor or total benefit are present in Battle Creek, East Lansing, Grand Rapids and Muskegon. But, Wyoming is the only comparable community which has no such cap. Thus, several employees in the Wyoming Fire Department bargaining unit will realize a higher actual benefit calculation in Wyoming even though the annuity factor, standing alone appears to be lower. For example, comparing a firefighter with 35 years of service in Wyoming and the other comparable communities, the basic benefit calculation (expressed as a percentage of final average compensation) is as follows:

Wyoming	77%	(35 years x 2.2%)
Jackson	72.5%	(25 years x 2.5% = 62.5% plus 10 years x 1%)
Ypsilanti Township	72.5%	(25 years x 2.5% = 62.5% plus 10 years x 1%)
Battle Creek	75%	(3% annuity factor but overall cap of 75% on the benefit)
Muskegon	75%	(2.3% up to 35 years but capped at maximum benefit of 75%)
East Lansing	80%	(2.5% annuity factor with 80% maximum benefit)
Grand Rapids	87.5%	(2.5% annuity factor capped at 40 years)
Median	75%	

(Union Exhibit 53).

Thus, for many firefighters the actual benefit calculation places Wyoming ahead of most comparables. According to the City

using a figure of 35 years of service is reasonable. City Exhibit 35A denotes that at age 62, almost two-thirds of the bargaining unit (specifically 64%, 16 out of 25) will have 35 or more years of service.

As to internal comparables, the City points out that none of the other five bargaining units have an annuity factor above 2.2%. (City Exhibit 2).

#### THE ANNUITY FACTOR ISSUE-UNION POSITION

The Union argues that a 25 or 30 year basis should be used, not 35 years, to calculate the percentage of FAC received as a pension. For example, using a 30 year basis the median for comparables is 71.25%. Wyoming stands at 66% and is last among the comparables. (Union Exhibit 56). Using a 25 year basis the median for the comparables is 62.5% and Wyoming stands at 55% and again is last.

#### DISCUSSION AND OPINION

The panel has heretofore stated, in connection with the wage issue, that, absent evidence to the contrary, it is probable that most firefighters will retire at age 62. Perusal of City Exhibit 35a denotes that only 6 out of 25 in the bargaining unit have close to 30 years service at age 62. But 17 out of 25 in the bargaining unit have close to 35 years or more service at age 62. Therefore the panel is persuaded to the above City position which puts Wyoming near the median of the comparables. Accordingly the panel finds that the Union's position is not sustained.

## **AWARD AS TO THE ANNUITY FACTOR ISSUE**

The panel awards the above City offer.

## **THE EMT PAY ISSUE**

The City's last offer includes a proposal to pay firefighters who maintain a basic EMT certification an annual bonus of \$300.00 per year. The Union's proposal is that the City pay each firefighter who maintains a medical responder (MRF) certification an annual bonus of \$250.00, and a \$500.00 annual bonus to each firefighter who maintains a basic EMT certification.

The terms medical first responder (MFR) and emergency medical technician (EMT) refer both to the level of medical training the individual firefighter has and to the level of emergency medical service that the department is committed to provide. (Tr. 412). MFR is the lower of the two levels. To achieve MFR certification a firefighter must complete 41 hours of training. (Tr. 412). To obtain the basic EMT certification a firefighter must complete 157 hours of training. (Tr. 413). The City of Wyoming is committed only to provide the MFR level of service. Wyoming firefighters are required to be MFR certified. None are required to be EMT certified. (Tr. 432, Tr. 454).

Prior to June 1, 1993 the police department responded to all emergency medical service (EMS) calls. On that date the fire department took over that function. Accordingly, the Union argues that the EMS work load of firefighters has substantially increased since that date.

In 1992 before taking over the EMS function, the City



firefighters responded to 40.42 EMS runs per firefighter. (Union Exhibit 27). In calendar year 1993, which represents approximately a six month period after the firefighters took over such function, firefighters responded to 80.58 EMS calls per firefighter. The median number of EMS runs completed by the comparables in 1992 was 51.73. Thus a Wyoming firefighter responded to 56% more EMS calls per firefighter than the median. (Union Exhibit 27).

But the City points out that there are 15 reserve firefighters with MFR certification and six more with EMT certification. The City asserts that if these reserves are added to the response figures used by the Union on Union Exhibit 27, the median number of EMS runs per firefighter in the City is 42.97 or within nine runs of the 51.73 median denoted on Union Exhibit 27.

In the panel's view the accuracy of the Union and City's positions relative to the number of EMS responses is problematic because the comparables are based on 1992 figures and the City firefighters did not take over EMS functions until June 1993.

It is also difficult to compare the number of EMS runs when they are not tied into the various populations of the comparable cities. Population differences in part account for both the number of fire and EMS runs. Also as above pointed out by the City, the reserves do attend some EMS runs, albeit the number is not in evidence. But to whatever degree the reserves perform that function, to that degree the number of EMS runs per firefighter in the City is reduced.

The bottom line is that it appears probable that city by city

firefighters perform about the same number of EMS runs because population in the comparables are more or less similarly prone to the need for emergency medical service. Therefore the panel will address the comparables relative to whether they pay their firefighters a similar bonus for EMS runs. As argued by the City the comparables do not support the Union position. Including Wyoming, six of the eight cities on the list provide the MFR level of service. Of the six, only one, Ypsilanti Township, pays a premium to those employees who obtain the MFR certification.

Of the six cities, including Wyoming, that provide MFR service, two, Grand Rapids and Jackson, pay no premium at all for any level of certification. Of those MFR service providers that do pay a premium for EMT certification, all, except Ypsilanti Township, pay \$50.00 to \$100.00 less than the City's proposed \$300.00 per year. In sum, the Union's proposal would result in the City paying as much or more for MFR certification as the other cities pay for basic EMT certification.

As to the Union's EMT offer, it is \$500 more per year than Grand Rapids and Jackson, double what Battle Creek pays, and two and a half times what Muskegon pays.

Further, the Union offer for both MFR's and EMT's covers July 1, 1992 through June 30, 1993 or one year before the firefighters assumed EMT duties.

While all criteria in PA 312 Subsection 9 must be considered, the comparable cities criterion in Subsection 9 has to be given considerable weight. As stated, this is because the main thrust

and intent of the Act is "equal pay for equal work." Accordingly, the panel does not view its authority as allowing it to "pioneer" benefits to either party. Such "pioneering" is best left to the parties at the bargaining table.

#### **AWARD**

The panel accepts the City offer on the EMT issue.

#### **RETIREE HEALTH INSURANCE**

Currently, an employee's retiree health insurance is limited to \$8 per month for each year of service with a maximum of 30 years, for a total \$240 a month maximum. Furthermore, payments begin only at age 55. Payments for retiree health insurance are terminated upon the employee reaching age 65.

The Union proposes that employees retiring after July 1, 1992 shall receive \$8.00 per month for each year of service up to a maximum of 30 years of service and that at age 60, the City shall provide the full cost of health insurance for the retired employee and spouse. When an employee is eligible for Medicare, the City shall be required to provide exact fill supplemental insurance to Medicare.

The City proposes \$10.00 per month per year of service to a maximum of 30 years. The City's proposal requires, however, achieving the age of 55 for eligibility. It removes the 65 year age cap.

All comparable cities provide fully paid retiree health insurance equal to the level of coverage at retirement up to the Medicare eligibility age with the exception of Portage and Jackson.

(U. Ex. 67). All of those five comparables provide Medicare complementary exact fill coverage at age 65.

In Portage the city contributes up to \$300 per month for retiree coverage. In Jackson the benefit coverage is significantly less than the package for active employees. The Jackson firefighters are currently eligible only for Medicare at age 65.

It is apparent that five of the seven comparables provide fully paid retiree health insurance including spouse coverage as a lifetime benefit.<sup>5</sup> As argued by the Union, these comparable cities have committed to providing a specific level of coverage. Thereupon the corresponding dollar value will increase to account for the rising cost of health care and inflationary effects. However, the \$10/\$300 proposed figure stays the same for the Wyoming Fire Fighters and will buy less coverage in the future due to rising health care costs and inflation. Thus, the Wyoming Fire Fighters will be able to buy less health care coverage while the comparables will receive the same level.

Further, eligibility to receive the exact fill coverage "Medicare valued at \$322" is not contingent upon the provision of 30 years of service in the comparable cities. However, Wyoming Fire Fighters must provide 30 years of service to obtain the current monthly benefit amount of \$240; fewer years of service means less health care.

The internal comparables also support the Union position. The

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<sup>5</sup>In Grand Rapids, the spouse coverage ends upon eligibility for Medicare.

benefit sought by the fire fighters is currently enjoyed by the two other internal units most closely aligned to the fire fighters. Both the police patrol and the police command officers enjoy this benefit. (U. Ex. 64). In both instances, they are entitled to receive the benefit at a minimum age of 50. (Tr. Vol. III, p. 265). Moreover, the administrative unit enjoys a life benefit of total health coverage insurance without any fixed dollar amount limitation prior to age 60 (U. Ex. 51, B-2).

The police patrol officers' unit obtained this benefit sought by the fire fighters in a 1992 Act 312 award chaired by Mario Chiesa. Prior to the award, the patrol officers received retiree health benefits on a similar basis as do the fire fighters currently.

In granting the benefit, Arbitrator Chiesa relied heavily on the fact that other internal units had the same benefit sought by the patrol. He stated:

In comparing the data regarding internal bargaining units, it is noted that this precise benefit exists in the Command and Supervisory and Administrative Units....(& Ex. 63, p. 15).

While the City argued that the patrol officers should not receive the benefits possessed by higher level management employees, the Chairman rejected the argument. He stated:

While clearly in some areas management employees should receive greater benefits and wages, it is not clear that this particular benefit falls in that category...it is a little more difficult to take that analysis and just conclude that as a result of being a Command Officer, one is entitled to retiree insurance while Patrol Officers are not. (U.

Ex. 63, p. 13).

While such prior 312 proceeding for police officers is not binding upon this panel, it is instructive.

The panel recognizes that, as argued by the City, there are reasons to give greater benefits to these internal comparables. However, the internal comparables do support the external comparables relative to such benefit. If the internal comparables stood alone and in contradiction to the majority position of the external comparables, the panel would give priority to the external comparables. But, as stated, the said position of three out of six internal comparable units is considered in support of the external comparables.

The City further argues that, if the Union offer is accepted, its flexibility to change said provision is impugned. It asserts that the law recognizes that an employee who retires in reliance upon the existence of a certain type of benefit may have a vested and legally enforceable claim for such benefits for life. See, e.g., UAW v Yard-Man, 716 F2d 1476 (6th Cir. 1983); UAW v Cadillac Malleable Iron Co., 728 F.2d 807 (6th Cir. 1984).

Thus, for example, if the Union's final offer were adopted and employees thereafter retire under those benefits, the employee may claim that they are entitled not only to full premium payment but also have a legally enforceable right to the package of benefits precisely as it existed on the day they retired.

The City also points out that there is a "theory", based upon a provision in the State Constitution, that a retirement benefit,

once vested, can never thereafter be taken away in collective bargaining or anywhere else. (Mich. Const. Art IV s/s 24)

The panel is of the opinion that such legal argument is not definitive or dispositive of the merits of said issue. Such legal conclusion is arguable at best.

In addition the City asserts that the subject issue should be adjudicated in the context of the entire package of retiree benefits. But as heretofore stated in connection with the pension offers, the City's methodology is flawed relative to such issue.

The City further points out that the Act provides that the panel consider benefits in private as well as in the public sector. City Exhibit 39b denotes:

Only 51% make retiree insurance available. Of that 51%, more than half (54%) pay no part of the premiums -- the retiree pays all. And, of the 51%, only 15% (or 7.5% of the total) pays 100% of the premium.

But, as stated, notwithstanding consideration of such factor, the panel places greater emphasis on external comparables.

Finally, the City argues that its offer is fair and adequate in increasing the amount of coverage to \$300 and the duration of coverage from 65 to lifetime. But, as heretofore emphasized, the main criterion in the statute is external comparables and not a standard of what is fair.

#### AWARD

The panel awards the Union offer as to the issue of retiree health insurance.

## HEALTH INSURANCE FOR ACTIVE EMPLOYEES

The Union's proposal on active employee health insurance is to continue the language of the current contract with the exception that the Union's proposal includes an increase of the prescription co-pay to \$5.00.

The City's final offer includes two proposals - one for a two year contract and one for a three year contract. If the contract is for two years, the only difference between the City's proposal and the status quo is that the City has proposed language which will give it more flexibility in shopping for more cost effective insurance providers. The current contract includes language which allows the City to change to another carrier only if it can find coverage that is "the same [as] or better" than the MVF II plan. The City's two year contract proposal is to replace the "same or better" requirement with the following language:

The City shall have the right to change to another insurance carrier or health plan, providing the coverage shall be generally equivalent to the coverage listed above and the bargaining committee of the Association has a timely opportunity to review and comment upon any change in a reasonable period of time before the change becomes effective. Any disagreements concerning the application of this section will be subject to the contractual grievance and arbitration procedure. (Emphasis added.)

The City's proposal also includes language which allows the firefighters to choose HMO coverage provided the City's contributions to those plans will not exceed its contributions for the MVF II coverage. While this language is in addition to that which is included in the current contract, it does not reflect any



change from the status quo. The City currently allows the firefighters to choose HMO coverage provided they pay any excess costs. (Tr. 293).

The City's three year contract proposal includes replacing the "same or better" language with the "generally equivalent" language. It also includes the language allowing firefighters to choose an HMO or PPO plan provided they pay any excess costs. In addition to those, the three year proposal includes some cost sharing features.

First, under the three year plan the City's proposal, as similar to Union's, the prescription drug co-pay is increased to \$5.00. Second, there would be a \$10.00 co-pay for office visits under the HMO plan. Finally, the three year proposal includes caps on the City's insurance premium obligation during the last year of the contract only. The City's proposal is to cap its obligation for premium payments after July 1, 1994 as follows:

Full Family - \$380.00  
Employee and Spouse - \$341.00  
Employee Only - \$163.00

Given the fact that the panel has heretofore awarded a three year contract, the City's above two-year offer will not be considered.

#### AWARD

Since the City's three-year offer accepts the Union's offer of a prescription co-pay of \$5.00, that portion of the City and Union's offer will be accepted by the panel.

## CHANGING THE PRESENT "SAME OR BETTER" LANGUAGE

### CITY POSITION

As to changing the "same or better" language to "generally equivalent", the City asserts that practically there is no other carrier which provides exactly the same coverage as the MVF plan. (Tr. 299, 337). Every plan has its own nuances. Accordingly, the City might propose another insurance plan with some differences but it would not necessarily be a worse plan. But in such instance, under the present provision, the Union could veto the selection of the new plan. According to the City, its current insurance situation illustrates the way in which this "same as" language skews normal market forces. The undisputed testimony at the hearing was that on a national basis HMO Plans are generally less expensive than traditional indemnity plans like that required by the current contract. (Tr. 345). (See also the Foster and Higgins Survey, City Exhibit 40.) The City however has three HMO's it makes available to its employees on purely voluntary basis. Two of these three plans are more expensive than the MVF II indemnity plan. The reason for this is that since the plans are purely voluntary none of them have enough City employees enrolled to effectuate the cost savings generally derived. (Tr. 337-338).

The City contends that in the event the Union claims that the new plan is not "generally equivalent" to the present plan, the Union can avail itself of arbitration procedure. The City's proposal has support among the comparables. Jackson's contract, for instance, at Article 11 requires the employer to provide the

MFV II Policy "or comparable coverage from another insurance carrier". (Emphasis added.) Muskegon's contract at Article XVI, requires that city only to provide a basic health plan without specifying the plan, thereby leaving that employer to determine which plan it will provide. Portage's contract at Article 12, requires Portage to provide an insurance plan "comparable" to that which existed under the prior agreement. Grand Rapids' contract at Article 25 does not specify any particular insurance plan but only requires that a policy be "not less" than the one provided under the prior agreement. The City of East Lansing's contract at Article 25 requires that the City provide the MFV II Plan or an "equivalent".

Thus, Wyoming is proposing language that gives it the same rights as 5 out of the other 7 comparables -- the right to provide a less costly plan so long as the plan is generally equivalent to the plan currently provided.

#### UNION POSITION

The Union argues that the City may use such new language to justify switching from the current premium based system to mandatory HMOs. Due to the ambiguous nature of the City proposed language, a grievance arbitrator may be forced to conclude that the City was granted this privilege in the provision of health care benefits.

According to the Union, shifting from a traditional premium based insurance system to any other system, such as mandatory HMOs, would be a dramatic change. While some Wyoming Fire Fighters have

chosen the option of going to an HMO plan, it is not an option that is beneficial to all employees. Moreover, the comparables do not support such a position. In all of the comparables, both internal and external, employees are granted the choice to utilize either traditional Blue Cross Blue Shield or a variety of HMOs. Such a decision is not left to the discretion of the employer. (U. Ex. 68). In support of its position the Union cites the following colloquy which occurred at the hearing:

THE ARBITRATOR: Let me interrupt for a minute. Is the City proposing in their offer here to eliminate the option of the employees to go with one of the three HMOs?

MR. SNAPPER: What we are proposing  
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THE ARBITRATOR: They're not doing that, are they?

MR. SNAPPER: What we are proposing is more latitude in changing plan design. You understand that.

THE ARBITRATOR: To get a generally equivalent?

MR. SNAPPER: To get a generally equivalent. That might be an expanded right. We might need to, for example, reduce the amount of HMOs, unless the union wants to state on the record that we may do that unilaterally presently, which I don't think they're going to do.

THE ARBITRATOR: Then you are saying that inherent in the offer, by virtue of your ability to obtain a generally equivalent carrier, you can then unilaterally eliminate the option the employees have to choose an HMO. Is that what you're saying?

MR. SNAPPER: I'm saying that I think we would have an option of going from three to two or maybe one.

THE ARBITRATOR: Or zero?

MR. SNAPPER: And that's not what the City wants to do, but that's a good question. (Tr. Vol. III, p. 348-349).

According to the Union all of the comparables also grant an option to the firefighters to choose either BC/BS or HMOs. But notwithstanding such options, similar "equivalent" language is in their health insurance provisions. Accordingly, it is arguably possible that such language may, per the above colloquy, be used to abrogate such option. But the predominant factor is that five of the seven comparables have similar language. Thereby it appears that the fear of the issue involving the interpretation of the word equivalency is not so real as to preclude subjecting it to arbitration.

The panel agrees that the present language locks the City in to the present health insurance coverage. There are few, if any, companies that provide exactly the same coverage. In most cases where companies are competitive as to pricing, provisions vary giving more or less benefits. But in such case where premiums might be lower, the City is precluded from changing carriers by the present contract language. Therefore, the Panel is persuaded to the City's position.

#### AWARD

The Panel awards the above City offer relative to the "generally equivalent" language.

## THE CITY'S COST SHARING PROPOSAL

### CITY POSITION

As to the City's \$10 co-pay for office visits under the HMO plan and caps on its insurance premium obligation during the last year of the contract, the City does not rely on any external firefighter comparables. In support thereof the City relies on 45 employers in Wyoming and Grand Rapids who provided some health insurance benefit and had more than 100 employees. (Tr. 322). These employers have some health insurance plans whereby the Union shares cost. (City Exhibit 39). Item A-2 of the exhibit shows that 50% of the surveyed employers required employees to pay a portion of the premium. Item A-3 of the exhibit shows that 52% of the employers require employees to pay a portion of the dependent coverage premium.

It also shows at items A-4 and A-5 that most of the surveyed employers have shifted more of the cost to their employees by requiring employees to pay a higher deductible. Finally, as item A-6 shows, all but 6% of the surveyed employers require their employees to pay some portion of the covered charges even after the deductible is met.

Initially the City supports the efficacy of such comparables by contending that Act 312 panels routinely consider the wage and benefit data from private employers. Illustrating this is the City of Grand Rapids and the Grand Rapids Firefighters Association, Case No. G82 E-1232, (A copy of the pertinent portions is attached). In that case, chairman Mario Chiesa's discussion at page 22

demonstrates that he considered very carefully wages paid to private sector employees in ruling on the wage issue in that case. In the City of Grand Rapids and the Grand Rapids Firefighters Association chairman Barry Brown took into account the wages paid in the private sector in arriving at his conclusions. In the City of Lansing and the Lansing Firefighters Association, Case No. R66E-215, the panel considered the wages paid by private manufacturing companies on arriving at its conclusion on the wage issue.

The Union argues that such comparables have no efficacy and are in derogation of PA 312 requirements that the City limit itself to consideration of comparable cities which it had previously decided upon.

The panel agrees with the Union position. The panel has heretofore adjudicated the issue as to what communities are comparable. While Grand Rapids and obviously the city of Wyoming can legitimately be used, the panel is of the view that the fact of the omission of the other comparable cities makes the City position flawed. The issue involved in deciding the appropriate comparables is profound and encompasses attention to a myriad of factors usually argued by the respective parties. As stated, the criterion of "comparable communities" is of premier importance in the Panel's decision-making process. Accordingly, once the Panel has decided on a number of comparables, they should be used by the parties in support of their particular positions.

In the absence of any external public sector comparables bearing upon firefighter contract provisions, the City bears a

heavy burden of proof relative to sustaining its position based solely upon private sector comparables.

But such use of all comparables becomes academic in the subject case because it is particularly noted that in the two Grand Rapids cases and the Lansing case cited by the City, the panel relied on both external firefighter comparables and private sector comparables. The subject panel agrees with such reliance on private sector comparables, but only as limited to supporting or detracting from external public sector firefighter comparables. As heretofore emphasized, it is the external public sector firefighter comparables which predominate in terms of the Act 312 intent to provide "equal pay for equal work." To a lesser extent internal comparables and external private sector comparables may additionally be considered but only in connection with such external public sector comparables. Here there is no evidence of external public sector firefighter comparables to which the Grand Rapids and City of Wyoming private sector comparables can be compared.

Therefore whatever the merits of the City's cost sharing proposals relative to saving money, the panel is limited to the application of the PA 312 criteria. The panel does not act as a court in equity to apply equitable principles and thereby pioneer proposals by either side.

Therefore the panel does not agree with the Grosse Pointe Park case cited by the City. In that case, absent any external comparables to support the panel's position, the panel awarded the



City's offer that the Union share increases in health insurance premium costs based simply upon fairness.

The City of Detroit case cited by the City is distinguished. Both parties therein submitted offers which included some sharing of health insurance costs. (p. 35). The panel chose the City's offer.

#### AWARD

The Panel rejects the above City offer relative to cost sharing proposals.

#### LIFE INSURANCE FOR ACTIVE EMPLOYEES

Last best offer of the Union -

Effective January 1, 1994, the City shall provide each full-time employee with life insurance in the amount of \$25,000.

The last offer of the City provides for the same increase in life insurance for active employees.

#### AWARD

Since the City and Union offers are identical, the panel awards the Union's last best offer as to life insurance for active employees.

#### LIFE INSURANCE FOR RETIREES

The last offer of the Union amends Article XIII, Section 4, as follows:

For those employees' retiring after July 1, 1992, the City shall provide life insurance in the amount of \$5,000.

The last best offer of the City is to maintain the status quo.

The present contract recites:

For those employees retiring after July 1,

1988, the City shall provide life insurance in the amount of \$5,000 between age 55 and 65.

#### CITY POSITION

The City argues that, as a practical matter, the most significant part of the Union's final offer is removal of the upper age limit, age 65.

Of the seven comparables five offer no retiree life insurance whatsoever; one offers \$5,000 coverage which ends at age 65 (identical to Wyoming); only one, Ypsilanti Township, offers \$5,000 coverage beyond age 65.

As to the internal comparables the retiree life insurance benefit is capped at age 65 in all other City bargaining units. Thus, general City employees, administrative and supervisory employees, as well as police command and policy non-supervisory employees, all are subject to the age 65 cap on this benefit. (City Exhibit 2, Tab A). (The dispatcher bargaining unit has no retiree life insurance benefit whatsoever.)<sup>6</sup>

#### UNION POSITION

The Union points out that neither the police patrol (Jt. Ex. 18 A, p. 30) or police command (Jt. Ex. 19, p. 24) collective bargaining agreements require any minimum age for eligibility for retiree life insurance. When an employee retires from either unit,

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<sup>6</sup>The City's exhibit is not accurate in stating that all units have a minimum age of 55. In the police non-supervisory and command units, there is no such stated minimum age, and as a practical matter, the age is defined by the normal retirement age, which is 50 in those units. However, the exhibit is accurate in showing that all such employees are subject to the age 65 upper limit.

they are eligible for the benefit.

But as asserted by the City, since most firefighters will probably retire after age 55, the significant aspect of the Union offer is the removal of the age 65 cap. In view of the lack of support for the Union position among both external and internal comparables the panel is persuaded to the City position.

#### AWARD

The panel awards the City's last best offer as to life insurance for active employees.

#### SICK LEAVE PAYOFF UPON SEPARATION OF SERVICE

The last offer of the Union modifies Article X, Section 4 (3), paragraph 2, as follows:

Employees having five (5) or more years of seniority shall receive twelve (12) hours pay for each twenty-four hours of accumulated sick leave upon termination of employment with the City except for cause.

The City proposes to amend Article X, Section 4 (3), paragraph 2, in this manner:

Employees having five (5) or more years of seniority shall receive eight (8) hours pay for each twenty-four hours of accumulated sick leave upon termination (including retirement or death) of employment with the City except for cause.

In effect the Union's offer would increase the rate of payoff from eight (8) hours to twelve (12) hours for each twenty-four hours of accumulated sick leave. Put another way, the increase would be from a payout of one hour for each three hours of accumulated sick leave to one hour for each two hours of accumulated sick leave. Both parties' offers reflect removing the

336 hour cap.

The evidence as to external comparables is somewhat confusing. The panel has used Union Exhibit 90 as a base denoting maximum hours paid and City Exhibit 57 denoting the 93/94 effective hourly rate. By multiplying both factors the maximum payout on City Exhibit 57 is then figured. As pointed out by the Union said figure for Battle Creek and Ypsilanti Township is incorrectly figured on City Exhibit 57. Also the panel noted that Grand Rapids, Muskegon and Wyoming are incorrectly figured as to maximum payout when multiplying the maximum hours paid (Un. Ex. 90) times the hourly rate (City Ex. 57). Accordingly the panel has refigured the maximum payout for comparables and Wyoming as follows:

Maximum Sick Leave Payout Upon Retirement of Service  
At 25 Years of Service  
- Fire Prevention Personnel -

<u>City</u>	<u>Hourly Rate</u>	<u>Maximum Payout</u>	<u>Rank</u>
Grand Rapids	\$14.99	\$16,189	1
Ypsilanti Twp	\$11.64	\$13,968	2
East Lansing	\$13.09	\$13,090	3
Battle Creek	\$12.53	\$12,217	4 (Median)
Muskegon	\$11.25	\$ 8,100	5
Portage	\$13.09	\$ 6,545	6
Jackson	\$11.37	\$ 6,140	7
<hr/>			
MEDIAN	\$12.53	\$12,217	
<hr/>			
WYOMING w/City's Proposed Inc.	\$15.13	\$ 9,532	5

In the panel's view what is important is the amount of money received as a maximum payout on retirement and not the particular formula by which said amount is figured. It therefore appears that the City of Wyoming is at a maximum payout of \$9,532 or 5th from the top and just below Battle Creek at \$12,217. But as to the maximum payout of \$9,532 the City is \$2,685 below the median.<sup>7</sup>

While the actual figure by which the city firefighters would improve their standing is not set forth by the Union, it appears that said maximum payment would improve by 17% (the difference between 33-1/3% and 50% of accumulated sick leave). Thereby, the gap between the median and the City would be narrowed.

As to the internal comparables, the City points out that the "one for three" payout formula applicable to the firefighters, is the same as the general City employees, the City's supervisory and administrative employees, and the dispatchers. The police command and non-supervisory units, however, are paid at the rate of 50% rather than 33-1/3%. However, in comparing these groups it is important to remember that the firefighters work more hours, and therefore have opportunity to earn more sick leave hours, compared with police officers.

The Union argues that the firefighters should be placed in parity with the police units.

The panel cannot agree with the Union position relative to

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<sup>7</sup>It is noted that City Exhibit 57 denotes the \$15.13 hourly rate as reflecting the City's proposed increase for 1993. However, the panel has awarded the Union's demand of 5% for that year and therefore the hourly rate would be higher. Accordingly the maximum payout would be somewhat higher.


parity with the police units. Parity should be negotiated between the parties as to wages and all benefits. As heretofore emphasized throughout this opinion, it is the status of the external comparables which predominate. Therefore the fact that the police units exceed the firefighters as to the subject benefit is not, per se, dispositive of the issue. The panel has held that internal comparables have efficacy only as a support for external comparables. But here the majority of the internal bargaining units do not support the status of the City relative to the external comparables. However, since the external comparables do support the Union, the panel is persuaded to the Union's position.

#### AWARD

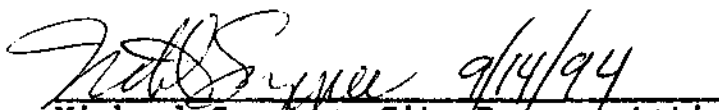
The Panel awards the Union offer as to sick leave payoff.

 9/19/94

Richard L. Kanner, Chairman

 9/12/94  
Ronald Helveston, Union Representative

Union dissents to: Pension Eligibility, Pension Annuity Factor, Pension Escalator, EMT, Retiree life insurance, Active Employee health insurance "same or better" language.

 9/14/94  
Michael Snapper, City Representative

City dissents to: Duration; Wages (first and third years); Retiree Health Insurance; Sick Leave Payoff; Active Employee Health Insurance (cost sharing).

Dated: August 30, 1994

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS DIVISION

In the Matter of Statutory Arbitration  
between:

WYOMING FIRE FIGHTERS, LOCAL 2758,  
IAFF, AFL-CIO,

-and-

CITY OF WYOMING,

---

Chairperson: Richard L. Kanner  
Union Delegate: Ronald R. Helveston  
City Delegate: Michael A. Snapper  
MERC Case No. G92 K-0218

**APPENDIX TO ACT 312 ARBITRATION OPINION AND AWARD**

Dated: September 15, 1994

I. Duration

Article XIX Terms of Contract and Effective Dates, Section 1 - Term and Section 2 - Effective Date

Amend Sections 1 and 2:

Section 1. Term. The term of this Contract shall be three years commencing July 1, ~~1989~~ 1992 and terminating June 30, ~~1992~~ 1995.

Section 2. Effective Date. All provisions of this Contract shall become effective July 1, ~~1989~~ 1992; unless otherwise provided.



II. Wages - First Year - July 1, 1992 through June 30, 1993

Article XIV, Pay, Section 1 Wages

Amend Section 1:

As of July 1, 1992 each employee shall receive an increase of 5% of the employee's annual wage.

III. Wages - Second Year - July 1, 1993 through June 30, 1994

Article XIV, Pay, Section 1 Wages

Add to Section 1:

Beginning July 1, 1993 each employee shall receive an increase of 2.75% of the employee's annual wage.

IV. Wages - Third Year - July 1, 1994 through June 30, 1995

Article XIV, Pay, Section 1 Wages

Add to Section 1:

As of July 1, 1994 each employee shall receive an increase of 5% of the employee's annual wage.

V. EMT Pay

Article XV: EMT

Amend paragraph 1:

Effective July 1, ~~1987~~ 1992, each employee who has acquired and maintained Basic EMT certification for the whole of the previous contract year shall receive an annual bonus of ~~\$250~~ \$300. This bonus shall be paid in a separate check by July 31 of each year.

## VI. Retiree Health Insurance

### Article XIV Pay, Section 2, Pension-Retirees Blue Cross-Blue Shield

#### Amend Section 2, paragraph 1:

~~Beginning July 1, 1985, retired employees shall receive \$6.00 for each month for each full year of employment with the City, not to exceed 25 years after retirement for Blue Cross/Blue Shield medical insurance subject to the following conditions: Payment shall not begin until the employee reaches the age of 55 and shall end upon the employee having reached the age of 65. Employees retiring on or after July 1, 1992 shall receive \$8.00 for each month for each full year of employment with the City, not to exceed 30 years. At age 60, the Employer shall provide the full cost of the retired employee and spouse's health insurance coverage. At such time as the employee and/or spouse become eligible for Medicare, the employee and/or spouse shall apply for and receive Medicare. Thereafter, the City shall provide supplemental insurance which shall provide benefits equal to those received under Blue Cross/Blue Shield or self-insurance prior to eligibility for Medicare. Any employee who is retired and is or can receive Blue Cross/Blue Shield or such other equivalent hospitalization plan from his or her employment or the employment of his or her spouse shall not be paid any monies toward Blue Cross/Blue Shield during such times that said spouse is or could be eligible or said employee is or could be eligible. Effective July 1, 1988 and applicable to employees retiring on or after July 1, 1988, the aforementioned \$6.00 will be increased to \$7.00. Effective July 1, 1990 and applicable to employees retiring on or after July 1, 1990, the aforementioned \$7.00 shall be increased to \$8.00 and the full years of employment which are counted shall be increased to 30.~~

VII. Health Insurance - Active Employees

Article XIII, Section 1, Health Insurance

Amend Section 1:

The City shall provide each employee and the employee's dependents the MVF2 coverage which shall include the following:

Comprehensive Blue Cross, Semi-private Room 1 MB, C.C., D45 NM, OPC, DCCR, MVF2-Blue Shield, ML Rider, and appropriate Medicare options, Master Medical Insurance Option I, Prescription Drug Program (2.00 co-pay) Health Service, Inc. Ambulance. Effective January 1, 1994, the prescription drug co-pay shall be \$5.00.

The City shall have the right to change to another insurance carrier or health plan providing the coverage shall be the same or better generally equivalent as listed above and the Bargaining Committee of the Association ~~approves the change. The Bargaining Committee shall not withhold approval of the change providing the coverage is the same or better.~~ has a timely opportunity to review and comment upon any change in a reasonable period of time before the change becomes effective. Any disagreements concerning the application of this section will be subject to the contractual grievance and arbitration procedure.

VIII. Life Insurance - Active Employees

Article XIII, Insurance, Section 2, Life Insurance

Amend as follows:

Effective January 1, 1994, the City shall provide each full-time employee with life insurance in the amount of ~~\$20,000~~ \$25,000.

IX. Sick Leave Payoff Upon Separation of Service

Article X, Leave of Absence and Sick Leave Section 4(3)

Amend Section 4(3), paragraph 2:

Employees having five (5) or more years of seniority shall receive ~~eight~~  
~~(8) twelve (12) hours~~ pay for each twenty-four hours of accumulated sick leave  
upon termination of employment with the City except for cause. ~~not to exceed~~  
~~336 hours, but unlimited upon retirement from the City or death while employed~~  
~~by the City.~~



X. Alcohol and Drug Policy

**CITY OF WYOMING, FIRE DEPARTMENT  
EMPLOYEE ALCOHOL AND DRUG ABUSE POLICY**

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This policy is adopted pursuant to the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), Title V, Subtitle D), in an effort to provide a safe and healthy work environment for our employees.

The use and effects of illegal drugs and alcohol pose very serious problems. While the City of Wyoming (the "Employer") would prefer not to intrude into the personal lives of its employees, it must be recognized that employees who use illegal drugs or abuse other controlled substances or alcohol tend to be less productive, less reliable and prone to accidents and absenteeism. Each employee has a responsibility to our community to deliver services in a safe and conscientious manner. In order to ensure that this responsibility is met, employees must work free from the effects of alcohol and other performance impairing substances.

Accordingly, the Employer wants to state clearly its policy so that present and future employees understand our objectives: to remove problems associated with illegal drugs and alcohol abuse from our workplace, either through treatment, cessation of use or termination of employment. Our policy is as follows:

**I. DRUG-FREE AWARENESS PROGRAM**

A Drug-Free Awareness Program has been developed to inform employees about: (1) the dangers of alcohol and drug abuse in the workplace; (2) the Employer's Alcohol and Drug Abuse Policy; (3) the availability of treatment and counselling for employees who voluntarily seek such assistance; and (4) the sanctions the Employer will impose for violations of its Alcohol and Drug Abuse Policy.

**II. ASSISTANCE TO EMPLOYEES IN OVERCOMING ALCOHOL OR DRUG ABUSE**

Early recognition and treatment of alcohol or drug abuse is important for successful rehabilitation and for reduced personal, family, and social disruption. The Employer encourages the earliest possible diagnosis and treatment for alcohol and drug abuse. However, the decision to seek diagnosis and accept treatment for alcohol or drug abuse is primarily the individual employee's responsibility.

To assist employees in obtaining early voluntary treatment, the Employer refers such employees to an Employee Assistance Program ("EAP"). The EAP is an assessment, counselling and referral service for employees with substance abuse problems. The Employer also provides an insurance plan to full-time employees to help pay for treatment. Finally, the Employer offers a variety of leave options for full-time employees who need time off work for treatment of substance abuse problems. To ensure that these benefits are available, however, employees must voluntarily seek help. These benefits may not be available to employees who do not seek help on their own.

Employees with alcohol or drug abuse problems should request the assistance of the EAP. Employees may seek help without the approval or knowledge of their supervisor. The EAP will provide assistance on a confidential basis and will refer the employee to the appropriate counselling and treatment services. Employees who voluntarily request the EAP's

assistance in dealing with an alcohol or drug abuse problem may do so without jeopardizing their continued employment with the Employer.

Voluntary requests for assistance from the EAP will not result in discipline. However, such requests and participation will not prevent disciplinary action for other violation(s) of this Alcohol and Drug Abuse Policy. Employees who undergo voluntary counselling or treatment pursuant to a referral by the Employer and who continue to work must meet all established standards of conduct and job performance.

### **III. APPLICATION**

The Policy applies to all employees.

For purposes of this Policy:

- "Employer premises" includes, but is not limited to, all property, whether owned, leased or used by the Employer. This Policy also includes any other locations or mode of transportation to and from those locations while in the course and scope of employment.
- "Employer time" includes, but is not limited to, all time spent on any Employer activity. This does not include the lawful use of alcohol for authorized Employer-related purposes (e.g., authorized social functions, off-hours dinner while traveling on Employer business, etc.).
- "Prohibited substances" are defined as: illegal drugs or controlled substances (including trace amounts); alcoholic beverages; prescription drugs -- except as provided in Section IV of this Policy; and any other substance which affects or may affect the employee's ability to competently or safely perform.
- "Under the influence" of any prohibited substance means any detectible level of a prohibited substance in an employee's system. If an employee is "called out," the employee shall not report to work with any prohibited substance in his/her system except that the employee may report where the presence of alcohol does not exceed the standard set by the U.S. Department of Transportation for truck drivers in interstate commerce. (Blood alcohol less than .04%.)
- "Reasonable suspicion" includes, but is not limited to: observation of behavior such as slurred speech, unsteady walking, abrupt mood swings, breath (alcohol) or odor; observation of physical manifestations frequently associated with some forms of substance abuse, e.g., needle marks, sudden nosebleeds, frequent illness not explained by other medical conditions; absenteeism; declining productivity; excessive tardiness; and suspicious activity indicating possible involvement with prohibited substances in violation of this Policy.

#### **IV. AUTHORIZED USE OF PRESCRIBED MEDICINE**

Employees undergoing prescribed medical treatment with any substance which may alter their behavior or physical or mental ability must report the effects such treatment may have on their ability to perform their job to their immediate supervisor or the Personnel Director, who will determine whether the Employer should temporarily change the employee's job assignment during the period of treatment.

#### **V. PROHIBITIONS**

The Employer's Policy prohibits the:

1. Use, possession, manufacture, distribution, dispensation, transportation or sale of prohibited substances or drug paraphernalia on Employer premises or being under the influence of a prohibited substance on Employer premises on Employer time or at an Employer activity;
2. Storing by an employee of any prohibited substance in a locker, desk, vehicle or other repository on Employer premises or refusing to submit to an inspection (this does not prohibit the storage of unopened, lawful alcoholic beverages in the employee's personal vehicle);
3. Possession, use, manufacture, distribution, dispensation or sale of prohibited substances off Employer premises or Employer time that adversely affects the employee's work performance, his own or others' safety at work or the Employer's regard or reputation in the community; (note: lawful and moderate use of alcohol is not prohibited);
4. Failing to adhere to the requirements of any drug or alcohol treatment or counselling program in which the employee is enrolled;
5. Conviction under any criminal drug statute or failure to notify the Employer of any arrest or conviction under any criminal drug statute within five days of the arrest or conviction;
6. Failure to report to the immediate supervisor or Personnel Director the effect of a prescribed drug which may alter the employee's behavior or physical or mental ability;
7. Refusing to consent to testing or to submit a urine, blood or other sample for testing when requested pursuant to the Employer's testing policy, or switching or adulterating any sample submitted for testing.

## **VI. IMPLEMENTATION AND ENFORCEMENT OF POLICY**

The following procedure will be employed to assure compliance with the Policy.

A. **Testing.** Employees or applicants for employment may be required to submit to substance testing, including, but not limited to, urinalysis, blood tests, plasma tests or breath tests for the drugs specified in the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs ("HHS Guidelines") and any amendments to the HHS Guidelines in effect at the time of the testing:

1. to be considered for employment;
2. where the Employer has reasonable suspicion that an employee has ingested, possesses or has distributed a prohibited substance;
3. following an accident or incident where the Employer has reasonable suspicion that prohibited substance(s) may be implicated, e.g., where safety precautions were violated or careless acts were performed; and
4. immediately after an employee returns to work after a disciplinary suspension, where the Employer has reasonable suspicion that prohibited substance(s) may be implicated.

All positive initial drug tests will be confirmed using gas chromatography/mass spectrometry techniques at the cutoff values listed in the HHS Guidelines and any amendments to the HHS Guidelines in effect at the time of the testing.

Samples provided by an existing employee (not an applicant or new hire) shall be given at a collection site outside the City of Wyoming where necessary to protect the employee's privacy.

Collection site procedures will provide the employee an opportunity to identify in writing any medication being taken, or other reason, which might account for a positive test result.

Collection site procedures will be used which protect against mislabeling samples and other errors.

Upon request, the Union may review and/or tour the procedures and/or facilities of the collection site(s) and/or laboratory(ies).

B. **Searches** Employees, while on Employer premises, are required to submit to searches of their persons, vehicles, lunch boxes, personal effects, desks or similar repositories, etc., when the Employer has a reasonable suspicion that the employee has ingested, possesses or has distributed a prohibited substance.

## **VII. CONSEQUENCES FOR VIOLATION OF THIS POLICY**

Violation of the Employer's Alcohol and Drug Policy may result in severe disciplinary action, up to and including discharge for a first offense. Violation of this Policy may also subject employees to arrest and prosecution by law enforcement agencies.

In addition to any disciplinary action for drug or alcohol abuse, the Employer may refer an employee to the Employee Assistance Program for assessment, counselling and referral to a treatment program for alcohol and drug abuse. Employees who undergo counselling and treatment for substance abuse and who continue to work must meet all established standards of conduct and job performance.

## **VIII. LAST CHANCE AGREEMENT**

Individuals discharged for violation of the Employer's Alcohol and Drug Policy may, at the Employer's sole discretion, be offered the opportunity to enter into a "Last Chance Agreement."

The Last Chance Agreement provides that an employee may return to employment under the following conditions:

1. The employee acknowledges in writing that he/she has a substance abuse problem;
2. The employee successfully completes a rehabilitation program prescribed under the Employee Assistance Program;
3. The employee agrees in writing to submit to random testing or search for the remainder of his/her employment; and
4. The employee is subject to automatic discharge for any violation of Last Chance Agreement or this Policy while on the Last Chance Agreement and waives the right to grieve such discharge.

## **IX. CONDITION OF EMPLOYMENT**

Compliance with the Employer's Alcohol and Drug Abuse Policy is a condition of employment. Failure or refusal of an employee to cooperate fully, sign any required document or submit to any inspection or drug test as provided will be grounds for termination.

Questions regarding this Policy should be directed to the Personnel Director.

## **X. REVIEW OF PROGRAM**

This Policy will be reviewed bi-annually to determine its effectiveness, to implement needed changes and to ensure that disciplinary actions are consistently enforced.

**XI. OTHER PROGRAMS**

This Policy is separate and apart from any testing done in connection with a special program, e.g., WMET.

**XII. RECEIPT**

I acknowledge that I have received a copy of the City of Wyoming's Employee Alcohol and Drug Abuse Policy.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Employee's Name (Printed)

**XI. FMLA (Non-Economic)**

**FAMILY AND MEDICAL LEAVE**

**Section 1.** As required by the Family and Medical Leave Act (FMLA), the City will provide covered employees up to twelve (12) weeks of unpaid job protected leave for certain family and medical reasons. Employees who have worked for the city for at least twelve (12) months and for 1,250 hours during the previous twelve (12) months of employment are eligible.

**Section 2. Definitions of Certain Terms**

- A.** The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
- B.** The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
  - 1.** Inpatient care in a hospital, hospice, or residential medical care facility; or
  - 2.** Continuing treatment by a health care provider; and
- C.** The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
  - 1.** under 18 years of age; or
  - 2.** 18 years of age or older and incapable of selfcare because of a mental or physical disability.

These and all other statutory terms and definitions shall be interpreted and applied consistent with the FMLA.

**Section 3. Purpose of Leave**

Unpaid leave may be granted for any of the following reasons:

- A.** To care for the employee's child after birth or placement for adoption or foster care;
- B.** To care for the employee's spouse, son, daughter or parent who has a serious health condition; or
- C.** For a serious health condition that makes the employee unable to perform the employee's job.

Leaves in excess of twelve (12) weeks may be granted for the employee's own serious health condition. Any request for an extended leave shall be in writing, stating reasons, signed by the employee, and given to the department head. Approval shall be at the City's discretion, and any decision shall be in writing.

#### **Section 4. Notice, Duration and Certification**

When the need for leave is foreseeable, employees are expected to provide thirty (30) days advance notice. When not foreseeable, employees are required to provide notice of the need for leave as soon as practicable. When leave is needed for planned medical treatment, employees must attempt to schedule treatment so as not to unduly disrupt the city's operations. Failure to provide appropriate notice may result in the denial of leave.

Leave for a newborn or newly placed child may be taken only within 12 months from the date of birth or placement and may only be taken continuously. If both parents are employed by the city, the combined leave is for twelve (12) weeks, not twenty-four (24) weeks.

When medically necessary, leave to care for a family member or for the employee's own serious health condition may be taken on an intermittent or a reduced work schedule basis. An employee may be required to transfer temporarily to a position that can better accommodate an intermittent or reduced hours leave. All time taken will count toward the employee's 12 week annual entitlement for family and medical leave.

The city may require medical certification to support a request for a leave because of a serious health condition and may require second or third opinions (at the city's expense) and a fitness for duty report to return to work. The medical certification must include the first anticipated date of absence from service to the city and the expected date of return. The medical certification to support a leave for family medical reasons must include a statement indicating that the employee's presence is necessary or would be beneficial for the care of the family member and the period of time care is needed or the employee's presence would be beneficial.

When leave is required for a serious health condition, employees will normally be given 15 calendar days to obtain the necessary medical certifications, if required, to support the leave. Employees may be required to report in on a periodic basis concerning their progress, the progress of their parent, spouse or child, and their anticipated date for return to work.

#### **Section 5. Coordination With Other Forms Of Leave And Paid Time Off**

FMLA leave is coordinated with other existing forms of leave and paid time off as follows:

- A. Other serious medical condition of employee. When FMLA leave is used for a serious medical condition of the employee, the employee is required to use up sick leave and vacation leave, except that up to 60 hours of the employee's vacation leave is exempt from such use.
- B. Serious medical condition of child, spouse or parent, birth, adoption, foster care of a child. When FMLA leave is used to care for a family member with a serious medical condition, or for



purpose of birth, adoption or foster care of a child, the employee may use up to 5 days of sick leave and may thereafter use vacation leave.

#### **Section 6. Wages and Benefits**

Leave will be unpaid except as covered by any paid time off. For the duration of any period of paid leave and for up to twelve weeks thereafter, the city will maintain the employee's health coverage under any group health plan. The employee's contributions to the health plan must be maintained during the leave to maintain coverage.

If the employee fails to make such contribution, the city may elect either to cancel health plan coverage (after 30 days) or to pay for such coverage and to obtain reimbursement by payroll deduction when the employee returns to work.

Any other coverage which is maintained during FMLA leave is the responsibility of the employee (except as otherwise provided in this Agreement or to the extent that the FMLA leave is covered by paid leave) and the employee shall either make arrangements for payments during the leave, or shall reimburse the city by payroll deduction at the conclusion of the leave.

Employees who fail to return from a leave will be obligated to reimburse the city for the cost of the city paid health coverage, except when the employee's failure to return is due to the continuation, recurrence or onset of a serious health condition which would entitle the employee to medical or family leave or other circumstances beyond the employee's control.

#### **Section 7. Return to Work**

Upon return from a leave, employees will be restored to their original or equivalent position with equivalent pay, benefits and other employment terms consistent with the seniority provisions of this Agreement. The employee will not lose any employment benefit that accrued prior to the start of the leave. The employee shall retain and accumulate their seniority during the period of the leave of absence.

#### **Section 8. Eligibility Year**

For purposes of determining eligibility for a leave, the city hereby adopts a rolling 12 month period whereby each time an employee takes family or medical leave, the remaining leave entitlement will be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Section 9. The provisions of this Article are not to be construed to add or pyramid obligations of the city, except as may be expressly set forth herein. Nothing in this Article shall be construed to diminish the city's obligations to comply with any other provision of this Agreement.

**XII. Shift Bid Assignment**

**Article IX, Seniority, Section 2, Classification**


**Add to Section 2:**

Employees shall be allowed to transfer between shifts within classifications. Such transfer will take effect the first eight (8) week pay cycle of each year. Shift assignments shall be for twelve (12) months. Employees will be notified of the opportunity to bid on the shift of their choice at least six (6) weeks prior to the transfers provided the Union notifies the City of its desire to bid. Seniority will be the sole factor in determining preference within a classification. The Union shall be notified in advance if the Fire Chief determines an unusual situation delays the shift assignment process. The Fire Chief shall maintain the right to assign employees to shifts which are in the best interests of the City. The Union shall have the right to grieve the reasonableness of the Fire Chief's decision. Nothing in this provision shall prevent the Union and City from mutually agreeing to a different procedure.

The above Appendix incorporates the resultant changes in contract language as a result of the Opinion and Award of the Act 312 Arbitration Panel.

A large, stylized handwritten signature in dark ink, appearing to read 'Richard L. Kanner'.

Richard L. Kanner, Chairman

A handwritten signature in dark ink, appearing to read 'Ronald R. Helveston'.

Ronald R. Helveston, Union Delegate

A handwritten signature in dark ink, appearing to read 'Michael A. Snapper'.

Michael A. Snapper, City Delegate

Dated: September 15, 1994