STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION

CITY OF OWOSSO

-and-

Cases No. L93 C-2005 & L93 C-2006
under Act 312, P.A. 1969

POLICE OFFICERS LABOR COUNCIL

FINDINGS, OPINION AND ORDERS
OF ACT 312 ARBITRATION PANEL

Background. Two Act 312 arbitration cases, one (C-2005) involving the bargaining unit comprised of patrol officers in the Owosso Police Department, the other the Department's command officers, are combined for hearing and decision before this arbitration panel. The panel members are arbitrator Paul E. Glendon, appointed as chairman by the Michigan Employment Relations Commission (MERC); attorney Dennis B. DuBay, serving as both advocate and panel delegate for the City; and Union delegate James Quinn. The Union's advocate is attorney Kenneth W. Zatkoff.

By stipulation on file with the MERC, the parties waived all time limits applicable to these proceedings, both statutory and administrative. The chairman presided at a hearing in Owosso on April 20, 1994, at which both parties presented testimony and documentary evidence. In keeping with deadlines agreed upon then and during pre-hearing conference, and as extended by post-hearing stipulations, they presented final offers of settlement on May 18, 1994 and post-hearing briefs on July 21, 1994. The issues before the panel, all of them except the Union's proposal to amend the grievance procedure in the patrol officers' contract being economic, are discussed individually in the following findings and opinion prepared by the chairman and are disposed of by the panel's orders.

Comparable Communities. Section 9 of Act 312 (MCL 423.239) requires that the panel base its findings on certain "factors" enumerated therein. As in most Act 312 cases, one of the most significant of those is factor (d), which reads as follows:

(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.

Unless parties agree completely on what are "comparable communities," the application of this factor must be preceded by a decision (by the chairman) on that question. In these cases, the parties agree ten Michigan cities are "comparable" to the City of Owosso. They are Adrian, Alma, Alpena, Big Rapids, Cadillac, Coldwater, Hillsdale, Ludington, Mt. Pleasant and Sturgis. But they disagree about four other cities proposed by the Union as additional comparable communities: Fenton, Flushing, Muskegon Heights and Marysville.

Nancy L. Ciccone, Labor Research Analyst for the Union, presented its justification for including those four cities. She explained that the Union first considered all lower peninsula Michigan cities outside Wayne, Oakland and Macomb Counties with population and total state equalized valuation (SEV) of taxable real and personal property within the city not more than fifty percent below or above Owosso's, then analyzed all those cities under thirteen other criteria using a computer program developed by the Union for that purpose. Ciccone said no city on the original list was excluded from the final list for failure to compare closely with Owosso on any single criteria; rather, total variations on all thirteen criteria were analyzed to develop and apply a standard deviation and those within a certain (but unspecified) range were included and those outside were excluded. She said Fenton, Flushing, Muskegon Heights and Marysville all fell within the Union's range of comparability, so they were included. Ciccone also said Adrian was not on the Union's original list because it did not fit the threshold criteria (its total SEV is more than fifty percent above Owosso's), but it was close enough to that threshold and sufficiently similar under other criteria that the Union agreed to include it.

O. William Rye, a personnel management consultant retained by the City, explained why he recommended the ten agreed comparable communities but recommended against the other four cities proposed by the Union. At the threshold, his method was very much like the Union's. He too used initial criteria of population and SEV within fifty percent of Owosso's, but only as to cities in lower peninsula counties with population no greater than

100,000. Rye said he limited his examination to counties of that size in order to focus on communities with an "urban/rural mix" similar to that in Shiawassee County, of which Owosso is the county seat, with nearly a quarter of the population (16,322 out of 69,770). He then examined statistics for Owosso and the cities in this initial group under several other criteria, many of them the same as those used by the Union.

The common criteria were: population change from 1980 to 1990; land area and population density; per capita income; median home value; breakdown of SEV among commercial, industrial, personal and residential property; SEV per capita; property tax rates and collections; police department staffing and number of officers compared to city population. In addition, the Union analyzed offense and arrest statistics; percentages of population below poverty level, over age 65 and/or high school graduates; and changes in per capita income. Additional criteria used by the City, besides city/county population comparisons, were state shared revenues received by the cities and unemployment rates.

The City contends the four additional Union-proposed cities are not comparable for a variety of reasons. First, it notes major population disparities as to three of the four, each at the extreme low end of the minus-fifty percent range: Fenton, 8,444; Flushing, 8,542; and Marysville, 8,515. Second, it notes all four are in much more populous counties than Shiawassee and account for a much smaller share of county population than does Owosso: Fenton and Flushing are in Genesee County, population 430,459 (6.2 times more than Shiawassee), of which each accounts for less than two percent; Muskegon Heights is in Muskegon County, population 158,983 (almost 2.3 times more than Shiawassee), and its population of 13,176 accounts for only 8.3% of the county total; Marysville is in St. Clair County, population 145,607 (2.1 times more than Shiawassee), of which it accounts for only 5.8%. Third, it notes Marysville's total SEV of $219,897,300 is much higher than Owosso's $160,586,617, and argues similar disparities in SEV per capita and property tax revenues indicate it is a much wealthier community. Fourth, it contends Fenton and Flushing also are significantly wealthier communities than Owosso, as reflected in higher per capita income ($15,327 and $16,904 respectively, compared to $11,545), SEV per capita ($20,207 and $14,717, compared to $9,839), and median home values ($63,600 and $70,300, compared to $38,000). Fifth, it points out that Marysville and Muskegon

Heights have significantly lower percentages of residential SEV than Owosso (50.7% and 49.3%, compared to 68.7%). Sixth, it points to major disparities in unemployment rates: Muskegon Heights significantly higher, at 18.1% compared to Owosso's 11.4%; the other three much lower, at 5.1% (Fenton), 5.9% (Flushing) and 6.5%. Seventh, it notes similar disparities in population density: Muskegon Heights on the high side, with 4,118 residents per square mile compared to 3,331 in Owosso; the other three cities having much lower densities of 1,279 per square mile in Fenton, 1,987 in Flushing, and 1,234 in Marysville.

Findings. The four additional Union-proposed cities are dissimilar from Owosso in all the ways summarized above, and others as well. The most obvious disparities are to be found with Muskegon Heights. Owosso is predominantly residential. It is the largest community in and county seat of Shiawassee County. It accounts for almost a quarter of the county population, and stands apart from other cities. Muskegon Heights, however, is in the middle of a relatively seamless metropolitan area of more than 75,000 population, surrounded by the larger cities of Muskegon and Norton Shores. It accounts for less than twenty percent of the population in that metropolitan area, and only 8.3% of Muskegon County's population. Other characteristics of the two cities also differ starkly: Muskegon Heights is more commercial and industrialized, less residential, and significantly poorer, as reflected in per capita SEV and income and unemployment statistics.

Fenton, Flushing and Marysville are not only much smaller than Owosso, but also smaller than most of the agreed ten comparable communities, among which Ludington (8,507) and Hillsdale (8,170) are the only cities in the 8,000 population range. In contrast, Owosso is more populous than all but two (Adrian at 22,097 and Mt. Pleasant at 23,385) of the agreed comparable cities. Their relative places in the county also are quite different, especially in the cases of Fenton and Flushing, which are satellites of Flint each accounting for less than two percent of Genesee County's population. The disparity is not as great in the case of Marysville, but it is significant, and its 5.8% share of county population is not only less than a quarter of Owosso's, but barely one-third of the lowest of the ten agreed comparables, Sturgis at 17%. And much as Fenton and Flushing are to Flint, albeit on a smaller scale, Marysville is to Port Huron, a much larger city and St. Clair County seat, which is only about five miles away.

Equally significant, not only in the case of Marysville but also of Fenton and Flushing, are large discrepancies in statistical indicia of community wealth and prosperity. Median home values are 67% to 85% higher than in Owosso, and higher than all the ten agreed comparables. Per capita incomes are 27% to 46% higher than in Owosso, and higher than all ten agreed comparables. SEV per capita in those three cities ranges from 50% to 162% above that in Owosso, and only one of the ten agreed comparables exceeds (by only $258) the lowest of the three. The highest rate of unemployment in those three cities (6.5% in Marysville) is 43% *lower* than the rate in Owosso, and *higher* than only two of the ten agreed comparables.

For these reasons, the additional cities proposed by the Union are not comparable to Owosso, and only the ten agreed cities will be used as "comparable communities" when applying factor (d) to the various issues in both cases before the arbitration panel.

PATROL OFFICERS: CASE NO. L93 C-2005

UNION ISSUE NO. 1: RETIREES' HEALTH INSURANCE. Article XXVI (d) of the expired agreement provides for Employer-paid health insurance coverage for retirees, as follows:

> (d) If an employee retires at the age of sixty (60) and has accumulated ninety (90) unused sick days, the Employer will pay the full premium for Blue Cross-Blue Shield for the employee and his spouse until the employee reaches the age of sixty-five (65).
>
> If an employee chooses to retire at age fifty-five (55) and has accumulated ninety (90) unused sick days, the Employer will pay the full premium for the Blue Cross-Blue Shield for the employee only until age sixty-five (65).
>
> If the employee chooses the Blue Cross-Blue Shield plan upon retirement, he will forfeit the sixty (60) sick leave days cash-out.

The Union proposes to replace these provisions with the following:

> (d) If an employee retires and draws a pension from the City of Owosso, he/she shall receive fully paid hospitalization for the retiree and dependents.

The Union contends this proposal should be granted because patrol officers in none of the comparable communities are required to accumulate a certain number of sick days to be eligible for retiree health insurance or to forfeit payout for accumulated sick days upon

retirement if they choose to avail themselves of such insurance. In the Union's view, that makes the sick leave benefit of Article XXI (permitting accumulation of up to 120 days of sick leave and payout of half of them at retirement) "no benefit at all."

The City contends this proposal is unjustified and status quo should be maintained, because the retiree health insurance provision currently found in Article XXVI is more generous than that provided to patrol officers in nine of the ten comparable communities, and equal to or better than the retiree coverage available to members of any other group of City employees. It also points out that granting the proposal would impose significant additional costs, both for extending full premium payment beyond age 65 and for adding several additional years of potential coverage for employees eligible for retirement before age 55. It argues such extra costs should not be imposed upon the City for further improvements in an already generous retiree health insurance program, especially not when its two main funding sources -- local property taxes and state shared revenue -- are in some jeopardy due to limits on future assessment increases and anticipated cutbacks in state revenue sharing as a result of recent property tax reform legislation.

Findings. Statutory factors (a) and (b) do not apply on this issue. The City does not claim it lacks "lawful authority" to grant the proposed improvements in retiree health insurance coverage, nor does the Union claim they are legally mandated. Neither did the parties enter into any stipulations applicable to this subject.

Strictly speaking, factor (c) does not apply either, despite the City's concerns about limits on future funding and the need to maintain a substantial general fund balance, both as a cushion for cyclical variations in City revenue and to pay for capital improvements. Those concerns have to do with prudent management of limited but adequate resources, not a claimed inability to meet the costs of such health insurance improvements (or other benefits sought by the Union, for that matter). In its brief the City characterizes its "ability to pay" as "declining" and says it "is not the wealthiest of communities and must continue to carefully allocate its resources," but "does not claim to be 'impoverished.'" As for the first half of factor (c), the "interests and welfare of the public," neither party claims they are affected by the retiree health insurance proposal.

Factor (d) clearly does apply, and it strongly favors the City's position. Only one of the ten comparable communities, Cadillac, provides a health insurance benefit for members of its patrol officers bargaining unit comparable to that proposed by the Union. Two, Big Rapids and Coldwater, provide no such coverage at all. Four -- Adrian, Alma, Hillsdale and Mt. Pleasant -- provide for retiree health insurance coverage but *entirely at employee expense*. The other three provide such coverage but pay for only part of it: 50% but only up to $100 per month in Alpena and Ludington; 70% in Sturgis, but subject to the further requirement that the employee pay $20 per month for himself and another $20 for spouse after the retiree is eligible for Medicare. Coverage in the last three cities is more generous than in this bargaining unit in that it is available immediately upon retirement regardless of age (although Alpena requires thirty years of service for retirement, not twenty-five as in Owosso, Ludington and Sturgis) and none of them require forfeiture of sick leave payout as a condition of eligibility for continuing health insurance coverage. However, no sick leave payout is available at retirement in Ludington, and the limit is forty-five days (half of maximum accumulation of ninety) in Alpena. Potential additional pre-55 coverage and non-forfeiture of sick leave in Ludington might make coverage there roughly comparable to that currently available in this bargaining unit, but it obviously is less generous than the Union proposes.

Neither party contends that factor (e) or (g) has any bearing on this issue. Factor (f) may be said to apply with respect to the Union's argument that the current retiree health insurance provision in effect deprives retiring bargaining unit members of the value of their unused sick leave. However, the Union did not tie that argument into an analysis of the "overall compensation presently received by the employees," and in fact it has *no* impact on the *use* of sick leave, only on potential payout for unused sick leave. Therefore factor (f) may not be said to favor the Union's position. The City's concern for the cost of the Union's proposal is relevant as an "other factor . . . traditionally taken into consideration" in collective bargaining and Act 312 cases. In that light, there is merit to the argument that it would be imprudent to incur significant additional expenses at a time of limited and potentially diminishing City resources to improve retiree health coverage that already is better than eight of the ten comparable communities, at least equal to a ninth, and as good

as or better than any other City employees receive. Therefore factor (h) also applies, and favors the City's position.

In summary, the evidence pertaining to the two clearly relevant statutory factors, (d) and (h), strongly favors the City's position on this issue, while the Union's proposal finds support in none of the statutory factors. Accordingly, the proposal must be rejected and the status quo must be maintained with regard to retiree health insurance.

Order: The Union's proposed changes in Article XXVI (d) are rejected, and the language of that provision shall remain the same in the 1993-96 agreement as it was in the expired agreement.

UNION ISSUE NO. 2: SHIFT PREMIUMS. The expired agreement contained no provision for payment of shift premiums. The Union proposes to add such a provision as a new Section 6 in Article XXVII, to read as follows:

> Members of the bargaining unit who are assigned to work the afternoon shift shall receive an additional fifteen (15) cents per hour for every hour worked. Employees assigned to work the midnight shift shall receive an additional twenty-five (25) cents per hour for every hour worked.

The City opposes this proposal and contends the status quo should be maintained. Both parties find support for their positions among the comparable communities: the Union in that one-half of them provide shift premiums, the City in that the other half do not. The Union also relies on what it terms the "common sense" proposition that patrol officers are likely to encounter more criminal activity on the afternoon and midnight shifts than during the day shift, and the traditional notion that employees on afternoon and midnight shifts deserve some additional compensation to offset the inconvenience and loss of the normal pleasures of family life inherent in such schedules. Finally, it points out that the City's cost to provide such benefits will be minimal, amounting to only $312 per officer per year on the afternoon shift and $520 on midnights.

The City suggests the traditional rationale for shift premiums does not fully apply here because members of this bargaining unit pick shifts based on seniority. Thus, it argues, senior officers would only work afternoon or midnight shifts if they desired to do so, and

it would be unnecessary and illogical to further reward them with premium pay for a theoretically *un*desirable shift. In addition the City contends, and City Manager Gregg Guetschow testified, that shift work is a normal part of police employment, wages for such employment are set with that in mind, and police officers undertake such careers with that understanding. The City finds further support for its position in the fact that members of other City employee groups are not paid shift premiums. It also contends the costs of this proposal would be significant, adding over $5,000 a year to the police department budget, and cannot be justified in the face of potentially declining ability to pay.

Findings. Factors (a), (b), (c), (e) and (g) are not applicable to this issue. Factor (d) is, but with half the comparable communities paying shift premiums and the other half not, it does not clearly support either party's position. The City suggests the balance actually swings in its favor when the amount of the premiums paid in the communities that do pay them is considered, because one (Ludington) pays only fifteen cents for both afternoons and midnights. However, the logic of that argument is less than compelling, because three of the other four pay *higher* premiums than the Union proposes.

The fact that half the comparable communities pay shift premiums also undercuts the City's argument that such premiums are not appropriate because shift work is an inherent part of police work and thus reflected in the officers' overall compensation, which is to be considered under factor (f). Compensation for shift work is not rolled into and reflected in overall compensation in Alpena, Cadillac, Ludington, Mt. Pleasant or Sturgis, and the city manager's general opinion on that subject notwithstanding, there is no evidence that these parties ever mutually understood that to be the case in Owosso. In this respect, therefore, and because the average shift premiums paid by the five comparable communities that pay them exceed those proposed by the Union, the evidence pertaining to factor (d) slightly favors its position, and factor (f) cannot be said to favor the City.

As for factor (h), the City recognizes the traditional factor of paying premiums for less desirable shifts, but argues it does not apply here because officers can select their own shifts by seniority. Upon close analysis, however, it becomes apparent that the City has this argument backward. A shift premium might be an unnecessary inducement for senior officers who *desire* an afternoon or midnight shift. But the more likely scenario would be

for those with priority for shift selection to choose the shift most compatible with normal sleeping patterns and family activities, leaving the less senior two-thirds of the force with the typically less desirable choices. Thus the general principle of compensating employees for the inconvenience and undesirability of afternoon and midnight shifts is relevant in this case, and it favors the Union's position. The same cannot be said for the "common sense" assertion that employees on those shifts also deserve a premium because they encounter more criminal activity; this record contains no evidence to support such a conclusion. But neither does it contain any evidence supporting the City's opposition to such premiums on financial grounds. As the Union asserts, the costs of such premiums will be minimal and the City has the resources to pay them, and in light of the sound reasons for them such a modest expenditure can hardly be considered imprudent. That other City employees do not receive shift premiums is not convincing evidence that members of this bargaining unit should not, either, absent evidence that any of them regularly work shifts as the police do.

Based on evidence supporting the Union's position under statutory factors (d) and (h), and lack of evidence persuasively supporting the City's opposition to shift premiums under any of the statutory factors, the panel adopts the Union's last offer of settlement for shift premiums, as set forth above.

Order: A new Section 6 shall be added to Article XXVII in the 1993-96 agreement reading as follows:

> Section 6. Members of the bargaining unit who are assigned to work the afternoon shift shall receive an additional fifteen (15) cents per hour for every hour worked. Employees assigned to work the midnight shift shall receive an additional twenty-five (25) cents per hour for every hour worked.

UNION ISSUE NO. 3: SHOE ALLOWANCE. Article XXXI of the expired agreement requires the City to "provide and clean uniforms" and to "provide" rain coats, flashlights and batteries, body armor and vest covers, and riot equipment. It also provides for a "shoe allowance," as follows:

> (d) The Employer will provide up to fifty dollars ($50.00) per year shoe allowance if purchased at a store of Employer's choice with receipt verifying proof of purchase.

The Union proposes to amend that provision to read as follows:

(d) The Employer will provide up to Fifty Dollars ($50.00) per year shoe/equipment allowance with receipt verifying purchases.

In support of this proposal it argues in its brief that "there is absolutely no reason" to limit such allowance to shoes but not other items such as briefcases and flashlights or to restrict purchases to particular stores pre-approved by the City. It does not cite any comparable communities or refer to any of the statutory factors to buttress that argument.

The City argues the proposal should be rejected because it is vague, unnecessary and unjustified by any evidence cognizable under Section 9 of Act 312. Regarding factor (d), it further argues that only two comparable communities have a monetary shoe allowance and that both are less than $50, only for shoes, and in the larger of the two (Alma, $45 per year) can be used only for shoes approved by the chief. The City finds further support for its position among so-called "internal comparables," noting that non-union employees get no shoe allowance and members of the fire fighters bargaining unit get a show allowance of $40 per year subject to the same restrictions as the patrol officers. Members of the AFSCME bargaining unit get an unrestricted "uniform allowance" of $300 per year, with no specific mention of shoes.

Findings. As the sponsor of this proposal, the Union bears the burden of producing evidence related to the statutory factors supporting it. The bare assertion that "there is no reason for" the restrictions contained in Article XXXI (d), without reference to any evidence in the record or any statutory factor alleged to be applicable, hardly carries that burden. Examination of patrol officers contracts from the ten comparable communities reveals that none contains a "shoe/equipment allowance" such as the Union proposes, so factor (d) clearly favors the City's position on this issue. No other City employees get such an allowance either, a factor properly to be considered and also clearly favoring the City's position under Section 9(h). No other statutory factor applies, so the proposal to amend Article XXXI (d) must be rejected.

Order: Article XXXI (d) shall not be amended as proposed by the Union, but shall remain the same in the 1993-96 agreement as it was in the expired agreement.

UNION ISSUE NO. 4: GRIEVANCE PROCEDURE. Article IX Section 2 Step 4 of the expired agreement provides that either party may submit a grievance to arbitration "within ten (10) calendar days following Step 3 answer" by written notice to the other party. The Union proposes to amend the first paragraph of Step 4 to extend that period from ten to forty-five calendar days, leaving all the other language of Article IX the same. It contends the ten-day period is unreasonably short for an unresolved grievance to be processed from local Union officials to staff representative to central office and reviewed for arbitration at the central office, and unnecessarily jeopardizes the fair resolution of meritorious grievances due to potential timeliness objections. It also points out that only two of the comparable communities have ten-day arbitration filing limits, two more have a fifteen-day limit, and the other five allow thirty days. Finally, it notes that arbitration typically takes several months from filing to conclusion and argues that extending the arbitration filing deadline will cause no undue delay in the entire process.

The City also proposes to lengthen the arbitration filing period, but only to fifteen calendar days. It finds support for that proposal in the comparable communities and other City bargaining units. It points out that fifteen days is the filing period in both the IAFF and AFSCME city employee units, and is equal to or longer than the filing period in the patrol officers' contracts in four of the ten comparable communities, and that the average for the ten comparables is twenty-two days, less than half what the Union proposes. The City also contends the Union's practical justification for the longer filing period is illogical and unreasonable, especially since staff representative Quinn acknowledged he has a fax machine with which he can communicate with the Union's central office without being subject to the vagaries of the U. S. Mail.

Findings. In its brief, the City says its offer "would provide three weeks for the Union to file a request for arbitration." That is incorrect, because its offer is "fifteen (15) calendar days following Step 3 answer," not fifteen *working* days.

This same confusion applies to its analysis of some of the comparable communities: in Adrian and Hillsdale, the contract provides "ten days," without specifying whether they are to be "calendar" or "working" days, but other time limits in the grievance procedure are stated in "working days," which suggests the arbitration filing deadline would be com-

puted the same way, in which case those ten-day periods are really twelve to fourteen *calendar* days long. In Alma, which has a thirty-day deadline, there is no indication whether it or any of the grievance procedure deadlines is to be computed in working or calendar days. In Alpena, Big Rapids, Cadillac and Sturgis, all of which have thirty-day periods, they are specified as "calendar days." But in Coldwater, which also has a thirty-day period, Saturdays, Sundays and holidays are excluded, so that would be at least thirty-eight and could be as long as forty-one *calendar* days. Ludington has a fifteen-day limit, but they are defined as "working days," so that would be twenty-one *calendar* days. Mt. Pleasant also has a fifteen-day limit, specified as calendar days.

As for the other City bargaining units, the IAFF unit has an arbitration filing period of fifteen "calendar days," whereas the fifteen-day limit in the AFSCME contract is stated merely as days, without indication as to whether it or any of the other grievance procedure deadlines are working or calendar days.

Only two of the statutory factors apply to this issue. With regard to factor (d), it is noteworthy that six of the ten comparable communities have a thirty-day arbitration filing period, and one of those, as noted above, is more like forty calendar days. Three of the four shorter periods also are or may be computed in working days, which lengthens them as well. Therefore the average is higher than the twenty-two calendar days indicated by the City, which favors an arbitration filing period for this bargaining unit longer than that offered by the City, but not necessarily as long as proposed by the Union. Factor (h) is applicable two ways: for consideration of the other City bargaining units, and of practical problems identified by Union. The first of those considerations favors the City. The second favors the Union, but not to the full extent of a forty-five-day filing period. It is understandable that the Union would prefer more than ten calendar days to process and review an unresolved grievance before demanding arbitration; better, after all, to have time for a thorough review, which might eliminate some unmeritorious grievances, than to have such grievances carried through to arbitration merely to protect against an untimeliness defense. However, with or without a fax machine, there appears to be no real need for a full forty-five days.

This being the one non-economic issue before the panel, we are not constrained to adopt either party's offer exactly as proposed. Given the practical justification for a period longer than fifteen days and the fact that six of the ten comparable communities have an arbitration filing period of thirty calendar days or longer, a thirty-day period seems most appropriate here too.

Order: The first paragraph of Step 4(a) in Article IX Section 2 of the 1993-96 agreement shall read as follows (amended language in italics):

> Step 4. (a) In the event the grievance is not resolved at Step 3, the Union or Employer may, within *thirty (30)* calendar days following Step 3 answer, submit the grievance to arbitration. Written notice to the Employer or the Union shall constitute a request for arbitration.

UNION ISSUE NO. 5: SALARIES. The Union's last offer of settlement is for wage increases of 4% in the first year of the new three-year agreement and 3.5% in the second and third years. The City's offers no increase in the first year, a 3% increase in the second year, and a 2% increase in the third year.

The Union relies on wage increases in the comparable communities as the controlling statutory factor, and argues that the amounts of wage increases (in percentage terms) in those communities -- not average or median wage levels of the comparable communities as a group -- are the appropriate standards of comparison. It also argues the City has the financial ability to pay the increases it seeks.

The City bases its argument on four factors: comparable communities, comparison with other groups of City employees, cost of living, and ability to pay. It points out that this bargaining unit compares very favorably to the comparable communities, both in terms of rank order from top to bottom and relative to the average or median wage levels of the ten comparables, and asserts that even though its ranking among the ten comparables will decline if the panel adopts the City's offers, it still will compare favorably to the median wages of the comparable communities. It notes that even though the AFSCME bargaining unit and the non-union employees received 3% increases for 1993-94, they got no increase (in response to the City Manager's wage freeze request, with which the police unions re-

fused to comply) in 1992-93, while this bargaining unit got a 4% increase. It argues no greater wage increases are justified by increases in the cost of living, because bargaining unit wages outgained the Consumer Price Index (CPI) by $5,864 ($6,745 excluding medical costs) from 1967 to 1993. The City also repeats the argument that uncertainties regarding future property tax and state shared revenues could lead to significant erosion of its undesignated general fund balance and thus jeopardize its ability to pay the increases sought by the Union.

Findings. As indicated by the above summary of the parties' arguments, only four statutory factors are alleged (by either party) to apply to this issue. The first, according to the City, is the ability to pay component of factor (c). As noted earlier, however, the City does not really argue *present in*ability to pay, but only potential declines in its future financial strength linked to possible reductions in state shared revenue and/or smaller than previous increases in property tax revenues. As the Union correctly contends, its present financial condition is very sound, with a general fund balance of $1,655,015 at the end of the 1992-93 fiscal year, of which $1,396,126 was undesignated (the rest was "designated" for capital projects or tied to earmarked tax sources). Furthermore, despite apparently having made the same gloomy predictions a year earlier and thereby justified a wage freeze for non-union and AFSCME-represented employees in 1992-93, the fund balances actually *increased* significantly that year: the total general fund balance increased by $182,314, or 12.4%, from June 1992 to June 1993; and undesignated fund growth that year was even greater, $232,717, a 20% increase. Based on present facts rather than speculation about the future, therefore, factor (c) favors the Union, because it is clear the City has the financial ability to pay the costs of wage increases the Union seeks.

Factor (d), properly applied, also favors the Union's position. The starting point for measuring the parties' competing proposals against the comparable communities must be the way in which this bargaining unit compared with police units in the ten comparable cities during the last year of the expired agreement. Indisputably, it compared very favorably. Adding Owosso to the list of comparable cities, this bargaining unit would have ranked third among the eleven cities, surpassed only by Mt. Pleasant (by $1,067) and Alma (by $297), and the top patrol officer's salary in this bargaining unit ($30,071) was

$1,683 (or 5.9%) above the median for the ten comparables and $1,438 (or 5%) above the average. The City asserts that these facts favor lower wage increases, arguing, in effect, that the result of the process of comparison should be to bring wages in this bargaining unit down toward the median -- and that is exactly what its offer would do.

Freezing salaries for the first year of the new agreement would leave top patrol officer wages in this bargaining unit only $557 (1.9%) above the median for the ten comparable cities and $499 (1.7%) above the average. In the second and third years, the margins would decline even further: to only $43 and $50 (0.1%) above median and average wages for the seven comparable cities with settled contracts for 1994-95; and to $194 and $399 *below* the median and average wages of the four comparable cities with settled contracts for 1995-96 (*minus* 0.6% and 1.3%, respectively).

If the objective of wage comparisons under factor (d) of Act 312 were to compress wages tightly to the median level among comparable communities, the City's argument might be convincing. But the statute does not set forth such an objective. Indeed, such a result might well contradict the underlying purposes of Act 312, in the following regard. The Act 312 compulsory arbitration system is an extension of the collective bargaining process, designed to achieve contract terms as close as possible to what the parties themselves might have reached if they had not come to impasse. Thus there is real merit to the argument that the process of factor (d) comparison should have the objective of maintaining the relative standing of this bargaining unit and the comparables *as last agreed upon by the parties.* As the Union contends, comparison of wage increases better serves that purpose than comparison to median or average wage levels, and adoption of increases proposed by the Union will better achieve that result.

For 1993-94, four of the comparable communities had 4% salary increases and one had a 4.5% increase, so half the ten comparables had an increase equal to or more than the Union proposes, and the average increase among all ten was 3.3%. Among the seven comparable cities with settled contracts for 1994-95, four have 4% increases for that year, one 4.5%, one 3.5% and one 3%, for an average of 3.9%. Among the four comparable cities with settled contracts for 1995-96, two have 4% increases that year, one 3.5% and one 3%, for an average increase of 3.6%. Adopting the increases proposed by the Union

will leave this bargaining unit in third place on the eleven-city list for the first year of the new agreement, but if wages are frozen it will drop to fourth place. The Union-proposed increase for 1994-95 would move this bargaining unit up to second position (surpassing Alma by $149) on the eight-city list, and to first place among five cities (with neither Alma nor Mt. Pleasant yet having a settled contract) for 1995-96. The City's offer would drop it to fourth among eight cities and third among five in the second and third years of the new agreement, which would be a much more significant shift in the relative rankings. For these reasons, the evidence favors the Union's position under factor (d) for all three years.

Factor (e) favors the City's position, but only slightly, and not for the reason the City advanced. Wages in this bargaining unit may have widely outpaced inflation over the past twenty-seven years, but that is irrelevant, because the wages paid before July 1993 were established by agreement between the parties, and if the City believed that they were rising too fast, relative to the CPI, that should have been dealt with at the time. The relevant period of comparison is the three years of the immediately previous agreement and, to the extent known, the period covered by the new agreement. This bargaining unit received 4% salary increases in each of the three years of the 1990-93 agreement, compared to CPI (less medical) increases of 4.3%, 1% and 2.4%, so bargaining unit members did slightly better than inflation during the term of that contract. The only post-June 1993 CPI figures in evidence show an increase of only 0.5% during the second half of 1993. If this were the only applicable statutory factor this might lend significant support to the City's position, but it is not, and the CPI evidence must be considered to have much less significance than that bearing on factor (d).

As for factor (h), under which wage changes for other City employees must be seen as another factor traditionally taken into consideration in determining wages, it has limited application, because there are settled wages for only two groups -- the AFSCME unit and unrepresented employees -- and for them only for 1993-94. In each case, the employees got a 3% increase, which on its face would seem to favor the Union since 3% compares much more closely to 4% than to 0%. The City argues the comparison must be extended backward a year, taking into consideration the wage freeze those employees had in 1992-93 but this bargaining unit refused to accept. The argument is unconvincing, however,

because in effect what it seeks to do is retroactively force upon this bargaining unit salary strictures that were unjustified in light of improvement rather than deterioration of City finances during 1992-93. To the limited extent that it applies, therefore, factor (h) favors the Union's position, and the net effect of all applicable statutory factors is to favor the Union's position over the City's as to all three years of the new agreement.

Orders: The salaries of all members of the patrol officers' bargaining unit, in every classification, shall be increased as follows: by four percent (4%) effective (retroactively) July 1, 1993; by three and one-half percent (3.5%) effective (retroactively) July 1, 1994; and by three and one-half percent (3.5%) effective July 1, 1995.

UNION ISSUE NO. 6: RETIREMENT SYSTEM. The Union proposes to change the retirement system for bargaining unit employees from the City Charter adopted "City of Owosso Employee's Retirement System" to the Michigan Municipal Retirement System (MERS), which would involve an amendment to Paragraph (a) of Article XXVI of the expired agreement. The only evidence it cites in support of this proposal is that a majority of the comparable communities have either MERS or the Act 345 system, and only two of them have a local ordinance or charter system. The City proposes to maintain the status quo, and argues this issue is not even arbitrable because it was not listed on the Union's petition for compulsory arbitration and any issues not listed on the petitions or answers are "not part of this proceeding," as agreed by the parties in a stipulation entered in the record at the outset of the hearing. If found to be arbitrable, the proposal should be rejected, the City argues, because only four of the ten comparable communities use MERS and Union witnesses identified no problem with or deficiency in the existing Charter system.

Findings. This issue is not arbitrable, for the reasons advanced by the City. Section 3 of the act (MCL 423.233) permits employees or employer "to initiate binding arbitration proceedings by prompt request therefor, in writing" as to disputes (other than grievance disputes) that have "not been resolved . . . (through) mediation." A fair reading of Section 3 is that any particular dispute which is part of the unresolved contract terms is to be set forth in the written request by which Act 312 arbitration is initiated. That clearly was the understanding of the parties and the arbitrator when they agreed in pre-hearing conference

that the issues to be arbitrated were those set forth in their petitions and answers as filed with MERC, and when the parties stipulated at the start of hearing that "any issues not identified on the petitions or the answers filed in these two cases either have been settled or will be *and are not part of this proceeding.*" That stipulation clearly is applicable, and controlling, under factor (b) of Section 9 of Act 312, so the merits of the Union's demand and the possible applicability of other Section 9 factors thereto need not -- and may not -- be considered.

Order: The Union's proposal to amend Paragraph (a) of Article XXVI, not having been listed on its Petition for Arbitration, is not arbitrable and that provision shall remain the same in the new agreement as in the expired agreement.

CITY ISSUE NO. 1: RETIREMENT ELIGIBILITY. The City seeks to amend Paragraph (c) of Article XXVI by adding "and attainment of fifty (50) years of age" as a pre-condition for retirement; it now gives bargaining unit member "the option of retiring after twenty-five (25) years of continuous service regardless of age." In support of this proposal the City points out that only two of the ten comparable communities do not have an age requirement, in one of those two (Alpena) the continuous service requirement for retirement before age fifty-five is thirty years, and in the other eight the minimum age is either fifty (in three) or fifty-five (in five). It also argues that the benefits provided under the City's retirement plan are better than in most of the comparable communities and the costs of providing them are greater, and argues that minimally restricting those costs by requiring employees to wait until age 50 to retire is fully justified.

The Union proposes to maintain the status quo. Its argument is two-fold: first, that eligibility after twenty-five years of service regardless of age was negotiated in the early 1980s in return for bargaining unit members' acceptance of a wage freeze (Sgt. Keith Kewish so testified), but no *quid pro quo* in the form of a wage increase has been offered this time around; and (quoting from the Union's brief) because there is "no evidence upon the record as to why this benefit . . . should now be taken away."

Findings. In addition to the data from comparable communities, the City Manager gave two reasons for this proposal: to align this bargaining unit more closely with retire-

ment eligibility requirements for other City employees; and to control costs, especially in light of higher pension costs related to increasing pay rates and longer life expectancies. These certainly are legitimate concerns, although the City presented no statistical evidence to support its argument (and Guetschow's testimony) about increased life expectancies. However, the assertion that pension costs increase as wages do certainly is true, and it is not unreasonable for the City to seek to partially offset those increases by a modest front-end limit on retirement eligibility that is consistent with the eligibility requirements for other City employees (non-union and AFSCME employees may retire at age sixty with ten years of service; fire fighters after twenty-five years at any age) and patrol officers in the comparable communities. Thus the evidence favors the City's position on this issue under Section 9 factors (d) and (h) and none of the other statutory factors apply, so the City's position must be adopted.

Order: Article XXVI in the expired agreement shall be amended to read as follows in the 1993-96 agreement (new or amended language in *italics*):

> (c) Effective July 1, *1993*, Bargaining Unit members shall have the option of retiring after twenty-five (25) years of continuous service *and attainment of fifty (50) years of age*. Benefit formula shall be final average compensation times the sum of 2.25% for the first twenty-five years of service plus 1.0% for years of service in excess of twenty-five years of service.

CITY ISSUE NO. 2: HOLIDAYS. Under Article XXIII of the expired agreement, employees receive "a holiday with regular pay" for ten listed holidays, plus "ten (10) holidays in lieu" thereof, plus $115 extra pay for any holiday the employee "is scheduled to work" and "physically works." Christmas Eve Day also is listed as a holiday, but is not a *paid* holiday unless an employee is scheduled to and does work that day, in which event he/she receives $115 "added with the employee's regular pay." The Union's final offer of settlement is to maintain the status quo. The City proposes no change in the number or designation of holidays, eligibility requirements, or Paragraph (f) of Article XXIII, which provides employees three "personal days for the purpose of handling personal business." But it proposes a wholesale change in the form and amount of holiday benefits, as follows:

> (c) Payment for holidays will be made on the following basis.

(1) If the holiday occurs on the employee's scheduled off-day and the employee does not work, the employee shall receive eight (8) hours of pay at his/her straight time rate.

(2) If the holiday occurs on a day on which the employee is physically present and works the holiday, the employee shall receive, in addition to his regular pay, double time pay for such hours worked.

The City attempts to justify its proposal by comparing holiday benefits in comparable communities and other City employee groups. It points out that no other City employees get an extra paid day off for every holiday whether worked or not, nor do patrol officers in nine of the ten comparable communities, and that none of the comparable communities provide extra pay plus an extra day off for employees who work listed holidays. It also notes that employees in this bargaining unit receive the second highest number of holidays among the comparable communities.

In practical terms, the City relies on testimony of City DPW and Employee Relations Director Stanley Jelinek, who said that based on his discussions with the Police Chief he understood the extra days off created scheduling problems and excessive costs, the latter compounded by a need to call in other officers on overtime to replace employees taking off their extra holidays. However, Jelinek conceded he was not familiar with any details related to such purported problems and wished the Chief were there to explain them (the Chief did not testify). He also said he did not know whether officers could take their extra holidays off only if staffing was such that they would not have to be replaced.

Sgt. Kewish testified, from personal knowledge, that an employee "can only take the holiday when he doesn't need to be replaced." Based on that testimony, the Union argues the City's proposal to eliminate a benefit that has been in the contract for many years (at least sixteen, according to Jelinek) is totally without justification.

Findings. It is undisputed that this bargaining unit ranks at the top of the comparable communities in holiday benefits, and still would compare favorably to most of them if the extra days off were eliminated as the City proposes. However, it is not true that none of the comparable communities provide benefits as generous as these. In Big Rapids, patrol officers get one day of paid compensatory time for every holiday not worked, in addition to eight hours of holiday pay, and two days for every holiday worked, and they may take

those days in cash payment rather than time off with the city's approval and *must* take them in cash if the compensatory time off is not taken within a year after it is earned. To adopt the City's proposal would drop this bargaining unit below Big Rapids, place it on a par with one other city (Ludington) in terms of total holiday benefits, and place it exactly at the same level as every comparable community except Big Rapids regarding holidays not worked; eight of the ten pay patrol officers two and one-half times the regular rate for work on designated holidays, so the City's offer of regular pay plus double time for work on holidays still would provide a more generous benefit than that.

However, the reduction in benefits for members of this bargaining unit could be significant -- loss of ten paid days off for the (probably unusual) employee who was not scheduled to and did not work any of the designated holidays -- and it would change the relative standing of this bargaining unit and the ten comparable communities. That might be justifiable, given that the comparison still would be largely favorable to this unit, if the purported need and/or justification for such a drastic reduction in benefits were proven by clear and convincing evidence. But according to Sgt. Kewish's unrefuted testimony, there is *no need*, because employees are permitted to take their extra holiday time off only if and when they need not be replaced. Thus there could be no scheduling problem, nor would the City incur *any* additional costs. Financially, maintaining the benefit is a wash for the City, because employees who are paid for time off and not replaced would receive the same pay if they worked; the City may get less direct benefit from the money spent, but the amount expended is the same.

Without any practical need or justification for eliminating the extra holiday time off, therefore, neither factor (d) nor factor (h) can be said to favor the City's position. Instead, they both favor the Union: factor (h) in that preservation of benefits that have been part of the contract for many years is a factor traditionally taken into consideration in collective bargaining; factor (d) in the same way as with wage increases, namely, by maintaining the existing relationship between this bargaining unit and comparable communities, rather than using the minimum, mean or median of the comparables as a standard of comparison and thereby drastically reducing this unit's standing among them.

Neither party has suggested that any of the other statutory factors apply, nor is there any evidence that they do. Therefore, since relevant evidence regarding the two applicable factors supports the Union's position, its final offer regarding holidays must be adopted.

Order: The City's proposed changes in Article XXIII are rejected, and the language of that article shall remain the same in the 1993-96 agreement as in the expired agreement.

CITY ISSUE NO. 3: HEALTH INSURANCE PREMIUMS. In Article XXVIII Section 1 of the expired agreement the City "agrees to pay the monthly premium for Blue Cross-Blue Shield MVF-1 Hospitalization benefit coverage for the employee and his family, semi-private rate, with a $2.00 co-pay prescription drug rider or equivalent coverage with employee approval." In Section 2 of the same article, it agrees to provide dental insurance, but its maximum contribution toward premiums for such coverage is $30.69 per month, with employees responsible for premium costs in excess of that limit. The City proposes to amend Section 1 by adding this sentence: "Any premium increases above those in effect as of June, 1994, shall be borne two-thirds (2/3) by the employer and one-third (1/3) by the employee."

Its argument in support of this proposal is that the total health insurance coverage for employees in this bargaining unit "ranks high amongst the comparable communities" and that a small contribution by the employees themselves with respect to future premium increases is warranted in light of significant increases in such costs in recent years. It also contends the burden on employees will not be significant, noting that one-third of the increase in monthly premiums from August 1, 1989 to August 1, 1993 was only $11.68 for single coverage or $20.15 for family coverage. It also notes an employee contribution toward health insurance premiums "is not unprecedented amongst the comparables." In Alma, the employee's contribution is up to $50 per month, depending on the form of coverage elected under that city's self-insured Health Care Plan; in Hillsdale, which has a Blue Cross comprehensive plan, employees are subject to "bi-weekly deduction of $21.00 Family, $19.00 Couple, and $9.50 Single . . . toward the cost of said insurance coverage." Contracts in the other eight comparable communities require no employee contribution

toward health insurance premium costs. A third city, Adrian, will require a contribution of $10 per month beginning July 1, 1995.

The Union's final offer of settlement is to maintain the status quo in Article XXVIII. It finds support for that position in the comparable communities evidence, and in the lack of any evidence indicating that Owosso faces greater increases in health insurance costs than do the comparable communities, and in the fact that no other City employee group is required to contribute anything toward their Blue Cross-Blue Shield or HMO coverage.

Findings. Once again, the only applicable Section 9 statutory factors are (d) and (h), and both of them favor the Union's position on this issue. A large majority (now eight of ten; as of July 1, 1995, seven of ten) of the comparable communities require no employee contribution toward medical-hospitalization premium costs, and, as the Union notes, there is no evidence indicating that the City faces any greater future increases in such costs than do those seven or eight comparable communities. Factor (h) also favors the Union, both because no other City employee group is required to contribute toward the cost of their medical-hospitalization insurance, and because the City, with a substantial undesignated general fund balance, has the resources to absorb future increases. On the latter point, the City's position is undercut by its own argument that even though health insurance costs have "skyrocketed" in recent years the cost of its proposal to split future increases "to unit members . . . would not be significant." If not, they should be even less significant to the City, which has greater resources at its command than does the average patrol officer.

Order: The City's proposal to amend Article XXVIII Section 1 is rejected, and the language of that section shall remain the same in the 1993-96 agreement as in the expired agreement.

CITY ISSUE NO. 4: HOSPITALIZATION OPT-OUT. Article XXVIII Section 3 of the expired agreement provides that an "eligible employee, covered by health insurance from another source, may elect to forego the City provided health insurance set forth in Section 1 and receive, in lieu of such coverage, an annual stipend equal to one-half (1/2) of the single subscriber rate for the coverage set forth in Section 1." The City proposes to delete this provision in its entirety. Its argument in favor of this proposal is that half of the

ten comparable communities do not provide this option and that in three of the five that do the amount an employee can receive is smaller than in this bargaining unit; that only fire fighters and police command officers, among other City employees, share this benefit; and that its ability to pay such stipends is jeopardized by potential problems with property tax and state shared revenues.

The Union's final offer of settlement is to maintain the status quo in Section 3. It also relies on factors (d) and (h), noting that six of the ten comparable communities permit an opt-out and cash payment option (the sixth, omitted by the City, is Mt. Pleasant, which does not permit a complete health insurance opt-out, but provides a cash payment up to $1,263 for employees choosing the most basic form of coverage), as does Owosso for two of the four other City employee groups. It also notes there is no evidence in the record that this opt-out provision imposes any financial hardship on the City, and suggests the opposite is true and this option really is a substantial cost saving device for the City.

Findings. The Union has the better of this argument as well. Factor (d) favors its position because a majority of the comparable communities provide some form of opt-out and cash payment alternative, and there is no evidence to justify moving this bargaining unit from the majority to minority position on this point. Factor (h) does too, because it is in the majority among City employee groups as well, and also because adopting the City's proposal might well be more costly than rejecting it, since elimination of the opt-out cash alternative would eliminate an incentive for employees not to avail themselves of the full coverage provided under Section 1 of Article XXVIII. As for the City's passing reference to "ability to pay," factor (c) does not favor its position either, for the reasons explained in earlier discussions on that subject. None of the other statutory factors is applicable to this issue, so the support for the Union's position in factors (d) and (h) requires the panel to enter an order maintaining the status quo.

Order: The City's proposal to delete Section 3 from Article XXVIII is rejected, and Section 3 shall remain in the 1993-96 agreement with the same language as in the expired agreement.

COMMAND OFFICERS: CASE NO. L93 C-2006

UNION ISSUE NO. 1: Article 18(a) of the expired agreement provides bargaining unit members five work days of vacation after one year, ten after two years, and after five years ten work days "plus an additional day for each year over five (5) years, not to exceed a total of twenty (20) work days." The Union proposes to keep the same formula but increase the maximum to twenty-five work days of vacation. The City's final offer of settlement is to maintain the status quo. Both parties rely on evidence related to factor (d) in support of their positions. The City also relies on factor (f), in conjunction with factor (d), noting that total paid days off available to a ten-year employee in this bargaining unit in combined vacation, holidays, personal business and sick days are more than all but one of the comparable communities.

Findings. Comparing paid days off for ten-year employees is irrelevant, because the Union's proposal only seeks increased vacation days for command officers with more than twenty years of service. Comparing only vacation totals after twenty-five years of service, this bargaining unit ranks at the bottom among the comparables, three of which also have a twenty-work-day limit. The average among the ten comparable communities is twenty-four work days of vacation after twenty-five years; the median is 24.5. The highest among the comparables is Alpena, with thirty-two days at twenty-five years However, the City is right in suggesting that the more appropriate comparison is total paid days off available, even if it picked the wrong service anniversary to make that comparison. Extending it out to twenty-five years, this bargaining unit is not at the bottom, but right in the middle. The median number of total available paid days off among the ten comparable communities is forty-six, exactly the same number available in this bargaining unit, and the average is only one higher, at forty-seven. The Union has furnished no evidence to explain why this unit's standing relative to the comparable communities should be changed. Therefore the only two applicable factors, (d) and (h), cannot be said to favor its proposal, which must be rejected in favor of the status quo.

Order: The Union's proposal to amend Article 18 of the agreement is rejected, and that article shall remain the same in the 1993-96 agreement as in the expired agreement.

UNION ISSUE NO. 2: RETIREES' HEALTH INSURANCE. Article 20(c) of the expired agreement provides that employees who retire at age sixty with ninety unused sick days get fully paid Blue Cross-Blue Shield insurance coverage for the retiree and his spouse until the employee is sixty-five, or for the employee only if he retires at fifty-five. Initially the Union proposed changes to remove the age-of-retirement and accrued unused sick leave conditions, but withdrew those proposals in its final offers of settlement. But it retained another proposal for amendment to Article 20, namely a new Paragraph (e) which would read as follows:

> Retirees who do not receive hospitalization insurance through the City shall receive a payment of Two Hundred ($200.00) Dollars per month for each month they do not receive insurance coverage.

Its argument in support of this proposal is entirely based on "equitable" considerations, namely to create a "fail-safe provision" for command officers who might retire before age fifty-five with health conditions such that they would not be insurable.

The City's final offer of settlement is to maintain the status quo in Article 20, and it points to the comparable communities -- none of which offer such a benefit -- as evidence that such a new benefit for retirees is unwarranted.

Findings. Doing what is "reasonable and equitable," to quote from the Union's brief, may be something taken in to consideration in collective bargaining and thus cognizable under statutory factor (h), but it hardly can form the sole basis for establishment of an entirely new and potentially costly benefit through arbitration. Equally relevant under factor (h) is the fact that no other City employees get such a benefit, and far more relevant to the arbitration panel's consideration of this issue is factor (d). None of the comparable communities provide cash payments in lieu of health insurance for retirees. One of the ten, Big Rapids, does not even provide health insurance for retirees. Five of the nine that do make health insurance available for retirees contribute nothing toward the costs, which are payable entirely by the retirees themselves. And of the other four, only one (Cadillac) pays the entire cost of such coverage. As the City contends, therefore, factor (d) strongly sup-

ports its position. No other statutory factor applies, so the panel must adopt the City's final offer of settlement.

Order: The Union's proposal for addition of a new Paragraph (e) to Article 20 is rejected and the City's final offer of settlement to maintain status quo regarding provision of health insurance for retirees is adopted.

UNION ISSUE NO. 3: RETIREMENT SYSTEM. The command officers unit also is part of the City's charter-based Employees Retirement System, as recognized in Article 20(a). The Union proposes to switch to MERS. The City opposes such a switch. The facts and arguments related to this issue are identical to those already discussed with respect to the same issue in the patrol officers' bargaining unit, except that in this case the Union's request was included in its petition for arbitration and therefore is arbitrable.

Findings. Based on the fact that a minority of the comparable communities have charter-based retirement systems, the Union contends such systems are "obviously . . . the least desirable." However, it presented no evidence of problems with or deficiencies in the existing sytsem in Owosso, and the fact is that a minority of the comparable communities also use MERS (the others being in the Act 345 system), and witness Quinn conceded that bargaining unit employees have constitutional protections in terms of vesting and other pension matters in the existing charter-based system. On this record, it must be found that the only two applicable statutory factors are (d) and (h), the relevant consideration under the latter being that the party who proposes a change in a long-standing feature of the collective bargaining relationship has the burden of presenting convincing evidence in favor of the change. The Union did not produce such evidence on this issue, and the evidence under factor (d) does not favor its position either, so this proposal must be rejected.

Order: The Union's proposal to amend Article 20(a) is rejected and that provision of the 1993-96 agreement shall remain the same as it was in the expired agreement.

UNION ISSUE NO. 4: RETIREMENT, PENSION MULTIPLIER. Article 20(d) of the expired agreement reads as follows:

(d) Effective July 1, 1985, Bargaining Unit members shall have the option of retiring after twenty-five (25) years of continuous service regardless of age. Benefit formula shall be final average compensation times the sum of 2.25% for the first twenty-five years of service plus 1.0% for years of service in excess of twenty-five years of service.

The Union proposes to amend this provision to read as follows:

(d) Effective July 1, 1995 bargaining unit members shall have the option of retiring after twenty-five (25) years of credited service regardless of age. Benefit formula shall be final average compensation times the sum of 2.5% for each year of service.

Its argument in support of this proposal is that a bargaining unit employee who retires after thirty years of service, with a benefit of .6125 x FAC, would compare unfavorably to his/her counterparts in the comparable communities, eight of which would have a higher composite benefit formula, ranging from .66 to .75. They also would be well below the median (.675) and average (67.73) benefit formulas in the ten comparables.

The City's final offer of settlement on this issue is to maintain the status quo, and it argues the Union's proposal really is *two* proposals: to increase the FAC multiplier, and to change the years-of-service component of the benefit formula from "continuous service" to "*credited* service." It argues the latter proposal is not arbitrable, because it was never a subject of negotiations or mediation, and since this is an economic issue as to which the panel must adopt one party's position or the other's, without change or compromise, this alone necessitates rejection of the Union's proposal in its entirety. The City also contends the proposal to increase the FAC multiplier is unwarranted even if considered separately. It points out that the current formula is higher than three of the comparables and equal to three others, taking into account caps applicable in some comparable cities but not in this bargaining unit, and that the composite multiplier at twenty-five years of service (.5625) is fifth highest among the comparables and equals the ten-city median.

Findings. It is not clear whether the Union's proposal to change the wording of this provision from "continuous" to "*credited* service" is inadvertent or intentional, because it did not address that aspect of the proposal, either with evidence or in argument, at hearing or in its post-hearing brief. That being the case, one would have to conclude that if it is intentional it represents an attempt to slip something past the City and the panel, but if so it was an attempt thwarted by the City's brief. The chairman will not presume bad faith by

either party, so it must be concluded that it was inadvertence on the Union's part, and that the proposal should still say "continuous service."

That is a moot point, however, because the City has the better of the argument on the merits of the proposal to increase the FAC multiplier. The formula in this bargaining unit is in the mid-range among the comparables at the twenty-five year level, although it goes to the lower end of the range later. That in itself is not a reason to adopt the Union's proposal, however, unless there is a convincing reason to alter the existing relationship between this bargaining unit and the comparable communities. The Union has identified none, and if one considers the total compensation received by bargaining unit members it becomes apparent that the lower ranking on this point is counterbalanced by a higher ranking in salaries if pay increases proposed by the Union are granted. The cost of the multiplier increase is another relevant factor, and it would be substantial: an additional six percent at twenty-five years, almost fourteen percent at thirty years. Thus the evidence favors the City's position on the three applicable statutory factors -- (d), (f) and (h) -- and the Union's proposal must be rejected.

Order: The Union's proposal to amend Article 20(d) is rejected and the language of that provision shall be the same in the 1993-96 agreement as in the expired agreement.

UNION ISSUE NO. 5: SALARIES. The Union proposes across-the-board pay increases for members of this bargaining unit of three percent for each of the three years of the new agreement. The City's final offer of settlement is for no salary increase in the first year of the agreement and increases of three percent in the second year and two percent in the third. The parties' arguments in support of these proposals are basically the same as for their respective salary proposals for members of the patrol officers' unit: the Union contending that the controlling statutory factor is (d) and the appropriate standard of comparison is the amount of increases, not the median or average of comparable community salaries; the City arguing that even under its proposal members of this bargaining unit still will compare favorably to median and/or average salary levels in the comparable communities, and that a first-year freeze is justifiable both due to uncertainties relative to its future property tax and state shared revenues and as a matter of equity since AFSCME-

and non-represented City employees took a freeze in 1992-93 but the police unions refused.

Findings. Factor (f) does not favor the City's position, for the reasons explained in earlier discussions on the "financial ability" issue. Neither does factor (e), for reasons also explained during discussion of the patrol officers' salary issue (although the City did not return to that argument, for reasons unknown to the chairman, with respect to command officers' salary increases). Neither does its "equity" argument in favor of a one-year wage freeze under factor (h), also for the reasons explained earlier. That leaves factor (d), and it favors the Union's position, for the following reasons.

In the last year of the expired agreement sergeants' wages in this bargaining unit were fifth highest among the comparable communities and exceeded both the median and mean salary levels among the ten comparable cities by approximately $1,000. Freezing salaries for 1993-94 would drop this bargaining unit to seventh place among the comparable cities and put it *below* both the median and mean salary levels for the comparables. Granting the three percent increase proposed by the Union would move this bargaining unit slightly ahead of Coldwater (by $98, rather than $134 below in 1992-93) to third place among the comparables, and keep salaries in this bargaining unit above both the median and average salary levels for the ten comparable cities, but by a smaller margin than the preceding year. The City attempts to justify its position by noting that *lieutenants'* salaries for 1993-94, if frozen, still would exceed median and average *sergeants'* salaries in the comparable communities by a wide margin, but that is an "apples to oranges" comparison and thus deserves no weight for salary determination in either classification. (The parties presented no comparable community salary information for lieutenants, so this issue must and will be decided strictly with sergeant-to-sergeant comparisons.) For reasons explained during the discussion of patrol officers' pay increases, the appropriate standards of comparison are amounts of increases in comparable communities and relative standing of this unit and the comparables before and after such increases, not equivalence to median or average salary levels of the comparable cities as a group. A three percent increase for 1993-94 maintains the relative standing of this bargaining unit and comparable communities in approximately the same relationship as 1992-93, whereas a freeze would significantly and negatively alter

that relationship. Three percent also is slightly below the average increase (3.2%) for the nine comparable communities with contracts for 1993-94: equal to three cities, exceeded by four, higher than two

For these reasons, the panel must adopt the Union's proposal for the first year of the new agreement. The parties' proposals are identical for the second year, so nothing needs to be decided about that. As to the third year, only three of the comparable communities (Adrian, Cadillac and Hillsdale) have settled contracts, and they include sergeants' salary increases of 3.5%, 3.7% and 4% respectively. That comparison favors the Union's three percent proposal, as does the fact that even with a three rather than two percent increase salaries in this bargaining unit will drop below the average of the other three cities. Thus the Union's final offer of settlement for 1995-96 also must be adopted.

Order: Salaries of all members of the command officers' bargaining unit, in every classification, shall be increased as follows: by three percent (3%) effective (retroactively) July 1, 1993; by three percent (3%) effective (retroactively) July 1, 1994; and by three percent (3%) effective July 1, 1995.

CITY ISSUES: The City presented the same four issues in this bargaining unit as in the patrol officers' unit, and they must be decided the same way, for the same reasons, as they were there. Accordingly, the chairman repeats and incorporates here by reference the findings announced as to City Issues No. 1, 2, 3 and 4 in Case No. L93 C-2005, and enters the following orders on those same issues in this case.

Order: Article 20 in the expired agreement shall be amended to read as follows in the 1993-96 agreement (new or amended language in *italics*):

> (d) Effective July 1, *1993*, Bargaining Unit members shall have the option of retiring after twenty-five (25) years of continuous service *and attainment of fifty (50) years of age*. Benefit formula shall be final average compensation times the sum of 2.25% for the first twenty-five years of service plus 1.0% for years of service in excess of twenty-five years of service.

Order: The City's proposed changes in Article 17 are rejected, and the language of that article shall remain the same in the 1993-96 agreement as in the expired agreement.

Order: The City's proposed changes in Article 23 Section 1 are rejected, and the language of that section shall remain the same in the 1993-96 agreement as in the expired agreement.

Order: The City's proposed deletion of Section 3 from Article 23 is rejected, and Section 3 shall remain in the 1993-96 agreement with the same language as in the expired agreement.

CONCLUSION: The arbitration panel, acting by majority as to each issue, adopts the foregoing orders, which, together with previously ratified tentative agreements on issues resolved by the parties and all other provisions of the expired agreement which have not been a subject of this arbitration, shall constitute the parties' agreement for the period from July 1, 1993 through June 30, 1996.

James J. Quinn, Union Delegate
(Concurring as to Union Issues No. 2, 4 and 5 in Case No. C-2005; Union Issue No 5 in Case No. C-2006; and City Issues No. 2, 3 and 4 in both cases; dissenting as to all other issues.)
Dated: ~~September~~ October 7, 1994

Paul E. Glendon, Chairman
Dated: September 24, 1994

Dennis B. DuBay, City Delegate
(Concurring as to Union Issues No. 1, 3 and 6 in Case No. C-2005; Union Issues No. 1, 2, 3 and 4 in Case No. C-2006; and City Issue No. 1 in both cases; dissenting as to all other issues.)
Dated: ~~September~~ October 7, 1994