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STATE OF MICHIGAN

DEPARTMENT OF LABOR EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POLICE OFFICERS LABOR COUNCIL,

UNION,

-v-

MERC ACT 312

Case No. L92-B-0786

CITY OF BAY CITY, POLICE DEPARTMENT
(COMMAND OFFICERS),

EMPLOYER.

ARBITRATION PANEL OPINION AND AWARD

APPEARANCES:

Arbitration Panel

Neutral Panel Member:

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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EXHIBITS

- Joint Exhibit 1 - 3: City of Bay City Michigan Comprehensive Annual Financial Reports for the fiscal years ended June 30, 1991, June 30, 1992, and June 30, 1993
- Joint Exhibit 4: Collective Bargaining Agreement between the Bay County Sheriff's Deputy Association, Unit 2, and the Bay County Sheriff and Bay County effective January 1, 1991 through December 31, 1993
- Joint Exhibit 5: Agreement between the State Lodge of Michigan Fraternal Order of Police Labor Council and the Bay County Sheriff and Bay County effective January 1, 1991 through December 31, 1993 - Command Officers
- Joint Exhibit 6: Collective Bargaining Agreement between the City of Bay City and Lodge No. 103 Fraternal Order of Police (Patrol Officers and S.D.O.s effective January 1, 1992 through December 31, 1994

CITY EXHIBITS

- Exhibit 1-A: Letter and Bay Area Chamber of Commerce City Budget Task Force recommendations dated May 15, 1993
- Exhibit 1-B: General Fund - Fund Balance History
- Exhibit 1-C: 1992 Municipal Tax Rate Survey of Selected Cities in Michigan dated December 15, 1992 and December 15, 1993
- Exhibit 1-D: Tax Levies for Comparables for Bay City (Battle Creek, Bay County, Muskegon, and Port Huron)
- Exhibit 1-E: Comparable items for Bay County including total sworn officers, 1990 population, general fund budget, Sheriff Department budget, total county employees, SEV real property, personal property, general fund mileage, total mileage and county income tax information
- Exhibit 1-F: Comparables of the same items for the City of Muskegon
- Exhibit 1-G: Comparables for the same items for the City of Port Huron
- Exhibit 1-H: Comparables for the same items for the City of Battle Creek
- Exhibit 1-I: Comparables for the same items for the City of Bay City
- Exhibit 1-J: Act 312 Arbitration Questionnaire for Police Command in the City of Port Huron and the Collective Bargaining Agreement between the City of Port Huron and the Command Officers Association of Michigan for Lieutenants and Sergeants effective July 1, 1991 through June 30, 1994
- Exhibit 1-K: Act 312 Arbitration Questionnaire for the City of Muskegon and the Collective Bargaining Agreement effective January 1, 1992 through December 31, 1994 between the City of Muskegon and the Labor Council, Michigan Fraternal Order of Police for the Muskegon Police Department Command Officers

Exhibit 1-L: Act 312 Arbitration Questionnaire for the City of Battle Creek and the Collective Bargaining Agreement effective July 1, 1991 to June 30, 1994 between the City of Battle Creek and the Labor Council, Michigan Fraternal Order of Police on behalf of the Organization of Supervisory Personnel/Lieutenants of the Battle Creek Police Department

Exhibit 1-M: Collective Bargaining Agreement between the City of Battle Creek and the Labor Council, Michigan Fraternal Order of Police on behalf of the Organization of Supervisory Personnel/Sergeants of the Battle Creek Police Department effective July 1, 1991 through June 30, 1994

Exhibit 1-N (1-4): City Exhibits RE: Wages

Exhibit 1-O (1-2): City Exhibits RE: Shift Selection

Exhibit 1-P (1-2): City Exhibits RE: Retirement

Exhibit 1-Q (1-2): City Exhibits RE: Residency

Exhibit 1-R (1-4): City Exhibits RE: Holidays

Exhibit 1-S (1-2): City Exhibits RE: Longevity

Exhibit 1-T (1-2): City Exhibits RE: Funeral Leave

Exhibit 1-U (1-2): City Exhibits RE: Leaves for Conferences

Exhibit 1-V (1-6): City Exhibits RE: Health Insurance

Exhibit 1-W (1-3): City Exhibits RE: Education

Exhibit 1-X, Y, Z
(1-2): City Exhibits RE: Personal Leave and Personal Holidays

UNION EXHIBITS

Exhibit 1-L (1-20): Petition for Arbitration, Proof of Service, letter dated January 13, 1994, letter dated December 27, 1993, letter dated December 21, 1993, objections to withdrawn issues being presented at Act 312 hearing, letter dated October 1, 1993, letter dated September 17, 1993, letter dated August 25, 1993, letter dated June 2, 1993, letter dated May 20, 1993, letter dated May 14, 1993, letter dated May 3, 1993, and letter dated May 5, 1993

Exhibit 1-M (1-15): Collective Bargaining Agreement between the City of Bay City and Labor Council Michigan Fraternal Order of Police for the Bay City Command Officers dated December 18, 1989 effective January 1, 1993 through December 31, 1992

Exhibit 1-MC (1-8): Exhibits regarding comparable communities

Exhibit 1-N (1-17): Union Exhibits on wages

Exhibit 1-O (1-2): Union Exhibits on shift selection

Exhibit 1-P (1-8): Union Exhibits on retirement

Exhibit 1-Q (1-2): Union Exhibits on residency

Exhibit 1-R (1-2): Union Exhibits on holidays

Exhibit 1-S (1-4): Union Exhibits on longevity

Exhibit 1-T (1-2): Union Exhibits on funeral leave

Exhibit 1-U (1-2): Union Exhibits on leaves for conferences

Exhibit 1-V (1-5): Union Exhibits on health insurance

Exhibit 1-W (1-9): Union Exhibits on education

Exhibit 1-X, Y, Z
(1-3): Union Exhibits on personal leave

Exhibit 2: Summary of Benefits between the City of Midland and Police Command Officers dated October 23, 1992

- Exhibit 3:** Collective Bargaining Agreement between the City of Saginaw and the Police Officers Labor Council, Command Officers Division effective January 1, 1993 through December 31, 1995
- Exhibit 4:** Collective Bargaining Agreement between the City of Flint and the Labor Council Michigan Fraternal Order of Police (Police Sergeants) effective July 1, 1989 through June 30, 1992.
- Exhibit 5:** Collective Bargaining Agreement between the City of Flint and the Labor Council Michigan Fraternal Order of Police (Police Captains and Lieutenants) effective July 1, 1989 through June 30, 1992
- Exhibit 6:** Memorandum of Changes in Collective Bargaining Agreement for the period July 1, 1992 through June 30, 1995 between the City of Flint and the Flint Police Captains and Lieutenants Association

I. INTRODUCTION

The City of Bay City on behalf of its Police Department and the Police Officers Labor Council on behalf of its membership ("Union") are parties to a Collective Bargaining Agreement effective January 1, 1990, with a termination date of December 31, 1992 ("Agreement"). The Agreement covers wages, hours and conditions of employment for the ranks of Sergeant, Lieutenant and Captain. However, the rank of Captain was not a subject of dispute between the parties since the former incumbent, Timothy Lochinski, became the Chief of the Department and the position was either eliminated or allowed to remain vacant. The parties, after engaging in the Collective Bargaining process, were unable to resolve all of the issues in dispute and a Petition for Arbitration was presented to the Michigan Employment Relations Commission on February 23, 1993. After mediation was concluded in accordance with the Petition, the parties advised the Director of the Michigan Employment Relations Commission that they had mutually agreed upon the undersigned neutral panel member as the neutral arbitrator for the Act 312 case. On May 14, 1993, the Department of Labor informed the undersigned neutral panel member that he had been selected to act as chairperson with regard to the issues in dispute. The undersigned neutral panel member advised the parties of his selection on May 20, 1993. Subsequently, the undersigned neutral panel member was advised that the parties wished to continue the Collective Bargaining process rather than immediately engaging in arbitration. That process continued from June of 1993 until September of 1993 at which time it was concluded

that the parties were unable to reach a mutual agreement on all of the issues set forth in the Act 312 petition. Accordingly, the pre-arbitration conference was held on November 30, 1993. At the pre-arbitration conference, the parties discussed the Union issues, the City issues, comparable cities to be utilized by the parties, the number of days of hearings and the dates upon which the parties would be available for hearings, the location of the hearings, the date for exchange of exhibits, the date for exchanges of rebuttal exhibits, the date for the exchange of last best offers, the date for transmission of briefs upon the conclusion of hearings, the date of the award, the time for an executive session, the Union and City panel members, stipulations regarding the fact that the award would be entered more than 6 months beyond the date of filing, a discussion concerning the term of the collective bargaining agreement and whether or not there would be issues of retroactivity with regard to wages and/or fringe benefits, a discussion of whether the wages would be considered as a single offer or each year would be considered separately, a discussion concerning providing the panel member with all exhibits, a discussion of lay and expert witnesses and a date for exchanging lists of expert witnesses, a discussion with regard to whether or not the City was pleading poverty or inability to pay, and any other items which were deemed to be relevant to the hearings.

The parties also discussed the fact that the City was proposing four issues (longevity pay, funeral leave, leave for conferences and personal holidays) which the Union objected to on the basis that they

were not contained within the Act 312 Petition and further that those issues had been withdrawn during the collective bargaining process and had not been certified nor discussed by the mediator as being issues in dispute between the parties.

Although, the parties had difficulty agreeing upon dates for hearings eventually hearings were scheduled for April 5, 7 and 8, 1994. Unfortunately, due to the fact that counsel had to be in several courts in Texas when those dates were approaching, it became necessary to reschedule the hearings which took place on August 22 and August 23, 1994.

During the course of the hearings each party was given a full and complete opportunity to present evidence in the form of witnesses testimony, exhibits and documents in support of each party's respective positions. The hearings were concluded on August 23, 1994.

Subsequently within the time frame agreed upon by the parties the last best offers were transmitted to the arbitrator and subsequently to the respective parties. Also, within the appropriate time frame the parties submitted briefs in support of their respective positions.

Executive meetings of the Act 312 Arbitration Panel took place on November 22 and December 15, 1994. This decision is being issued in accordance with the stipulations of the parties, the factors required to be considered by the provisions of Act 312 of the Public Acts of 1969, all exhibits and testimony and any other relevant factors which were introduced into evidence.

It should be noted that Ronald G. Acho of Cummings, McClorey, Davis & Acho, P.C. represented the City of Bay City while Kenneth W. Zatkoff of John A. Lyons, P.C. represented the police officers labor counsel. The panel member for the police officers labor counsel was Thomas Kreis and the panel member for the City of Bay City was Chief of Police Timothy A. Lochinski.

II. STIPULATIONS AND WITEDRAWALS

At the outset of the hearing the parties stipulated that in accordance with the case of the City of Detroit v D.P.O.A., M.E.R.C. and Keefer, 174 Mich App 388 that the award in this case could be rendered more than six months after the date the petition was filed and the arbitrator was appointed. (See transcript dated August 22, 1994, pages 4-5.)

The parties also stipulated that the new collective bargaining agreement would be effective January 1, 1993 through December 31, 1995.

It has also been stipulated that all provisions of the current collective bargaining agreement shall be carried forward into the new collective bargaining agreement except as may hereafter be modified by way of this opinion and award.

It was also stipulated that all of the issues in dispute between the party were economic with the exception of the Union issues regarding shift selection and residency which were deemed to be non-economic.

The City also as part of its last best offer and during panel considerations has withdrawn its issues regarding longevity, funeral leave, and personal leaves. Accordingly since the Union position on those items was to retain the status quo and the City has withdrawn its positions the status quo shall remain with respect to each of those issues and the current contract language shall continue in full force and effect.

The Union during the course of last best offers and panel discussions withdrew its issue regarding retirement with respect to a cost of living allowance for future retirees. Since the City opposed that issue the Union withdrawal is accepted and there will be no awards with respect to a cost of living allowance for future retirees.

The remaining issues which must be determined by the panel include comparable communities of which only Bay County has been stipulated to be a comparable community by both the Union and the City, wages, shift selection, two Union retirement issues, residency, holidays, and the method of computation of holiday pay. The City issues remaining which must be determined consists of city proposals regarding health insurance, educational reimbursements, and leaves for conferences.

III. STATUTORY REQUIREMENTS

Act 312 of the Public Acts of 1969 as amended provides for compulsory arbitration of labor disputes between municipalities and

departments consisting of police officers and firemen. Section 8 of Act 312 states in relation to economic issues:

An arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors described in Section 9. The findings, opinions and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

Section 9 of Act 312 requires the panel to consider the following factors in arriving at its decision to accept the last best offer of either the City or the Union with respect to each issue:

- (a) The lawful authority of the employers;
- (b) Stipulations of the parties;
- (c) The interest and welfare of the public and 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 communities 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, continuity and stability of employment, and all other benefits received;

- (g) Changes in any of the foregoing circumstances presented during the pendency of the arbitration proceedings; and
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact findings, arbitration or otherwise between the parties, in the public service or in private employment.

In addition, Section 10 of Act 312 requires that the decision of the arbitration panel must be based upon competent, material and substantial evidence on the whole record. However, as noted in the City of Detroit v Detroit Police Officers Association, 408 Mich (1980) the factors set forth in Section 9 of Act 312 need not be accorded equal weight. The legislature has made their treatment where applicable mandatory in the panel deliberations and considerations which lead up to its decision on each of the issues. In the last analysis it is the panel which must determine which factors are worthy of greater emphasis in resolving a contested issue. Even then, the panel must consider each of the factors where applicable.

The parties should be assured that the panel has complied with the statutory requirements as well as those set forth in cases relevant to the Act 312 proceedings. Likewise, the party should be aware of the fact that on many of the issues many of the conditions and tests set forth in Section 9 could not be applied based upon the

fact that evidence was not submitted with regard to one or more of those conditions.

IV. COMPARABILITY

A. Union Position.

The Union indicates that all of the criteria need not be weighted equally as established under the 8 criteria set forth in Section 9 of the Act. Therefore, it concludes that comparability is of great importance to the panel in its deliberations. Moreover, the Union notes that Section 9 does not specify factors which establish one community as being more comparable than another. It acknowledges that each panel appears to have its own idea as to which factors it deems to be most important but virtually all panels do consider factors such as population, State equalization valuation, budgets, department size, geographic proximity, the overall nature of the community involved traditionally appear to be examined when determine comparability. However, the union maintains that many other factors or even possibly one factor alone can be relied upon by an arbitration panel when making its determinations.

The Union notes that both the Union and the county have stipulated to the fact that the Bay County Sheriff Department may be utilized as a comparable community. However, the Union believes that the cities of Midland, Saginaw and Flint should be utilized as comparable communities whereas the City of Bay City objects to those communities being considered to be comparable communities and instead

relies upon its position that the cities of Battle Creek, Muskegon and Port Huron should be utilized.

The Union believes that the fact that Bay City has in the past and to some extent currently is automotive dominated should be given great weight in the determination of what communities are comparable. Accordingly, the Union keeping geographic proximity in mind as well as the fact that Bay City is both the largest city and the county seat in the County of Bay reviewed the communities along the I-75 corridor with similar labor markets and similar dependence upon the automotive industry. The Union further alleges that at least in the case of Bay City, Midland and Saginaw they are commonly referred to as the Tri-City area and thought of as being comparable communities within that area. Since, the City of Flint is but a relatively short distance further south on I-75 and since it is equally or even to a greater extent reliant on the automotive industry the Union maintains that it also should be determined to be a comparable community. Thus, the Union would argue that those factors should be given a greater weight than mere statistical data in determining comparability.

The Union further objects to the communities which have been advanced by Bay City based upon the fact that at least in two cases the communities are not reliant upon the automotive industry and in all cases the cities are geographically removed from the area of Bay City. According to the Union Bay City's unique characteristics as a mid-Michigan auto dominated community located along the I-75

corridor ("Rust belt") simply cannot be ignored as the predominate factor for purposes of comparability.

B. Bay City Position.

The City argues that in addition to Bay County the cities of Muskegon, Port Huron and Battle Creek even in light of the lack of geographic proximity are more comparable to Bay City based upon the historic factors which are ordinarily utilized by Act 312 panels than are the cities which have been advanced by the Union as being comparable.

The City argues that the Union witness could not explain any common line of comparison in the selection of Union comparables with the exception of geographic proximity and the fact that the communities selected by the Union are reliant upon the automotive industry. The City maintains that neither population nor S.E.V. are similar for Flint or Midland when compared to Bay City and crime statistics also do not correlate with Bay City. The City also notes that the reliance upon the automotive industry argument does not pertain to Midland since it is dominated by Dow Chemical, a non-automotive company.

The City maintains that there is neither reasonable nor convincing analysis of the full range of factors such as the general fund budgets, police budgets, total number of employees, populations, or S.E.V. with regard to the cities being advanced by the Union. For example the City notes that there is a range of sworn officers ranging from 42 in Midland to 304 in Flint in the Union's proposed

comparables. Moreover there are gross disparities when comparing the populations of the Union comparable cities to the City of Bay City. The City notes that at least two-thirds of the comparables used by the Union are not similarly situated.

The City also notes that the Union conceded during the course of the hearing that when measured against the Union's criteria the City comparables were far closer to the City of Bay City than were the Union comparables.

The City rejects the Union's attempt to characterize the so-called "Rust belt" as a factor which should be applicable and valid for the Union's selection of comparables while ignoring the reality of the entire economic picture in the State of Michigan.

C. Decision of the Panel.

A review of the testimony and the exhibits with respect to the issue of comparability leads the panel to the following conclusions. Clearly, the City of Bay City is both the county seat and the largest seat in the county. In addition, the City of Bay City in the past has been reliant to a large extent upon the automotive industry and to a lesser extent continues to be reliant upon the automotive industry. The cities of Flint, Midland and Saginaw are likewise the largest cities in their respective counties and also the county seats. In the case of the City of Flint and the City of Saginaw it is equally true that they have been reliant to a large extent in the past and continue to be reliant to a large extent upon the automotive industry. The City of Midland is not reliant upon the automotive

industry. It is also true that the three cities lie along the I-75 corridor and remain relatively close in geographic proximity to the City of Bay City. Geographic proximity is clearly a relevant factor and on that basis all three of the Union comparables bear a closer proximity than do those of the City of Bay City. The population of Bay City based upon the 1990 census was 38,936, while the populations of Flint, Midland and Saginaw respectively were 140,761, 38,053 and 69,512. Clearly, in the case of the City of Flint, the population differential is far beyond any basis for determining comparability. It could be argued that the other two cities are comparable if one were to use a factor of doubling the population for the highest number and halving the population for the lowest number as a basis for comparability. Medium home household income in Bay City was \$15,565 while in Flint, Midland and Saginaw it was \$17,181, \$23,542 and \$14,542. Certainly the medium income in the cases of Flint and Saginaw are comparable. Again it could be argued based upon a factor of 100% that Midland is also comparable. In fact even on the factor of 50% Midland would be comparable. Medium home values in the City of Bay City are \$28,200. In the cities of Flint, Midland and Saginaw the values are respectively \$26,400, \$52,500 and \$25,900. Certainly Flint and Saginaw have comparable medium home values. It would be stretching to consider the home values in Midland as being comparable unless again one used a factor of almost 100% on the high side in order to determine comparability. The City of Bay City has approximately 16,320 housing units whereas the City of Flint has 60,976, Midland 13,790 and Saginaw 28,747. Again, Saginaw and

Midland could be deemed to be comparable but under no stretch of the imagination could the City of Flint be deemed comparable with respect to housing units. State equalization evaluation for Bay City is \$319,000,000 while state equalization evaluation for Flint is \$1,614,000,000, Midland \$1,716,000,000 and Saginaw \$545,000,000. Clearly none of those cities unless again one would use a huge factor would be comparable to Bay City in terms of state equalization evaluation. In terms of land area Bay City has approximately 10.8 square miles whereas Flint has 32.4 square miles, Midland 27.3 square miles and Saginaw 17.4 square miles. All three Union comparable cities are considerably larger in land area with Flint being approximately 3 times as large. In terms of sworn police officers Bay City has 73 whereas Flint, Midland and Saginaw have 304, 42 and 121 respectively. Again Saginaw and Midland are at least within the same general ballpark whereas Flint far exceeds the number of sworn officers.

With respect to crimes there are index crimes in Bay City in the last year for which statistics were available of 2,442 whereas in the cities of Flint, Saginaw and Midland respectively the numbers were 19,245, 8,926 and 1,448. Clearly the City of Midland is comparable in this area but again it would take a tremendous stretch to regard either Flint or Saginaw as being comparable. In terms of non-index crimes the City of Bay City had 4,121 while the cities of Flint, Midland and Saginaw, respectively, had 35,274, 3,624 and 10,275. In this category Midland would again be comparable but it

would be stretching the point to find that either Saginaw or Flint was comparable.

Accordingly for the reasons herein set forth, it is the decision of the panel that the cities of Midland and Saginaw will be regarded as comparable communities for purposes of comparing wages and fringe benefits but the City of Flint will not.

In rejecting the City of Flint it should be noted that it is the opinion of the panel that the mere fact that a city is reliant upon the automotive industry, lies within the Rust Belt or the I-75 corridor, and is the largest city in its respective county does not in and of itself constitute a basis for determining that that community represents a comparable community while ignoring factors such as population, state equalized evaluation, size of the department, indexed and non-indexed offenses, and other factors which are traditionally taken into account in determining the comparability of communities which are in dispute between the parties.

Insofar as the cities of Battle Creek, Port Huron and Muskegon are concerned, the following factors are deemed relevant. Bay City is deemed to have 16,973 taxable parcels of property within the City, Battle Creek has 23,310, Port Huron has 14,676 and Muskegon has 16,197. All are deemed to be comparable with respect to that factor. In terms of population Bay City has 38,936 while Battle Creek has 53,540, Muskegon has 40,000 and Port Huron has 34,000. Again, all three communities are deemed to be comparable with regard to the population factor. With respect to state equalized evaluation Bay City has \$349,000,000; Battle Creek \$808,000,000; Port Huron

\$420,000,000; and Muskegon \$462,000,000. Certainly Muskegon and Port Huron are both comparable to Bay City using less than a 50% factor. Battle Creek would not be comparable unless one was to use a factor of over 100%. Insofar as city tax rates are concerned the City of Bay City has a tax rate of 25.8 mills. Battle Creek accesses 14.54 mills but also has a city income tax which Bay City does not have. Muskegon and Port Huron access 10.11 and 16.28 mills respectively but again both have a city income tax. When one combines the City millage rates with the fact that the proposed comparable communities also levy a city income tax, the millage rates are deemed to be comparable. The City of Bay City does not levy a 1% administrative fee which is an additional fee placed upon tax bills for the cost associated with the tax collection process. Likewise Port Huron does not levy a fee however Muskegon levies a fee of 53/100 of 1% and Battle Creek levies a fee of 72/100 of 1%. Certainly Port Huron is comparable in that respect and the difference is so slight as in the cases of Muskegon and Battle Creek as to indicate that there is a difference but hardly enough to justify a finding of non-comparability. The total tax rate levied in Bay City is 75.46 mills while the total tax rates levied in Battle Creek, Muskegon and Port Huron are 73.05, 64.79 and 64.58 mills, respectively. The rankings indicate that Port Huron and Muskegon are ranked 15th and 16th while Battle Creek is ranked 19 and Bay City 21 in terms of tax rates including cities, counties, intermediate school and school millage. If one were to rank only the cities, Port Huron would rank 19, Muskegon, 8; Battle Creek, 18; and Bay City, 25.

In terms of sworn police officers Bay City is deemed to have 73, Battle Creek 89, Port Huron 41 and Muskegon 83. If one were merely to utilize a factor of 50% up or down all of the communities would be comparable. In terms of command officers there is even greater comparability with Bay City having 12 command officers while Battle Creek has 17, Port Huron 10 and Muskegon 13. Population factors indicate that the communities are comparable with Bay City having 38,936, Battle Creek 53,540, Port Huron 33,694 and Muskegon 40,283. In terms of the general fund budget Bay City has a budget of 18.7 million while Battle Creek is at 32.3 million, Port Huron 14.8 million and Muskegon 12.8 million. Again using a 50% factor all of the communities with the exception of Battle Creek would be considered to be comparable. In terms of police budgets Bay City has a budget of 4.3 million, Battle Creek 10 million, Port Huron 3.8 million and Muskegon 4.5 million. Again with the exception of Battle Creek all of the communities would be considered to be comparable. In terms of total city employees Bay City has 409, Battle Creek 658, Port Huron 326 and Muskegon 288. Once again utilizing a 50% factor all but Battle Creek would be considered to be comparable. In terms of state equalized evaluation Bay City has 301 million, Battle Creek 608 million, Port Huron 405 million and Muskegon 375 million. Again all of the communities with the exception of Battle Creek would be considered comparable utilizing a 50% up or down factor. In terms of personal property Bay City has 48,000,000, Battle Creek 201,000,000, Port Huron 61,000,000 and Muskegon 88,000,000. In this category Bay City and Port Huron would be considered to be comparable

but Battle Creek and Muskegon would not be comparable. In terms of general fund mileage all three of the proposed communities would be deemed to be comparable and using a 50% up or down factor, all three would be comparable to Bay City as well. The same would be true with respect to total city mileage.

Each of the three cities as proposed by Bay City is the largest city in its respective county. Clearly, none of the three cities bears any real degree of geographic proximity to the City of Bay City with the possible exception of Port Huron.

Accordingly based upon the factors hereinabove set forth it is the decision of the panel that the cities of Port Huron and Muskegon may be utilized as comparable communities. However, there are enough dissimilar factors to determine that the City of Battle Creek should not be utilized as a comparable community.

V. ABILITY TO PAY

The City has raised an issue with regard to its ability to pay any wage increases and/or increases in fringe benefits over and above those offered by the City. It alleges that it finds itself in an overall declining economic system which is fostered by noticeable decline in its industrial base and an overall population reduction from approximately 56,000 during the decade of the 50s to 38,000 plus at the current time. In addition, it has an aging population. It is competing with outlying areas which offer less expensive land and less costly infra structure. It notes that Act 312 in Section 9 requires the panel to consider the interest and welfare of the public

and the financial ability of the unit of government to meet additional costs when making its determination between the last best offers of the City and the Union on economic issues.

It notes that the City of Detroit v DPOA case does not require the panel to give equal weight but does require the panel to determine the relevant importance of the various factors set forth in the Act. The City believes that based upon competent, material and substantial evidence produced on the record it will compel an award finding in favor of the offers of the City as opposed to those of the Union based upon the City's alleged inability to pay.

The City imposes no income tax but rather relies upon property taxes of which only 5% of the real property taxes are paid by industry. The City notes industrial plants have fewer workers today dropping in one instance to one-third of a level of only 15 years ago. The downtown portion of Bay City has lost its ability to foster economic development and is unable to compete with the growth and opportunity available in outlying areas. Real estate evaluations have decreased in the downtown area to about \$600 per front foot as compared to outlying townships where the cost of real estate is commonly \$2,000 a foot. Major stores in the downtown area including Sears, J.C. Penney and Knepps have all closed. However, in several instances independent entrepreneurs have replaced the commercial establishments which have fled the City.

In response to these pressures the City has trimmed its overall employment roster including the elimination of three captains within the command rank of the police department since 1988.

In order to entice new business into the City, the City has been forced to grant tax abatements which reduced the income of the City in terms of the real property taxes derived from those properties since the abatements allow a reduction in taxes of 50% for a period of 1 to 12 years.

The City notes that the Chamber of Commerce commissioned a study of the City budget and determined in May of 1993 that the City was experiencing a negative cash flow. The Chamber of Commerce recommended a reduction in the work force, controlled multi-year wage increases and limitations on benefit packages. It also recommended improvements in the City infra structure, as well as privatization and reorganization of city operations.

The City notes that its taxes are at a maximum limitation of 18.35 mills pursuant to the Headlee constitutional amendment limitation. The City is currently using a 3 mill garbage tax imposition for the retirement of environmental clean-up bonds. The clean-up is related to the "middle ground" site which is, according to the City, laced with PCVs. The City is a target defendant in a lawsuit directed toward the remediation of the site. The City notes that its exposure will result in millions of dollars having to be expended for environmental clean-up which will present a clear potential for an inability to pay. The City also concludes that Joint Exhibits 1-3 which are the annual audits for the City for the fiscal years ending on June 30, 1991, 1992 and 1993 clearly demonstrate that the City is currently in a precarious financial position. The City also claims that its fund balances have been

consistently declining as demonstrated in the graphics submitted by the City tracking the history of its fund balance. The granting of wage increases to the various labor groups within the City has acted as a counter balance to the City's efforts to balance the budget. In the past 15 years the City has reduced its employment roster by approximately 100 employees but still has not managed to improve its economic situation.

The City also notes that while other bargaining groups received wage increases in return for a reduction of insurance benefits including health insurance co-pay increases the police command officers while receiving the same wage increases gave up nothing. The City also claims that it has been forced to reduce its maintenance on city buildings in order to protect the fund balance.

The City notes that the chief witness for the Union did not dispute the claims hereinabove set forth and indeed recognizes the City's ability to pay or lack thereof as a factor which must be considered in determining wage levels. The City also notes that the management of fringe benefits and internal consistency of other city unions is just as important in achieving a reasonable contract.

The City also notes that internal comparability is one of the factors under the Act which must be considered in a comparison of wages, hours and conditions of employment with the employees in the instant bargaining unit and those within the City and within the comparable communities.

In conclusion with respect to its ability, or lack thereof to pay, the City notes that it should not be forced to create a

financial situation which threatens other employee groups and that the awarding of excessive benefits of necessity focuses on one group while clearly potentially adversely impacting other employees as well as the City and the public in general.

The Union concedes that Section 9 of the Act requires the panel to consider the interest and welfare of the public and the financial ability of the unit of government to meet the cost of any last best offers. However, the Union disagrees with the City's conclusion that it lacks an ability to pay increased wages and benefits. The Union notes that since 1979 the City has never been in the red and that there has always been an undesignated fund balance. The Union notes that as of June 30, 1993 the undesignated fund balance of the City was 2.92 million. Indeed the Union notes that the fund balances have been in excess of \$2,000,000 for the past decade. The undesignated portions of the fund balances have also been in excess of \$2,000,000 for the past decade. The City further projected that during 1994 89% of the total fund balance or 2.669 million will be undesignated. In addition, the City projected that 77.3% of the total fund balance was projected to be undesignated in 1995. The Union believes that despite the City's predictions of gloom and doom the City in all likelihood will continue to expect undesignated fund balances of over \$1,000,000 throughout the entire term of the contract which as of the date of this award would only have an additional 1 year and 2 weeks to run.

Accordingly, the Union concludes that it is unlikely that the City will experience a financial downfall as a result of the Union's

"modest demands." The Union does not believe that the City lacks the ability to pay but rather that it is unwilling to pay.

It is the conclusion of the panel that the City has neither pled nor would there be a basis for finding poverty. The City has pled an inability to pay. It is only considered to be financially responsible on the part of the City to take the position which it has taken in light of its projected future needs. All cities should attempt to be fiscally responsible. The mere fact that an individual has some money in his bank account does not mean that he should go out and spend every cent of it. One should always be wary of a future rainy day. However, the fact that the City is in fact seeking to be fiscally responsible does not mean that it does not have the ability to pay modest increases in either wage or fringe benefits if otherwise justified. Accordingly, it is the decision of the panel, based upon the City's prior financial history as well as the current status of its general fund balance and undesignated fund balance that the City does not lack an ability to pay modest wage increases or increases in fringe benefit costs if they are otherwise justified based upon the factors set forth in Section 9 of Act 312.

In fact the City through its own exhibits and testimony has apparently arrived at the same conclusion by giving all of its bargaining units reasonable increases in their wages and fringe benefits in the years immediately leading up to 1994. If, the City truly believed that it lack an ability to pay it would not have granted wage increases to the various bargaining units prior to the institution of these proceedings and in fact during the course of

these proceedings. However, it is noted, that in some instances which will be discussed subsequently during the course of this decision the City has received benefits in return for its generosity from certain of its bargaining units. It is also noted and understood by the panel that the wage demands which will be discussed subsequently of the command unit are based upon increasing the differential between ranks as opposed to seeking a wage increase which the command officers automatically received when the SDO-Patrol unit received wage increases.

VI. UNION ISSUES

A. Wages

Last best offer - the Union seeks an 11½ differential between the rank of sergeant and the rank of special duty officer (SDO) effective January 1, 1995.

The Union seeks a rank differential between lieutenant and top paid sergeant of 7½ effective January 1, 1995.

The City's last best offer is to retain the status quo. In addition, the City would propose to add the following contractual language:

The City will hereby pay the command officers any wage increase that is secured or otherwise given to the patrol officers and special duty officers. That is, if a lump sum payment is agreed upon in lieu of the wage increase, then the command officers will also receive a like payment for the third year of the collective bargaining agreement.

Otherwise, if the patrol officers and special duty officers receive a wage increase, then the percentage spread will continue to be in effect.

The wages of the sergeants and lieutenants in the command unit are dependent upon two factors. First, the wages are piggyback upon the wage increases given to the patrol and SDO officers. Then the current wage differential which in the case of sergeants is 10% above the wage rate of an SDO and in the case of a lieutenant is 6% above the highest rate of a sergeant is computed. It should be noted that in 1993 and 1994 special duty officers in the patrol officer and special duty officer bargaining unit received wage increases of 4½% effective January 1, 1993 and January 1, 1994. That bargaining unit is currently in negotiations for wage increases and other benefits at this time for the January 1, 1995 and succeeding years.

The current annual wage of a special duty officer effective January 1, 1994 was \$36,649. Applying that formula a sergeant for the 1994 calendar year would receive 10% more than that wage or a base salary of \$40,313 by applying the 10% differential to the special duty officer annual salary and adding that amount to the salary of an SDO. By the same token the lieutenant's salary, based upon a differential of 6%, would be in the sum of \$42,732 based upon the sergeant's salary of \$40,313 and an additional 6% or \$2,419 payable to the lieutenant.

Thus, the net effect of the Union proposal for January 1, 1995 would be to increase the sergeant's base pay by the sum of \$366.49 and the lieutenant's base pay by the sum of \$403.13. However these amounts could change annually based upon changes in the base salary of the special duty officer since it is that salary from which the rank differential of a sergeant and ultimately the rank differential

of a lieutenant is calculated. It should be noted that a rank differential, while maintaining the same percentage difference, annually guarantees the recipient of the differential be it a sergeant or lieutenant a greater dollar difference as the base salaries increase between the 2 ranks of SDO versus sergeant and sergeant versus lieutenant. Currently, the increase in the rank differentials requested by the Union would cost the City \$366.49 more for the base salary per sergeant and \$403.13 more per lieutenant. Thus, based upon the City exhibit of 12 persons in the command unit the overall increase requested by the Union would cost the City less than \$5,000 annually. However, in the future as salaries increase so to would the annual cost to the City increase in terms of actual dollars.

With respect to the rank of sergeant the Union notes that the differentials between a top paid patrolman and a sergeant based upon the Union's comparables for 1993 indicate a differential of 15.1% in Bay County, 10.9% in Midland and 21.5% in Saginaw. The current differential as previously noted in Bay City is 10%. The dollar differential between a top paid patrolman and a top paid sergeant in Bay City in 1993 was \$3,507 while the differentials in Midland and Saginaw were \$4,005 and \$7,279 respectively. The Union notes that the current differential in terms of dollars between Bay City sergeants and comparable communities was \$5,188 while Bay City was \$16,081 below that average. (It should be noted that the Union included Flint in its calculations which has been discarded as a comparable community.) The Union also notes that many of its

comparable comparisons are based on a top paid patrolman versus a sergeant rather than a special duty officer as is the case in the City of Bay City. A special duty officer makes approximately \$811 more than a patrolman which amounts to about 2½% more. Thus, although the Union claims the differential between a patrolman and a sergeant in Bay City is only 11% based upon the panel calculations it would appear to be currently approximately 12½%. Even then the Union calculation would indicate a differential of approximately 2.4% more in the comparable communities than in Bay City.

The Union also notes that the rate for a top paid sergeant which it calculated to be \$40,216 and which the panel calculates to be \$40,313 is approximately \$4,000 below the average of its comparable communities. A review of the Union exhibits would indicate that if the sergeant's 1994 base wage was in fact \$40,313 in Bay City the comparable rates in Midland and Saginaw were \$42,010 and \$41,995 respectively with Saginaw earning an additional increase on July 1, 1994 bringing their rate to \$42,827.

Thus the Union argues that in any event whether one compares the percentage of rank differential, the dollar differential based on rank differential or actual wages the Bay City sergeants earn substantially less than their counterparts in Midland and Saginaw.

The Union further notes that if the City's proposal that the sergeant's differential remain the same is accepted by the panel the sergeants will continue to fall further and further behind their counterparts in the Union's proposed comparable communities. With respect to the rank of lieutenant the Union believes that the

comparable communities of Midland and Saginaw have a differential of 11.7% and 13% while Bay County has a differential of 15.1%. In addition Muskegon and Port Huron have a differential of 9% and 10% respectively. The Union concludes that regardless of which the communities the panel deems to be comparable with respect to the lieutenant's salaries the current differential of 6% above the rate of the sergeant is substantially below both the Union comparables and the City comparables based upon the percentage differentials. The Union further argues that Bay City lieutenants currently rank last among the Union comparables and would continue to do so even if they received the Union's last best offer. The salary of a Bay City lieutenant in 1994 was \$42,723 which is substantially below the salary of a Bay County lieutenant in 1993 which was \$45,372. In Port Huron in 1993 the rate was \$46,026 and in Muskegon the 1994 rate was \$41,908 which is \$815 less than that in Bay City.

Based upon its comparables the Union argues that there is no justification for refusing the Union's demand with respect to lieutenants since a 6% differential barely establishes a distinction between ranks. The Union exhibits indicate that lieutenants in Midland and Saginaw earned \$46,935 and \$47,444 respectively in 1994 compared to the lieutenant's wages of \$42,732 in Bay City.

The City's position for status quo in the rank differentials is supported, according to the City, based upon the following factors: there is obvious uncertainty with regard to negotiations for the patrolmen, the piggyback increase that the sergeants and ultimately the lieutenants receive is based upon whether or not the

patrolmen receive either a percentage or lump sum wage increase. The City's last best offer grants the sergeants and the lieutenants the same increase as may be granted, if there is one, to the patrolmen and SDOs. It also envisions the same rank differentials throughout the length of the contract. The City notes that the interim rank of an SDO places a sergeant's rate of pay well above that of a patrolmen with a differential of approximately \$1,800. Thus, the City notes that it does not make economic sense to build in additional monies for command officers over and above the increases which may be given the patrolmen along with the current rank differentials. The command officers, according to the City, will benefit as a result of the linkage and piggy backing provisions already contained in the command officer's collective bargaining agreements. The City also notes that its lieutenants already receive the second highest salary and its sergeants are ahead of all salary levels for other comparable cities with the exception of Port Huron.

Based upon the exhibits presented it is clear that the sergeant's base rate of pay in 1994 when compared to the cities of Midland and Saginaw is substantially below those comparable communities. On the other hand, based upon a revised rate for Bay County, the sergeants in Bay City earn as much or more than Bay County as well as Muskegon but substantially less than Port Huron.

The lieutenants in Bay City earn substantially less than lieutenants in Bay County who it is noted work in the jail area, Port Huron, Midland and Saginaw. Thus, the only comparable community to which the Bay City lieutenants earn more is the City of Muskegon.

Based upon the respective positions of the parties, the testimony elicited during the course of hearings, the exhibits presented by the parties and the factors which are to be utilized pursuant to Section 9 of Act 312 of the public acts of 1969 it is the decision of the panel that the last best offer of the Union more nearly complies with the statutory criteria. The amount involved cannot be found to have a substantial negative impact upon the ability of the City to meet the additional costs. Nor will it have a negative impact upon the interest and welfare of the public. The employer has the lawful authority to pay the increase. The comparison of wages with those of the same rank in comparable communities clearly demonstrates that the sergeants and lieutenants in Bay City do not enjoy comparable base salaries. Even, if one were to take into account the overall compensation presently being received by the sergeants and lieutenants including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits and the continuity and stability of employment as well as other benefits, it would not appear that the wages currently received by the sergeants and lieutenants are comparable. In addition, there were no changes in any of the foregoing circumstances which were presented during the pendency of the arbitration proceedings which could be said to have a negative impact upon this determination.

It should also be noted, however, that the mere difference in percentage differentials or in the amount of dollar differentials between ranks in and of itself is not considered to be persuasive

by this panel. Surely, the Union would not seriously argue that a sergeant who only earns \$30,000 in some other city but has a differential of 20% over and above the highest paid corporal or patrolmen in that city is better off than the sergeant in Bay City who currently earns \$40,313 per year. By the same token it is of relatively little significance that a sergeant in the same city who earns \$30,000 has a \$5,000 differential between his rate and that of a patrolmen or corporal in the same city whereas the sergeant in Bay City only has a rank dollar differential of \$3,664 between his rank and that of an SDO. The bottom line and most telling comparison should be what base wage does a sergeant or lieutenant in Bay City receive versus the base wages of a sergeant or lieutenant in a city that has been deemed to be comparable. The secondary factors which of course impact upon that determination are a calculation of the other benefits that the employees receive in the comparable cities versus those benefits received in the City (in this instance Bay City) which is in the Act 312 proceeding.

For the reasons hereinabove stated, as previously noted, the last best offer of the Union is accepted by the panel and the last best offer of the City is rejected. Accordingly, effective January 1, 1995 the rank differential between a sergeant and an SDO shall be 11% and the rank differential between a lieutenant and sergeant shall be 7%.

B. Shift Selection

The Union's last best offer seeks to incorporate into the collective bargaining agreement the following provision:

Bargaining unit members who are assigned to the uniform division shall bid for shift assignments by seniority annually on January 1st of each year.

The City's last best offer is to maintain the status quo. The Union in support of its position argues that both Bay County and Saginaw have language which allows shifts to be selected by seniority. In the case of Midland seniority is taken into consideration but the chief has the ultimate decision. It also notes that according to the City exhibits the uniform divisions in Bay County, Muskegon and Port Huron do have the right to select shifts by seniority but there is no right to select shifts by seniority in detective bureaus which work exclusively on day shifts.

The Union notes that Chief Lochinski, during the course of his testimony in opposition to the Union position, indicated that he had conversations with other chiefs that have shift selection and those conversations reinforced his opinion not to have shift selection by seniority. It amounted to giving up control over the personnel and various chiefs felt the situations occurred which handcuffed them as far as running an effective department. Chief Lochinski further indicated that it was his belief that it would inhibit various efforts on his part even though he would like to allow employees the right to select a shift. Although, he conceded in some cases it probably would make no difference. He indicated that to the best

of his recollection he had spoken with three other police chiefs. However, insofar as the City comparables were concerned, only the Muskegon chief of police was concerned over the right of shift selection by seniority. He conceded that employees could be disciplined regardless of whether or not they had the right to select shifts by seniority. Chief Lochinski also conceded that it was his belief that he have the right to refuse officers the right of selection of a certain shift or to transfer officers from one shift to another if, he believed that it would improve their work performance.

The Union maintains that a denial of its proposal would result in the panel having ignored those statutory factors set forth in Section 9(d) of the Act since so many of the comparable communities allow command officers to select shifts by virtue of their seniority. Moreover, the Union argues that the chief should not be allowed to hold a sword of "damocles" over the heads of his subordinate officers. The Union notes that the record is void of any specific examples wherein Bay City or any comparable communities have experienced difficulty managing their departments.

The City on the other hand opposes the Union's last best offer and seeks the status quo based upon its belief that the current contract language is reasonably grounded in an aspect of the lawful authority of the management to efficiently direct its work force. The City notes that Chief Lochinski testified regarding the adverse management consequences of allowing senior employees to automatically

select a preferred shift. The right to select a shift by seniority works against consistency, experience and reliability in directing specialized work within the department.

The City also notes that this has been stipulated as a non-economic issue and accordingly the proposal of the Union impinges upon the management rights of the City. The City argues that its comparables significantly demonstrate that its comparable communities do not permit selection by seniority except as uniformed officers. The basis for a selection of shifts by uniform officers presents a different scheduling dynamic thereby reducing management problems.

A review of the collective bargaining agreements indicates that clearly in the City of Saginaw the right to select a shift is determined by virtue of seniority in rank. In the case of the City of Muskegon, shift selections are made on the basis of seniority within rank and division or bureau. In the case of the City of Port Huron, shifts are selected in seniority order. In Bay County there does not appear to be a specific contractual provision with regard to shift selection and in Midland the document presented to the panel was a summary of benefits and accordingly no determination can be made.

Since, this has been stipulated to be a non-economic issue the panel is not bound by either the last best offer of the Union nor the last best offer of the City. Accordingly, based upon the testimony and exhibits presented it is concluded that neither offer is acceptable. Those officers who performed their jobs in an

acceptable manner clearly should have a right to choose their shifts in order of seniority. Those officers who present a problem by way of either acts of misconduct or a general lack of performance should be required to work shifts at times when there is greater supervision present in order to allow supervision to monitor the activities and work performance of the officer in question. Accordingly, it is the decision of the panel that the following language be incorporated into the collective bargaining agreement:

Bargaining unit members who were assigned to the uniformed division shall bid for shift assignments by seniority annually on January 1st of each year. However, the chief of police shall have the right to deny the selected shift of any individual officer provided that he supplies the officer with the reasons for the denial in writing. The officer shall have recourse to the grievance procedure in the event that he disagrees with the reasons set forth by the chief.

C. Residency

The Union's last best offer is that all current residency language contained in Article 11, Section D be deleted and that new language be incorporated into the collective bargaining agreement which would read as follows:

- (a) All employees of the City of Bay City who become members of the bargaining unit shall be domiciled in the City of Bay City at the time of hire or entry into the bargaining unit and remain residents as long as they are in the employment of the City.
- (b) The residency requirements set forth in paragraph (a) above is not applicable or enforceable in any way to any bargaining unit employee hired prior to September 14, 1982.

- (c) All employees in the bargaining unit hired prior to September 14, 1982 shall maintain their domicile within the County of Bay as long as they are in the employment of the City.
- (d) As used in this section, domicile shall be defined as the established, fixed, permanent, ordinary dwelling place, and place of residence of such employees.
- (e) Any employee who, 30 days after having received a written notice from the City manager has failed to comply with the terms of this section shall forfeit his/her employment of the City and shall be considered to have voluntarily quit his/her employment.

The City's last best offer on the issue of residency is to maintain the status quo with the current contractual language.

The parties have stipulated this to be a non-economic issue. The current contract language requires all employees who become members of the bargaining unit to be domiciled in the City at the time of hire or entry into the bargaining unit and remain residents as long as they remain in the employment of the City. Those requirements are not applicable or enforceable in any way to any bargaining unit employee hired prior to September 14, 1982. Employees in the bargaining unit hired prior to September 14, 1982 who maintain a domicile within the City are required to continue to maintain it as long as they are in the employment of the City. Employees who entered the bargaining unit after January 1, 1987 but who were hired prior to September 14, 1982 shall, upon any change in their domicile, establish and maintain their domicile within the

City of Bay City. Domicile is defined as the established, fixed, permanent, ordinary dwelling place and place of residence of such employees. The provision further provides that an employee who 30 days after having received written notice from the City manager has failed to comply with the terms of the residency requirements forfeits his/her employment with the City and shall be considered to have voluntarily quit his/her employment.

In support of its position, the Union maintains that there is no residency requirement in Bay County with the exception of county residency being required but further claims that it is not enforced. In the cases of Midland and Saginaw there are residency requirements within the City limits. The Union indicates that there are a number of officers in the bargaining unit who were already grandfathered in under the current language and are not required to live in the City. Prior to 1982 officers were allowed to move outside without having to move back into the City. That is to say that an officer who did not live within the City could change his residence to a different residence still outside the City rather than having to change his residence to one within the City. The Union further maintains that people are paid 40 hours per week and that that should suffice. Furthermore, the Union maintains that the chief of the police department does not personally support residency. The Union notes that 8 of the 13 command officers were in the command unit prior to 1982 and accordingly can live anywhere in the county that they desire. Moreover, of the remaining 5 officers, 3 live within

the county but not the City and only 2 currently reside in the City. The Union further notes that of the City comparables only Port Huron was initially indicated as not having a residency requirement. However, testimony indicated that Battle Creek a non-comparable city allowed employees who were hired prior to 1983 to reside outside the City. Bay County requires its employees to live in the county. Muskegon allows employees hired prior to 1986 to reside outside the City. In fact, the Union notes that even Chief Lochinski is not a resident of the City. Moreover, when asked for his position on residency he indicated that his position was that the City pays people to work 40 hours a week and that should suffice and then based upon a further question as to whether or not he supported residency his answer was:

"No, I don't personally, no."

The Union also notes that the modification sought by the Union was indicated by Chief Lochinski to be an item which would not affect his ability to efficiently run the department. Moreover, the Union does not seek the elimination of a residency requirement merely that all of its current command officers should be similarly situated. This is especially true based upon the lack of impact on the department.

The City in support of its position to maintain the status quo states that Chief Lochinski was honest enough to state his opinion that he has a personal objection to a residency requirement.

However, he also provided an articulate description of the reasons why residency is advisable and sought by the City. Residency engenders participation in the community life and investment in the City. Moreover, residents retain a sense of security when they know that a police officer lives among them. Residency has been a requirement since 1982 and it also assures that movement back to the City occurs when those living outside the City determine to change their domicile. Furthermore, the City maintains that it is a non-economic item which impinges upon the authority of the employer to exercise management of its work force.

The only difference between the Union proposal, the current contractual language and the position of the City which seeks to retain the current contractual language is that the Union would eliminate the current contractual language contained in Article 11, Section 11(d) which provides that employees who entered the bargaining unit after January 1, 1987 but who were hired prior to September 14, 1982 shall upon any change in their domicile establish and maintain their domicile within the City of Bay City. In short, this requirement discriminates against employees who already lived outside the Bay City limits and wish to buy either a larger or smaller home or move into a different community by requiring that if they became members of this bargaining unit after January 1, 1987 the only change they could make is back into the City of Bay City even though they formerly lived outside the City. All of the bargaining unit members are required to live within Bay County which

assures the department that they will be in relatively close proximity to the department should they be required to come to the department in an emergency situation in a relatively short period of time. Few, if any of the officers, currently would be affected by the current contractual language since they were grandfathered in under the pre-1982 language. For the remaining few it would seem that the proposal offered by the Union is fair and equitable. Its certainly comparable to the overwhelming majority of communities which have been determined to be comparable communities with respect to their residency requirements or lack thereof.

Accordingly for the reasons hereinabove set forth the last best offer of the Union is accepted by the panel and is hereby ordered to be incorporated into the new collective bargaining agreement.

D. Retirement

The Union has proposed in its last best offer that Article 9 of the Collective Bargaining Agreement be amended to read as follows:

The pension benefits for all members of the bargaining unit shall be governed as set forth as it presently exists or amended under Article XXVIII of the City charter of the City of Bay City and shall be the pension benefits of the police department employees with the formula for calculating benefits changed to the best three years of the last ten, including accumulated sick leave as part of salary (effective 01/01/95).

The Union had also requested to add a cost of living adjustment for future retirements on or after January 1, 1993, based on the Consumer Price Index or 2½%, whichever is less, during the course

of the Act 312 proceedings. However in its last best offer that proposal was withdrawn and the counter proposal in opposition to that proposal by the City will, of course, be accepted by the panel. Accordingly, there is no issue with respect to a cost of living adjustment.

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

The proposed changes by the Union would require that accumulated sick leave be included as part of a retiring officer's salary for purposes of calculating final average compensation. Currently, the final average compensation is calculated by the base pay, longevity and pay in lieu of vacation time which an officer accumulates. The Union notes that Bay County receives a sick leave and that Midland has 7 items rolled into its final average compensation and Saginaw has 6 items rolled into its final average compensation. It should be noted that in the Union exhibits unused sick leave is considered to be included in Bay County and Midland but not Saginaw. The City exhibits indicate that the City of Port Huron does not include sick leave in the calculation of final average compensation and the City of Muskegon only includes six sick leave days from the last year of employment in the calculation of final average compensation. The City currently includes salary, pay in lieu of vacation and longevity in the calculation of final average compensation for its employees. The point being made by the Union is that the comparable communities include many other items in the calculation of final average compensation which in turn results in higher pension payments for

retirees in the comparable communities. It asserts that a Bay City sergeant's final average compensation would be \$3,600 below the average of its comparable communities while a lieutenants would be \$6,800 below average. Thus, over a 25 year period of time, a Bay City sergeant would receive \$57,000 less than the average and a lieutenant would receive \$104,000 less than the average. It should be noted that these assertions were based upon including the City of Flint in their calculations. In addition, the Union notes that comparable communities include 2-4 additional items in final average computation beyond those included by Bay City. It alleges that Section 9, Factors A, B, C, E and G are not applicable to this issue while Section 9(d) applies with over half of the proposed communities supporting the Union's position. The Union further argues that the balance swings even further in its favor when the total number of items included in FAC for Bay City are compared to those of the comparables. In addition Section 9(f) of the statute supports the Union's position when the overall compensation of the Bay City command officers is considered. Since the final average compensation in total pension payouts in comparable communities exceeds that received by officers in Bay City and would continue to do so, even if the improvement were adopted. Finally, the Union notes that the City has offered no evidence to support a denial of its position.

The City notes that given its tenuous financial condition the calculation of sick leave into final average compensation presents an encumbrance that is not supported in the comparables and is not

currently provided in Bay City. Thus the City proposes the maintenance of the status quo. Cost control in the municipal setting call for as much certainty as possible in wages and retirement. The City notes that variables introduced by benefits such as the inclusion of sick leave time can reek havoc with respect to budgeting. The purpose of sick time usage is to insure the ability of the police department to effectively manage its day to day operation. The accumulation of sick time can grow into an uncontrollable obligation as well as an artificial enhancement of average compensation.

The City pension plan is based upon its charter. The general fund millage is utilized for pension purposes with an employee contribution of 8%.

A comparison of the comparable communities offered by the Union indicates that in Bay County the multiplier is only 2½ times years of service while in Midland it is 2¾ for the first 25 years with 1½ for excess years, and Saginaw it is 2.6½ for the first 25 years with a 2.75½ times excess years and in Bay City the multiplier is 2¾ times years of service. The eligibility for retirement in Bay County is 25 years, Midland 23 years or 25 years and in Saginaw 20 years. Bay City is either 28 years of service or 25 years of service provided the employee is at least 55 years of age. None of the comparable communities have social security for their officers with the exception of Bay County which as previously noted has a multiplier which is 20% less than the comparable communities. In

terms of employee contributions Bay City employees pay 8% as do the employees in Saginaw. Midland pays 9% and Bay County pays nothing. Bay City uses a best 3 of 10 as does Saginaw and Midland in terms of the number of years which are utilized in the calculation while Bay County uses 5 years.

None of the exhibits indicate the amount of sick leave time that is includable either on a cap basis or as an average amount of time in any of the communities which allow accumulated sick leave time to be incorporated as a factor into final average compensation. Nor do any of the exhibits indicate whether the sick leave in each community is calculated based upon the worth of a day at the time of retirement or the worth of a day at the time that it is accumulated and converted into a cash dollar figure for bank purposes. There is a world of difference in how the calculations are made. It is much more lucrative for example for days to be accumulated and only converted into cash upon retirement at the highest rate of pay rather than being converted into cash in prior years at lower rates of pay and placed in a bank based upon the dollar value at the time of accumulation. The panel cannot say that the interest and the welfare of the public as well as the financial ability of the unit of government to meet those costs is more nearly satisfied by the last best offer of the Union than the last best offer of the City. Clearly the interest and welfare of the public required fiscal responsibility and the ability of government to attempt to keep millage within reasonable limits. Clearly, this

would impact upon the financial ability of the government to meet its day to day costs. No evidence has been introduced as to what that impact would be by either party.

Moreover, the overall compensation presently received by the employees in this bargaining unit along with the increases granted in this award certainly represent a reasonable living wage and also will impact upon the future pension benefits of the employees since their wages will increase which clearly does impact upon final average compensation calculations.

The former contract, expired on December 31, 1992. This award although it covers a 3 year period of time, in effect, will only bind the parties for the next calendar year commencing on January 1, 1995, thus giving the parties the ability and opportunity within a relatively short period of time to once again meet at the bargaining table. At that time, it would be appropriate for the Union to raise whatever issues it feels are appropriate including pension issues of the sort sought in this issue.

Thus, for the reasons hereinabove set forth and based upon the lack of competent and material evidence which would support the granting of the Union's position, it is the award of the panel that the last best offer of the City is hereby accepted and awarded.

H. Holidays

The Union has three issues regarding holidays: first it seeks to increase the number of holidays from 7-9 with the addition of

Christmas Eve and New Years Eve. Next it seeks a contract modification as follows:

An employee who works on any of the holidays designated herein will receive time and one half for all hours worked plus 8 hours holiday pay for that date. If an employee is scheduled to work on a holiday, he/she may be granted the day on leave and shall receive eight (8) hours holiday pay only.

Finally the Union seeks a change in the method of payment for employees who are not scheduled to work on a holiday and request that the current contract language be deleted and the following language be included:

When a holiday falls on a day where it is an employee's regular day off, the employee shall have the option to receive eight (8) hours pay or shall be entitled to an additional day of holiday to be taken as a personal holiday, subject to the convenience of the chief or his/her designee and such holidays must be used within the year earned as they are not cumulative. An employee on formal unpaid leave of absence, lay/off (removed from payroll) shall not receive holiday pay as provided in this contract.

The City's last best offer with respect to each of the three Union positions is to retain the status quo which would retain the seven (7) holidays and the current contract language which the Union seeks to supplant by virtue of its second and third issues.

Each holiday issue is a separate and distinct issue and will be considered as such even though the three issues are decided by the panel under a single heading.

Bay County has 9 holidays, Midland has 7 and Saginaw currently does not receive paid holidays as they are part of 31 days of annual leave. Muskegon has 9 holidays and Port Huron has 7 holidays.

According to the City exhibit when one combines vacations, holidays and personal holidays Bay City has a total of 35, Bay County 35, Muskegon 33 and Port Huron 22. In addition to the holidays noted in the Union and city exhibits the Union provided testimony that a local UAW bargaining unit had 11 holidays plus 3 additional personal holidays and that the 24-hour personnel in the fire fighters contract receive 6 holidays for which they are paid a cash bonus in lieu of holiday pay while the 40 hour personnel in the fire fighters contract receive 11 holidays and 2 personal holidays for a total of 13. The Union maintains accordingly that the average number of holidays excluding personal days and birthdays is 9.5 and that the average number of holidays excluding floating holidays and birthdays in the City exhibits is 10. Internally the Union maintains that the average number of holidays excluding patrol and personal days is 9.3. Thus, the Union concludes that the comparables support the Union request for two additional holidays.

The City on the other hand maintains that one must take into context the total leave time in order to determine whether or not the holiday time proposed by the City is reasonable. Thus the City concludes that when one takes into account the total leave time the members of the command unit in the City are indeed comparable to other bargaining units both in the City and in comparable communities. It should be noted that the police patrol unit also receives 7 holidays.

It would appear based upon the exhibits that although the number of holidays that the command officers receive is low, when taken in the context of total time off for comparable purposes the command officers seem to fall within the ballpark. As noted in the Union's exhibits, the City of Saginaw has 31 days of annual leave which includes so-called paid holidays. Muskegon has 33 vacations, holiday and personal holidays, Port Huron has 22 and this bargaining unit has 35. It really does not matter whether you call a day off with pay a holiday, a vacation day or a personal holiday since they all represent time away from work for which an employee is being compensated.

Accordingly based upon internal and external comparables it would appear that the last best offer of the City to retain the status quo more nearly meets the statutory criteria and therefore the last best offer of the City is hereby granted.

The next holiday issue of the Union is to change current contract language for employees who work a holiday from straight time for all hours worked plus straight time or comp time for all hours worked which fall within his/her regularly hour of work for that day to time and a half for all hours worked plus 8 hours holiday pay for that day. As previously noted the City position is to retain the status quo.

According to the exhibits Bay County pays 8 hours of straight time plus time and a half for all hours worked on holidays to sergeants and 8 hours of straight time plus a replacement day off

to lieutenants. Midland pays 8 hours of straight time plus time and a half for all hours worked. Saginaw does not have designated holidays and according it is merely part of a 31 day annual leave program which would not involve overtime.

According to the City exhibits Muskegon Officers, who work a regularly scheduled holiday, receive triple time or in the alternative 16 hours of additional time based on an annual salary divided by 2,080 hours and in Port Huron employees working a holiday are paid at the rate of time and a half for all hours worked.

The Union maintains that the majority of comparables support the Union's position. Furthermore, the City's ability to pay is not an issue. The Section 9 factors support the Union's position and there is no practicable justification for its denial.

The City position is based upon its overall opposition to the holiday proposals of the Union as previously hereinabove set forth. Moreover, the City believes that the payment of time and one-half constitutes an act equivalent to over reaching on the part of the Union.

Contrary to the position taken by the City the question of the method of compensation when an employee works on a holiday clearly, based upon the comparables, favors the Union position. The overwhelming majority of the comparables allow for the payment of time and a half for hours worked on holidays in addition to 8 hours of holiday pay. When one considers the statutory factors it is clear that Section 9(a), (c), (d) and (f) all support the position of the

Union. Accordingly, for the reasons hereinabove set forth, the Union's last best offer with respect to the payment of holiday pay is accepted and awarded by the panel and the contract language which currently governs contract pay shall be deleted and replaced with the Union's proposal which states:

An employee who works on any of the holidays designated herein will receive time and one-half for all hours worked plus 8 hours of holiday pay for that day. If an employee is scheduled to work on a holiday, he/she may be granted the day on leave and shall receive 8 hours holiday pay only.

The last holiday issue propounded by the Union seeks to replace current contractual language which provides that when a holiday falls where it is an employee's regular day off the employee is entitled to an additional day of holiday to be taken as a personal holiday subject to the convenience of the chief or his/her designee and such holidays must be used within the year earned as they are not cumulative. It further provides that an employee on formal (sic) of unpaid leave of absence, lay-off (removed from payroll) shall not receive holiday pay as provided for in this contract. The Union modification seeks to provide:

When a holiday falls on a day where it is an employee's regular day off, the employee shall have the option to receive eight (8) hours of pay or shall be entitled to an additional day of holiday to be taken as a personal holiday, subject to convenience of the chief or his/her designee and such holidays must be used within the year earned as they are not cumulative. An employee on formal unpaid leave of absence, lay-off (removed from payroll) shall not receive holiday pay as provided for in this contract.

The City's last best offer on this proposal is to retain the current contract language - status quo.

Since, this issue has been proposed by the Union it is incumbent upon the Union to present clear, material and convincing evidence to support its position. The Union in support of its position states that it simply wants to afford the employee an option of either obtaining an additional day off when the employee is already scheduled off on a holiday or in the alternative to be afforded 8 hours of pay. The Union indicates that under its exhibits Bay County and Midland allow their employees to receive 8 hours of straight time for holidays not worked. It can obtain no information from the City's exhibit with regard to Muskegon and Port Huron. The Union further alleges that its request has no economic impact upon the City and in fact would probably alleviate scheduling problems which may occur under the current system. The Union states that it is not asking for anything more than it already has but rather it is simply asking for the option to choose how the benefit will be received in terms of additional money or additional paid time off. The Union further believes that based upon the record evidence and the Section 9 standards it has fulfilled its obligation and its last best offer merely meets those standards and criteria.

The City while maintaining its posture that the status quo should be maintained did not comment upon this issue in its brief. In addition, its exhibits do not indicate what occurs within the comparable communities when a holiday falls on an employee's

regularly scheduled day off. A review of the contracts indicates that in the case of Muskegon when a holiday falls on a normally scheduled day off the employee receives a compensatory day off. In the case of the City of Port Huron employees do not receive holidays per say but rather receive 14 days as vacation plus 8 additional work days off in lieu of holidays for each 12 months of service. Thus the employees receive 22 work days of annual leave per year and there is no provision for payment for a holiday which falls on an employee's regularly scheduled day off. The position of the Union with respect to obtaining pay rather than an additional day off and the conclusion that it does not represent an economic cost to the City is simply not justified. If, the employee chooses 8 hours extra pay in lieu of the day off the employee will undoubtedly receive more than 260 days of pay in the calendar year. Thus, it could indeed be an economic cost to the employer and if half or more of the bargaining unit employees work on holidays the cost should the employees select the payment in lieu of a day off for which they would have been paid anyway could amount to a substantial sum of money. Accordingly, based upon the statutory criteria it would appear that the Union has failed to substantiate its position by competent, material and relevant evidence. The last best offer of the City to retain the current contract language is hereby accepted and awarded.

VII. CITY ISSUES

The City at the arbitration hearing introduced 6 issues. Subsequently the City withdrew its position on issues involving

longevity, funeral leave, and personal leaves. Since, the Union did not have an issue with respect to any of those items and since the Union position was to maintain the status quo each of those 3 items is hereby dismissed by the panel and the status quo with respect to the language and benefits in the current city contract shall be maintained.

A. Health Insurance

The City in its last best offer proposes that the following language replaced existing contractual language:

- a. The City will provide all bargaining unit employees with the health insurance now in effect, or comparable coverage, including a pre-determination program in second opinion surgery. Elective abortion is not included in this plan.

The City will allow each member of the bargaining unit the option to participate in the above plan or an HMO or PPO if such are offered by the City. An employee electing to participate in an HMO or PPO will co-pay twenty-five (25%) percent of the monthly premium cost. Participant's choose from single, double (2), or family (more than 2) coverage.

- b. All full-time members of the bargaining unit and their families will be provided with a fifty-fifty (50/50) dental plan with a Six Hundred Dollar (\$600) maximum per family member.
- c. The City will continue to pay the premiums for the above plan for a period of six (6) months for employees not on the payroll, but on sick leave with pay; and for a period of six (6) months from day of lay off for involuntary termination of employment, except where the employee was "fired for cause". In this latter event, the coverage is to be terminated as soon as possible under this policy.

The Union's last best offer with regard to this city issue is to retain the status quo. The City asserts that coverage through the Blue Care Network presents a particular problem due to the fact that an HMO costs more than the traditional medical insurance coverage. With the difference already negotiated with the fire union, the City's last best offer proposes the command officers pay 25% of the premium, which is in line with the internal comparable. The medical coverage constitutes a unique situation which affects only those employees who want an HMO, since Blue Care Network is the sole provider in Bay City, therefore having no competition to challenge their rates. The traditional Blue Cross - Blue Shield rates are not affected with the City offering to pay the entire premiums. The City notes that it also included in its last best offer with regard to health insurance dental coverage on a 50/50 basis and continuation of coverage during layoff by adding language in Article 6, Section 1.

The City notes that there are significant increases in hospital/medical costs per the City exhibits and that the same is true in the comparable cities as well. Moreover, the City notes that with the exception of Port Huron all of its comparable cities have a portion of the premium paid by the employee. The City states that its internal comparable exhibit clearly indicates the disparity in premium co-payments between the command officers and other Bay City bargaining units.

The Union notes that currently the City proposal would cost an employee who elects to participate in an HMO or PPO plan from \$15.44

per month for a single contract to \$35.17 per month for a double contract and \$40.14 per month for a family contract. In addition the City currently pays any increase in excess of those rates which were hereinabove set forth. The current contract also provides the City pays full premiums and absorbs future increases throughout the term of the agreement. The Union notes that the City proposes to delete that language and amend the HMO co-pay language to provide that employees pay 25% of the total monthly premium cost.

Currently six of the thirteen command officers participate in an HMO plan. Of the six, four are subject to the family contract premiums. If the City's offer is adopted by the panel the Union notes that the impact on the officers would be to increase their current co-payment from \$40.14 per month to \$128.88 per month. The Union strenuously argues that according to the Union exhibits Bay City is the only comparable community which requires an employee to make a co-payment. The Union also notes the amount paid currently by Bay City command officers for HMO coverage is equal to the amount paid by the Flint lieutenants for Blue Cross/Blue Shield traditional coverage (although the City of Flint is not considered to be a comparable community by this panel). Finally, the Union argues that testimony failed to establish that Bay City was experiencing any premium increases that were greater than those experienced in comparable communities nor was there an indication that the current system was creating a financial drain on the City.

The Union exhibit indicates that Bay County does have an HMO option and that it is possible that part of it is paid by the

employee although the employer pays up to \$330 per month. Neither the City of Midland, which is self-insured, nor the City of Saginaw is indicated as having an HMO option. The only other Union exhibit indicates the current premium rates for HMO coverage which at the time of the hearing were \$165.38, \$381.33 and \$430.01 respectively for single, couple and family coverage.

The City exhibits indicate that the City portion of the premium for the HMO coverage for a single individual in 1994 was \$198.26. Every bargaining unit in the City which had the HMO required a payment of \$49.57 from its employees and members with the exception of the police command which only paid \$20.89 and the police patrol which only paid \$35. The same disparities occur in the case of double contracts and family contracts. On a double contract the City premium was \$457.17. All of the bargaining units in the City (of which there are 5) excluding police command and police patrol paid \$114.29 and police command and police patrol paid \$47.62 and \$55.00 per month respectively. In the case of a family contract the City premium was in the sum of \$515.52 of which the other 5 bargaining units required a payment of each member monthly in the sum of \$128.88 whereas the police command paid a monthly sum of \$54.35 and the police patrol paid the sum of \$75.00.

According to the City exhibits, Bay County does not require a co-payment from its employees for the premium, however, the premium for each classification is \$35, \$85, and \$114, less than the premiums being paid by Bay City. In the case of the cities of Muskegon and Port Huron neither one requires a premium co-payment. The internal

comparables clearly justify the last best offer of the City with respect to health care coverage. It is only the two police bargaining units which are not currently paying 25% of the premiums for an HMO. If, those officers who are currently covered by an HMO do not wish to pay the increased monthly premiums, they are free to convert to the traditional Blue Cross/Blue Shield coverage and incur no cost whatsoever. If, the officers who are currently enrolled in an HMO wish to remain in the HMO then the increase in payments is more than offset by the award allowing the increase in rank differential plus the actual wage increases that the sergeants and lieutenants have enjoyed during the first two years of this collective bargaining agreement by virtue of the wage increases that are negotiated in the patrol unit. It is evident to all that health care costs have increased at a far more rapid rate than the cost of living in the United States. Employers throughout the state and country are seeking ways of reigning in these types of costs. It is not unreasonable for the City to expect the officers to contribute when they voluntarily choose a more expensive program than that which is covered by the traditional Blue Cross/Blue Shield insurance. Accordingly the statutory criteria set forth in Section 9 of Act 312 including the lawful authority of the employer, the interest and welfare of the public as well as the diminishing financial ability of the unit of government to meet costs, the internal comparison of wages, hours and conditions of employment between employees in this bargaining unit and employees in other bargaining units in the City and the overall compensation presently being received by the

employees when taken into consideration more nearly meet the last best offer of the City than the last best offer of the Union.

Accordingly, the last best offer of the City with respect to health insurance is hereby accepted and awarded by the panel.

B. Education

The City as its last best offer proposes to delete the current contractual language contained in Article 11, Section 4 and replace it with the language hereinafter set forth.

C. City Last Best Offer

Any officer of this bargaining unit may attend a course of instruction on their own time, and the officer shall pay for such courses under the following terms and conditions:

- A. The City shall provide a maximum fund of \$1,000 each year for purpose of employee continuing education.
- B. Officers who wish to avail themselves of this program, must inquire of the Police Chief as to the availability of funds. Officers must present costs of tuition, fees and books to the Police Chief. The Chief will inform the officer as to the current status of the education funds and whether said funds are sufficient to cover the costs incurred by the officer.

It is understood and agreed that any tuition costs, fees and books used toward completion of an A.A., A.S., B.S. or B.A degree shall be paid, limited only to availability of funds, to be determined as follows:

- A. All applications for spring, summer and fall semesters must be submitted to the Police Chief no later than September 15 of each succeeding year.

B. All applicants for winter semester must be submitted to the Police Chief no later than January 15 of each succeeding year. "In the event the claims submitted are greater than funds available, the Police Chief shall notify each applicant of same and each applicant shall receive an equal amount of the remaining funds, not to exceed 100% of the costs presented.

Reimbursement will occur when the officer presents an original statement of costs together with an original of that officer's transcript evidencing successful completion of the course. An officer must successfully complete the course before the City is responsible to reimburse the officer.

The City shall not be responsible for any courses taken by an officer pursuing an M.A., M.S., or Ph.D. or any course of study beyond a B.A. or B.S. degree.

Upon successful completion of a course, any books paid for by the department must be turned over to the department. Failure to

Prior to the purchase of course books, the officer must inquire whether said books are available from the department. Failure to comply with this paragraph will result in denial of reimbursement for course books."

The Union's last best offer is to retain the status quo and the current contract language. The current contract language provides upon the recommendation of a department head an employee may discontinue the course of instruction on his or her own time and that the employee will bear the cost of tuition, books and student fees for the course of instruction for two courses per semester. It further

provides that the course of instruction must be applicable to the betterment of the employee in his or her employment classification and that a transcript of grades for the course of study be submitted to the department head and after successful completion of the course the City will cancel the amount which it paid for the tuition books and student fees if the employee successfully completed the course or courses. Otherwise, if the employee is not successful in completing the course then the monies advanced by the City would be repayable to the City on an installment plan basis agreeable to both the parties. In lieu of that contract language the new contract language would provide a maximum fund for all of the command officers in the sum of \$1,000 per year. If more than one officers wishes to avail themselves of the fund the amount available will be prorated. Moreover reimbursement would only occur upon the presentation of an original statement of costs together with an original of the officer's transcript evidencing successful completion of the course. Thus, unlike the current contractual language, there would no advance payment subject to reimbursement by the City in the event that the officer did not successfully complete the course. In addition the City would not be responsible for any courses taken by an officer which were beyond a B.A. or B.S. degree.

The City exhibits indicate that the cities of Muskegon and Port Huron do not make any tuition payments while Bay County reimburses tuition for job related classes that have been approved by the sheriff and county executive. The Union exhibits indicate that the cities of Flint and Midland both reimburse for continuing education.

In the case of Bay County the county has agreed to pay in advance the tuition and necessary expenses for enrollment and any job-related educational courses taken by the employee with the prior approval of the sheriff and the ways and means committee. If the employee fails to complete the course or fails to obtain a passing grade the employee is required to reimburse the employer. In the case of the City of Saginaw employees who accumulate approved expenses eligible for tuition reimbursement are reimbursed at the rate of \$200 per year until the reimbursement has been paid. Employees are not allowed to incur future liability against the City until such time as current liabilities had been settled. The City in support of its position indicates that there are a number of grievances arising under the current educational language. In addition the benefit poses problems in the allocation of reimbursement and interpretation of relatedness of courses. The City further maintains that the majority of comparables do not provide open-ended tuition payments. The City also indicates that prior approval by the sheriff and the county executive is required in Bay County.

The Union in its opposition to the City position and its support of retaining the status quo notes that the language in the collective bargaining agreement has been in place since its inception without change. Further the Union maintains that its proposed comparables contain continuing educational language which provides some form of tuition reimbursement. It also notes that some of the comparables communities provide educational incentives. The Union the City of Muskegon will not make a tuition

employees but has an educational bonus or incentive clause for employees who attain certain degrees of education. In addition, the Union notes that contrary to the City exhibit the City of Port Huron collective bargaining agreement provides for 100% tuition reimbursement. In addition, the Bay City patrol officers association has language in their collective bargaining agreement that provides for an annual bank in the sum of \$5,000 (of course it also should be noted that the patrol officers bargaining unit is substantially larger than the command officers bargaining unit, in all likelihood has employees who are younger and therefore still desirous of obtaining various degrees which may well have already been obtained by the command officers).

The burden of proof with respect to this issue is upon the City. Once again they must prove by competent, clear, material and convincing evidence that their proposal more nearly meets the statutory criteria than the proposal of the Union which is simply to retain the status quo. The City has not provided sufficient evidence by way of either external or internal comparables to carry the day on this issue. Moreover, the City already has the right under the current contract language to regulate the cost associated with continuing education. The contractual language requires the recommendation of the department head before an employee may attend a course of instruction. Accordingly, should the City feel that the costs exceed its ability the department head need merely be instructed to deny the request of the employee in question and rather

than recommending that the employee attend the course of instruction recommend against the employee attending a course of instruction.

In addition, the City should encourage its employees to obtain instruction in courses that are related to their job classifications rather than attempting to stifle those accomplishments. The current language would only require a payment for a maximum of two courses per semester. There is no indication as to the number of command officers who have in the past or currently are attending educational courses based upon the recommendation of the department head which would call for reimbursement. However, based upon prior experience it would be fair to say that certainly the entire command officers unit is not simultaneously attending an educational institution. In addition, if the officer does not pass the course the City is entitled to reimbursement of any monies which it has advanced. There is no evidence that in the current collective bargaining agreement or in the past collective bargaining agreement the City actually expended more than \$1,000 during any year for tuition reimbursements for command officers. The City has failed to convince the panel with respect to the criteria set forth in Section 9 of Act 312 and specifically subparagraphs (c), (d) and (f). Accordingly, the last best offer of the City is hereby rejected and the last best offer of the Union is hereby accepted and awarded which shall result in the retention of the current contractual language.

D. Leaves for Conferences

The City proposes as a last best offer that the current contractual language be replaced with the following language:

Leave for conferences - the City will grant an unpaid leave of absence for up to two (2) employees to attend the labor council national conference and up to five (5) employees to attend the labor council state conference providing departmental operations are not adversely affected. Such unpaid leave for conference must be requested to the police chief at least ten (10) calendar days prior to the conference.

The Union proposes that the current contractual language be retained as its last best offer. The current contractual language provides as follows:

The City will grant leaves of absence, with pay, up to two (2) members of the council for five (5) days when elected or selected to attend a by-annual conference of the national council and to five (5) employees for three (3) days when selected or elected to attend the annual conference of the state council, provided leaves are requested in advance. It is further understood that the day off with pay will only be granted to the personnel normally scheduled to work.

It is understood that the five (5) members is the total combined for the patrol officers association and the command officers association.

In support of its position the City maintains the consistency among other City unions is the basis for the proposal to limit paid conference/convention time. The City acknowledges that police patrolmen received paid time for conferences but indicates that it is an issue which will be addressed in current negotiations with the patrolmen's union. The City believes that the elimination of payment for conferences by the City is equitable since it would continue to allow command officers leave time to attend the conferences but merely terminate the City payment when the officers were on leave. The City further maintains that comparables disclose limitations on the number of persons allowed to attend even with pay. All of the

City's comparables according to the City recognized the need to anticipate staffing/coverage needs. Thus the City believes that its last best offer which contains a caveat that departmental operations cannot be adversely affected is equitable and ultimately in the best interest of the City and the community.

The testimony on behalf of the City indicated that its other collective bargaining units do not have paid conference time with the exception of the patrol unit. The City comparable for Bay County indicate that leaves are granted without pay for a period not to exceed five (5) days and the number of officers attending are subject to the approval of the sheriff. The City of Muskegon grants leave with pay for three (3) employees for a maximum of three (3) days. The City of Port Huron allows a leave without pay to one (1) employee.

The Union, in addition to its last best offer requesting the status quo, objects to the determination of this issue based upon its allegations that the issue along with three other issues which have been withdrawn by the City were initially withdrawn during the course of negotiations prior to mediation. Accordingly, the Union takes the position that since the issues were not mediated, they cannot be properly before the panel for determination. In support of its position, the Union quotes Section 3 of Act 312 which provides:

Whenever in the course of mediation of a public police or fire department employees dispute, except a dispute concerning the interpretation or application of an existing agreement (a grievance dispute), the dispute has not been resolved to the agreement of both parties within thirty (30) days of the submission of the dispute to

mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefore in writing, to the other, with a copy to the employment relations commission.

The Union also argues that the case of City of Manistee v Employment Relations Commission, 168 Mich App 622, 425 NW2d 168, 171 (1988) supports its position based upon the following determination by the court:

Thus, on its face, Section 3 of Act 312 does not require the good faith bargaining to impasse prerequisite advocated by the City. Rather, Section 3 requires unsuccessful mediation on an unresolved dispute and a written request for arbitration by either party. Thus, the union concludes that only an issue which has been left unresolved after it has been subject to mediation may be the proper subject of an Act 312 arbitration award. The union notes that neither the petition for Act 312 arbitration nor any other document indicates that the City was maintaining that the issue of leaves for conferences was in fact an issue either during written mediation or at the time that the Act 312 petition was filed.

The Union also refers to a decision by Arbitrator Paul E. Glendon in Act 312 Case No. L93-C-2005 and L93-C-2006 involving the City of Owosso and the Police Officers Labor Council when the same legal issue was brought to his attention. The only difference being in that case it was the City which took the position that the Union was not entitled to arbitrate a retirement issue based upon its failure to include that issue on its petition for compulsory arbitration. In the course of ruling in favor of the City, Glendon stated:

This issue is not arbitratable, 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 therefore 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 term is to be set forth in the written request by which Act 312 arbitration is initiated.

...

Aside from the procedural issue raised by the Union the Union also objects to the position of the City and request that the status quo be maintained based upon its assertion that the City is simply presenting an attack on contractual language which has been in place since the very first collective bargaining agreement. The Union further notes that in its exhibit 3 of its 4 proposed comparables provide paid leaves for conferences. The Union also noted that the City of Muskegon granted leave with pay among the comparables advocated by Bay City. Thus, the Union notes that regardless of what community the panel relies upon, the worse case scenario would be the Bay City command officers currently rank in the middle with regard to pay versus no pay. Since, in its opinion, the City is not suffering any financial difficulties, nor was any evidenced introduced which would indicate that by allowing officers to attend union conferences with pay the efficiency of the department is somehow inhibited. In addition, the Union notes that the current contractual language only allows leaves for conferences when departmental operations would not be adversely affected.

It is the decision of the panel that the last best offer of the Union maintaining the current status quo most merely complies with the statutory requirement. While the internal comparables may support the position of the City no exhibits were introduced by the City which would indicate that all of its unions do in fact have leaves for union conferences without pay. The external comparables

go in both directions but there certainly are a sufficient number of external comparables to justify minimum leaves with pay. The Union has indicated that the command officers in Bay City at most would attend a union conference one time per year for a maximum of two days with a maximum of two command officers being involved. This cannot be found to be an unusual economic burden insofar as the City is concerned. Moreover, in the event that there is an unusual situation which would be exacerbated by granting two command officers two days off to attend the union conference the current contractual language provides that the leaves must be requested in advance and that the leaves will only be granted to personnel normally scheduled to work in terms of pay. There are safeguards involved which would protect the City in the event of an unusual situation which would lead to the City operations and the departmental operations being adversely affected.

The interest and welfare of the public and the financial ability of the City are not adversely affected by the imposition of this award. A comparison of the conditions of employment of employees involved in public employment in comparable communities does not support the position of the City. The overall compensation presently received by the employees when compared to comparable communities or internally certainly would not justify the elimination of this benefit except insofar as other bargaining units have not been successful within the City in obtaining pay.

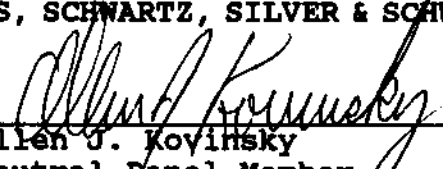
Accordingly, for the reasons hereinabove set forth, the last best offer of the City is rejected and the last best offer of the

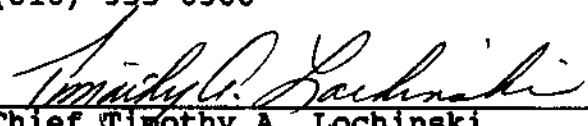
Union is awarded which will retain the current contractual language with regard to Article 5, Section 6(e) of the collective bargaining agreement entitled "Leaves for Conferences".


For the reasons hereinabove set forth, based upon the fact that this issue has been decided on the merits it is unnecessary to decide the procedural issue raised by the Union.

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Panel member Lochinski dissents with respect to allowing the Union to utilize the comparable communities of Midland and Saginaw and further dissents with respect to the elimination of the City of Battle Creek which was proposed by the City of Bay City.

Panel member Lochinski further dissents with respect to the panel's conclusions with respect to the City's ability to pay, the

awarding of wages based on shift differentials, residency, the granting of holiday pay for hours worked at the rate of time and one-half and the Panel's denial of the City proposals on Educational Reimbursement and Leaves for Conferences.

Panel member Kreis dissents with respect to the disallowance of the City of Flint as a comparable community and the allowance of the cities of Port Huron and Muskegon as comparable communities.

Panel member Kreis further dissents on the decisions of the panel with respect to retirement, the denial of the increase in the number of holidays, the denial of the method of payment for an employee who is scheduled to be off on a holiday, and the award to the City of its health insurance proposal.

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