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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ACT 312 ARBITRATION

City of Ann Arbor, Employer

and

Ann Arbor Police Officers Association

Case No. D83 D-1376

January 29, 1985

Panel of Arbitrators

L. Ray Bishop, Union Delegate
Richard Parker, Employer Delegate
Gabriel N. Alexander, Impartial Chairman

FINDINGS, OPINION AND ORDER OF THE ARBITRATION PANEL

Introduction and Background

1.

The City of Ann Arbor (hereinafter "Ann Arbor" or "City") has recognized and bargained with the Ann Arbor Police Officers Association (hereinafter the "Association", or "P.O.A.", or Union") for many years. A two year Agreement, executed in 1981 has expired by its terms June 30, 1983 and the parties were unable to come to agreement on a successor contract, despite the efforts of themselves and mediators appointed by the Commission. Thereafter in due course, the dispute came on for arbitration before the above named panel pursuant to Michigan Public Act 312 of 1969 as amended.

2.

The issues to be decided were identified in pre-trial conferences held on June 6, and July 30, 1984. Evidence was presented at hearings held on the following dates: September 11, 12, 18 and 25, October 16, 23 and 24. Thereafter the parties exchanged their final

offers, following which final arguments were voiced on November 14, all in 1984. The Panel met in deliberative sessions on December 27, 1984. Statutory time limits were waived by the parties as to all aspects of the proceedings.

3.

Although at the outset the parties stipulated that the issues hereinafter discussed were properly before the panel, after the close of evidence, in the final offer and final argument stages the City challenged the authority of the Panel to rule on Item 13, Paid Leave Time for the President of the Union, and Item 14, Leave Time for the Union's Bargaining Committee. Findings and rulings on those items are narrated below.

4.

Here follows a brief identification of the sixteen issues submitted to the Panel in the sequence in which the evidence was adduced. The Article reference are to the 1984-1985 Contract.

First: Non-Economic. The City proposes, the Union opposes, to amend Article XVIII, Section 19 so as to permit the City to withdraw the privilege of Officers to park free at the Fourth and Williams Street Municipal parking structure in downtown Ann Arbor.

Second: Non-Economic. The City proposes, the Union oppposes, that Article IX, Section 3, be deleted or amended so as to restrict or eliminate the right of Officers to bid on a seniority basis for shift assignments.

Third: Non-Economic. The City proposes, the Union opposes, an amendment to Article IX, Section 1 so as to give the City an option to schedule patrol and communications Officers for four ten hour days or five eight hour days. At present the four ten hour schedule is mandatory.

Fourth: Non-Economic. The Association proposes, the City opposes, an addition to Article XVIII, Section 5, so as to rescind the right of the City to suspend or discharge employes who are rendered unfit for duty by job-related causes.

Fifth: Economic. The City proposes, the Association opposes, to alter the contract to redefine "final average compensation" for pension calculations so as to exclude therefrom the lump sum redemption

of accumulated sick leave paid at time of retirement.

Sixth: Economic. General Wage Increases for three contract years, viz, 1983-84; 84-85; 85-86. Only the first year remains in dispute.

Seventh: Economic. The City proposes, the Union opposes, to revise downward the definition and calculation of pay for holidays.

Eighth: Economic. The Union proposes, the City opposes, to increase from three to four per year, Officer's personal leave days, and to permit unused days to be banked.

Ninth: Economic. The City proposes, the Union opposes, to amend Article XIII, Section 5(a) to redefine the number of hours charged for each sick day and to redefine the amount of pay allowed per sick day.

Tenth: Economic. The City proposes, the Association opposes, to reduce from double time to time and one half, overtime premium pay on certain days.

Eleventh: Economic. A City proposal to reduce overtime premium pay from double time to time and one half for working at the University of Michigan football games.

Twelfth: Economic. The City proposes to reduce the minimum pay guarantee for call back to appear in court.

Thirteenth: Economic. The Association proposes, the City opposes, that members of the Union's bargaining team be allowed more time off with benefits to prepare for contract negotiations. The City challenges the Panel's authority.

Fourteenth: Economic. The Association proposes that its President be granted a leave of absence with pay for the duration of his office. The City challenges the Panel's authority.

Fifteenth: Economic. The Association proposes, the City opposes, that back pay awards in both grievance arbitration and contract arbitration proceedings bear interest.

Sixteenth: Economic. Various aspects of retroactive applications of the award of this panel.

Seventeenth: Economic. Contract Duration.

The Statutory Criteria

By force of Section 9 of Act 312, the findings, opinions and order of this panel must be based on the "...following factors", as applicable.

423.239 Findings and orders; factors considered.

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

The parties have addressed, and the panel has considered the evidence and arguments adduced respect to, the foregoing criteria and bases its findings, opinion and orders upon them. It should be self evident that the factors are not susceptible to categorical or mathematical analysis or application. As to some of the issues, the factors are sources of defineable influence. As to other issues, their impact is imprecise and remote. Within the area of allowable arbitration judgement the factors, in the opinion of the Chairman, support the awards hereinafter set forth.

By way of further explanation the Chairman records the following observations.

(a) As to the lawful authority of the Employer. Except as to issues Thirteenth and Fourteenth, Ann Arbor has not contended that the granting of any of the Union's proposals would, if complied with, require the City to engage in acts "ultra vires", or otherwise unlawful and the Panel does not intend by its ruling to require the City to act beyond its lawful authority.

(b) The parties stipulated as to various procedural and substantive aspects of the case, and the Panel has abided with such stipulations.

(c) Ann Arbor expressly waived any reliance on a claim of "inability to pay". It did address in substantial detail, the concept denoted by the phrase "interests and welfare of the public", chiefly with respect to the budgetary concerns of the City for repairs and maintenance of streets, the City's argument being that, all things considered, street maintenance needs were more important than police wage increase needs. It is impossible to quantify that consideration, but we have not ignored it.

(d) The Association listed thirteen communities which in its opinion were "comparable" to Ann Arbor. The City submitted an analysis of various cities and sub-criteria by which comparability might be evaluated. It then applied an arbitrary evaluation formula and concludes that only six communities warranted final consideration as "comparables". The communities cited by the P.O.A. are: Dearborn; Dearborn Heights; Farmington Hills; Livonia; Pontiac; Royal Oak; St. Clair Shores; Southfield; Sterling Heights; Taylor; Troy; Warren; and Westland. All are in the Detroit "Metropolitan Area" as defined by the Michigan Municipal League. They are among the top 15 most populous cities in that area and are similar among themselves and Ann Arbor with regard to crime rates, civilian labor force, SEV (State Equalized Value), government revenues and expenditures, housing figures, personal incomes etc., etc.

The City compiled statistics for 23 communities, including Ann Arbor, across a spectrum of ten specific factors. The communities other than Ann Arbor are: Dearborn; Dearborn Heights; East Lansing; Farmington Hills; Flint; Grand Rapids; Lansing; Livonia; Pontiac; Redford Township; Roseville; Royal Oak; Saginaw; St. Clair Shores; Southfield; Sterling Heights; Taylor; Troy; Warren; Washtenaw County; Westland; Wyoming. The ten factors analyzed by the City are: College town?; City or suburb?; Population; Median household income; Percent

of population over 25 having four years of college education; Total crime rate; Percent population below poverty line; Percent population change 1970-1980; Percent change in S.E.V. 1970-1980; and Relative tax burden. The City concluded on the basis of its study that only the following six communities deserved to be classed as "comparable" for purposes of this case: Lansing; Grand Rapids; Roseville; Southfield; Washtenaw Cty; and East Lansing.

The statute is not specific with respect to the definition of "comparable communities":, and the concept does not lend itself to a two valued orientation. That is to say that one may not reasonably say, "Community X is comparable with Ann Arbor, while Community Y is not". Rather, one can only say, "Community X is more (or less) like Ann Arbor than Community Y".

Insofar as the outcome of this proceeding is concerned, little support for the Association's position can be found by comparing Ann Arbor with other cities because the City is at or near the top of the spectrum of police wages and other conditions of employment. If nothing other than inter city comparisons were relevant, all of the City's proposals would have great, perhaps compelling, substantiation.

(e) The parties agree that this cost of living factor is to be gauged by reference to (and extrapolations from) the Federal Consu ers Price Index for the Detroit area, as distinct from the national index. They did not agree on other aspects of this criterion. Two consumer price indexes are published. One suffixed "(w)" relates to wage earners; the other, suffixed "(u)", pertains to all urban consumers. Both indexes are published monthly. While calculations of percent increase or decrease in cost of living are mathematically precise, different results ensue if different base periods are postulated.

The better bases for comparison, the Chairman believes, are the averages of indexes over periods coextensive with the period during which the adjusted wage rate will prevail. In this case that period being one year, the comparison should be between twelve month averages centered on some representative month. Only the first year, July 1983-June 1984, remains in dispute. The CPI comparison then should be between the twelve month average centered on December 1983 and the like average centered on December 1982.

Other uncertainties impinging on the application of this

factor are (1) The extent to which Ann Arbor living costs differ from Detroit costs. What, if any, extrapolations should be made from the Detroit CPI? (2) What significance ought to be given to the fact that the costs of medical care, which is calculated into the CPI are not shouldered, or only partly shouldered by Ann Arbor Officers, inasmuch as the City provides them with a fringe benefit over and above salaries to cover such costs.

(f) This factor, overall compensation received by employees etc., includes numerous items, viz vacations, holidays and personal leave days, pensions, health and accident medical benefits. Some of those items are themselves in dispute in this proceeding, and some circular reasoning questions arose because of that. On the whole record, the Chairman finds, Ann Arbor Police Officers are well paid and enjoy substantial benefits and stabile employment.

(g) The statute requires consideration of any "Changes in the foregoing circumstances during the pendency of the arbitration proceedings". The City sought to inject a claim of change in circumstance having to do with the non-economic issue numbered Second above, that is, the "shift bid" issue. That matter may be adverted to below.

(h) The last factor mandated by the statute is a catch all, and includes "other factors...normally or traditionally taken into consideration...in...collective bargaining, mediation, fact-finding, arbitration or otherwise...in the public service or in private employment". Normally or traditionally taken into consideration, experience shows is the concept of "intra-plant" inequity, that is the wage relationships among employes of the same employer. Although a passing reference was made to a recent settlement or proposed settlement by another Ann Arbor bargaining unit, no reliable evidence was presented on this point. Another factor traditional only in the steel industry, the Chairman believes, is the "buy back" concept, the exchange of one time benefit such as a specific money bonus for the surrender of a "loose" incentive plan.

So much for general observations as to the criteria by which the Chairman has been guided to his conclusions. Next to be discussed are the specific issues.

First: Non-Economic. Locations of City Paid Parking

The Present Situation. Article XVIII, Section 19, of the 1981 Agreement states,

> "The Employer shall provide parking spaces within a reasonable distance from the police station for the use of employees."

The same or similar provision was in effect since 1973 or prior. In 1973 the City implemented the provision by a Police Department directive to the effect that POA Officers could park free at either of two downtown Ann Arbor municipal parking structures. One, at Fourth and Washington, is two blocks from police headquarters. The other, at Fourth and Williams, is four blocks distant. The Police Department Memorandum is dated November 1, 1973. It describes the procedure to be followed. Since that time the Fourth and Washington structure has become more crowded than the Fourth and Williams structure. The Municipal Parking Authority, which maintains and operates both facilities wants to favor the customers of downtown business enterprises over the competing parking demands of City employes in the use of the Fourth and Washington ramp. The City Administrators Office and other Departments have sought to comply with the Parking Authority. In furtherance thereof, in 1978, the City directed that POA members discontinue parking in the Washington structure. A grievance was filed in protest alleging a violation of the Labor Agreement. The grievance was sustained in arbitration. The Award, dated February 8, 1979, states

> "The grievance is granted. The members of the Ann Arbor Police Officers Association shall be permitted to park their private vehicles, while on duty, at the Washington and Fourth Ave. parking structure as well as the Williams and Fourth Ave. parking structure as they have in the past, prior to October 30, 1979."

The City's Position. The City seeks relief from this Panel in the form of a change in the text of the Labor Agreement. Its final offer on the point is to amend Article XVIII, Section 19 to read

> "The Employer shall provide parking spaces within a reasonable distance from the police station for

the use of employees. The parking structure at Fourth and Williams Street shall be considered as falling within the term "reasonable distance." Provided however, as new parking structures are completed within a closer radius to the police station than the Williams structure, the City will provide parking spaces for the use of employees at one or another of such structures (excluding the Fourth and Washington structure). The changes in this clause shall become effective on April 1, 1985..."

The Associations Position: Maintain the status quo.

Findings. The benefit of parking only two blocks from headquarters (at Fourth and Washington) instead of four blocks (at Fourth and Williams) has not been uniformly available to all POA members, apparently, because not more than 25 parking spaces are available to policemen at any one time, and depending on prior occupancy, individual officers might have to use alternate locations. Officers do not pay parking fees. All other "free" City employe parking has been, or will be, located elsewhere than at Fourth and Washington. The underlying promise expressed in the contract has always been to provide the parking "within a reasonable distance". There have occurred changes in the surrounding circumstances which gave rise to the original use of the Fourth and Washington structure and the City's proposal to provide an alternate site is reasonable in light of those changes. The City's final offer affords POA constituents the benefit of parking reasonably close to headquarters.

Ruling: The City's proposal shall be adopted.

Second: Non-Economic. Shift Bidding

The Present Situation: A system of bidding for shift and off days on the basis of seniority is now in effect pursuant to Article IX, Section 3 which reads in relevant part as follows,

Section 3: It is recognized by the Association that scheduling work is a management right. It is recognized by the Employer that such scheduling must not be arbitrary nor capricious such as changing a member's work schedule from day to day, except during periods of emergency. Employees shall be assigned to their respective shifts on the basis of seniority through the following shift bid procedure.

(a) Shift schedules shall be from 28 to 112 days in length.

(b) Three weeks prior to the posting of a new shift change schedule, the Employer shall furnish the Association President a shift schedule bid form. The Association President or his designee shall be responsible for obtaining shift and days-off bids from employees in the unit in accordance with the restrictions designated below and shall return the completed shift schedule to the Employer not later than fourteen (14) days prior to the shift change.

(1) Of the shift/days off slots available for bid, the Employer retains the right to restrict bids for not more than two slots on the then current day shift and not more than two slots on the then current mid-day overlap shift for those certified police motorcycle operators who do not have scheduled vacations during the shift change period. The restriction of bids for those slots shall be exercised only during those shift change periods where motorcycle patrol is operational. The leave day slots to be utilized for this restricted bid process are those which are established by procedural orders.

(2) The Employer retains the right to assign to the mid-day overlap shift not more than 13 employees in any 56-day period for the purpose of training/orientation. During such 56-day period, such employees will be provided a minimum of 80 hours of training/orientation. The selection, notification, assignment and utilization of these employees during any 56-day period shall be in accordance with procedural order. The assignment of an individual employee's shift for a 56-day period of training/orientation shall be restricted to one occurrence which begins in any July 1 - June 30 period.

The City's Position: The present system of bidding for both shifts and days off constitutes a serious obstacle to the management of the Police Department. Some specified difficulties, attested to by City witnesses are: 1. High seniority officers tend to schedule themselves so that they cannot be paired with less senior officers, leaving the junior men to work together on least desireable shifts and days. 2. A provision included in the 1981 contract aimed at easing problems of scheduling training sessions has been unsuccessful, and required or desired training of officers is overcostly and complicated. 3. Unrestricted shift bidding as practiced enables senior officers to isolate themselves on particular shifts and excape exposure to the whole complex of police responsibilities. 4. Patrol supervisors are assigned to rotating shifts. The shift bid system enables officers to avoid specific supervisors by bidding away from the supervisors shift. 5. Ann Arbor officers may be trained to become specialists in various ways such as: Motorcyclist, Accident Investigator, First Aid Instructor, Firearms Instructor, Special tactics, Helicopter Observer, Communications, Investigative training, or Field training. The shift bid system prevents the scheduling of the specialists against their will to times when they are needed. 6. The system prevents management from scheduling female officers to cover all shifts and results in call back delays and costs on some occasions when female prisoners are searched.

In no other comparable city are officers permitted unrestricted shift bidding rights, Ann Arbor asserts. The scheduling of work, which is a fundamental management right, is not a mandatory subject of bargaining and the right to challenge the Panel's authority on this issue is reserved.

The City modified its original position at the point of final offer, and proposed the following substitute language for Section 3 of Article IX.

Proposed Replacement Provision:

> It is recognized by the association that scheduling work is a management right. It is recognized by the employer that such scheduling must not be arbitrary nor capricious such as changing a member's work schedule from day to day, except during periods of emergency. Employees in the Patrol and Communications Sections shall be assigned to their respective shifts according to the following procedures.

a. Shift schedules shall be from 28 to 112 days in length.

b. Three weeks prior to the posting of a new shift change schedule, the Employer shall furnish the Association President a shift schedule bid form. The Association President or his designee shall be responsible for obtaining shift bids from employees in the unit in accordance with the restrictions designated below and shall return the completed shift schedule to the Employer no later than fourteen (14) days prior to the shift change.

1. Management will assign leave days to all employees. This language supersedes Article XII, Section 4(d) and Section 4(e) regarding vacation scheduling.

2. Employees with less than 5 years seniority shall be assigned their shift and leave days by management.

3. Management retains the right to assign employees to a designated shift for a 56 day period for the purpose of training or orientation. The selection, notification, assignment, and utilization of those employees, during any 56 day period shall be in accordance with procedural order. The assignment of an individual employee shift for a 56 day period of training or orientation, shall be restricted to one occurrence, which begins in any July 1-June 30 period, except if the employee is unable to go through a training program given in one July 1-June 30 period and must complete said training in the next year in addition to the training given in the second year.

4. Because of the need to have female officers available when females are taken into custody, female officers shall be assigned to their shifts by management. Such assignment shall be on the basis of seniority when not in conflict with the other requirements of this section.

5. Officers with specialized training such as motorcycle, Field Training Officer, Special Tactics Unit Officer, Investigations, Communications, Firearms Instructor, Advanced Accident Investigator, etc. may be assigned to their shifts by management, based on the needs of the department.

6. Management retains the right to assign employees to their shift where the employees performance or actions demonstrate the necessity for continuity of supervision. Such assignment will be for a period not to exceed 168 days and shall not be arbitrary or capricious.

7. Employees not covered by the restrictions in subparagraphs 1 through 6 shall be assigned to their shift by seniority.

The Association's Position: The problems discussed by the City are misdirected and elimination of the shift bidding system will not cure them. Once understood, the system is extremely efficient, and contains safeguards which protect both the employer and employees. Latitude in shift assignments and leave days granted to employees is subject to the administration's final approval. The difficulties postulated by the City are imaginary, not real, and the City has failed to deal directly with them within the existing system. No complaints have been brought to the Association by the City regarding specific scheduling problems. Not until the final offer stage of this arbitration did the City come forth with any specific changes or means of dealing with the alleged problems. To sustain it would destroy a valuable seniority right. The status quo should be maintained.

Findings. The evidence is convincing that as it is currently being applied, the existing contract language places substantial obstacles in the way of satisfying the City's legitimate managerial needs. Not fully clear from the evidence and argument, however, is whether the existing language compels the City to let officers specify their off days. I would have thought not, and the Association has acknowledged that the City has some "final approval" authority in scheduling. In my view the City has, or by appropriate change in language should be given, the right to define tours of duty, meaning specific regular

days and hours of work and rest, and that Officers should be given the right to bid for those tours of duty on the basis of their seniority and their ability to perform the work of the specified tour. This is conventional labor contract administration doctrine. Implementation of the following changes in the contract text requires only that Management look carefully and realistically at the operating needs of the department, fit the tours of duty schedules to meet those needs and stand back to permit qualified Officers to enjoy their seniority rank to choose among the tours.

Ruling. The third sentence of the Article IX, Section 3, Preamble shall be changed to read

> "Employes shall be assigned to their respective tours of duty (regular work days and hours) on the basis of seniority and qualifications through the following shift bid procedures."

> Section 3(a) shall be amended to read

> "(a) Tour of duty schedules shall be from 28 to 112 days in length. They shall recite for each tour the regular days of work, the regular hours of work and the days of rest. Bonafide occupational qualifications pertaining to any tour of duty shall be set forth (in summary form) on the bid form."

Third: Non-Economic. Duty Tours-The Four/Ten or Five/Eight Work-Week

The Present Situation: The contract requires that patrol and communications officers to be scheduled ten hours per day and that others be scheduled eight hours per day, as detailed in Article IX, Section 1, which reads as follows,

ARTICLE IX - HOURS

Section 1: The regular work day shall consist of ten (10) hours per day for employees assigned to the patrol and communications divisions. The regular work day shall consist of eight (8) hours per day for employees assigned to the investigation section, staff services, special services, traffic and special assignments. The regular work week shall be forty (40) hours per week. However, this shall not preclude the Employer from reducing its work force in accordance with Section 5 of Article VII.

The City's Position. Ann Arbor is dissatisfied with the practical consequences of the four/ten scheduling requirement. Specific disadvantages alleged are: The employes are less accessible to the employer. Unnecessary overtime must be paid for court appearances and other functions. Increases in leave time and sick time usage are attributed to this scheduling routine. Fatigue is increased by the longer workday. The three day break between duty tours cause loss of contact with ongoing department affairs. Contrary to the Union's claim, the Department will in fact save manpower hours by scheduling smaller (8-hour) duty segments and spreading them across the spectrum of manpower needs. The City should be given the scheduling option, so as to accomodate to special situations in which the four/ten schedule may be feasible. Very few other comparable cities are required to, or do, use the four/ten work week. The original hope that it would be beneficial has not withstood the tests of time. The evidence does not substantiate the Union's assertion that the five/eight schedule pattern increases stress or that the four/ten pattern enhances the personal affairs of the employes.

The City's final offer is to change Article IX, Section 1 to read as follows,

> "The regular work week shall be forty (40) hours per week. Management shall have the right to change the number of days and hours per week an employee shall be assigned, provided that management gives reasonable notice of the schedule change."

The Association's Position. The City's objections to continuation of the present contract provision do not meet the statutory criteria. The public interest has not been demonstrably harmed by the four/ten scheduling practice. Other comparable cities had retained the system. It has been in effect in Ann Arbor since 1973, and should be abandoned only for the most compelling reasons, not proved by the evidence. Contrary to the City's contentions, the four/ten system provides increased efficiency, increased manpower at peak periods, a reduction in response time, increased arrests and better reports. Both the four/ten and five/eight systems have advantages and disadvantages. The notion that overtime is increased by the four/ten plan is not proved. Three comparable cities retain it. The City has failed to explore the possible alternative work week plans in negotiations, and its final offer is so broad as to include much more than remedial steps for proved weaknesses. Any change in established work week schedules will have an adverse impact on the employees. The present language should not be changed.

Findings. While the four/ten schedule has been in effect in Ann Arbor for many years, I am satisfied by the proofs that it is not a type of schedule that is in wide use in municipal police departments in comparable Michigan cities, or more broadly in police administration in the United States. I think there is merit in the argument that a three day hiatus between tours of duty contributes to a loss of continuity of awareness and contact with police department affairs. The number of hours of work per day is not the only measure of effective work as a police officer, I believe. The number of days per week that the officer is on active duty is also significant. The notion is one of degree, of course. But five days activity of the seven day calendar week is measurably more beneficial than four days activity, I believe. And the evidence does not persuade me to agree with the Association's assertion that a ten hour work day provides more and better police patrol coverage than an eight hour work day.

But the City's final offer is not phrased in terms which preserve contractual control over the normal work day and work week. Rather, the phrasing sounds like an extension of the City's assertion that it is a management "prerogative" to schedule hours of work. In my opinion, that notion is not correct, with respect to the definition of the hours per day and days per week that work shall normally be performed. Rather, definitions of normal work days and normal work weeks are appropriate topics for bargaining. I agree

with the Association's assertion that the proposed text opens the door to unilateral changes of days and hours of work without limit.

Ruling. The substance of the City's position may be achieved, with the least amount of change from the present contract text by amending Article IX, Section 1 to read as follows,

> "The regular work day may consist of ten (10) hours, or eight (8) hours for employees assigned to the patrol and communications divisions; provided however that before changing from one to the other the Employer shall announce in writing four months in advance of the change, the specific bids (tours of duty) to be changed. The regular work day shall consist of eight (8) hours per day for employes assigned to the investigation section, staff services, special services, traffic and special assignments. The regular work week shall be forty (40) hours per week. However, this shall not preclude the Employer from reducing its work force in accordance with Section 5 of Article VII.

Fourth: Non-Economic. Unfit for Duty Terminations

The Present Situation. The contract sets forth the following provision with respect to the terminations of Officers who are found to be unfit for duty. Article XVIII, Section 5.

> **Section 5: The Employer reserves the right to suspend or discharge employees who are not physically/psychologically/psychiatrically fit to perform their duties in a satisfactory manner. Such action shall only be taken if a physical/psychological/psychiatric examination performed by a medical doctor/psychologist/psychiatrist of the Employer's choice at the Employer's expense reveals such unfitness. If the employee disagrees with such doctor's/psychologist's/psychiatrist's findings, then the employee at his own expense may obtain an examination from a medical doctor/psychologist/psychiatrist of his choice. Should there be a conflict in the findings of the two (2) doctors/psychologists/psychiatrists then a third doctor/psychologist/psychiatrist mutually satisfactory to the Employer and the Association shall give the employee a physical/psychological/psychiatric examination. The fee charged by the third doctor/psychologist/psychiatrist shall be paid by the Employer, and his findings shall be binding on the employee, Employer and the Association. In the event an employee's seniority is terminated pursuant to this Article, he shall be afforded the opportunity to apply for, and the Employer will attempt to place him in, a position with another department with the Employer and, if he is employed by another department, he shall retain all accrued benefits.**
>
> **(a) This Section shall not preclude the Chief from assigning an employee to light or limited duty if there is available work which the employee can perform without displacing another employee.**

The contract also contains provisions which extend to employes who become disabled due to industrial accident or injury benefits over and above those provided for by the Workmans Compensation statutes. Article XV, Sections 1 and 2 read as follows,

ARTICLE XV - WORK RELATED INJURY

Section 1: Each employee will be covered by the applicable Worker's Disability Compensation Act and the Employer further agrees that an employee whose absence from work is due to illness or injury arising out of and in the course of his employment with the City, and who is eligible for Worker's Compensation, shall, in addition to Worker's Compensation benefits, receive the difference between the Worker's Compensation benefits and his City salary and all fringe benefits (except clothing and equipment allowance) as of the date of injury (excluding overtime) commencing the first actual day on which he is unable to work following the day of injury, and continuing thereafter until the 365th day following such injury. In the event that the employee is receiving income from another job and still remains on Worker's Compensation, the amount of the City's contribution shall be reduced by such an amount so that the total of the Worker's Compensation, City contribution, and outside income will not exceed his City salary as of the date of the injury. Thereafter, an employee injured on the job and eligible for Worker's Compensation shall, in addition to Worker's Compensation benefits, receive 70% of the difference between the Worker's Compensation benefits and his City salary and all fringe benefits (except clothing and equipment allowance) as of the 365th day following said illness or injury (excluding overtime) until such time as the employee either receives a duty disability pension or is able to return to his original classification or another open classification within the Department, if possible, or if not, within the City. If the employee is able to return to his original classification, he shall do so. If the employee is not able to return to his classification but is able to perform work in another open classification, he shall be offered a position in that classification and his pay shall either be commensurate with the salary or wage grade for that position, or 70% of the salary or wage grade of his original classification or position, whichever is higher. Following the 365th day, an employee's health and ability to perform work for the City shall be reviewed. After the 365th day, if the employee is receiving income from another job outside the City and is still on disability leave, the amount of salary paid by the City will be reduced by such an amount so that the total will not exceed 100% of the employee's salary or wage grade. In other words, once the employee earns 30% of his salary or wage grade, any additional money earned will decrease the City's contribution by a like amount. Commencing with the 366th day of illness or injury, the employee may use accumulated sick time in such an amount so as to receive full salary when added to the 70% benefit level, until receiving a disability pension or returning to his original or an open classification.

Section 2: The worker's compensation and pension benefits paid to an employee or retiree shall be coordinated so that the amount of pension paid to that person shall be reduced by the amount of the worker's compensation payments. Upon termination of the period for payment of worker's disability compensation, arising on account of his/her City employment, the employee or retiree shall again receive his/her full periodic pension payments.

Consider the situation where an employe becomes unfit for duty, wherein he or she claims that his/her disability was caused by occupational injury or disease, but the City disagrees and contends that the disability is not compensable under the statute. One such situation did arise during the course of the last contract. The City terminated the employe pursuant to Article XVIII, and declined to provide him with the extended benefits described in Article XV, and persisted in its refusal to do so even after the employe was awarded compensation after a hearing before a referee. The City appealed from that determination.

The Association's Position. The following clause should be added to Article XVIII, Section 5 as Subsection b.

> "This Section does not apply where any physical/psychological/psychiatric disabilities are job related."

The City's Position. Preserve the contract language unchanged.

Findings. The particular case wherein the City challenged the employes claim of occupational disability gave rise to a grievance which was heard and decided in the City's favor by Arbitrator Whiting. It is clear from that decision, and the City's acknowledgements in this Act 312 arbitration that in any case if and when it is finally determined by the Workmans Compensation Commission, or the courts, that an employes disability is compensable under the statute the City must provide the benefits described in Article XV.

The Association's proposed contract clause does not on its face alter the result as above described. To apply the Association's proposed Subsection b requires that a determination be made that the employes disabilities are "job related" (which I take to mean "compensable" under the Statute). Unless it is postulated that such determination shall be made by an arbitrator pursuant to the contractual grievance procedure, rather than the Compensation Commission and the courts, the course of events is not altered or affected. The Chairman is of the opinion that except as expressly otherwise provided by contract, an arbitrator may not make a determination as to whether an injury is compensable under a statute. Indeed it may be beyond the powers of the parties to contract so as to deprive an employe or his dependents from access to the statutory forums for the resolution of Workmans Compensation disputes.

While there are perceivable dislocations and possible hardships associated with the appeal process in the administration of the Compensation Statute (meaning that an employe who ultimately prevails after extended appeals may be deprived of benefits until the litigation comes to an end) I do not think that the Association's proposal will ameliorate that condition.

Ruling. The City's position is sustained.

Fifth: Economic. Sick Leave Roll-In on Retirement

The Present Situation. For most employes the item "final average compensation" which is used in the calculation of retirement pay, includes the lump sum payment made at retirement time to redeem unused sick leave time. By force of Article XIII, Section 7, all employes may at retirement receive a cash payment for up to 960 hours of unused sick leave. By force of a long standing practice which was started before the Association was recognized as bargaining agent, that cash payment is regarded as an item of earnings, which with other earnings is factored in to the item "final average compensation". The practice is at odds with the definition of "average final compensation" in the Michigan Police and Firemen Pension Act (Act 345 P.A. 1937, as amended) set forth in Stover vs St. Clair Shores, 78 Mich. App 409, 1977. There the Michigan Court of Appeals held that the quoted term did not include payments for unused sick leave. Article XIII, Section 7 reads as follows,

> Section 7: **When an employee dies or retires under the Employer's Retirement Plan, any unused accumulation, not to exceed nine hundred and sixty (960) hours of paid sick leave, shall be paid to said retiring employee or his estate at the rate of pay applicable to the permanent classification held by the employee at the time of said death or retirement. For employees not on the department payroll as of January 1, 1982, sick leave payout at retirement will not be included in final average compensation.**

The City's Position. Ann Arbor proposes to eliminate the sick leave redemption payment from pension calculations over a period of time as described in the following amended text,

> Section 7: **When an employee dies or retires under the Employer's Retirement Plan, any unused accumulation, not to exceed nine hundred and sixty (960) hours of paid sick leave, shall be paid to said retiring employee or his estate at the rate of pay applicable to the permanent classification held by the employee at the time of said death or retirement. For employees not on the department payroll as of January 1, 1982, sick leave payout at retirement will not be included in final average compensation.** For employees hired before January 1, 1982, the maximum number of sick leave hours which will be included in final average compensation for pension purposes will be reduced from 960 to 0 in 60 monthly increments of sixteen (16) hours each beginning on June 30, 1986.

Although Ann Arbor did not at any time plead inability to pay the wages and benefits provided by contract, with respect to this pension item it argues that economic relief ought to be given to the City because the City wide pension plan is underfunded actuarily. Retirement benefits afforded Ann Arbor policemen are substantially above any city cited as comparable, are now the highest in the entire state, and would become no lower than second highest upon grant of the City's proposal. The fact that police department executives also receive very high retirement benefits is irrelevant, the City asserts. The solvency of the City pension plan ought to be a concern of the Association members of the Pension Board, as well as others, the City asserts. Periodic increases have been made in pension benefit levels by the Pension Board, the City points out, and the reduction here proposed will soon be overcome by future increases.

The Association's Position. The benefit ought not be reduced, the AAPOA argues because: a) the roll-in practice is of long standing; b) the pension fund is not insolvent or likely to become so, unless the City persists in underfunding it; c) pension increases are not guaranteed by contract, which is unlike other cities; d) this same issue was on the bargaining table in 1981, and was then settled by the proviso that sick leave pay roll-in would not enure to officers hired after January 1, 1982. The City has not pleaded inability to pay, and there is no economic support for its unwillingness to abide by the 1981 settlement.

Findings. This benefit is of long standing. It was created by practice prior to the recognition of the Union, and has been adhered to and confirmed by bargaining except as modified in the last round of negotiations. At that time the parties addressed substantially the same considerations as are now relied on by the City. Ann Arbor does not claim inability to pay. The fact that its pension levels are higher than other cities is a consequence of active or passive collective bargaining in prior years. In due course of time the benefit will disappear because new employes are not entitled to it. Insufficient justification has been proved to now take the benefit away from other employes.

Ruling. The present contract language shall remain unchanged.

Sixth: Economic. General Wage Increases

The Present Situation. The parties are in agreement that wages shall be increased by three percent in each of the second and third years of the contract. Their final offers differ only as to the first year. The Association proposes eight percent. The City proposes four percent.

Findings. The Panel must choose between the final offers, on the overall basis of which one more nearly satisfies the criteria set forth in the statute. Police salaries in comparable cities do not support an increase of eight percent. Ann Arbor's police salary level is well above the mid-range of comparable cities. Neither do cost of living or real purchasing power considerations lend support to the higher increase proposed by the Association. To come closer, and prevail on the choice basis, the Association would have to substantiate increases in costs of living or losses in real purchasing power of six percent or more. The evidence falls well short of meeting that burden. Assuming that there were 5.9% increases along those lines, the City's proposed four percent increase is closer.

Only one item lends support to the Association. That is the fact that other city employes received eight percent increases for the year 1983-1984 by force of three year contracts executed in 1981. But the economic outlook on which the third year wage increase was based in 1981 negotiations did not in fact materialize, and by 1983, when the AAPOA contract came open for bargaining, costs of living increases had slowed down substantially.

The Chairman is of the opinion that Act 312 arbitration rulings ought to be based on circumstances occurring after the execution of the last previous agreement, and should not be influenced by events or factors which occurred prior thereto and which were within the contemplations of the parties at the time of their last contract negotiations. AAPOA and Ann Arbor settled on a two year contract in 1981, and left open for future consideration changes which might occur between 1981 and 1983. By comparisons with three year contracts settled upon in 1981, AAPOA now appears to be disadvantaged, but I think that must be regarded as a normal consequence of the 1981 bargain, and not a basis for a higher increase by this 1983 Panel.

Ruling. The first year general increase shall be four percent.

Seventh: Economic. Holiday Pay Practice

The Present Situation. Officers who work the holidays specified in the Contract, are paid double time for work performed, plus straight time. Officers who are scheduled to work on a holiday but are permitted to take off and those whose scheduled off days coincide with the holidays are paid double time. Officers who would be scheduled on for the holiday but who are away on vacation receive straight time pay for that holiday. The holiday bay benefits accrueing to officers under the current system are greatly in excess of holiday pay benefits afforded officers in comparable cities. The benefits in some respects exceed by substantial margins, the holiday pay benefits accorded Ann Arbor municipal employes other than police.

The City's Position. The City last offer is to continue the present practices, but modified so that employes other than those in the patrol and communications sections will not normally be scheduled to work designated holidays and will be paid straight time for unworked holidays. If unusual circumstances require that such an employee be called in to work on a holiday the employe will be paid double time additionally for the work performed. Article XI, Section 2(d) should be amended to read as follows,

> "Employees outside the patrol sections and the communications section will take the holiday as a day off and will receive forty (40) hours of pay per week. This section does not prevent the employer from scheduling work if advantageous to the department."

The Association's Position. The Association proposes changes in the text of Article XI, which tend towards the changes sought by the City. Its final offer proposes substantial changes in the text, as follows

Article XI, Sections 1,2 and 4

Offer: Change current language to read as follows:

Section 1: (a) All employees shall receive holiday benefits as set forth in this Article for the following holidays or parts thereof and any other day or part of a day proclaimed in writing as a City holiday by the Mayor upon the recommendation of the City Administrator, during which the public offices of the City are closed:

New Year's Day	Traditional
Lincoln's Birthday	
Washington's Birthday	
Good Friday (1/2 day)	
Easter	
Memorial Day	Traditional
Independence Day	Traditional
Labor Day	Traditional
Veteran's Day	
Thanksgiving Day	Traditional
Christmas Day	Traditional
Employee's Birthday	

(b) Patrol and Communications personnel on shift schedules will celebrate the holiday on the actual calendar day. The Chief will determine in advance the day to be celebrated as the holiday by personnel assigned to Training, Special Services, Property, or the Detective Division.

Section 2:

(a) In cases where an employee's assigned leave day falls on a holiday, he or she shall receive a regular day's pay in addition to that week's pay. For example,

an employee who is working the ten (10) hour day when a holiday falls on his or her assigned leave day shall be compensated for fifty (50) hours for that week. An employee who is working the eight (8) hour day when a holiday falls on his or her assigned leave day shall be compensated for forty-eight (48) hours for that week.

In cases where an employee's assigned leave day falls on a holiday, but the employee is called in to work the holiday, he or she shall receive two (2) times the regular hourly rate of pay for the holiday in addition to the appropriate overtime rate of pay for that day.

(b) Employees who are scheduled to work and do work on a holiday will receive two (2) times their regular hourly rate of pay for the holiday in addition to their regular pay for that scheduled day. For example, employees working a ten (10) hour day and working on a holiday shall receive compensation for sixty (60) hours for that week. Employees working a eight (8) hour day and working a holiday shall receive compensation for fifty-six (56) hours for that week.

(c) If an employee is scheduled to work but is on approved time off they will recieve their regular pay for that day plus straight time pay for the number of hours of their approved time off. The employee will be required to use some type of banked time to be off. For example if an employee is scheduled to work but has an approved compensatory day the employee will receive 50 or 48 hours of pay for that week, depending on their regular work schedule, but will use 10 or 8 hours of compensatory time.

(d) Employees assigned to Training, Special Services, Property, or the Detective Division: These employees will not work those holidays specified as "Traditional" under this Article on the days designated as the holiday by the Chief, but will receive the day off with their regular day's pay for that holiday. All other holidays may be worked by these employees if those holidays fall on a regularly scheduled work day.

(i) If an employee under this subsection is scheduled to work a holiday as part of the regular work week, he or she may request the day off as holiday leave. If the request is approved by the Chief

the employee will receive the holiday off with their regular day's pay for that day. The employee would not be required to use any form of banked time in order to be off.

(ii) If an employee under this subsection is scheduled to work and is told not to work, the employee will receive 50 or 48 hours of pay for that week, depending on their regular work schedule, but will not use banked time to be off.

(iii) Employees under this subsection who are called in to work a traditional holiday as specified in this Article shall receive two (2) times their regular hourly rate for the holiday in addition to pay at a rate of time-and one-half (1 1/2) for a minimum of three hours, unless such call back shall extend past three hours, inwhich case he or she shall be paid at the above rates for the exact hours or portion thereof worked.

(e) The terms of this section shall take effect at the point this contract becomes binding on the parties through arbitration award or otherwise.

Findings. The details as to the operation of the system now in effect are complex. The evidence supports the City arguments to the effect that Ann Arbor's holiday pay benefits are substantially in excess of those in comparable cities, and in excess of those enjoyed by other Ann Arbor municipal employees. The change proposed by the City preserves more of the status quo than does the Association's proposal. In final argument the City stated that the concerned employes who might be required to work on a holiday in unusual situations (the technicians, or others working the usual Monday-Friday schedule pattern) would receive, in all, triple time for the holiday, that is, straight time pay for the holiday as such, plus double time for the work performed. Accordingly, the proposed change in text must be understood in that context. The City also stated on the record, as to the amount of notice to be given to the concerned employes that they were being called to work the holiday,

> "We'll amend our final language proposal to give, barring a police emergency, a reasonable notice, which we do. If we know ahead of time that people are going to have to

work, we let them know as soon as possible. It's not been any problem." (R. 126)

As thus qualified, the City's final offer more nearly meets the satutory criteria and it shall be effectuated.

Ruling. Article IX, Section 2(d) shall be amended as proposed by the City.

Eighth: Economic. Personal Leave Days

Present Situation. Three personal leave days per year are available as provided in Article VIII, Section 7, which reads as follows.

Section 7: Employees may take up to three (3) personal leave days in any July 1 through June 30 period, except that only one personal leave day of the three may be taken in May or June. Request for such personal leave days must be made at least twenty-four (24) hours before the day requested. These days will not be charged as sick leave days. Granting of this leave is subject to the operational requirements of the department but shall in no case be denied to avoid creating overtime work.

In the event that new employees are added to the Bargaining Unit, they shall accrue one (1) personal leave day in each third of the first fiscal year of their employment. The three periods are July 1 to October 31, November 1 to February 28, and March 1 to June 30. Once an employee begins working in a second fiscal year, he/she will no longer be considered a new employee for purposes of computing personal leave days.

The Association's Position. Increase the leave days to four and allow banking of unused time. Amend Section to read,

Section 7:

(a) Employees who work a 4/10 schedule may take up to thirty (30) hours of personal leave and employees who work a 5/8 schedule may take up to thirty-two (32) hours of personal leave, to be taken in one day increments, in any July 1 through June 30 period, except that only one day of personal leave may be taken in May or June. Any hours remaining after June 30 will be converted to compensatory time and stored in the employees compensatory time banks.

(b) Request for such personal leave must be made at least twenty-four (24) hours before the day requested. These days will not be charged as sick leave days. Granting of this leave is subject to the operational requirements of the department but shall in no case be denied to avoid creating overtime work.

(c) The terms of this section shall take effect at the point this contract becomes binding on the parties through arbitration award or otherwise.

The City's Position. No increase in amount of time, but permit banking of unused time. Amend Section 7 to read,

> "Employees may take up to three (3) personal leave days in any July 1 through June 30 period, except that only one personal leave day of the three may be taken in May or June. Request for such personal leave days must be made at least twenty-four (24) hours before the day requested. These days will not be charged as sick leave days. Granting of this leave is subject to the operational requirements of the department but shall in no case be denied to avoid creating overtime work. Any unused personal leave days remaining upon completion of the employee's last scheduled work day in the fiscal year shall be converted to compensatory time. This change shall become effective January 1, 1985."

Finding and Ruling. The City's last offer more nearly complies with the applicable statutory factors and shall be included in the contract.

Ninth: Economic. Sick Leave Charging

Present Situation. Application of sick leave benefit is provided for in part by Article XIII, Section 4(a), which reads as follows,

> **(a) All eligible employees with accumulated sick leave credits who meet the qualifications of this Article and who take sick leave pursuant to this Article shall receive the straight time pay they would have received had they actually worked the day taken as sick leave and shall have eight (8) hours deducted from their accumulated sick leave bank per day taken. Hypothetically the procedure shall work as follows: An employee working ten (10) hour shifts, who has available sick leave credits and qualifies pursuant to this Article, takes a day of sick leave. He receives one-fourth (1/4) of his weekly salary as sick pay and has eight (8) hours deducted from his accumulated sick leave bank. An employee working eight (8) hour shifts, who takes a day sick leave, shall receive one-fifth (1/5) of his weekly salary as sick pay and have eight (8) hours deducted from his sick leave bank.**

City's Position. The City proposed to amend this provision so as to assure that the employes bank of unused sick leave is reduced by number of hours of sick leave pay given to him on each occasion. That is not now true as to employes who work a ten hour day. Their banks are decreased by only eight hours. The City's final offer is to change Article XIII, 4(a) to read as follows:

> "Employees with accumulated sick leave credits who meet the qualifications of this article and who use sick leave pursuant to this article shall receive the straight time pay they would have received had they actually worked and shall have a corresponding amount of time deducted from their accumulated sick bank to the nearest half hour."

Association's Position. The Association's final offer is to retain the present contract language.

Findings and Ruling. The text of the City's final offer more nearly complies with the applicable statutory factors and shall be included in the contract as Article XIII, Section 4(a).

Tenth: Economic. Overtime on Sixth and Seventh Day

Present Situation. Article IX, Section 4 provides for premium pay in some circumstances as follows,

> **Section 4: For those employees working the ten (10) hour per day schedule, one and one-half times their regular straight time hourly rate of pay shall be paid for all hours worked in excess of ten (10) hours in any work day and for all hours worked on the fifth day of the employee's scheduled work week and two (2) times the employee's regular straight time hourly rate shall be paid for all hours worked on the sixth and seventh day of the employee's scheduled work week.**
>
> **For those employees working the eight (8) hour per day schedule one and one-half times their regular straight time hourly rate of pay shall be paid for all hours worked in excess of eight (8) hours in any work day, and for all hours worked on the sixth work day of the employee's scheduled work week and two (2) times the employee's regular straight time hourly rate shall be paid for all hours worked on the seventh day of the employee's scheduled work week.**

City's Position. The City's final offer is to change Article IX, Section 4 to read as follows.

> "Except as provided in Article X, Section 4, employees shall earn overtime pay for all time worked in excess of their normal work day and work week at the rate of one and one-half (1 1/2) times their regular straight time rate. Provided, however, that if an employee has worked at least eight (8) hours per day on each of the first six (6) days of such employee's scheduled work week, such employee shall earn two (2) times such employee's regular straight time hourly rate for all noncourt related hours worked on the 7th day of the employee's scheduled work week. This change shall become effective January 1, 1985."

Association's Position. The Association's last offer is to change Article IX, Section 4 as follows,

Section 4: For those employees working the ten (10) hour per day schedule, one and one-half times their regular straight time hourly rate of pay shall be paid for all hours worked in excess of ten (10) hours in any workday and for all hours worked on the fifth and sixth day of the employees' scheduled work week. The employer must first take volunteers for work on the fifth and sixth days before ordering employees to work on those days. Two times the employee's regular straight time hourly rate shall be paid for all hours worked on the seventh day of the employee's scheduled work week.

[The remainder of this section would remain the same as current contract language except that the following would be added as the final paragraph of Section 4]

The terms of this section shall take effect at the point this contract becomes binding on the parties through arbitration award or otherwise.

Findings and Ruling. The Association's position more nearly complies with the applicable factors prescribed by the statute and shall be incorporated in Section 4 of Article IX.

Eleventh: Economic. Overtime: Football Games

Present Situation. Premium pay for working football games is provided for by Article IX, Section 5 as follows,

> Section 5: Employees working other than regularly scheduled hours will receive two (2) times their regular hourly rate when working football games at the U of M stadium.

City's Position. The City proposes to delete this clause.

Association's Position. Maintain the status quo.

Findings. Deletion of the clause will not affect the application of other premium pay criteria to work at football games. The City's position more nearly complies with the applicable statutory factors.

Ruling. Article IX, Section 5 shall be deleted from the contract.

Twelfth: Economic. Court Time Call Back Pay

Present Situation. Minimum guaranteed call out pay is provided for in Article X, Section 4 as follows,

Section 4: If an employee is called back to work on any other shift, he shall be compensated for a minimum of three (3) hours overtime unless such call back shall extend past three (3) hours, in which case he shall be paid overtime for the exact hours or portion thereof worked. This provision includes, but is not limited to, returning to work for court appearances. If an employee is called back within eight (8) hours of the end of his regular shift, he shall be compensated at the rate of double time. This shall not apply to shift change days.

City's Position. The City's final offer is that Section 4 should be amended by addition of the following sentence,

> "Effective January 1, 1985 employes returning to work for court appearance shall be compensated for a minimum of two (2) hours overtime."

Association's Position. The Association's final offer is to maintain the present contract provision unchanged.

Finding and Ruling. The Association's position more nearly complies with the applicable statutory factors. Article X, Section 4 shall remain unchanged.

Thirteenth: Economic. Release Time for Union President

The Present Situation. Some time off with pay is afforded to elected Union officials by force of Article XIII, Section 4 which reads as follows,

Section 4: The City will allow officers who are elected officials of the AAPOA reasonable time off the job with pay to attend to business relating to their official functions, as outlined below. Such time off will be granted at the discretion of the Chief of Poli upon reasonable notice by written request to permit proper evaluatio and manpower consideration.

1. External Affairs (Seminars of Association choice)

   a. Monthly Board Meetings
   b. Special Training Seminars
   c. Annual conference (5 days will be allowed only one officer for the term of the contract.)
   d. Special Officer Maintenance Assignments of Short Duration.

2. Internal Affairs (AAPOA)

   a. Monthly Membership Meetings
   b. Special Committee Meetings
   c. Special Training Seminars
   d. Executive Board Meetings
   e. One (1) hour per day for Internal Association Affairs.

The Association's Position. Increase the release time for the President of the Union as provided in proposed new Paragraph 3 in Article VIII, Section 4, to read as follows,

> 3. Recognizing the need for coordination and cooperation in the implementation and execution of this Agreement and the complex nature of this obligation, and in order to more fully meet these needs, the Association officials designated as the President, Vice-President in charge of Internal Operations, and the Vice-President in charge of Bargaining, shall be accorded the rights as set out in this section in addition to the rights set out elsewhere in this Agreement.

(a) The President and two Vice-Presidents shall have the right of super-seniority in the shift bid sign-up and vacation sign-up as provided for in departmental orders.

(b) Release Time.

(i) The President shall be allowed release time from his or her regular duties with the police department, up to 1040 hours per fiscal year, to attend to the business of the Association. The Association shall reimburse the Employer at a straight time hourly rate for those hours taken by the President under this provision.

(ii) The President shall return to regular duties in the event of an emergency, as defined in this Agreement, unless it is impracticable to do so.

(iii) During those hours spent on Association release time the Employer will continue to provide all fringe benefits and pension contributions as though the President were working regular duties. The President will continue to accrue seniority during release time as though the President were working regular duites.

(iv) Written notice will be forwarded to the Chief twenty-four hours in advance by the Association President when utilizing this provision, stating the release time being taken and the reason for such release time. In no event can the release time be denied by the Employer other than in cases of emergency, as defined in this Agreement.

The City's Position. Maintain the status quo. Moreover, this issue is not properly before the Panel because it involves only a permissive subject of bargaining which cannot be bargained to impasse, and therefore cannot be carried into Act 312 arbitration. The Michigan Employment Relations Commission has so ruled in two cases, POAM vs. Redford Twp. Case No. CU82-L89 and IAFF vs Detroit, Case No. C78-B30.

Findings. The jurisdictional question raised by Ann Arbor's "moreover" argument was not made known prior to the presentation of final

oral arguments in this matter, at which time the Chairman expressed some reservations as to its validity and strength. The City expressed regret at not having disclosed it earlier in the proceeding, but expressed the belief that it must be raised.

Subsequent study of the authorities cited convince me that the jurisdictional point is valid, and that an award in favor of the Association on the merits could not be enforced. As I understand the rulings by M.E.R.C., only issues which properly may be, and which in fact are, bargained to impasse, may be submitted to Act 312 arbitration, and pay or release time for Union representatives do not come within that requirement.

> "Payment for time spent by bargaining unit employes on behalf of their Union in collective bargaining is not a mandatory subject of bargaining... The Union may not bargain to impasse over the subject."
> (P.O.A.M. vs Redford Twp.)

and

> "Resort to Act 312 arbitration is an explicit recognition that the parties are at an impasse. If insistence on one of several unresolved issues is to the point of impasse, such insistence will be found unlawful when it concerns a non-mandatory subject of bargaining." (I.A.F.F. vs Detroit)

In the latter case the Commission ordered the party (in that case the Employer) who sought to raise a non-mandatory issue in arbitration to withdraw the issue from the arbitration.

I think this Panel is obliged to refrain from ruling on the merits of the issue.

Ruling. This issue is not within the jurisdiction of the Panel.

Fourteenth: Economic. Bargaining Time for Union Committee

Finding and Ruling. This issue comes within the same considerations as to jurisdiction raised by the City and discussed in issue Thirteen. The Panel's ruling must be the same. The issue cannot be resolved on its merits within the authority of this Panel.

Fifteenth: Economic. Interest on Arbitration Awards

The Present Situation. Nothing in the contract or the existing practices of the parties fixes a rule, pro or con, regarding the payment of interest on arbitration awards, either grievance arbitration or interest arbitration pursuant to Act 312. As a background matter, there is some precedent in grievance arbitration awards, and in text writer comment, to the effect that arbitrators have inherent authority by virtue of their office to include interest as an item of compensation in awards. Also by way of background, it is fairly widely understood that in practice back pay awards in grievance arbitration cases do not uniformly include monetary interest additions. [I am aware that there may be occurring a rise in the number of instances to the contrary, thus coming closer to the practice of customary inclusion of interest found in the proceedings of administrative agencies. (e.g. EEOC, NLRB)]

The Association's Position. The contract Article VII, Section 13 should be amended to provide affirmatively for the inclusion of interest in cases of "inappropriate" terminations, and in cases of late contract settlements. The text of the Association's last offer is as follows,

> Section 13: No claim for back wages shall exceed the amount of wages the employee would otherwise have earned, except in cases of innappropriate terminations and late contract settlements. When back wages are claimed in cases of innappropriate termination, an arbitrator shall have the authority to order that interest be paid on back wages awarded. When back wages are owed to employees as a result of late contract settlements, interest shall be paid to the employees on the back wages at an annual rate of five and one-quarter percent (5 1/4%).

The City's Position. As to interest on wage awards pursuant to Act 312 arbitration, the City cites Detroit vs. D.P.O.A. 408 Mich. 410 (1980) wherein it was found that inasmuch as the question of interest is purely statutory and no statute authorizes the addition of interest to wage increases awarded in Act 312 arbitrations, interest may not be awarded. As to the granting of interest in grievance arbitration awards, the City acknowledges that a "grievance

arbitrator has the inherent power to grant such interest if the facts of the specific case warrant the same because the City acted in bad faith", but argues that a uniform requirement of interest for any "inappropriate" termination is arbitrary and punitive without regard to the facts of a specific case.

Findings. With respect to the question of interest on the wage increases mandated by this Act 312 proceeding, while I think there is strength to the Union's position, I am convinced that this Panel is without authority to grant interest. What has occurred is that the City has enjoyed the use of money which it now agrees or this Panel agrees should be paid as retroactive wage increases, and the interest earned offsets its costs. On the other hand, the matter may be viewed as a question of "time value" in the payment of money, a universal monetary concern and that value may be factored into the calculation of the amount paid. Thus the four percent increase for the year 1982-1983, herein awarded, is worth less when paid (as a lump sum) in 1985 than if paid incrementally in 1982-83. But that difference is relatively small, and does not, in my opinion, shift the balance of considerations in favor of the 8% increase proposed by the Union.

With respect to the request for mandatory awards of interest in grievance awards where it is found that a termination was "inappropriate", I think the relevant criteria do not support the Union's position. Similar clauses are not shown to exist in the contracts of comparable cities. It is clear that grievance arbitrators, by virtue of their office, have the authority to award interest. In my view, grievance arbitrators ought to have broad remedial powers, to be exercised on a case by case basis. That is substantially the point of view taken by the City in this proceeding.

Ruling. The amendment proposed by the Association is rejected.

Sixteenth: Economic. Retroactivity

The Present Situation. This issue involves only the timing of the effectuation of the changes in the Collective Bargaining Agreement which are defined by the ruling of this Panel. The statute recites,

> "Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding."

The City's Position. Wage increases and other benefits should be made retroactive to the beginning of the period in dispute, July 1, 1983, but only with respect to employes who are now, as of the date of the issuance of this award, on the payroll in the bargaining unit. That is, persons who left the bargaining unit since July 1, 1983 should not be entitled to any increase for the period they were employed. Article XIX should read as follows,

> This Agreement shall become effective as of the date of the arbitration award in MERC - ACT 312 Case No. D83-0-1376 and shall remain in full force and effect until the 30th day of June, 1986, and from year to year thereafter unless either party hereto serves a written notice upon the other at least sixty (60) calendar days prior to the expiration date or sixty (60) calendar days prior to the ex piration of any subsequent automatic renewal period of its intention to amend, modify, or terminate this Agreement.
>
> The wage increases resulting from the salary range changes in Appendix A shall be retroactive to the effective dates indicated. There shall be no retroactive adjustments for any former employee. All other economic or noneconomic related changes in the Agreement shall become effective as of the date of the "Act 312" award or the effective date indicated in the last best offer whichever is later.

The Association's Position. There should be no limits on the retroactive application of increases in wages and benefits. All bargaining unit members employed on July 1, 1983 should be made whole for all time worked by them in the Unit.

Findings. This issue was stipulated by the parties to be an economic issue, the effect of which is to confine the Panel to a choice between the final offers as made, without modification or change by the Panel.

Fundamentally, inasmuch as the rationale of Act 312 Arbitration is that parties covered by it must engage in collective bargaining but must go to arbitration rather than engage in strike or lockout, statutory arbitration, with all the delays and uncertainties that it entails, becomes a foreseeable element in the collective bargaining process. Issues of retroactivity as to wage and benefit increases, the Chairman believes, seldom arise in strikes or lockouts of short duration. Rather, they arise and increase in intensity when final settlement is long delayed.

In this proceeding, the nineteen months have elapsed between the beginning of the dispute period and the issuance of this award. Nevertheless, the parties are in substantial agreement as to retroactivity, and differ only with respect to whether persons who left the bargaining unit during the time the dispute was unresolved should be afforded the benefits of retroactive application of improved wages and benefits. The only consideration advanced to the contrary by the City is that had there been granted any decreases of benefits, the City could not recoup them. But there is no certainty as to that. While the notion of decreases in benefits as a consequence of collective bargaining is viable, as is evidenced by the current spate of "concession bargaining", I am unaware of any trend in experience towards retroactive application of reductions in benefits. Accordingly, the City's reasoning does not persuade me. To the extent that the statutory criteria shed any light on the issue, I think they favor the position of the Association.

Ruling. Changes in wages and benefits shall be effective July 1, 1983. All non-economic changes shall be made effective as of the date of this decision.

Seventeenth: Economic. Duration of the Contract

The Present Situation. During the course of the proceedings, the parties came to agreement that the contract period covered by this Award shall be for three years beginning July 1, 1983 and ending June 30, 1986. That being their stipulation, the Panel rulling affirms it.

Ruling. The contract shall be effective for three years beginning July 1, 1983 and ending June 30, 1986. It will continue in effect thereafter on the same terms as to notice as set forth in the previous contract, viz

ARTICLE XIX - DURATION OF AGREEMENT

THIS AGREEMENT shall become effective as of the 1st day of July, and shall remain in full force and effect until the 30th day of June, and from year to year thereafter unless either party hereto serves a written notice upon the other at least sixty (60) calendar days prior to the expiration date or sixty (60) calendar days prior to the expiration of any subsequent automatic renewal period of its intention to amend, modify or terminate this Agreement.

Eighteenth: Other Matters and Award of the Panel

Except for the issues submitted to the Panel, the parties stipulated, no dispute exists as to any or all of the terms and conditions of their Collective Bargaining Agreement for the term stated, July 1, 1983 to June 30, 1986

Each and all of the rulings set forth above constitute the majority decisions of the Panel.

As to the following items, Employer Panel Delegate Parker CONCURS, and Union Panel Delegate Bishop DISSENTS:

FIRST:	Location of City Paid Parking.
SECOND:	Shift Bidding.
THIRD:	Duty Tours - The 4/10 or 5/8 Workweek.
FOURTH:	Unfit for Duty Terminations.
SIXTH:	General Wage Increase.
SEVENTH:	Holiday Pay Practices.
EIGHTH:	Personal Leave Days.
NINTH:	Sick Leave Charging.
ELEVENTH:	Overtime - Football Games.
THIRTEENTH:	Release Time for Union President.
FOURTEENTH:	Bargaining Time for Union Committeemen.
FIFTEENTH:	Interest on Arbitration Awards.

As to the following items, Union Panel Delegate Bishop CONCURS, and Employer Panel Delegate Parker DISSENTS:

FIFTH:	Sick Leave Roll-in on Retirement.
TENTH:	Overtime on Sixth and Seventh Day.
TWELFTH:	Court Time Callback Pay.
SIXTEENTH:	Retroactivity.

As to the following item(s) both the Employer and Union Delegates CONCUR:

SEVENTEENTH:	Duration.

Dated this 29th day of January,
1985 at Southfield, Michigan

Gabriel N. Alexander, Impartial Chairman

L. Ray Bishop, Union Delegate

Richard Parker, Employer Delegate