

IN THE MATTER OF:

CITY OF TRENTON,

Public Employer,

-and-

MERC Case No. D-03 D-0798

MICHIGAN ASSOCIATION OF POLICE,

Labor Organization.

ACT 312 ARBITRATION OPINION AND AWARD

APPEARANCES:

Steven H. Schwartz, Esq.
(For Public Employer City of Trenton)

Fred Timpner, Executive Director
(For Labor Organization
Michigan Association of Police)

PANEL DELEGATES:

Steven H. Schwartz
(For Public Employer City of Trenton)

Scott Reinacher
(For Labor Organization
Michigan Association of Police)

PANEL CHAIRPERSON:

Karen Bush Schneider, Esq.

DATES OF HEARING:

September 8, 12, 16, 30, and October 17, 2003

INTRODUCTION

The Labor Organization, Michigan Association of Police (hereinafter referred to as "MAP"), filed a petition for Act 312 arbitration with the Employment Relations Commission, Michigan Department of Consumer & Industry Services, on or about April 9, 2003. The petition covered a bargaining unit described as all sergeants, corporals, and patrol officers employed by the Public Employer, City of Trenton (hereinafter referred to as the "City").

Pursuant to 1969 PA 312, an arbitration panel consisting of Karen Bush Schneider, Esq., Panel Chairperson, Scott Reinacher, Delegate for MAP, and Steven Schwartz, Esq., Delegate for the City, was constituted to conduct the hearing in this matter. Hearings were held on September 8, 12, 16, 30, and October 17, 2003, at the offices of the Michigan Employment Relations Commission, 3026 West Grand Boulevard, Suite 2-750, Detroit, Michigan.

Following the conclusion of the evidentiary hearing, Last Best Offers were submitted by the parties on or about October 31, 2003. Post-Hearing Briefs were exchanged on or about December 22, 2003. The arbitration panel convened on February 6 and 11, 2004, to deliberate on the outstanding issues in the case.

After due deliberation on the disputed issues, the panel issues this Award.

THE FINAL OFFERS OF THE PARTIES

The Final Offer of the Labor Organization, Michigan Association of Police:

Public Act 312

City of Trenton

vs

Michigan Association of Police

Case No. D03 D-0798

Union Last Best Offer of Settlement

Union Issue No. 1 - Pensions

Current contract language. Article XXVI Section 8 Page 27.

Section 8

The multiplier shall be 2.5% for each year of service, up to a maximum of 80%.

The computation of the Final Average Compensation (FAC) will include only base annual wage, holiday pay, overtime pay and unused vacation leave. The payments received for the following will not be included in the FAC:

Unused Sick Leave

Longevity

Gun Allowance

Clothing/Cleaning Allowances

Effective January 1, 1996, new employees will not be eligible for the Act 345 Police and Fire Retirement System. Employees hired after January 1, 1996, will be required to enter a defined contribution retirement system through the ICMA Retirement Corporation. Operating under Section 401 (a) of the Internal Revenue Service Code, all employee contributions will be made on a pre-tax basis. The employee must contribute 6% and the City must contribute 12% of the employee's base wage, excluding overtime and other special payments.

Employee and City contributions into the defined contribution retirement system will begin upon the successful completion of the employee's probationary period.

In accordance with the guidelines and requirements of the Internal Revenue Service, the employee will be permitted to make additional contributions into the defined contribution system on a post-tax basis.

The portion of the contributions made by the City will not be available to the employee until the completion of sixty (60) months of service with the City of Trenton.

The City shall provide disability benefits to employees in the defined contribution pension plan system in an amount equal to the benefit the employee would have received if they were in the defined benefit pension system. Such disability benefits are subject to coordination with all other benefits received, including defined contribution and workers compensation benefits, if applicable.

Current employees; with less than five years of service may elect to be covered by this plan rather than the Act 345 pension plan. Employees wishing to switch plans must inform the City of their decision to do so by October 1, 1996. Such transfer will take place in accordance with the provisions to be identified and approved by the City and Union.

Effective January 1, 1996, all new employees must be at least 55 years of age and have at least 20 years of service before being eligible for any post retirement benefits.

Union Last Best Offer of Settlement

Section 8

The multiplier shall be 2.5% for each year of service, up to a maximum of 80%.

The computation of the Final Average Compensation (FAC) will include only base annual wage, holiday pay, overtime pay and unused vacation leave. The payments received for the following will not be included in the FAC:

Unused Sick Leave
Longevity
Gun Allowance
Clothing/Cleaning Allowances

Delete rest of Section 8 and replace with new Section 9.

Section 9

Effective 7-1-04 all employees hired on or after January 1, 1996, shall be eligible for the Act 345 Police and Fire Retirement System as outlined in this section.

All benefits of the current Act 345 Police and Fire Retirement System currently in effect for the City of Trenton shall also be effective for the employees hired on or after January 1, 1996 except as amended in this article.

Final Average Compensation (FAC) shall be based on the average of the highest annual compensations during a period of three (3) years of service contained within the last ten (10) years of service. FAC shall be based on base pay only.

A member who has twenty-five (25) or more years of service and has attained the age of fifty-five (55) may leave the service and receive the full retirement benefits payable throughout his/her life as provided, regardless of age.

The pension multiplier shall be 2.2% for credited time for service.

There will be no post retirement increases for anyone retiring from this group.

The Employer contribution shall be twelve (12%) percent of the Employee's base pay.

The Employee's contribution shall be 6% to begin with and then set each year thereafter, by the pension board according to the annual actuarial report.

The Employer shall not be responsible for any unfunded accrued liability, if any, as a result of reopening the Act 345 pension system.

At the time of the change, July 1, 2004, all post January 1, 1996 employees will automatically be converted into the Act 345 pension system with no unfunded accrued liability for prior years of service. That is, their pension credits will start as of July 1, 2004.

Each employee shall have the option to buy an amount of time not to exceed their original date of hire, for purposes of retirement. Any employee wishing to exercise this option must do so prior to June 30, 2005. The employee shall pay 100% of the costs associated with the time.

Union Issue No. 2 - Dental Insurance. Article XIV Section 3 paragraph A and B.

Current contract language.

Section 3 - Dental

- A. The City shall provide and pay the full cost of a full family dental insurance program as set forth in the insurance policy covering all maintenance procedures to eighty percent (80%) of reasonable and customary care.
- B. Additional benefits shall be provided at seventy-five percent (75%) for restorative work, except for dentures, which will remain at fifty percent (50%), subject to a Fifty Dollar (\$50.00) calendar year deductible per individual with a maximum of One Hundred Fifty Dollars (\$150.00) per family. The City shall provide benefits for Orthodontia, subject to a Fifty Dollar (\$50.00) deductible, with lifetime benefits of One Thousand Dollars (\$1,000.00).

Union Last Best Offer of Settlement

Section 3 - Dental

- A. The City shall provide and pay the full cost of the Delta Dental full family dental insurance program as set forth in the insurance policy Plan B, covering all maintenance procedures to eighty percent (80%) of reasonable and customary care.

	<u>Delta Premier or Class I Benefits</u>	
	<u>DPO Member Dentist</u>	<u>Nonparticipating Dentist</u>
	<u>Delta Dental Pays</u>	<u>Delta Dental Pays</u>
Diagnostic Services	100%	80%
Preventive Services	100%	80%
Emergency Palliative Treatment	100%	100%
<u>Class II benefits</u>		
Radiographs	80%	80%
Oral Surgery	80%	80%
Minor Restorative Services	80%	80%
Periodontics	80%	80%
Endodontics	80%	80%

Class III benefits

Prosthodontics	75%	75%
Major Restorative Services	75%	75%

Class IV benefits

Orthodontics (to age 19)	50%	50%
Deductible limitations -	None	

Maximum payment - \$1,000.00 per person total per calendar year for Class I, Class II and Class III Benefits. Delta Dental's payment for Class IV benefits will not exceed a lifetime maximum of \$1,000 per eligible person.

Union Issue No. 3 - Wages**Union Last Best Offer First Year**

Effective 7/1/02 a 2.5% wage adjustment to all classifications and all steps of the wage scale. Retroactivity will be effective 1/1/03.

Union Last Best Offer - 1st Year Wages**Article XXIV - Wages**

Section 1 Increase 7/1/02 2.5% wage increase at all steps of the wage scale and for all classifications covered by the bargaining unit. Retroactivity will be effective 1/1/03.

	7/1/02 to 6/30/03
<u>Patrol Officer</u>	
Start	\$36,905.38
1 Year	\$39,365.74
2 Year	\$44,286.46
3 Year	\$49,207.18
5 Year	\$50,683.18
8 Year	\$51,250.00
<u>Corporal</u>	\$52,787.50
<u>Sergeant</u>	\$54,620.20
	\$55,112.20
<u>Staff Sergeant</u>	\$56,588.20
	\$57,080.20

Union Issue No. 4 - Wages

Union Last Best Offer - 2nd Year Wages

Effective 7/1/03 a 2.0% wage adjustment to all classifications and all steps of the wage scale.

Union Last Best Offer - 2nd Year Wages

Article XXIV - Wages

Section 1 Increase Effective 7/1/03 2.0% wage increase at all steps of the wage scale and for all classifications covered by the bargaining unit.

	7/1/03 to 6/30/04
<u>Patrol Officer</u>	
Start	\$37,643.49
1 Year	\$40,153.05
2 Year	\$45,172.19
3 Year	\$50,191.32
5 Year	\$51,696.84
8 Year	\$52,275.00
<u>Corporal</u>	\$53,843.25
<u>Sergeant</u>	\$55,712.60 \$56,214.44
<u>Staff Sergeant</u>	\$57,719.96 \$58,221.80

Union Issue No. 5 - Wages

Union Last Best Offer Third Year

Effective 7/1/04 a 3.5% wage adjustment to all classifications and all steps of the wage scale.

Union Last Best Offer - 3rd Year Wages

Article XXIV - Wages

Section 1 Increase Effective 7/1/04 3.5% wage increase at all steps of the wage scale and for all classifications covered by the bargaining unit.

7/1/04
to
6/30/05

Patrol Officer

Start	\$38,961.01
1 Year	\$41,558.41
2 Year	\$46,753.21
3 Year	\$51,948.01
5 Year	\$53,506.23
8 Year	\$54,104.63

Corporal \$55,727.76

Sergeant \$57,662.55
\$58,181.95

Staff Sergeant \$59,740.16
\$60,259.57

Employer Issue No. 6 - Personal Leave Days

The Employer proposes that the use of all personal leave days be subject to minimum shift complement.

Current Language: Article X Section 2 and Section 3.

Section 2 - PERSONAL LEAVE DAYS - CONNECTED TO SICK LEAVE

If an employee uses five (5) days or less sick leave in any one-accrual period (March 1 to March 1 of any given year) the employee shall be entitled to three (3) personal leave days.

These personal leave days will not be chargeable against the employee's regular sick and/or vacation accrual. Said personal leave days shall be scheduled and taken only on the authorization of the Chief of Police without regard to shift complement.

Section 3 - PERSONAL LEAVE DAYS - NOT CONNECTED TO SICK LEAVE

All employees covered under this contract will receive four (4) additional personal days not connected to sick days. Said personal leave days shall be scheduled and taken only on the authorization of the Chief of Police without regard to shift complement.

Union Last Best Offer of Settlement - Employer Issue No. 6 Personal Leave Days

Delete Sections 2 and 3 of Article X and replace with the following:

The same language agreed to in the Trenton Inspectors and Lieutenants Association 2002-2007 collective bargaining agreement.

Employees covered by this contract shall be entitled to six (6) personal days per year. The City agrees to add one (1) additional personal leave day if five (5) or fewer sick days are taken in preceding annual sick leave period.

Personal days are classified as either "Personal Days" or "Super Personal Days" and may be utilized as follows:

1. **Personal Days-** Two (2) personal days per year are subject to scheduling requirements and may only be taken upon authorization of the Chief of Police or Deputy Chief. These personal days may be subject to minimum shift complement,
2. **Super Personal Days:** The remaining four (4) or five (5) personal days may be used at the sole discretion of the employee and are no subject to minimum shift complement. These personal days are not subject to approval by the Chief of Police.

Employer Issue No. 7 - Hours of Employment: Modify Article VIII, Section 2 (D) and (F)

Current contract language. Article VIII.

Section (D)

It is the intent of the City and the Association to provide a method of according employees (excluding probationary employees) an equal opportunity to work such overtime, as the City deems necessary to maintain a safe and orderly police operation. The overtime shall be applied in a consistent and equitable manner. The City shall exercise good judgment [sic] in contacting employees. Probationary employees will be considered for overtime in the event of an emergency and only after all eligible employees have been contacted. At the end of the probationary period, the employee shall be added to the overtime chart with an average in overtime hours and all overtime hours worked while on probation shall be added to the averaged hours.

Section (F)

The City will designate the number of employees working a shift to maintain safe and orderly police protection. New probationary officers shall not be considered as part of the minimum shift complement until such time as the officers satisfactorily complete the department's Field Officer Training (FTO) program, which will be not less than eighteen (18) weeks in duration. Vacancies that are filled will be filled according to the overtime schedule, with the low employee in hours to be called first. New probationary officers shall not be eligible to fill these overtime assignments.

Union Last Best Offer of Settlement

No change in status quo. Article VIII

Section (D)

It is the intent of the City and the Association to provide a method of according employees (excluding probationary employees) an equal opportunity to work such overtime, as the City deems necessary to maintain a safe and orderly police operation. The overtime shall be applied in a consistent and equitable manner. The City shall exercise good judgment (sic) in contacting employees. Probationary employees will be considered for overtime in the event of an emergency

and only after all eligible employees have been contacted. At the end of the probationary period, the employee shall be added to the overtime chart with an average in overtime hours and all overtime hours worked while on probation shall be added to the averaged hours.

Section (F)

The City will designate the number of employees working a shift to maintain safe and orderly police protection. New probationary officers shall not be considered as part of the minimum shift complement until such time as the officers satisfactorily complete the department's Field Officer Training (FTO) program, which will be not less than eighteen (18) weeks in duration. Vacancies that are filled will be filled according to the overtime schedule, with the low employee in hours to be called first. New probationary officers shall not be eligible to fill these overtime assignments.

Employer Issue No. 8 - Article XIV, Section 2, Paragraph A

Current contract language.

Article XIV, Section 2. Paragraph A

The City shall provide, and pay the full cost of Full Family Hospitalization, (A plan equivalent to - or Blue Cross/Blue Shield plan with riders D45M, Master Medical, MVF 1, ML, OB, FAE, five dollar (\$5.00) deductible drug prescriptions for all permanent full time employees, with VST and reciprocity riders. Employees shall be notified in advance of any contemplated change in the carrier of the City's Hospitalization insurance.

Union Last Best Offer of Settlement

Article XIV, Section 2. Paragraph A.

Delete current Article XIV, Section 2. Paragraph A and replace with the following:

- 1) The City shall provide, and pay the full cost of Blue Cross/Blue Shield Community Blue 1 with the following riders:
 - Ten (\$ 10.00) dollar office visit
 - Fifty (\$50.00) dollar emergency room rider
 - Prescription drug rider (to be determined by the arbitration panel)
- 2) The City shall provide and pay the full cost (as soon as the carrier can implement) Health Alliance Plan (HAP) Exclusive Provider Arrangement (EPA) Plan Option 1 with the following riders:
 - Five-dollar (\$5.00) office visit
 - Twenty-five (\$25.00) emergency room rider.
 - Five-dollar (\$5.00) prescription drug rider.
- 3) The current Blue Care Network HMO plan will no longer be an option effective upon the implementation date of the HAP HMO plan described in Section 2, Paragraph A, Section 2 of Article XIV.
- 4) The City shall provide Blue Cross/Blue Shield Traditional health care Plan as follows:
 - MVF 1, ML, D45NM, OB, FAE, VST, reciprocity rider. Prescription drug rider to be determined by the arbitration panel

Employees choosing the Blue Cross / Blue Shield Traditional health care plan as outlined above shall pay the difference, if any, between the Community Blue 1 rate and the Blue Cross / Blue Shield Traditional rate.

The Employer shall pay the full cost of the Community Blue 1 plan as well as the Health Alliance Plan as outlined above, to include the family rate as well.

All health insurance plans will cover the employee, spouse, and dependent children as defined by the insurance carrier.

Employer Issue No. 9

Current contract language.

Article XIV, Section 2, Paragraph A.

The City shall provide, and pay the full cost of Full Family Hospitalization, (A plan equivalent to - or Blue Cross/Blue Shield plan with riders D45M, Master Medical, NIVF 1, ML, OB, FAE, **five-dollar (\$5.00) deductible drug prescriptions** for all permanent full time employees, with VST and reciprocity riders. Employees shall be notified in advance of any contemplated change in the carrier of the City's Hospitalization insurance.

Union Last Best Offer of Settlement

(See Union last best offer of settlement Employer Issue No. 8 for the complete description of the medical coverage.)

Effective as soon as Blue Cross/Blue Shield can implement the change, the prescription drug rider for both the Blue Cross/Blue Shield Traditional plan and the Blue Cross/Blue Shield Community Blue 1 plan shall be Five-dollar (\$5.00) generic and ten (\$ 10.00) dollar brand name.

Employer Issue No. 10

Current contract language

Article XIV Section 5 - Lay-off

The City shall pay the full cost for hospital, dental, optical and life insurance benefits for a maximum of one year after an employee is laid off from the City of Trenton, provided that subsequent employment with similar benefits has not occurred.

Union Last Best Offer of Settlement

No change in status quo.

Employer Issue No. 11

Current contract language.

Article 14, Section 9, Effective Date.

The effective date of all insurance policies shall be the next eligible enrolment [sic] date after the ratification of this contract by the Union and the City. Any increases in the cost of insurance shall be paid by the City.

Union Last Best Offer of Settlement

No change in current Article XIV, Section 9 contract language.

The effective date of all insurance policies shall be the next eligible enrolment [sic] date after the ratification of this contract by the Union and the City. Any increases in the cost of insurance shall be paid by the City.

Add new Section 10 to article XIV.

The parties will establish a joint Union - management Health care oversight committee. There shall be two (2) management representatives and two (2) representatives of the Union on the four (4)-person committee. The purpose of the committee will be to research, investigate and make recommendations to the parties as to possible health care cost containment programs in an effort to reduce health care costs.

Employer Issue No. 12

Health insurance for future retirees. The City proposes that health insurance for future retirees be the same as the insurance for active employees, subject to modification through future negotiations.

Article XIV Section 2.B

Current contract language.

Article XIV Section 2. B

All retirees shall also be provided with the same benefits as mentioned above. This coverage will be for the retired employees, their spouses and minor dependent children. This will continue for a widow or widower of a retiree until such time as he/she remarries. Effective for employees hired after January 1, 1996, the City will pay the cost of the employee's retirement health insurance, including spouse at the time of retirement (benefit will cease for the spouse in the event of divorce), and continuing for dependent children based upon health insurance program eligibility, as follows:

If at the time of retirement the employee's age is at least 55 years and the employee has service years solely with the City of Trenton equal to a minimum of 20 years, the City's obligation to provide for health insurance will be continued for the employee and/or spouse. In the event of the death of the retiree, the City's obligation for the cost of this benefit will be continued for the retiree's spouse until their death or remarriage. The City's obligation for the cost of this benefit will be suspended if the retiree or the retiree's spouse is eligible for health insurance benefits from other employment or through a spouse's employment after the employee's retirement from the City. If at any time the health insurance with the other employer is terminated the retiree may immediately re-enroll on the City health insurance coverage without cost or penalty to the retiree. This benefit will not be available to those employees who terminate employment prior to retirement from the City, regardless of having a vested interest in the City's retirement system.

Union Last Best Offer of Settlement

Article XIV Section 2. B

All retirees shall have the option to select, once a year at open enrollment, their health care. The retiree shall be allowed to keep the health care plan that they retired with or select from any of the health care plans in effect for the active employees. This same option will be allowed for eligible widows or widowers of retirees. The coverage selected will be for the retired employee their spouse and minor dependent children. This will continue for a widow or widower of a retiree until such time as he/she remarries. Effective for employees hired after January 1, 1996, the City will pay the cost of the employee's retirement health insurance, including spouse at the time of retirement (benefit will cease for the spouse in the event of divorce), and continuing for dependent children based upon health insurance program eligibility, as follows:

If at the time of retirement the employee's age is at least 55 years and the employee has service years solely with the City of Trenton equal to a minimum of 20 years, the City's obligation to provide for health insurance will be continued for the employee and/or spouse. In the event of the death of the retiree, the City's obligation for the cost of this benefit will be continued for the retiree's spouse until their death or remarriage. The City's obligation for the cost of this benefit will be suspended if the retiree or the retiree's spouse is eligible for health insurance benefits from other employment or through a spouse's employment after the employee's retirement from the City. If at any time the health insurance with the other employer is terminated the retiree may immediately re-enroll on the City health insurance coverage without cost or penalty to the retiree. This benefit will not be available to those employees who terminate employment prior to retirement from the City, regardless of having a vested interest in the City's retirement system.

Employer Issue No. 13

Article XIV Section 6 Retirees.

Current contract language.

Article XIV Section 6 Retirees.

Effective July 1, 1985, the City shall provide dental and optical insurance for all new retirees, their spouse, and minor dependent children of the retiree until the retiree reaches age 60. Effective July 1, 1996 the City shall provide dental and optical insurance for all new retirees, their spouse, and minor dependent children of the retiree until the retiree reaches age 65. Effective for employees hired after January 1, 1996, the City will pay the cost of the employee's retirement dental and optical insurance, including spouse at the time of retirement (benefit will cease for the spouse in the event of divorce), and continuing for dependent children based upon dental and optical insurance program eligibility, as follows:

If at the time of retirement the employee's age is at least 55 years and the employee has service years solely with the City of Trenton equal to a minimum of 20 years, the City's obligation to provide for dental and optical insurance will be continued for the employee and/or spouse. In the event of the death of the retiree, the City's obligation for the cost of this benefit will be continued for the retiree's spouse until their death or remarriage. The City's obligation for the cost of this benefit will be suspended if the retiree or the retiree's spouse is eligible for health insurance benefits from other employment or through a spouse's employment after the employee's retirement from the City. If at any time the dental and optical insurance with the other employer is terminated the retiree may immediately re-enroll on the City dental and optical coverage without cost or penalty to the retiree. This benefit will not be available to those employees who terminate employment prior to retirement from the City, regardless of having a vested interest in the City's retirement system.

Union Last Best Offer of Settlement

Article XIV Section 6 Retirees.

No change in contract language - maintain status quo.

Effective July 1, 1985, the City shall provide dental and optical insurance for all new retirees, their spouse, and minor dependent children of the retiree until the retiree reaches age 60. Effective July 1, 1996 the City shall provide dental and optical insurance for all new retirees, their spouse, and minor dependent children of the retiree until the retiree reaches age 65. Effective for employees hired after January 1, 1996, the City will pay the cost of the employee's retirement dental and optical insurance, including spouse at the time of retirement (benefit will cease for the spouse in the event of divorce), and continuing for dependent children based upon dental and optical insurance program eligibility, as follows:

If at the time of retirement the employee's age is at least 55 years and the employee has service years solely with the City of Trenton equal to a minimum of 20 years, the City's obligation to provide for dental and optical insurance will be continued for the employee and/or spouse. In the event of the death of the retiree, the City's obligation for the cost of this benefit will be continued for the retiree's spouse until their death or remarriage. The City's obligation for the cost of this benefit will be suspended if the retiree or the retiree's spouse is eligible for health insurance benefits from other employment or through a spouse's employment after the employee's retirement from the City. If at any time the dental and optical insurance with the other employer is terminated the retiree may immediately re-enroll on the City dental and optical coverage without cost or penalty to the retiree. This benefit will not be available to those employees who terminate employment prior to retirement from the City, regardless of having a vested interest in the City's retirement system.

Employer Issue No. 14

Current contract language.

Appendix A Command Lieutenant Promotion Procedure

Written Evaluation:

1. The written portion of the promotional procedure will consist of forty (40) Multiple choice questions which will be authored and administered by the police department administration. Seventy (70) percentile of correct answers is minimally required to proceed further into the promotion procedure.

Performance Evaluation:

1. Each candidate will be evaluated by four (4) Trenton Police Department Command Lieutenants. The highest and lowest scores will be disregarded and the remaining two (2) scores will be used.

Union Last Best Offer of Settlement

Appendix A command Lieutenant Promotion Procedure

Written Evaluation:

1. The written portion of the promotional procedure will consist of forty (40) Multiple choice questions which will be authored and administered by a certified, accredited and qualified testing company. The test must be job related to that of a Lieutenant in the City

of Trenton Police Department. The test must be internally valid and non-discriminatory. Seventy (70) percentile of correct answers is minimally required to proceed further into the promotion procedure.

Performance Evaluation:

1. Each candidate will be evaluated by four (4) Trenton Police Department Command Lieutenants. The highest and lowest scores will be disregarded and the remaining two (2) scores will be used.

Signature:

Date:

The Final Offer of the Public Employer, City of Trenton

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CITY OF TRENTON,

Respondent,

- and-

MERC Case No. 03-D-0798

MICHIGAN ASSOCIATION OF
POLICE,

Petitioner.

CITY OF TRENTON'S LAST BEST OFFER

City of Trenton, by its attorneys, Steven H. Schwartz & Associates, P.L.C., submits its Last Best Offer.

Union Issues:

1. Pension (Placement of Post January 1, 1996 employees and future employees in the Act 345 pension system): No change/maintain current contract language.

2. Dental Insurance: No change/maintain current contract language.

3. Wages: Effective 7/1/02, there shall be no adjustment to base wages.

An increase of 2.0% in base wages for the second year of the contract shall be effective on the date the final Decision is issued by the Act 312 panel.

Effective 7/1/04, base wages shall be increased 2.5%.

City Issues:

1. Retroactivity of Wages: No wage increases shall be made retroactively prior to the date the final Decision is issued by the panel.

2. Pension: Definition of Final Compensation: Withdrawn by the City.

3. Personal Leave Days: Article X, Sections 2 and 3 shall be amended to read:

SECTION 2. PERSONAL LEAVE DAYS - CONNECTED TO SICK LEAVE

No change; maintain current contract language.

SECTION 3. PERSONAL LEAVE DAYS - NOT CONNECTED TO SICK LEAVE

All employees covered under this contract will receive four (4) additional personal days not connected to sick days. Said personal leave days shall be scheduled and taken only on the authorization of the Chief of Police, and will be subject to minimum shift complement.

4. Hours of Employment: Modify Article VIII, Section 2 (F):

ARTICLE 8, HOURS OF EMPLOYMENT

SECTION 2.

[Sections A- E and G-H remain unchanged]

- F. The City will designate the number of employees working a shift to maintain safe and orderly police protection. Vacancies that are filled will be filled according to the overtime schedule, with the low employee in hours to be called first.

- 5a) Health Insurance for active employees/Community Blue PPO, Blue Care Network or Health Alliance Plan: Amend Article XIV, Section 2(A) as follows:

SECTION 2. HOSPITALIZATION INSURANCE

- A. 1. The City shall provide, and pay the full cost of Full Family Hospitalization. (A plan equivalent to - or Blue Cross/Blue Shield plan with riders D45M, Master Medical, MVF 1, ML, OB, FAE, five dollar (\$5.00) deductible drug prescriptions) for all permanent full time employees, with VST and reciprocity riders.
2. Employees shall be notified in advance of any contemplated change in the carrier of the City's Hospitalization insurance.
3. Effective immediately after the date the final Decision of the Act 312 panel is issued or as soon as practicable thereafter, employees must select one of the following two (2) plan offerings, or equivalent plan(s) provided through a different carrier:
 1. Community Blue PPO, Option 1
 2. Blue Care Network HMO

As soon as practicable after the final Decision is issued by the Act 312 panel, Health Alliance Plan shall be substituted for Blue Care Network if there is plan participation sufficient for Health Alliance Plan's underwriters and the cost is equivalent or less than Blue Care Network. Nothing in this paragraph shall be deemed to restrict the City's right to switch back to Blue Care Network HMO or other carrier, provided that equivalent benefits are provided.

- 5b) Health insurance for active employees/increase the drug rider: Amend Article XIV, Section 2(A) as follows:

Effective immediately after the Act 312 panel issues its final Award or as soon as practicable thereafter, the prescription drug co-pay for all plans shall be \$5.00 for generic drugs and \$10.00 for brand name drugs.

- 5e) Health insurance for active employees/opt out provision: Withdrawn by the City.
- 5d) Health insurance for active employees/elimination of coverage for laid off employees:

Amend Article XIV, Section 5 as follows:

The City shall pay the full cost for hospital, dental, optical and life insurance benefits through the last date of the calendar month the employee actually works when an employee is laid off from the City of Trenton.

- 5e) Eliminate the provision that the City pays all future cost increases in the cost of insurance: Article XIV, Section 9 shall be amended by deleting the following sentence:

Any increases in the cost of insurance shall be paid by the City.

The section shall read:

The effective date of all insurance policies shall be the next eligible enrollment date after the ratification of this contract by the Union and City.

- 6) Health insurance for future retirees: Amend Article XIV, Section 2(B) by adding the following language to the existing language:

SECTION 2. HEALTH INSURANCE BENEFITS

All employees who retire after July 1, 2002 will be provided with health and prescription drug insurance described in this Section. However, the level of coverage after June 30, 2005 shall be identical to that provided to employees who retire after June 30, 2005.

7) Dental and Optical Insurance: Amend Article XIV, Section 6 by adding the following language to the existing language:

Subject to the eligibility criteria described in this Section, all employees who retire after July 1, 2002 will be provided with dental (minus orthodontia) and optical insurance described in this Section. However, the level of coverage after June 30, 2005 shall be identical to that provided to employees who retire after June 30, 2005.

8) Promotion to Lieutenant: Amend only the applicable sections of Appendix A as follows:

APPENDIX A

COMMAND LIEUTENANT PROMOTION PROCEDURE

The following criteria will be used for promotion to Command Lieutenant:

I. SENIORITY

Two (2) points will be awarded for each complete year of service With a maximum possible score of sixty (60) points. For the purpose of scoring seniority points, a candidate's seniority will be accrued and determined up to and including the effective date (beginning day) of the promotional list (May 1st).

2. WRITTEN EXAMINATION

Correct answers of seventy (70) percentile or better of a multiple choice written examination will award the candidate twenty-five (25) points. Failure to achieve at least a seventy percentile, will cause the candidate to become ineligible to proceed any further in the promotion procedure.

3. PERFORMANCE EVALUATION:

Each candidate will be evaluated by the Chief of Police. The Chief's evaluations will be recorded on the department's "Performance Evaluation Form for Promotion to Command Lieutenant". A maximum score of fifteen (15) points is possible.

ELIGIBILITY:

[Entire section remains unchanged]

WRITTEN EXAMINATION:

1. The written portion of the promotional procedure will consist of a validated test which will be authored and administered by an independent testing organization. Seventy (70) percentile of correct answers is minimally required to proceed further into the promotion procedure.
2. Bibliographies and resources to prepare for the examination will be made available to each eligible candidate at least sixty (60) calendar days in advance of the written evaluation date at the Police Department and the Trenton Library or other local Libraries.

3. One (1) union representative (other than a candidate) of the Sergeants, Corporals and Patrol Officers Union will be allowed to be present in the designated written examination room while candidates perform the written portion of the promotional procedure.
4. Upon completion of the written examination, signed candidates' answer sheets (not scored) will be placed in an envelope and then sealed. Only after each candidate has been awarded seniority and performance points, will the written examinations be removed from the sealed envelope and scored by the testing organization.
5. Should an emergency occur and a candidate is unable to take the written examination as scheduled, it is the only reason for another opportunity to take it. An emergency would be a confirmed hospitalization or death of a family member or a documented statement from a physician stating the candidate is under doctor's care and not able to take the written examination. In the event an emergency is documented, the written examination must be taken by the candidate within two (2) weeks of the originally scheduled written examination date or the candidate becomes ineligible to proceed any further in the promotional process.
6. Upon their request, candidates shall be apprised of their individual written examination scores. This will be done in a confidential manner between a police department administrator and the candidate.

PERFORMANCE EVALUATION:

1. Each candidate will be evaluated by the Chief of Police.
2. In making the evaluation, the Chief of Police will utilize the department's "Performance Evaluation Form for Promotion to Command Lieutenant". Each candidate's personnel file will be reviewed by the Chief of Police, and shall be considered along with the Chief's personal observation of each candidate's job performance in their current rank and their suitability for a position as a command Lieutenant, for this stage of the procedure.
3. The Chief of Police will place the completed evaluations into an envelope which will be sealed. Tallying of the evaluations will take place prior to the scoring of the written examinations. One (1) MAP union representative and administrative representative will tally the evaluations and will record the score for each candidate.
4. Any rating selections of "0" (not acceptable) or "I" (needs improvement) must be explained in writing on the reverse side of the evaluation form.

PROMOTIONAL LIST:

[entire section remains unchanged]

STATUTORY AUTHORITY

Public Act No. 312 of 1969, MCL 423.231, *et. seq.*, provides for compulsory arbitration of labor disputes involving municipal fire fighters. Section 8 of the Act states, in relation to economic issues, that:

The arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors 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. MCL 423.238.

Section 9 of the Act contains eight factors upon which the arbitration panel must base its opinion and orders. The factors are as follows:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and financial ability of the unit of government to meet those costs.
- d. Comparison of 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 sector or in private employment. MCL 423.329.

Section 10 of the Act provides that the decision of the arbitration panel must be supported by "competent, material and substantial evidence on the whole record." MCL 423.240. This has been acknowledged by the Michigan Supreme Court in City of Detroit v Detroit Police Officers Ass'n, 408 Mich 410 (1980).

There, Justice Williams commented on the importance of the various factors, stating:

The Legislature has neither expressly or [sic] implicitly evinced any intention in Act 312 that each factor of Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word "shall" in Sections 8 and 9. In effect, then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered. *Id.* at 484.

The arbitration panel applied all of the Section 9 factors in considering each of the disputed issues herein even if not specifically discussed.

STIPULATIONS OF THE PARTIES

The parties stipulated during the pre-hearing conference in this matter and again at the commencement of the evidentiary hearing to a waiver of the statutory time limits. (Vol. 1, p 4.) The parties also stipulated that all of the issues, with the exception

of the promotional procedure, were economic (*id.*), and that all tentative agreements reached by the parties prior to the commencement of the hearing or that might be reached throughout the proceedings would be carried forward in the successor agreement. (Vol. 1, p 5.) The parties' stipulation encompassed the Memorandum of Understanding and Tentative Agreement found at Tab 3 of the City's exhibit book. (Vol. 1, pp 5-6.) Additionally, MAP and the City agreed that the duration of the successor agreement would be three years, effective July 1, 2002 - June 30, 2005. (Vol. 1, p 7.)

Lastly, the City and MAP agreed that all other active City employees would be considered by the arbitration panel as internal comparables (Vol. 1, p 57), and that the following communities would be considered by the arbitration panel as external comparables within the meaning of MCL 423.239(d) (Vol. 1, p 111).

Brownstown Township
City of Monroe
City of Riverview
City of Southgate
City of Woodhaven
City of Wyandotte

THE CITY'S ECONOMIC CONDITION

The City asserts that it is significantly hampered in its ability to increase revenue and meet MAP's economic demands due to various geographic and legal constraints.

First, the City of Trenton is virtually completely developed and has little ability to grow and expand its tax base. (City Exhibit 59; Vol. II, pp 147-148.) Currently, the City's property tax revenue represents 74% of its budget. (Vol. II, pp 151-156.) Under Proposal A, the City's tax base may only increase by 1.5%, which

is the current rate of inflation, except for newly-transferred or developed parcels. (Vol. II, pp 153-154.) By contrast, the external comparable communities have a much greater potential for enhancing their tax base through development. (See City Ex. 56.)

Although the real property tax base is projected to grow approximately 4% in 2003-2004 (City Ex. 10), that gain will likely be diminished by such things as anticipated cuts in state-shared revenue, decreases in investment income (City Ex. 12), decreases in court revenue (*id.*), and decreases in taxes from PA 198 properties. (City Exs. 10 and 12). The City is reluctant to raise General Fund or Act 345 millage given increases between 1999-2000 and 2002-2003 (City Ex. 11), and the hardship such increases imposes on industrial taxpayers.

Various litigation issues also plague the City. The City has an obligation to pay an Administrative Consent Order from the Department of Environmental Quality. (City Ex. 13 Vol. III, pp 6-9.) It has also been forced to reserve \$1 million as a potential tax refund to Detroit Edison due to a challenge pending before the Michigan Tax Tribunal. (Vol. III, pp 11-12.) Additionally, the City worries about the application of two Michigan Supreme Court cases, namely WPW Acquisition v City of Troy, 466 Mich 117; 643 NW2d 564 (2002) and Bolt v City of Lansing, 459 Mich 152; 587 NW2d 264 (1998), which limit the City's ability to assess the true market value of a commercial or industrial addition beyond the inflationary limits of Proposal A and restrict user fees under certain circumstances.

In addition to the foregoing revenue concerns, the City points to its need to control expenses. The City's police department represents approximately 24% of the City's General Fund expenditures. (City Ex. 14.) It has reluctantly eliminated positions

as part of cost containment measures. To this end, two police officer, a police sergeant, and three firefighter positions have been eliminated from the last two City budgets. (City Ex. 15.) At the same time, the City has had to contend with dramatically rising health care costs (City Ex. 30), and increased contributions to the remnants of the City's defined benefit pension plan. (City Ex. 30). The City requests the arbitration panel to take into account these economic factors in evaluating the parties' economic issues.

MAP responds to the City's claims of financial hardship by pointing out that, despite economic turbulence, the City found revenue with which to increase the compensation and benefits of other City personnel, both union and non-union, over the dispute contract period, and that the City's position with regard to its proposals is punitive, not fiscally responsible. MAP points to the fact that the City's General Fund has enjoyed a sizeable surplus in recent years. As of July 1, 2001, the General Fund surplus was almost \$5.9 million. This surplus increased over the next 12 months to \$7.4 million. (Vol. II, pp 201-203.) These are general purpose monies available for use and do not include encumbered funds which could not be utilized for employee compensation and benefits.

The arbitration panel has carefully considered the "financial ability" argument advanced by the City in this matter. The panel acknowledges the City's efforts to remain fiscally responsible. It acknowledges the City's efforts not only to respond to, but to anticipate, further declines in revenue. The arbitration panel must balance the City's economic conservatism by the fact that there appears to be ample General Fund monies available to address the compensation and benefit issues in this

arbitration, and that other City employees are enjoying negotiated and unilaterally-granted increases.

Thus, while the arbitration panel will be mindful of the economic constraints on the City of Trenton due to its development status and static revenues, the arbitration panel finds that the City's economic condition is not such a significant factor under MCL 423.239(c) as to outweigh or, in other words to, "trump" the other Section 9 factors. It will be considered simply as one of those factors, not necessarily entitled to any greater weight than any of the others.

UNION ISSUE NO. 1: PENSION

MAP seeks to reopen the Act 345 defined benefit retirement plan currently closed to bargaining unit members hired on and after January 1, 1996. In the 1996 negotiations between the City of Trenton and the predecessor labor organization, it was agreed that all bargaining unit members hired after January 1, 1996 into the Trenton Police Department would participate in a defined contribution plan which provided for a 12% annual City contribution and a 6% annual employee contribution. In exchange, current bargaining unit employees received an increase in their pension multiplier from 2.0% to 2.5%. (Vol. IV, pp 93-96.) The City achieved this pension plan change not only with this bargaining unit, but with all other employee groups including police command, fire, AFSCME, and non-union employees. (Vol. IV, p 25, and City Ex. 26.)

In support of its proposal, MAP points out that the City's defined benefit retirement plan came into existence over 50 years ago when the taxpayers of the City of Trenton voted "overwhelmingly" for adoption of the plan. At that time, they also voted to

levy one mill to provide funding for the plan. That millage is not subject to Headlee rollback and funds derived from it may only be used to fund Act 345 pensions and health care.

There are currently seven bargaining unit members hired after January 1, 1996, who are in the defined contribution plan and who desire to participate in the defined benefit plan. In attempting to make its proposal affordable and appealing, MAP proposes a different level of benefits for defined contribution participants who wish switch to a defined benefit plan. Specifically, all post-January 1, 1996 bargaining unit members would have a multiplier of 2.2%, and an FAC based upon three years of service utilizing base pay only. Retirement eligibility would require 25 years of service and attainment of at least age 55. The City's contribution on behalf of post-January 1, 1996 participants would be capped at 12% of an employee's base pay. Subject employees would be required to make a 6% contribution to the defined benefit plan in the first year of participation. Thereafter, the employee's contribution could be adjusted per the annual actuarial report.

Affected bargaining unit members would have the ability to acquire credit for prior service. They would be required to rollover their assets from the DC plan into the DB plan to do so. The rollover would eliminate or reduce unfunded liability. Since the City's contribution would be capped at 12%, it should not have any expense above what it currently contributes to the existing defined contribution plan.

MAP also points out that placing all employees in the defined benefit plan would ease the current financial stress being experienced due to its closure. Additionally, earnings from the defined benefit plan could be earmarked to pay for

retiree health care costs. At present, DC plan monies cannot be used to fund or pre-fund future retiree health care costs. Lastly, MAP points out that maintenance of a defined contribution plan does not take into account the employees' lack of participation in the social security system. DC plan benefits are often coordinated with social security, annuities, and the like. The bargaining unit members in Trenton do not participate in the social security system.

The City asserts that the current defined contribution plan should be maintained. In support of its position, it relies heavily on internal comparability and points to the consistent pattern negotiated with all other internal employee groups in 1996. (Vol. IV, p 95, City Ex. 26.) If this arbitration panel were to restore a defined benefit retirement plan for this bargaining unit, it would likely cause other employee groups within the City to seek a similar change. That would undo the City's attempt to get a handle on its pension costs, inasmuch as DC contributions remain at a fixed percentage and are not subject to the vagaries of investment earnings and actuarial experience.

The City also points out that the defined contribution plan has had good financial management. Significantly, of the seven current participants in the DC plan, six of the seven voluntarily defer additional compensation to the City's 457 deferred compensation program. Likewise, 25 of the 26 defined benefit plan participants also participate in the 457 deferred compensation program. The City speculates that if those employees found the plan to be "too risky," they would not participate. (Vol. II, pp 70-72; Vol. IV, pp 104-105.)

The City notes that the defined contribution plan has a number of advantages over the defined benefit plan. It is portable (Vol. II, p 63), provides five-year vesting (Vol. II, pp 63, 65-66; Vol. IV, p 82), allows employees to take a lump sum payment, does not specify a maximum benefit (Vol. II, pp 63-64), and does not restrict or limit the participant's beneficiary only to a surviving spouse. (Vol. II, pp 64-66.)

The City worries that to the extent the arbitration panel allows a restoration of the defined benefit plan and participation by post-January 1, 1996 employees, MAP will seek further pension enhancements for those employees in future negotiations. The plan will be a springboard for higher and higher benefits down the road. Rather than eliminating a two-tiered pension system, MAP's proposal maintains a dual pension system since post-January 1, 1996 bargaining unit members would be placed in a defined benefit plan with less generous features than those existing in the pre-1996 plan.

Lastly, the City argues that, of the external comparables, at least two provide defined contribution plans. (Union Ex. 6-3.) The City speculates that the other external communities may not have addressed the issue of defined benefit vs. defined contribution plan given the relative youth of the communities in question. The City believes there is a growing trend on the part of public employers away from defined benefit plans to defined contribution plans.

The arbitration panel has very carefully considered MAP's proposal in light of the Section 9 factors set forth in MCL 423.239 and determines to award the position of the City on this issue. In reaching its decision, the arbitration panel finds most compelling the bargaining history of the City's employee groups. It is clear that the City,

in negotiations, set about to phase out a defined benefit retirement plan across all employee groups. Unfortunately, it accomplished this by grandfathering current employees and rewarding them with pension enhancements at the expense of their future colleagues. While it is tempting for current employees to grab the "big carrot," the parties often forget about the significant morale impact a two-tiered benefit system will have on future hires. They must co-exist with more senior employees, often feeling like second-class citizens. Nonetheless, it is not up to this arbitration panel to take a step which would most likely set in motion a domino effect for all employee groups. That is an endeavor which is best left to collective bargaining. It is likely that the perceived inequity in pension plans will take care of itself through the City's need to address continued volatility in the DB plan and the departure of post-January 1, 1996 employees, who may just decide to take advantage of their "portable" pension plan and leave the City's employ for what they perceive to be greener pastures.

Whenever a proposal is made which requires conversion from a defined contribution to a defined benefit plan, the arbitration panel must concern itself with the potential for the creation of unfunded accrued liability. While MAP's proposal attempts to address this through rollover of defined contribution plan monies to fund prior service, it does not wholly address the issue of who ultimately will pay any unfunded accrued liability following the expiration of the contract. Once again, these are issues which are better left to negotiated settlement by the parties, rather than to the detached opinion of an Act 312 arbitration panel.

UNION ISSUE NO. 2: DENTAL INSURANCE

MAP proposes to increase the current dental benefit. The City offers a traditional, fee-for-service plan that does not encourage or provide for cost containment. The City's premium has been revised annually and has been subject to a shared risk component which recently necessitated an additional payment of \$21,000 in one year. (Vol. I, p 91.) MAP's proposal identifies Delta Dental as the carrier and prescribes various levels of benefits depending upon whether a bargaining unit member uses a participating or non-participating dentist. The rates for the insurance would be in effect for a two-year period could result in a savings to the City.

By contrast, the City argues that its current dental coverage is adequate. The dental coverage enjoyed by bargaining unit members is better than that enjoyed by other City employee groups. Further, the coverage is better than that offered by a number of the external comparables, since dental coverage is provided not only to active employees but to retirees to age 65. None of the other internal employee groups sought an enhancement to their dental coverage in the last round of collective bargaining. Switching to the plan proposed by MAP may cost the City up to an additional \$8,000. (City Ex. 47.) The City does not believe that MAP has demonstrated a need or basis for the enhancement.

The arbitration panel has carefully considered MAP's proposal regarding dental insurance and the arguments of the parties in connection with the Section 9 factors (MCL 423.239). In doing so, the arbitration panel awards the position of MAP on the issue of dental insurance.

MAP's proposal seeks to define a dental plan while at the same time building in financial incentives for using a participating dentist. The rates for the plan would be fixed for a two-year period and would not subject the City to being blindsided by a shared risk component. Therefore, the proposal would be in keeping with MCL 423.239(c).

The panel is not persuaded that merely because other employee groups did not negotiate an improvement to dental insurance, MAP is precluded from doing so. Identical settlements are not to be expected where different unions represent different employee classifications. It is sufficient that MAP has put forth a rationale argument for its proposal. Likewise, consideration of the external comparables does not detract from MAP's proposal. Merely because the benefit is provided to retirees, as well as active employees, does not make it a benefit superior to that of the external comparables. It is the content of the benefit, not the application, which is significant.

UNION ISSUE NO. 3: FIRST YEAR WAGES

In its last best offer, MAP proposes a 2.5% increase to all steps of the wage scale for all classifications covered by the bargaining unit effective January 1, 2003. The City proposes no wage increase for the first year of the contract.

MAP argues that its proposal is supported by the Section 9 factors of Act 312 for the following reasons. First, all other internal employee groups received a 2.0% increase, effective July 1, 2002. No other employee group was forced to suffer a wage freeze, as is proposed by the City in its Last Best Offer. Second, MAP's proposal would place Trenton in the position of fourth out of six when comparing it to the external comparables. Third, the cost of MAP's proposal is only \$25,000. The City saves

\$15,000 since MAP has adjusted the effective date of its wage proposal from July 1, 2002 to January 1, 2003. Fourth, adjustment of the retroactivity date substantially addresses the City's argument that a wage freeze is warranted in light of the health care savings it lost pending this arbitration.

In support of its position of no increase in the first year of the contract, the City notes that the other internal employee groups received a 2.0% increase as of July 1, 2002, as a tradeoff for the savings the City realized through an adjustment in health care benefits. The City estimates it has lost \$25,673 per year in insurance savings due to the fact that this contract did not reach a negotiated settlement of the health care issue.

The City also points out that if the arbitration panel were to accept MAP's wage proposals in all three years, wages would increase by 8%, whereas the wages of other employee groups would only increase by 6.5%. Such an increase, coupled with the lack of insurance savings, would, according to the City, be unreasonable and inequitable.

The arbitration panel has carefully considered the parties' proposals on the issue of wages in the first year of the contract and has determined to award the position of MAP. Having considered all of the Section 9 factors, the arbitration panel is persuaded that, particularly on the basis of both internal and external comparability, MAP's proposal is warranted. All other employee groups employed by the City of Trenton received a 2.0% increase, effective July 1, 2002. MAP's proposal, while slightly higher, is retroactive only to January 1, 2003. Likewise, MAP's proposal does not place

the compensation of its bargaining members out of step with that offered by the comparable external communities.

While the arbitration panel is cognizant of the fact that the City reaped savings from other employee groups due to insurance adjustments which it cannot now, due to the sheer passage of time, recoup from the unit represented by MAP, the arbitration panel believes that MAP's delay in the effective date of its wage proposal addresses a substantial portion of the City's lost savings. Further, the arbitration panel will not penalize the bargaining unit for having exercised its statutory right to pursue Act 312 proceedings as the method for settlement of their labor dispute, especially given the number of City issues involved.

As previously discussed in the section of this Award dealing with the City's economic condition, the arbitration panel is not persuaded that the City's economic circumstances render MAP's proposal unreasonable or unwarranted under MCL 423.239(c).

UNION ISSUE NO. 4: SECOND YEAR WAGES

MAP proposes an increase of 2% to the wage schedule, effective July 1, 2003. As part of its Last Best Offer, MAP proposes that the wage increase should be fully retroactive. The City also proposes a 2% wage increase in the second year of the agreement. However, it proposes that the increase be effective at the time the Act 312 Award is issued by this arbitration panel.

In support of its Last Best Offer, MAP asserts that its proposed increase in the second year of the contract mirrors what all other internal employees groups of the City received, effective July 1, 2003. No other internal employee group will have gone

without a raise for a two-year period. MAP's proposal maintains the unit's ranking as fourth out of the six of the external communities. In the case of the Sergeant's pay rates, Trenton's Sergeants would still be last out of the six external communities even if the panel were to adopt both MAP's first and second year wage proposals.

In support of its Last Best Offer, the City points out that its offer of 2% is the same as that offered to, and accepted by, the other internal employee groups. However, in light of the fact that the City did not reap a savings from health insurance adjustments with this bargaining unit, no retroactivity should be awarded by the arbitration panel. To do so would be to allow this bargaining unit to enjoy a benefit that no other employee group enjoyed during the affected time period.

The City urges the arbitration panel to consider its total wage offer as its good faith attempt to mirror the economic package it was able to negotiate with all other bargaining units. The goal of this arbitration panel, according to the City, should be to achieve internal consistency and equality. It would be inequitable for all other employee groups to have received a 6.5% wage adjustment in exchange for a modification of health benefits, while allowing this unit to receive an 8% wage increase (assuming that all of MAP's wage proposals were accepted in all three years of the disputed period) and the enjoyment of better health benefits. The City has lost approximately \$25,000 per year in potential health care savings and \$40,000 or more overall throughout the course of these arbitration proceedings. Finally, the City contends that its proposal maintains the relative ranking of this bargaining unit when viewed in comparison to the external communities.

The arbitration panel has carefully considered the proposals of the parties concerning the issues of second year wages and awards MAP's Last Best Offer. In reviewing the Section 9 criteria found at MCL 423.239, the arbitration panel is once again persuaded by considerations of internal and external comparability, along with the overall compensation received by bargaining unit members and the financial ability of the unit of government to meet the cost of the wage increase. All of those factors weigh in favor of adoption of MAP's proposal on the issue of second year wages. While the panel is certainly cognizant of the City's "lost savings" in the area of health insurance, it is reluctant to utilize retroactivity as a penalty for the employees' legitimate exercise of this statutory process. To do otherwise would be to discourage employees from utilizing the dispute resolution mechanism the Legislature afforded them in lieu of the more traditional right to strike. This is particularly true in this arbitration where the City's issues substantially outnumbered MAP's issues. While it might not seem "fair" to the City to have to pay twice for this bargaining unit's wage increase and health benefits, it is not "fair" to make the employees pay twice through the loss of two years of wages plus suffer a permanent "hit" on the wage schedule for a health benefit that they were apparently willing to modify, at least to some degree, to the City's benefit during negotiations.

UNION ISSUE NO. 5: THIRD YEAR WAGES

MAP seeks a 3.5% wage increase effective, July 1, 2004 to all steps and all classifications within the bargaining unit. The City offers a 2.5% wage increase to all steps and all classifications within the bargaining unit, effective July 1, 2004.

In support of its Last Best Offer, MAP asserts that the external comparabilities support its proposal. If its offer is accepted, the compensation received by Sergeants would rank fourth behind the City of Southgate, City of Woodhaven, and Brownstown Township. (Union Ex. 4.) Although only two of the external comparables have settled contracts in July 2004, those external wage settlements were 3% and 4% respectively. Further, MAP's proposal places an eight-year patrol officer in a favorable position when compared to the cities of Woodhaven and Southgate.

The City proposes a wage increase of 2.5% in the third year of the agreement, effective July 1, 2004. The City relies heavily on internal comparability and points out that all other represented internal employee groups will receive a 2.5% wage increase, effective July 1, 2004.

The arbitration panel has carefully considered the Last Best Offers of the parties on the issue of compensation in the third year of the contract. In considering the Section 9 factors, the panel determines to award the position of the City on this issue.

First, the City's offer of 2.5% is strongly supported by the fact that the fire unit, police command unit, and AFSCME bargaining unit all settled for a 2.5% increase to be effective July 1, 2004. Awarding the City's offer on the issue of the wages in the third year of the contract would maintain the symmetry of settlements amongst those units. Further, the City's proposal of 2.5% is certainly in keeping with such things as the CPI and the overall compensation received by bargaining unit employees when considered in the context of this Award.

The factor of external comparability does not weigh as heavily on this issue since only two of the external comparables have economic data which extends

beyond July 1, 2004. (Union Ex. 4-3.) Accordingly, the value of such a small external sampling is somewhat less persuasive than a comparison to the factor of internal comparability.

CITY ISSUE NO. 1: RETROACTIVITY OF WAGES

The panel discussed this issue in each award pertaining to the issue of wages, *supra*.

CITY ISSUE NO. 2: PENSION (DEFINITION OF FINAL AVERAGE COMPENSATION)

The City withdrew this issue during the hearing. (Vol. 5, p 130.)

CITY ISSUE NO. 3: PERSONAL LEAVE DAYS

In its Last Best Offer, the City seeks to modify current collective bargaining agreement language to restrict the utilization of personal leave days not taken in connection to sick leave, where taking the time would create overtime by lowering the scheduled shift complement below minimum shift complement levels. The City seeks this modification and restriction on the utilization of personal leave days in order to reduce overtime costs. In the past three years, the City claims to have spent from \$30,000 to \$40,000 per year in overtime related solely to manpower shortages created by the use of personal leave days. (Vol. III, pp 126-127; City Exs. 48-49.)

The City looks for support for its proposal from the external comparables. Currently, no other external community offers as many personal days as the City of Trenton. The City notes that other communities either have fewer personal leave days available or prohibit their usage if overtime would be generated. (See City Ex. 46.)

MAP responds to the City's proposal by offering language which the City recently agreed to in the Trenton Lieutenant's contract. MAP's proposal provides that

two personal days per year will be subject to the scheduling requirements of the Department, subject to the approval of either the Chief or the Deputy Chief. The remaining days would be taken, as historically permitted. MAP argues that its proposal would keep an incentive for officers not to use sick time by providing them with one additional personal leave day if five or fewer sick days were taken in the preceding annual sick leave period. The incentive is intended to discourage the over-utilization of sick leave and encourage regular attendance at work.

In further support of its position, MAP argues that the City's reliance on controlling overtime is unsupported. City Exhibit 48 shows that there has been a reduction in the amount of overtime from 2000 to 2003. Further, the City's proposal would make the members of this bargaining unit the only unionized employees in the City to carry such a restriction on the use of personal time. (See Union Rebuttal Ex. 38.) None of the external comparables imposes the limitation which the City seeks to impose on this bargaining unit. (Union Rebuttal Ex. 39.) Lastly, MAP argues that the City's proposal is vague in that it does not define what is meant by minimum shift complement, thereby allowing the City maximum discretion to change shift minimums so as to effectively invalidate personal days as a benefit from the contract.

In response to MAP's proposal, the City argues that the reasons which supported adoption of this language in the Lieutenant's contract do not apply to the patrol unit. The size of the two bargaining units is significantly different. There are only six Lieutenants, while there are 35 members of MAP's bargaining unit. (See City Ex. 5.) Further, Lieutenants may or may not be replaced when they take a personal leave day, such as is the case with the Detective Lieutenant and Patrol Lieutenants.

The arbitration panel has considered both parties' proposals in light of the Section 9 factors contained in MCL 423. 239. Consideration of those factors has led the panel to adopt the position of MAP on this issue.

It is significant that MAP's proposal was recently negotiated between the City and its Lieutenants. The arbitration panel is not persuaded that there is a material difference which makes application of this language inappropriate to the patrol officers unit also. MAP's proposal does give the City some discretion as to an officer's utilization of at least two personal leave days per year and maintains an incentive for moderation in the use of sick leave time. Additionally, a review of the external comparables supports MAP's more balanced approach to the utilization of personal leave.

As for the interests and welfare of the public and the financial ability of the unit of government to meet those costs, it appears that the City has made great strides to reduce overtime expense over the past three years. At some point, a balance has to be reached between cost containment and the ability of the workforce to be able to take days off which have been promised to them as a benefit of their employment.

CITY ISSUE NO. 4: HOURS OF EMPLOYMENT

In its Last Best Offer, the City seeks to lift the contractual restriction that patrol officers may not count towards the minimum shift complement while they are participating in the 18-week field training officer (FTO) program. MAP proposes to maintain the status quo.

In support of its Last Best Offer, the City notes that MAP agreed to a revision of the contract permitting employees to work overtime during their FTO

program. The City theorizes that if an employee participating in the FTO program is fit to meet minimum manpower requirements so as to be able to work overtime, he/she should count towards that minimum during the regular shift. If, under any given circumstances, the Chief did not feel a particular officer should be counted toward the minimum manpower requirements, then the employer could still exercise its right to create overtime. The City notes that MAP's proposal on this issue creates a potential conflict in that it prohibits field training employees from working overtime under any circumstances.

In the City's view, its proposal will not result in the creation of any dangerous situations or impairment of public safety. The City typically hires experienced officers from other departments. Further, all officers involved in the FTO program are certified law enforcement officers with the power of arrest. (Vol. IV, pp 147-148.) They carry the same weapons and are responsible for enforcing the same laws as other officers. (*Id.*) The primary purpose of the FTO program is to educate an officer in the City's ordinances, not to teach basic police skills. (Vol. IV, p 149.) The City's proposal will help it to contain overtime costs while not jeopardizing the safety of its citizens.

MAP opposes the City's proposed contract modification. It argues that the modification may create a hazardous working situation if the City were able to count FTOs in its minimum shift complement. MAP believes that this proposal is motivated solely by the City's desire to cut overtime costs, rather than by any determination that FTO employees make the same contribution to law enforcement as regular officers and, thus, should be counted in the minimum shift complement. The City's proposal comes

from "City Hall," rather than from concern for the operational needs of the Department and the safety of the public.

The arbitration panel has reviewed this issue in connection with the Section 9 criteria of Public Act 312 of 1969 and adopts the position of the City on this issue. The arbitration panel is not persuaded that the City's offer would result in the creation of a hazardous situation for either departmental staff or the residents of the City of Trenton. First, it appears that the City does hire experienced officers who already possess police skills and training. The FTO program focuses on local ordinance enforcement. It does not deal with the development of basic police skills. To the extent a FTO can work overtime associated with his/her regular shift, it seems to follow that he/she should also be counted towards the minimum manpower requirement. If they are qualified for the purposes of overtime, they should be qualified for the purposes of minimum staffing. The interests and welfare of the public would not be impaired through the City's proposal.

Lastly, it cannot be gainsaid that the City will be able to reduce overtime costs if it is able to count FTOs in minimum staffing requirements. This is a win-win for both MAP and the City, inasmuch as it will free overtime monies to be utilized for other purposes, such as direct compensation and benefits to bargaining unit members.

Inasmuch as neither side focused on external comparability in connection with this issue, the arbitration panel has not considered this factor as compelling regarding this issue.

**CITY ISSUE NO. 5-a: HEALTH INSURANCE FOR ACTIVE EMPLOYEES
(COMMUNITY BLUE PPO, BLUE CARE NETWORK OR HEALTH ALLIANCE PLAN)**

In its Last Best Offer, the City seeks to eliminate Blue Cross Traditional insurance coverage from the successor agreement. The City also proposes a shift from Blue Care HMO to the Health Alliance Plan (HAP) if HAP's cost is less than that of Blue Care Network and there is adequate plan participation.

In support of its proposal, the City points to internal comparability and the fact that no City employee has had access to the Blue Cross Traditional plan since January 1, 2003. (Vol. III, p 20; City Ex. 41.) Significantly, none of the external comparables offers Blue Cross Traditional. (City Ex. 42). The City is unaware of any employee dissatisfaction with Blue Cross PPO1 or Blue Care Network. Even though the City is willing to offer HAP as a health option, there can be no guarantee that HAP's rates will not go up after one year. (Vol. IV, p 34.) Further, there is no guarantee that the rates quoted by HAP would necessarily be the rates applied to the City. (Vol. IV, pp 34, 40.)

In its Last Best Offer, MAP proposes that the City provide Blue Cross/Blue Shield Community Blue 1, HAP Exclusive Provider Arrangement Plan Option 1, and Blue Cross/Blue Shield Traditional Health Care Plan with premium sharing under certain conditions. MAP's Last Best Offer would eliminate Blue Care Network HMO as a health plan option, effective the implementation date of the HAP HMO plan.

MAP asserts that the City's offer, if awarded, would allow the City to change carriers, mid-contract, without the obligation of first having to bargain with it. By contrast, MAP's proposal would lock in carriers and plans. It would stabilize health care for bargaining unit members over the life of the contract and avoid the possibility

that health care providers who were "in the network" with one carrier could be "out of network" if a new carrier were adopted mid-contract. MAP's proposal would keep the current Blue Cross Traditional Plan available to bargaining unit members but would require premium sharing whenever the cost of Traditional Blue exceeded the current level for the Community Blue 1 Plan. Thus, a bargaining unit member who wished to continue coverage under Traditional Blue would have to pay the difference between the Community Blue 1 Plan and the Traditional Plan if the cost of the Traditional Plan were higher. MAP proposes eliminating the Blue Care Network HMO since few of its bargaining unit members have selected this option and the HMO does not appear to be an effective health cost containment mechanism.

Finally, MAP's proposal adds an incentive for bargaining unit members to select the Health Alliance Plan program through the inclusion of a reduced drug rider. MAP theorizes that a \$5 drug rider would be a welcome feature which would encourage bargaining unit members to select an HMO which provides both adequate health care coverage and affordable pricing.

The arbitration panel has carefully considered the parties' Last Best Offers and awards the offer of the City on this issue. The panel notes that the Blue Cross Traditional health insurance is not available to any other employee group within the City of Trenton. (Vol. III, p 20; City Ex. 41.) Further, it is not offered by any of the external communities, with or without employee premium sharing. (City Ex. 42.) Thus, the factor of comparability overwhelmingly favors the City on this issue.

The arbitration panel is not inclined to retain Blue Cross Traditional, even with premium sharing. Adding premium sharing language to the collective bargaining

agreement, in the long run, will create more problems for the bargaining unit than it will solve. It will not merely be used to retain Blue Cross Traditional. It will be a springboard for a wholesale shift in premium across all health plans offered.

From a consumer's standpoint, there was no testimony that the Blue Cross PPO, Option 1, or Blue Care Network HMO programs were deficient in any way. Both parties agreed to the elimination of the Blue Care Network HMO in favor of substitution of the Health Alliance Plan equivalent coverage, assuming HAP will implement such coverage. Accordingly, the City's health care proposal seems to contain some of the goals of both parties.

While the arbitration panel is cognizant of the fact that the City's proposal does allow it some flexibility to change carriers mid-contract, this right is not unfettered. A change in carrier may only be accomplished if "equivalent benefits are provided." The City could not change carriers with an aim towards reducing health care costs where such reduction would also diminish the benefits received. Thus, MAP's fear that the City might be tempted to change carriers on a whim, is tempered by the fact that the health benefits provided must be equivalent.

The City's proposal will not affect the overall compensation presently received by the employees, including their health benefits since current levels will be maintained. Rather, the modification attempts to address the issue of escalating health care costs and is, therefore, a reasonable offer.

**CITY ISSUE NO. 5-b: HEALTH INSURANCE FOR
ACTIVE EMPLOYEES - DRUG RIDER**

The City proposes to modify the current drug rider from \$5 for any prescription drug to \$5 for generic drugs and \$10 for brand name drugs for both the

PPO1 and HMO (either Blue Care Network or the HAP plan). By contrast, MAP proposes to modify the prescription drug co-pay to a \$5/\$10 co-pay, except under the HAP HMO plan, which would maintain a \$5 drug co-pay regardless of whether the prescription called for a generic or brand name drug. Currently, all other City employees have a \$5/\$10 drug co-pay, regardless of the health care plan selected. The City sees no rationale for adopting a different drug co-pay for those employees selecting HAP as their insurance option, particularly if Blue Cross Traditional is eliminated as an option.

Admittedly, MAP proposes to maintain the \$5 drug co-pay under the HAP HMO to act as an inducement for bargaining unit members to leave Blue Cross Traditional and select the HMO. However, if the employees are limited to a choice between two managed health care products, the incentive becomes meaningless.

Inasmuch as the arbitration panel adopted the City's proposal regarding the designation of health care plan, which has resulted in the elimination of Blue Cross Traditional as an employee option, it follows that the City's proposal on the issue of prescription drug co-pay should also be adopted. At present, all other internal employee groups have a \$5/\$10 prescription drug co-pay. Thus, among other things, in consideration of internal comparability and the overall compensation presently received by bargaining unit members, Section 9 factors favor the position of the City on this issue.

**CITY ISSUE NO. 5-c: HEALTH INSURANCE FOR
ACTIVE EMPLOYEES/OPT-OUT PROVISION**

The City withdrew this issue before the filing of Last Best Offers.

**CITY ISSUE NO. 5-d: HEALTH INSURANCE FOR
ACTIVE EMPLOYEES/LAID OFF EMPLOYEES**

The City proposes to eliminate the collective bargaining agreement provision that the City will continue to provide health insurance to laid off employees for a period of up to one year following the employee's layoff. MAP seeks to maintain the status quo.

The City argues that since layoffs are typically necessitated by economic conditions, it makes no sense for the City to have to continue to pay for an employee's health insurance at the same time it seeks to save money through the employee's layoff. The City speculates that if health insurance is provided at no cost to the laid off employee, he/she will not have an incentive to obtain alternate coverage by obtaining new employment.

MAP opposes the City's proposal on the grounds that the City did not seek a similar concession from the Firefighters unit at the time it negotiated the 2002-2005 collective bargaining agreement. Indeed, that agreement has similar language, obligating the City to pay the full cost for hospital, dental, optical, and life insurance for one year after an employee is laid off from the City of Trenton.

MAP also theorizes that the so-called "savings" from the City's proposal would be "nil." There were no layoffs during the term of the current agreement and City witnesses testified there were no plans for any layoffs in the near future. Accordingly, the City failed to demonstrate any need for modification to the contract in this area.

Lastly, MAP notes that this provision is intended as a lifeline to laid off employees. Since they have lost their employment with the City of Trenton, it is unlikely

they would have the financial means to maintain health insurance at their own cost during the period of their layoff. Thus, the City's argument that the employee could simply maintain coverage through COBRA is disingenuous.

The arbitration panel has carefully considered the City's proposal in light of the Section 9 factors found at MCL 423.239. It finds in favor of MAP on this issue. Considerations of internal comparability favor MAP's position. Currently, at least one other represented group of employees enjoys similar contract language. The City either did not seek, or was not successful in, negotiating that benefit away from the Firefighters. Further, the City has failed to demonstrate any need for, or potential savings from, adoption of the provision. No layoffs have occurred within the recent past and none are likely to occur in the near future. Without any demonstrated need for modification, and without any tangible savings to be yielded, the arbitration panel sees no reason to disturb this otherwise humanitarian provision.

**CITY ISSUE NO. 5-e: HEALTH INSURANCE FOR
ACTIVE EMPLOYEES/CITY PAYS ALL FUTURE COST INCREASES**

The City proposes to eliminate a sentence in Article XIV, Section 9 of the collective bargaining agreement which requires it to pay any increases in the cost of insurance. The City views the sentence as a "psychological barrier to a meaningful negotiation of whether employees will participate in the health insurance premium." Since premium-sharing may become a significant issue in the future, the City wishes to eliminate current contract language which would be an impediment to negotiations regarding that issue.

MAP opposes the City's proposed amendment to Article XIV, Section 9, describing it as a "Trojan horse whereby the Employer will seek to avoid any contractual

obligation that it may have to pay the premiums associated with all insurances currently provided." Further, MAP notes that the Police Lieutenants continue to maintain this language in Article XIII, Section 7 of their collective bargaining agreement. The City did not seek this concession from the Lieutenants during their negotiations. Further, the external comparables all have contract protection/guarantees of employer-paid insurance premiums in their contracts.

MAP proposes, as an alternative to the City's Last Best Offer, that Article XIV be amended to add a new Section 10 for the establishment of a Joint Union/Management Health Care Oversight Committee. The purpose of the Committee would be to research, investigate, and make recommendations to the parties regarding health care cost containment alternatives. MAP maintains that the formation of a joint committee with ongoing responsibility for health care cost containment would be a more prudent way to address health care costs. The City opposes the establishment of a joint committee. The City asserts that as long as there is a contractual commitment for the City to pay all insurance premiums, there is little incentive for employees to look at cost-saving measures.

The arbitration panel has carefully considered the proposals of the parties and awards the last best offer of MAP on this issue. While the language, as presently contained in the collective bargaining agreement, does obligate the City to pay increases in insurance premiums, its deletion will not provide any present relief to the City in the area of health cost containment. That would only come through direct negotiation of proposals that address health care premiums, in tandem with a proposal to delete the current language.

The arbitration panel notes that the internal comparable of the Lieutenants unit and the external comparables have language which stabilizes the burden of health care costs. Thus, the factors of external and internal comparability weigh in MAP's favor on this issue. Further, despite the City's pessimism regarding the establishment of a Joint Health Care Cost Containment Committee, such a Committee may provide a vehicle for educating both parties regarding health care alternatives. It is likely that both parties could benefit from the sharing of ideas on this very challenging subject.

CITY ISSUE NO. 6: HEALTH INSURANCE FOR FUTURE RETIREES

The City proposes that all employees who retire after July 1, 2002, be provided with health and prescription drug insurance. However, the level of coverage after June 30, 2005 would be identical to that provided to employees who retire after June 30, 2005. According to the City, any change to retiree health care must be negotiated with MAP and mirror that of employees retiring during future contracts. No other provision of retiree health care, including coverage eligibility for surviving spouses or dependents, would change under the City's proposal.

By contrast, MAP proposes that all retirees have an option to select their health care during an annual open enrollment period. At that time, a retiree could keep the health care plan under which they retired, or select from any of the health care plans in effect for active employees. The same option would be available for eligible surviving spouses or dependents.

The City opposes MAP's proposal because it locks the City into a level of benefits regardless of cost or changes in legislation. Thus, an employee retiring at age 55 could maintain a \$5/\$10 prescription drug rider indefinitely, despite years of inflation,

changes in legislation, and changes in health care programs. The proposal would also discourage the City from giving any improvements in the area of health care to future retirees. For example, if the City were to agree to improve health insurance benefits, then the individuals who are already retired would elect that improvement, adding to the City's costs.

The arbitration panel has carefully considered the proposals of the parties on this issue in light of the Section 9 criteria and awards the Last Best Offer of the City on this issue. The arbitration panel is persuaded by the arguments presented by the City in support of its Last Best Offer.¹ The offer requires negotiation between MAP and the City and avoids the perpetual lock-in of health benefits for future retirees without regard to cost or other considerations. MAP's proposal, by contrast, would lock the City into an improvement of benefits without regard to their cost, changes in health plan, or changes in legislation. The potential cost to the City under those circumstances could become exorbitant.

CITY ISSUE NO. 7: DENTAL AND OPTICAL INSURANCE

Like the prior issue, the City proposes that dental and optical insurance for employees who retire after July 1, 2002 be adjusted to the level of coverage provided to employees who retire after June 30, 2005. Here again, the City argues that it should have the opportunity to make adjustments in insurance coverages through negotiations. It notes that it is one of the rare communities that provides dental and optical insurance to retirees. (Vol. I, p 84.) MAP opposes the City's proposal for the same reasons articulated in the discussion of the prior issue. Further, it claims confusion as to

¹The arbitration panel has not been presented with, or considered any arguments under Mich Const 1963, art 9, §24.

whether orthodontia treatment is permanently carved out, or subject to the level of coverage after June 30, 2005.

For the same reasons articulated by the arbitration panel in the prior issue, the panel adopts the proposal of the City on the issue of dental and optical insurance for future retirees. The arbitration panel repeats and hereby incorporates by reference as if fully stated herein that analysis.

CITY ISSUE NO. 8: PROMOTION PROCEDURE FOR LIEUTENANT

The City proposes to amend Appendix A which deals with the Command Lieutenant Promotion Procedure. The City proposes amendments to that procedure which would call for the use of an independent testing organization to prepare the written exam and designation of the Police Chief to conduct candidate performance evaluations. With regard to the former, the City proposes that the promotional written exam be prepared by an unspecified independent testing organization. With regard to the latter, the City proposes that the performance evaluation be conducted solely by the Chief of Police.¹

In its responsive proposal, MAP does not dispute utilization of an independent testing company to prepare and administer a written examination. Its proposal does add a requirement, however, that the written examination consist of 40 multiple choice questions. The area of largest discrepancy between the parties' Last Best Offers rests with who conducts the performance evaluation of the candidates. While the City proposes that the performance evaluation be conducted solely by the Chief of Police, MAP proposes that the evaluation continue to be conducted by the four Trenton Police Department Command Lieutenants. The highest and lowest

performance scores would be disregarded and the remaining two scores would be utilized in the evaluation.

Both parties agree that an independent testing organization would be best equipped to author and administer the promotional examination. They also agree that 70% be the minimum required to pass the test. MAP proposes that the test consist of 40 multiple choice questions. It does not appear reasonable to this arbitration panel to lock the testing company into a precise number of questions. After all, it is the expertise of the testing company that the parties are purchasing in utilizing this component of the promotional procedure. Thus, it should be up to the testing company to determine the sampling and number of questions necessary to present a fair and non-discriminatory test. MAP proposes that the testing company prepare an examination that is "job related to that of a lieutenant in the City of Trenton Police Department." It argues that that language is necessary to protect the integrity of the testing process. MAP also asserts that the written test must be internally valid and non-discriminatory.

As for the issue of who conducts the performance evaluation, the City asserts that the Chief of Police is best situated to make that assessment. The City notes that Sergeants who are assigned to the Detective Bureau or the Traffic Bureau do not routinely interact with Lieutenants from the Uniform Division. (Vol. V, pp 88-91; City Ex. No. 5.) Similarly, Lieutenants do not regularly interact with the General Service Staff Sergeant. (Vol. V, pp 89, 106.) Thus, Sergeants working in those areas would be at a disadvantage when Lieutenants were called upon to evaluate their level of performance. The City thinks that this inequity can be addressed by having the Chief of Police perform the evaluations. Further, it notes that at least one external comparable,

the City of Riverview, gives its Chief of Police the sole discretion to appoint any Sergeant who meets minimum qualifications. (See City Ex. 54.)

MAP opposes placing the Chief of Police in the sole position of performance evaluator, to the exclusion of the Lieutenants who have had a long history in the promotion process. MAP worries that placing one person in charge of the evaluation process may render it overly subjective. It argues that the current evaluation process by four Lieutenants is fair as it gives a more balanced perspective on each candidate. MAP disputes the City's claim that the Lieutenants lack familiarity with individual Sergeants. Over the course of a year, each Road Sergeant will work with virtually every Lieutenant. Significantly, none of the Sergeants work in daily contact with the Chief of Police.

The parties acknowledge that this issue is non-economic and, accordingly, subject to modification by the arbitration panel. Thus, the arbitration panel is not constrained to choose either the Last Best Offer of the City or of MAP on this issue. Accordingly, it has attempted to blend the proposals of both parties and address the respective concerns of each. To this end, the arbitration panel has adopted language in its Award which provides for the utilization of an independent testing agency; utilization of tests prepared and administered by that agency which are job-related, valid, and non-discriminatory; and adoption of a performance evaluation procedure which takes into account performance evaluations by both the Lieutenants who have had a historical role in the promotion process, as well as the Chief of Police, as the highest ranking departmental official. Its language addresses MAP's concern that individual's with daily contact with the Sergeants have input in the promotion process and that a number of

people participate in the process, thereby avoiding a single individual having what amounts to veto power. Additionally, this language recognizes the role of the Chief of Police, as the chief executive officer of the Department and, his/her necessary and appropriate input in the promotion process within the Department.

The arbitration panel believes that its Award on this issue conforms to the Section 9 criteria of Act 312, particularly subsections (c), (d), (f), and (h).

AWARD

STIPULATION #1:

All tentative agreements of the parties and the Memorandum of Understanding and all other terms of the 1999-2002 collective bargaining agreement not addressed in this Award shall be carried forward in the 2002-2005 agreement.

Dated:

April 27, 2004

Karen Bush Schneider
Karen Bush Schneider, Panel Chairperson

4-12-2004

Scott Reinacher
Scott Reinacher, MAP Delegate

4/16/2004

Steven Schwartz
Steven Schwartz, City Delegate

STIPULATION #2:

The duration of the collective bargaining agreement which is the subject of this Award shall be three (3) years, effective July 1, 2002 through June 30, 2005.

Dated:

April 27, 2004

Karen Bush Schneider
Karen Bush Schneider, Panel Chairperson

4-12-2004

Scott Reinacher
Scott Reinacher, MAP Delegate

4/16/2004

Steven Schwartz
Steven Schwartz, City Delegate

UNION ISSUE NO. 1 – PENSION:

No change/maintain current contract language.

Accepted:

Garen Bouch Schmidt

Steve H. Kelly

Rejected:

Sam Reimche

UNION ISSUE NO. 2 – DENTAL INSURANCE:

Effective as soon as practicable after the issuance of the Act 312 panel award:

- A. The City shall provide and pay the full cost of the Delta Dental full family dental insurance program as set forth in the insurance policy Plan B, covering all maintenance procedures to eighty percent (80%) of reasonable and customary care.

Delta Premier or Class I Benefits

	<u>DPO Member Dentist Delta Dental Pays</u>	<u>Nonparticipating Dentist Delta Dental Pays</u>
Diagnostic Services	100%	80%
Preventive Services	100%	80%
Emergency Palliative Treatment	100%	100%

Class II benefits

Radiographs	80%	80%
Oral Surgery	80%	80%
Minor Restorative Services	80%	80%
Periodontics	80%	80%
Endodontics	80%	80%

Class III benefits

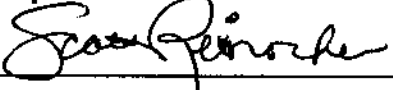
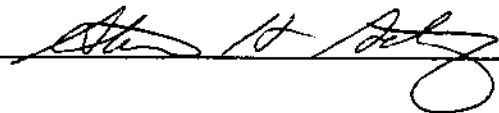
Prosthodontics	75%	75%
Major Restorative Services	75%	75%

Class IV benefits

Orthodontics (to age 19) 50% 50%

Deductible limitations - None

Maximum payment - \$1,000.00 per person total per calendar year for Class I, Class II and Class III Benefits. Delta Dental's payment for Class IV benefits will not exceed a lifetime maximum of \$1,000 per eligible person.

Accepted:
_____
_____**Rejected:**
_____**UNION ISSUE NO. 3 – FIRST YEAR WAGES:****Article XXIV – Wages**

Section 1. Increase 7/1/02 2.5% wage increase at all steps of the wage scale and all classifications by the bargaining unit. Retroactively will be effective 1/1/03.

7/1/02
to
6/30/03

Patrol Officer

Start	\$36,905.38
1 Year	\$39,365.74
2 Year	\$44,286.46
3 Year	\$49,207.18
5 Year	\$50,683.18
8 Year	\$51,250.00

Corporal \$52,787.50

Sergeant \$54,620.20
\$55,112.20

Staff Sergeant

\$56,588.20

\$57,080.20

Accepted:

Sam Reincke

Garen Bouch de Medina

Rejected:

John H. [Signature]

UNION ISSUE NO. 4 – SECOND YEAR WAGES:

Article XXIV – Wages

Section 1. Increase effective 7/1/03 2.0% wage increase at all steps of the wage scale and for all classifications covered by the bargaining unit.

7/1/03
to
6/30/04

Patrol Officer

Start	\$37,643.49
1 Year	\$40,153.05
2 Year	\$45,172.19
3 Year	\$50,191.32
5 Year	\$51,696.84
8 Year	\$52,275.00

Corporal \$53,843.25

Sergeant \$55,712.60
\$56,214.44

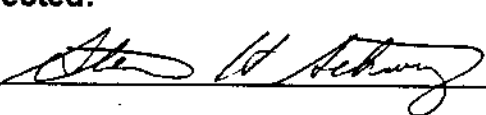
Staff Sergeant \$57,719.96
\$57,080.20

Accepted:



Karen Rauch Schmidt

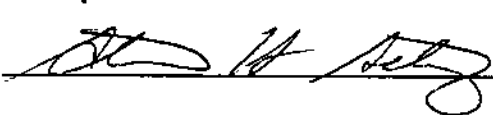
Rejected:



UNION ISSUE NO. 5 – THIRD YEAR WAGES:

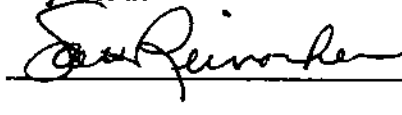
Effective 7/1/04, base wages shall be increased 2.5%.

Accepted:



Karen Rauch Schmidt

Rejected:



CITY ISSUE NO. 3 – PERSONAL LEAVE DAYS:

Delete Sections 2 and 3 of Article X and replace with the following:

The same language agreed to in the Trenton Inspectors and Lieutenants Association 2002-2007 collective bargaining agreement.

Employees covered by this contract shall be entitled to six (6) personal days per year. The City agrees to add one (1) additional personal leave day if five (5) or fewer sick days are taken in preceding annual sick leave period.

Personal days are classified as either "Personal Days" or "Super Personal Days" and may be utilized as follows:

1. **Personal Days:** Two (2) personal days per year are subject to scheduling requirements and may only be taken upon authorization of the Chief of Police or Deputy Chief. These personal days may be subject to minimum shift complement.

2. **Super Personal Days:** The remaining four (4) or five (5) personal days may be used at the sole discretion of the employee and are not subject to minimum shift complement. These personal days are not subject to approval by the Chief of Police.

Accepted:

Paul Rivoche

Maren Boush Schneider

Rejected:

Steve H. Schwarz

CITY ISSUE NO. 4 – HOURS OF EMPLOYMENT:

Hours of Employment: Modify Article VIII, Section 4 (F):

ARTICLE 8, HOURS OF EMPLOYMENT

SECTION 2.

[Sections A-E and G-H remain unchanged]

- F. The City will designate the number of employees working a shift to maintain safe and orderly police protection. Vacancies that are filled will be filled according to the overtime schedule, with the low employee in hours to be called first.

Accepted:

Steve H. Schwarz

Maren Boush Schneider

Rejected:

Paul Rivoche

CITY ISSUE NO. 5a – HEALTH INSURANCE FOR ACTIVE EMPLOYEES:

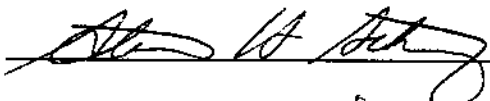
Amend Article XIV, Section 2(A) as follows:

SECTION 2 HOSPITALIZATION INSURANCE

- A. 1. The City shall provide, and pay the full cost of Full Family Hospitalization. (A plan equivalent to – or Blue Cross/Blue Shield plan with riders D45 M, Master Medical, MVF 1, ML, OB, FAE, five dollar (\$5.00) deductible drug prescriptions) for all permanent full-time employees, with VST and reciprocity riders.
2. Employees shall be notified in advance of any contemplated change in the carrier of the City's Hospitalization insurance.
3. Effective immediately after the date the final Decision of the Act 312 panel is issued or as soon as practicable thereafter, employees must select one of the following two (2) plan offerings, or equivalent plan(s) provided through a different carrier:
1. Community Blue PPO, Option 1
 2. Blue Care Network HMO


As soon as practicable after the Decision is issued by the Act 312 panel, Health Alliance Plan shall be substituted for Blue Care Network if there is plan participation sufficient for Health Alliance Plan's underwriters and the cost is equivalent or less than Blue Care Network. Nothing in this paragraph shall be deemed to restrict the City's right to switch back to Blue Care Network HMO or other carrier provided that equivalent benefits are provided.

Accepted:



Karen Bush Schmidt

Rejected:

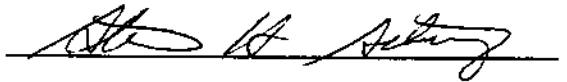


CITY ISSUE 5b – HEALTH INSURANCE FOR ACTIVE EMPLOYEES – DRUG RIDER:

XIV, Section 2(a) as follows:

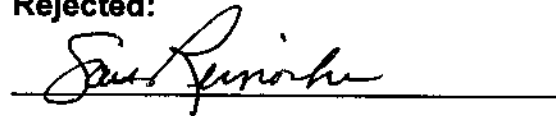
Effective immediately after the Act 312 panel issues its final Award or as soon as practicable thereafter, the prescription drug co-pay for all plans shall be \$5.00 for generic drugs and \$10.00 for brand name drugs.

Accepted:



Karen Bush Schmidt

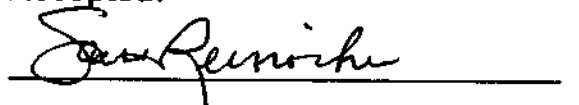
Rejected:



CITY ISSUE NO. 5d – HEALTH INSURANCE FOR ACTIVE EMPLOYEES/LAID OFF EMPLOYEES:

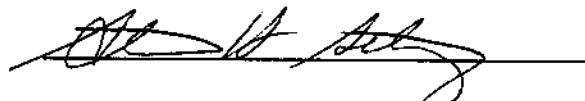
No change in status quo.

Accepted:



Karen Bush Schmidt

Rejected:



CITY ISSUE NO. 5e – HEALTH INSURANCE FOR ACTIVE EMPLOYEES/CITY APYS ALL FUTURE COST INCREASES:

No change in current XIV, Section 9 contract language.

The effective date of all insurance policies shall be the next eligible enrollment date after the ratification of this contract by the Union and the City. Any increases in the cost of insurance shall be paid by the City.

Add new Section 10 to Article XIV:

The parties will establish a joint Union – management Health care oversight committee. There shall be two (2) management representatives and two (2) representatives from the Union on the four (4)-person committee. The purpose of the committee will be to research, investigate, and make recommendations to the parties as to possible health care cost containment programs in an effort to reduce health care costs.

Accepted:

Joe Riosher

Harmon Roush Schmidt

Rejected:

Steve H. Schwanz

CITY ISSUE NO. 6 – HEALTH INSURANCE FOR FUTURE RETIREES:

Amend Article SIV, Section 2(B) by adding the following language to the existing language:

SECTION 2. HEALTH INSURANCE BENEFITS

All employees who retire after July 1, 2002, will be provided with health and prescription drug insurance described in this Section. However, the level of coverage after June 30, 2005, shall be identical to that provided to employees who retire after June 30 2005.

Accepted:

Steve H. Schwanz

Harmon Roush Schmidt

Rejected:

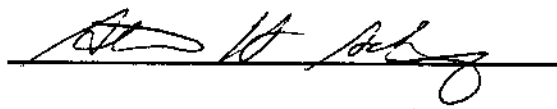
Joe Riosher

CITY ISSUE NO. 7 – DENTAL AND OPTICAL INSURANCE FOR FUTURE RETIREES:

Amend Article XIV, Section 6 by adding the following language to the existing language:

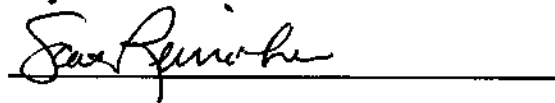
Subject to the eligibility criteria described in this Section, all employees who retire after July 1, 2002, will be provided with dental (minus orthodontia) and optical insurance described in this Section. However, the level of coverage after June 30, 2005, shall be identical to that provided to employees who retire after June 30, 2005.

Accepted:



Karen Marsh

Rejected:



CITY ISSUE NO. 8 – COMMAND LEIUTENANT PROMOTION PROCEDURE:

**APPENDIX A
COMMAND LEIUTENANT PROMOTION PROCEDURE**

The following criteria will be used to Command Lieutenant:

1. SENIORITY

Two (2) points will be awarded for each complete year of service with a maximum possible score of sixty (60) points. For the purpose of scoring seniority points, a candidate's seniority will be accrued and determined up to and including the effective date (beginning day) of the promotional list (May 1st).

2. WRITTEN EXAMINATION

Correct answers of seventy (70) percent or better of a multiple choice written examination will award the candidate twenty-five (25) points. Failure to achieve at least seventy percent, will cause the candidate to become ineligible to proceed any further in the promotion procedure.

3. PERFORMANCE EVALUATION:

Each candidate will be evaluated by the Chief of Police and by four (4) Trenton Police Department Command Lieutenants. Their evaluations will be recorded on the department's "Performance Evaluation Form for Promotion to Command Lieutenant". A maximum score of fifteen (15) points is possible.

ELIGIBILITY:

[Entire section remains unchanged]

WRITTEN EXAMINATION:

1. The written portion of the promotional procedure will consist of a validated test which will be authored and administered by an independent testing organization that has expertise in creating such tests. The test must be job-related to the position of Lieutenant providing law enforcement services in a suburban police department. The test must be internally valid and non-discriminatory. Seventy (70%) percent of correct answers is minimally required to proceed further into the promotion procedure.
2. Bibliographies and resources to prepare for the examination will be made available to each eligible candidate at least sixty (60) calendar days in advance of the written evaluation date at the Police Department and the Trenton Library or other local Libraries.
3. One (1) union representative (other than a candidate) of the Sergeants, Corporals and Patrol Officers Union will be allowed to be present in the designated written examination room while candidates perform the written portion of the promotional procedure.
4. Upon completion of the written examination, signed candidates' answer sheets (not scored) will be placed in an envelope and then sealed. Only after each candidate has been awarded seniority and performance points, will the written examinations be removed from the sealed envelope and scored by the testing organization.
5. Should an emergency occur and a candidate is unable to take the written examination as scheduled, it is the only reason for another opportunity to take it. An emergency would be a confirmed hospitalization or death of a family member or a documented statement from a physician stating the candidate is under doctor's care and not able to take the written examination. In the event an emergency is documented, the written examination must be taken by the candidate within two (2) weeks of the originally scheduled written examination date or the candidate becomes ineligible to proceed any further in the promotional process.

6. Upon their request, candidates shall be apprised of their individual written examination scores. This will be done in a confidential manner between a police department administrator and the candidate.

PERFORMANCE EVALUATION:

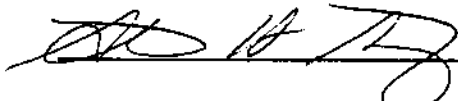
1. Each candidate will be evaluated by four (4) Trenton Police Department Command Lieutenants and the Chief of Police. The highest and lowest scores will be disregarded and the remaining three (3) scores will be used to determine the performance evaluation.
2. In making the evaluation, the four Lieutenants and the Chief of Police will utilize the department's "Performance Evaluation Form for Promotion to Command Lieutenant." Each candidate's personnel file will be reviewed by the four Lieutenants and the Chief of Police, and shall be considered along with their personal observation of each candidate's job performance in their current rank and their suitability for a position as a command Lieutenant, for this stage of the procedure.
3. The Chief of Police will place the signed and completed evaluations into an envelope which will be sealed. Tallying of the evaluations will take place prior to the scoring of the written examinations. One (1) MAP union representative and administrative representative will tally the evaluations and will record the score for each candidate.
4. Any rating selections of "J" (not acceptable) or "K" (needs improvement) must be explained in writing on the reverse side of the evaluation form.

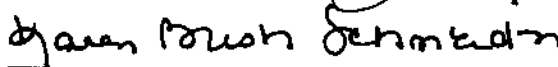
PROMOTIONAL LIST:

[Entire section remains unchanged.]

Accepted:







Rejected:
