

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CASE NUMBER: D03 A-0833

Opinion and Award in the matter of the Act 312 Arbitration between

City of Highland Park

- and -

Police Officers Labor Council

DATE OF ACT 312 PETITION:	June 26, 2003
DATE PANEL CHAIR APPOINTED:	March 18, 2004
DATE OF PRE-HEARING CONFERENCE:	March 30, 2004
DATES OF HEARING:	May 13, 2004 June 3, 2004
LOCATION OF HEARING:	Lansing, Michigan
DATE LAST BEST OFFERS EXCHANGED:	June 25, 2004
DATE RECORD CLOSED:	June 29, 2004
ARBITRATION PANEL:	

**Richard N. Block, Neutral Chair
Janet L. Lazar, City Delegate
Richard Weiler, Union Delegate**

APPEARANCES:

For the City of Highland Park

**Mr. John Entenman, Attorney, Dykema Gossett
Ms. Janet Lazar, Interim City Administrator
Ms. Susan Wager, Human Resources Consultant
Mr. Theodore Cadwell, Acting Director of Public Safety
Mr. Donald Cox, Chief of Operations for Wayne County Sheriff
Mr. Charles Lafferty, Fire Chief**

For Police Officers Labor Council

Mr. Peter Sudnick, Attorney
Mr. Frank Klik, Labor Representative
Ms. Nancy Ciccone, Labor Research Analyst
Mr. Marlon Walton, Unit President
Mr. Dave Fisher, Consultant
Mr. Jim Lant, Public Safety Officer
Mr. Morris Cotton
Mr. Pat McClelland

BACKGROUND

The most recent collective bargaining agreement between the City of Highland Park (hereinafter the City) and the Police Officers Labor Council (hereinafter the Union) covering the public safety employees in the City expired on June 30, 2003 (Jt. Ex. 1). Bargaining for a new collective agreement commenced, but the parties were unable to reach an agreement. On June 26, 2003, the Union filed a request for Act 312 arbitration. On March 18, 2004, Richard N. Block was appointed Act 312 arbitrator and neutral chair. A pre-hearing conference was held on March 30, 2004 at which the parties waived all time limits.

Issues in dispute, witness lists and exhibits were exchanged by May 7, 2004. Hearings were held on May 13, 2004 and June 3, 2004 in Lansing Michigan during which both parties had the opportunity to present testimony and documentary evidence and examine and cross-examine witnesses on the issues in dispute. The parties waived the filing of briefs (Tr. 419), and last, best offers were exchanged on June 25, 2004. The panel met in executive session in Lansing, Michigan on June 30, 2004, July 19, 2004, July 22, 2004, and September 29, 2004.

STATUTORY FACTORS

With respect to the factors that must be considered by the panel, Act 312 states, in relevant part:¹

the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

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

The record establishes that, for the purposes of these proceedings, the panel considered all the factors, but the most relevant statutory factors are c,² d,³ and h (hereinafter referred to as "other factors"). The record establishes that

¹See MCL 423.239.

²Hereinafter, factor c is referred to as "public interest" or "ability to pay."

³Hereinafter, factor d is referred to as "comparability."

statutory factors other than c, d, and h are not as applicable as the other factors in this case.

PROCEDURAL MATTERS

The panel unanimously determines that, for economic issues, the last, best offer for each provision within an issue is a separate last, best offer. All issues are economic unless designated as noneconomic (Tr. 421).

CITY ISSUE 1: TENTATIVE AGREEMENTS

The panel determined in executive session that all tentative agreements shall be included as part of this award.

CITY ISSUE 2: RIGHT TO CONTRACT FOR POLICE SERVICES

LAST BEST OFFERS

Last Best Offer of City

Add the following to Article IV, Management Rights:

Section 3. Effective July 1, 2003, the City has the right to enter into a contract for police services with the County of Wayne, or any other responsible entity, including as set forth in Jt. 20 at the Act 312 Arbitration, MERC Case No. D03 A-0833. So stated, the POLC is directed to take every action necessary to fully effectuate this Award, including, but not necessarily limited to:

- Dismissing its appeal from Judge McDonald's August 29, 2003 Order of Dismissal of Actions in Case No. 01-142400-CZ (Jt. 17).
- Abandoning any claim to relief as set forth in the February 9, 2004 Decision and Recommended Order of ALJ Julia Stern in MERC Case No. CO1 L-245 and, in particular, paragraph 4 of said Recommended Order. See, Jt. 18.

- Agree that relief on any issues in said case unrelated to the 7/1/03 contracting with County of Wayne is limited to employees in the bargaining unit as of 7/1/03.
- Withdrawing, with prejudice, Grievance 03-053. See, Jt. 19.

Last Best Offer of Union

“(T)he City has the contractual authority to subcontract for police services with the Wayne County Sheriff’s Department in accordance with Jt. Ex. 20.”

DISCUSSION

The parties agree that the right to contract for police services is an economic issue and therefore subject to last, best offer (Tr. 421-22). A majority of the panel notes that both parties agree that the City should have the right to contract for police services with Wayne County. With respect to the right to contract, the main difference between the two LBO’s regards whether the City should have the authority to subcontract with any other responsible entity.

The record establishes the City is in a dire financial situation. As of June 30, 2003, the City had a fund deficit of over \$16 million and an annual operating deficit of \$1,068,331 (Jt. Ex. 10). Cities the Union believes are comparable, Berkeley, Centerline, Fraser, Grosse Pointe Park, Grosse Pointe Woods, and Huntington Woods, ran fund balance surpluses ranging from \$673,000 to \$4.8 million (Un. Ex. 53; City Ex. 54).⁴

Other evidence also points convincingly to the City’s financial problems. The auditors for the City’s financial statements for the year ended June 30, 2003 noted that “it

⁴ The City does not concur with the Union’s proposed comparables (Un. Exs. 42-53). The City contends that, given the unique financial circumstances in Highland Park, no jurisdiction in Michigan is comparable to Highland Park (Tr. 29, 413-14; City Ex. 54). The panel is of the view that comparables for future Act 312 proceedings, if any, involving these parties, must be established based on the record of those future proceedings.

makes little sense to spend time on lesser matters . . . when there are so many larger issues, most of which are survivability (emphasis in original) matters . . . rather than financial reporting and internal control issues" (Jt. Ex. 11). The pension plan is only 19% funded; it is underfunded by \$16.8 million to \$17.7 million, depending on how the liability is determined (Jt. Ex. 9).

The City's ability to generate revenue is also limited. The current taxable value (TV) of its property is \$127 million (City Ex. 54). Among the cities the Union considers comparable, the mean taxable value is \$454.7 million, with the lowest TV in the Union's comparable communities being \$287.9 million (Un. Ex. 53; City Ex. 54).

In 2000, the City applied for an emergency loan from the State of Michigan through stabilization bonds in order to continue operating, receiving a loan of \$3.4 million (Tr. 60-61). In 2001 and 2002, the City also received an emergency loan of \$1 million and another \$3.2 million in stabilization bonds (Tr. 65).

Given this serious financial situation, the City was unable to fund the capital costs (e.g., building, vehicles) to operate an adequate police department (Tr. 128-29). Therefore, on July 1, 2003, the City contracted with Wayne County to provide police services for the citizens of Highland Park (Jt. Ex. 20). Under this contract, the City pays Wayne County \$2.562 million annually (Jt. Ex. 20).

There is no evidence on the record of any serious service problems associated with the contract. There is much evidence on the record that the contract has been very successful for the City, as regards the provision of police services. Acting Public Safety Director Theodore Cadwell provided uncontroverted testimony that the County has provided police services that the City would have been unable to provide (Tr. 186-89).

Wayne County Chief of Operations Donald Cox provided uncontroverted testimony that the contract has been a success and that the County has been praised by Highland Park officials and citizens for the quality of the police services provided to the City (Tr. 232-41, 243). There has been no litigation against Wayne County resulting from the interaction of police with citizens since the effective date of the contract (Tr. 205-06, 247, 253). In addition, the record establishes that no bargaining unit employee has been laid off because of the Wayne County contract (Tr. 235, 243, 262-63).

Based on the foregoing, a majority of the panel finds that the record establishes that the City has shown good faith and sound judgment in its contracting practices for police services. The record is clear that the City is unable to provide adequate police services without outside help. While there is nothing on the record that indicates that the City will not continue to contract with Wayne County in the foreseeable future, this evident sound judgment would dictate that the City should have broad discretion to contract with responsible entities in the event the City determines it should not contract with Wayne County.

Accordingly, a majority of the panel will find in favor of the City. As the City has the right to subcontract effective July 1, 2003, a majority of the panel will also find in favor of the City regarding those provisions of its LBO requiring that the Union dismiss its appeal from Judge McDonald's August 29, 2003 Order of Dismissal of Actions in Case No. 01-142400-CZ (Jt. Ex. 17), abandon any claim to relief as set forth in the February 9, 2004 Decision and Recommended Order of ALJ Julia Stern in MERC Case No. CO1 L-245 and, in particular, paragraph 4 of said Recommended Order (Jt. Ex. 18), agree that relief on any issues in said case unrelated to the July 1, 2003 contracting

with County of Wayne is limited to employees in the bargaining unit as of July 1, 2003, and withdraw Grievance 03-053 (Jt. Ex. 19).

CONCLUSION

Based on the foregoing, a majority of the panel finds that the LBO of the City is more appropriate than the LBO of the Union particularly on the statutory factor of the "public interest/ability to pay."

AWARD ON RIGHT TO SUBCONTRACT FOR POLICE SERVICES

The LBO of the City on the right to contract for police services is accepted. The LBO of the Union on the right to contract for police services is not accepted.

CITY ISSUE 3/UNION ISSUE 3: DURATION (NONECONOMIC)

The parties have agreed on the following language regarding the issue of duration:
"This Agreement shall remain in full force and effect from the execution of this Agreement until midnight December 31, 2005, and thereafter, until amended or modified as provided herein."

CITY ISSUE 4: SENIORITY (NONECONOMIC)

LAST, BEST OFFERS

City Last, Best Offer

ARTICLE IX SENIORITY

Section 1. A new employee hired in a permanent position in the unit shall be considered as a probationary employee for the first twelve (12) months of his employment, and he/she shall be entered on the seniority list of the Police or Fire Unit and shall rank for seniority from the date of appointment.

Section 2. Anniversary Date. The anniversary date of service for the purpose of this Agreement shall be the original date of appointment to the Public Safety Department or its predecessor departments. This shall also be defined as City seniority. In cases of ties

in departmental or class seniority, City seniority shall prevail. In cases of ties in departmental, class and City seniority, the person with the highest score on the MCOLES⁵ Exam or Fire equivalent will have the highest seniority. In cases where ties exist in the proceeding seniority, the person with the highest last numbers of his social security number will be deemed to have the highest seniority.

Section 3. Position Seniority. Public Safety Officers shall be permanent in position after one hundred eighty (180) days of successful service in said position and shall be granted position seniority from the first day of assignment to the position.

In the event of a layoff, employees with the highest Police Unit, or Fire Unit, seniority shall have the right to "bump" employees with lesser Police Unit, or Fire Unit, seniority.

Section 4. Loss of Seniority. An employee shall lose his seniority for any of the following reasons:

- a) Resignation or "quit,"
- b) Termination for just cause;
- c) Absence for three (3) consecutive scheduled work days without giving notice;
- d) Death;
- e) Retirement;
- f) Failure to return to work from an authorized leave of absence without notice or excuse;
- g) Performance of no work for a period of one (1) year.

Delete OLD Section 5 (deleted)

NEW Section 5 (Old Section 6). Seniority During Leaves of Absence. Employees on approved leaves of absence shall have their seniority frozen as of the date of commencement of the leave of absence, except that employees on military leaves of absence or sick leaves of absence shall continue to accumulate seniority.

Last, Best Offer of the Union

The Union proposes that Article IX, Sections 1, 3, 4, and 5 remain the status quo (Jt. Ex.

1). The Union also proposes that Article IX, Section 2 remain the status quo except that

⁵ MCOLES is the acronym for Michigan Commission on Law Enforcement Standards (Tr. 215-16).

the Union proposes substituting "MCOLES" for "MLEOTC" and agrees to spell "City" with an upper case "C" (Jt. Ex. 1).

DISCUSSION

Because seniority is a noneconomic issue (Tr. 421), the panel is not required to accept one or the other LBO. Regarding Article IX, Section 1, a majority of the panel accepts the City's LBO. The record establishes that 15 of the 19 employees in the bargaining unit are permanently assigned to the fire unit due to the City's financial situation, individual certifications, and the contract with Wayne County, under which the County is responsible for primary policing in the City (Jt. Ex. 13; Tr. 179-80, 184). The City's proposal reflects the reality of the current structure of responsibilities of bargaining unit members. Moreover, as this collective agreement will expire on December 31, 2005, the parties can address any changes in the responsibilities of bargaining unit members at that time.

There is no disagreement regarding Article IX, Section 2. Regarding Article IX, Section 3, a majority of the panel accepts the Union's status quo proposal of permanence in the position after 90 days. A majority of the panel believes that 90 days is a sufficient amount of time for the City to find that service of an employee is not successful. Moreover, a majority of the panel does not believe that an employee should be required to experience the uncertainty of temporary status for 6 months (180 days). A majority of the panel accepts the City's proposed change regarding bumping within units. As noted, this unit distinction reflects the reality of the organizational structure in the City.

Regarding Article IX, Section 4, the parties agree on items a-f. A majority of the panel accepts the City's LBO for Article, Section 4, item g. Given the difficult financial

condition of the City, discussed above, a majority of the panel believes it is unlikely that an employee who performs no work for the City for one year will be recalled.

A majority of the panel agrees with the City's proposal to delete Article IX, Section 5. With the separation of the police and fire units, this section is no longer applicable.

Article IX, Section 6 will be renumbered Article IX, Section 5. The substance, however, will remain unchanged.

CONCLUSION OF THE PANEL

Based on the foregoing, a majority of the panel rules that the provision on seniority shall read as follows:

ARTICLE IX SENIORITY

Section 1. A new employee hired in a permanent position in the unit shall be considered as a probationary employee for the first twelve (12) months of his employment, and he/she shall be entered on the seniority list of the Police or Fire Unit and shall rank for seniority from the date of appointment.

Section 2. Anniversary Date. The anniversary date of service for the purpose of this Agreement shall be the original date of appointment to the Public Safety Department or its predecessor departments. This shall also be defined as City seniority. In cases of ties in departmental or class seniority, City seniority shall prevail. In cases of ties in departmental, class and City seniority, the person with the highest score on the MCOLES Exam or Fire equivalent will have the highest seniority. In cases where ties exist in the proceeding seniority, the person with the highest last numbers of his social security number will be deemed to have the highest seniority.

Section 3. Position Seniority. Public Safety Officers shall be permanent in position after ninety (90) days of successful service in said position and shall be granted position seniority from the first day of assignment to the position.

In the event of a layoff, employees with the highest Police Unit, or Fire Unit, seniority shall have the right to "bump" employees with lesser Police Unit, or Fire Unit, seniority.

Section 4. Loss of Seniority. An employee shall lose his seniority for any of the following reasons:

- a) Resignation or "quit,"
- b) Termination for just cause;

- c) Absence for three (3) consecutive scheduled work days without giving notice;
- d) Death;
- e) Retirement;
- f) Failure to return to work from an authorized leave of absence without notice or excuse;
- g) Performance of no work for a period of one (1) year.

Section 5. Seniority During Leaves of Absence. Employees on approved leaves of absence shall have their seniority frozen as of the date of commencement of the leave of absence, except that employees on military leaves of absence or sick leaves of absence shall continue to accumulate seniority.

CITY ISSUE 5: PROMOTION (NONECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of City

ARTICLE X PROMOTION

All employees of the Highland Park Public Safety Officers bargaining unit are eligible for promotions to Public Safety Officer II, III and IV under the following conditions:

- A. For the rank of PSO II. Employees who have completed at least four (4) years of active service in Public Safety shall be placed on a permanent promotional roster. Promotion to PSO II shall be on the basis of qualifications and ability. Where two (2) candidates have equal qualifications, ability, and work record, the senior employee shall be promoted.
- B. For the rank of PSO III. Employees who have been promoted to the rank of PSO II shall be placed on a permanent promotional roster. Promotion to PSO III shall be on the basis of qualifications and ability. Where two (2) candidates have equal qualifications, ability, and work record, the employee with the greatest amount of PSO II rank seniority shall be promoted.
- C. For the rank of PSO IV. Employees who have been promoted to the rank of PSO III shall be placed on a permanent promotional roster. Promotions shall be made in the discretion of the City, fairly taking into account seniority, qualifications, ability, and work record.

- D. Promotion. Upon promotion, the candidate shall be given the salary for the newly acquired position and be placed on a one (1) year probationary period. Employees promoted to the rank of PSO III and PSO IV shall attend a Supervisor School conducted by a MCOLES Certified Training Instructor or Fire equivalent. Successful completion of the Officer Supervisory School is a prerequisite for completion of the probationary period. At the end of one (1) year, each candidate's performance will be evaluated to determine whether the officer is entitled for confirmation of promotion. Should an employee be unsuccessful in passing the Supervisory School, that employee will return to his/her former rank and placed on the seniority list.
- E. Employees promoted out of the collective bargaining unit have no right to return to the unit, but they may be permitted this option with the mutual agreement of the City.

Last, Best Offer of the Union

The Union proposes retention of status quo contained in Paragraphs A and B except that it agrees to substitute "MCOLES" for MLEOTC " (Jt. Ex. 1). The Union opposes the addition of a new Paragraph E as proposed by the Employer (Jt. Ex. 2).

DISCUSSION

Because promotion is a noneconomic issue (Tr. 421), the panel is not required to accept one or the other LBO. A majority of the panel is of the view that the City LBO's for Articles X-A and X-B most closely meet the statutory criterion of the interest and welfare of the public and ability to pay. The major difference between the City and Union LBO's is that the City is proposing that promotions be based on qualifications and ability, with seniority to be used as a "tiebreaker." The Union's LBO would continue to determine promotions primarily on seniority, then test scores. The record establishes that the City runs most efficiently and the interest of the public is best served when employees are promoted to higher ranks and assume greater responsibility based on qualifications and ability (Tr. 194, 289-90). Moreover, although the Union would prefer

the status quo with testing, there is nothing in the City's LBO that prohibits the City from using valid tests to determine qualifications and ability (Tr. 216). Accordingly, a majority of the panel finds that the City's LBO for Articles X-A and X-B is more consistent with the statutory criteria than the Union's LBO; therefore the City's LBO will be adopted.

With respect to Article X-C, a majority of the panel accepts the principle of qualifications in promotion but disapproves of the words "discretion of City, fairly" Whatever discretion the City may have is circumscribed by the collective bargaining agreement. A majority of the panel is of the opinion that the words "discretion of the City," if retained, may cause future disputes by providing the impression that the City has greater discretion than the collective agreement actually permits it. The statutory criterion of "other factors" requires avoiding language that may encourage future disputes.

A majority of the panel is of the view that the word "fairly" is redundant. Fairness is always required, and use of the word "fairly" would be superfluous verbiage that should be avoided. Avoidance of superfluous wording is consistent with the statutory criteria of "other factors."

A majority of the panel is of the view that City LBO for Article X-D should be adopted. It modernizes the language consistent with the Union LBO and it updates the language to account for the fact that the Union also represents firefighters in this bargaining unit (Jt. Ex. 13; Tr. 179-80, 184).

The panel is of the view that Union's opposition to the changes in Article X-E in the City's LBO is well-founded. The City's LBO, by removing from an employee the right to return to the bargaining unit upon promotion out of the bargaining unit, may have the effect of discouraging bargaining unit employees from accepting promotions out of the unit by creating a risk of separation from the City if they are unsuccessful in the nonbargaining unit position. It is equitable, and consistent with "other factors" that an employee should have some option to return to the bargaining unit from a non-bargaining unit position. Based on foregoing, the majority of the panel will award the language reproduced below as Article X-E.

CONCLUSION

Based on the foregoing, a majority of the panel rules that the provision on seniority shall read as follows:

ARTICLE X PROMOTION

All employees of the Highland Park Public Safety Officers bargaining unit are eligible for promotions to Public Safety Officer II, III and IV under the following conditions:

- A. For the rank of PSO II. Employees who have completed at least four (4) years of active service in Public Safety shall be placed on a permanent promotional roster. Promotion to PSO II shall be on the basis of qualifications and ability. Where two (2) candidates have equal qualifications, ability, and work record, the senior employee shall be promoted.
- B. For the rank of PSO III. Employees who have been promoted to the rank of PSO II shall be placed on a permanent promotional roster. Promotion to PSO III shall be on the basis of qualifications and ability. Where two (2) candidates have equal qualifications, ability, and work record, the employee with the greatest amount of PSO II rank seniority shall be promoted.

- C. For the rank of PSO IV. Employees who have been promoted to the rank of PSO III shall be placed on a permanent promotional roster. Promotions shall take into account seniority, qualifications, ability, and work record.
- D. Promotion. Upon promotion, the candidate shall be given the salary for the newly acquired position and be placed on a one (1) year probationary period. Employees promoted to the rank of PSO III and PSO IV shall attend a Supervisor School conducted by a MCOLES Certified Training Instructor or Fire equivalent. Successful completion of the Officer Supervisory School is a prerequisite for completion of the probationary period. At the end of one (1) year, each candidate's performance will be evaluated to determine whether the officer is entitled for confirmation of promotion. Should an employee be unsuccessful in passing the Supervisory School, that employee will return to his/her former rank and placed on the seniority list.
- E. An employee promoted out the bargaining unit shall have a right to return to the bargaining unit within one year of the effective date of the promotion at the same rank as he or she held when he or she left the bargaining unit. An employee who is promoted out of the bargaining unit shall not accumulate seniority in the bargaining unit and rank while out of the bargaining unit.

CITY ISSUE 6: LEAVES OF ABSENCE

LAST, BEST OFFERS

Last, Best Offer of City

ARTICLE XI LEAVES OF ABSENCE

Section 1. Leaves of absence without pay for a reasonable period not to exceed six (6) months may, in the sole discretion of the City, be granted to permanent employees with one (1) or more years of service without loss of seniority. An employee receiving such leave of absence shall not receive or accrue any vacation time, sick leave, days of leave with pay, holiday pay or any other paid time or fringe benefits normally given to regularly working employees. Such leave may be extended at the City's discretion.

Section 2. Union Leave. Leaves of absence, without pay, will be granted to any employee elected or selected by the Union to attend educational classes or conventions conducted by the Union. Not more than one (1) employee may be on such leave at any one time, and the total number of working days for the unit will not exceed ten (10) in any one (1) calendar year.

Not more than one employee at any one time elected to a union office or selected by the Union to do work, which takes him from his employment with the Employer shall be

granted a leave of absence, without pay and without loss of seniority, notwithstanding any other provisions in the contract to the contrary, not to exceed one (1) year or the term of office, whichever is shorter.

OLD Section 3 (deleted)

OLD Section 4 (deleted)

OLD Section 3 (deleted)

OLD Section 4 (deleted)

Section 3. Jury Duty. Employees shall be granted a leave of absence with pay when they are required to report for Jury Duty. Employees shall be paid the difference between any Jury Duty compensation they receive and their regular wages for time necessarily spent in jury service, up to a maximum of ten (10) days per calendar year. Seniority will continue to accrue to the employee while on jury duty. Employees will be paid for the full day after endorsing the jury check to the Employer.

Section 4. Any request for a leave of absence shall be submitted in writing by the employee to the Employer. The request shall state the reason the leave of absence is being requested and the approximate length of time off the employee desires.

Section 5. Authorization or denial for a leave of absence request shall be furnished to the employee by the Employer in writing within a reasonable period of time.

OLD Section 8 (deleted)

The effective date of this provision shall be July 1, 2004.

Last, Best Offer of Union

The POLC proposes that the language of Section 1 remain status quo without change or modification except that it proposes that the last sentence referring to approval by the Mayor be eliminated in its entirety. The POLC accepts the changes proposed by the City for Section 2. It proposes status quo for Section 3. It agrees to the elimination of Section 4 as proposed by the City. It proposes status quo for the remaining Sections 5, 6, 7, and 8.

DISCUSSION

A majority of the panel is of the opinion that the City's LBO regarding Article XI, Sections 1 most closely comports with the statutory criterion of "other factors." A majority of the panel observes that there is little difference between the two LBO's with

respect to Section 1. Both LBO's propose eliminating the Mayor from the decision on a leave of absence. The major difference is that that City proposes eliminating the "good cause" language and adding the phrase "in the sole discretion of the City." A majority of the panel is of the opinion that the "good cause" language is ambiguous and ambiguity is best avoided. Given the City's serious financial situation, the City is entitled to some flexibility in responding to requests for leaves of absence. In addition, the City has an obligation to be reasonable and nonarbitrary in its decisions. While a majority of the panel is of the opinion that the term "in the sole discretion of the City" is unnecessary, the panel has no authority to remove it. A majority of the panel is of the opinion that redundant language is preferable to ambiguous language.

The Union has accepted the City's LBO for Article XI, Sections 2 and 4, so it is unnecessary to address those sections. A majority of the panel is of the Opinion that the Union LBO is preferable to the City LBO for Article XI, Section 3. Employees should have the option of furthering their education, with the City's concurrence. The welfare of the public is enhanced when the public safety workforce is educated. Moreover, this provision does not commit the City to granting the educational leave; thus no financial obligation is imposed on the City.

Similarly, the Union's LBO regarding jury duty (old Section 5) is granted. Bargaining unit employees should fulfill their obligations of citizenship, and there is no evidence on the record that this provision has caused substantial financial hardship to the City.

The parties agree on the retention of the substance of old Sections 6 and 7. A majority of the panel agrees with City LBO to eliminate Section 8. This provision

provides for a leave extension. It is redundant, as an employee may ask for a new leave pursuant to Article XI, Section 1. As noted, the statutory criterion of "other factors" dictates that redundancies should be avoided.

CONCLUSIONS

With respect to the various sections, a majority of the panel finds that the City's LBO regarding Sections 1 and 8 are most consistent with the statutory factors. A majority of the panel finds that the Union's LBO regarding Section 3 and current Section 5 are most consistent with the statutory factors. The Union's LBO concurs with the City's LBO on changes for current sections 2, 3, 6, and 7.

AWARD ON LEAVES OF ABSENCE

The City's LBO's on Article XI, Section 1, 2, 4, current 6, current 7, and current 8 are accepted. The Union's LBO's on Article XI, Section 1 and current Section 8 are not accepted. The Union's LBO's on Article XI, Section 3 and current Section 5 are accepted. The City's LBO's on Article XI, Section 3 and current Section 5 are not accepted. Based on the foregoing, the maternity leave provision, Section 4, is deleted. The jury duty provision will become Section 4. Current Section 6 will become Section 5, and current Section 7 will become Section 6. Current Section 8 is deleted. Based on the foregoing, the provision on leaves of absence shall be as follows:

ARTICLE XI

LEAVES OF ABSENCE

Section 1. Leaves of absence without pay for a reasonable period not to exceed six (6) months may, in the sole discretion of the City, be granted to permanent employees with one (1) or more years of service without loss of seniority. An employee receiving such leave of absence shall not receive or accrue any vacation time, sick leave, days of leave with pay, holiday pay, or any other paid time or fringe benefits normally given to regularly working employees. Such leave may be extended at the City's discretion.

Section 2. Union Leave. Leaves of absence, without pay, will be granted to any employee elected or selected by the Union to attend educational classes or conventions conducted by the Union. Not more than one (1) employee may be on such leave at any one time, and the total number of working days for the unit will not exceed ten (10) in any one (1) calendar year.

Not more than one employee at any one time elected to a union office or selected by the Union to do work, which takes him from his employment with the Employer, shall be granted a leave of absence, without pay and without loss of seniority, notwithstanding any other provisions in the contract to the contrary, not to exceed one (1) year or the term of office, whichever is shorter.

Section 3. Education Leave. An employee wishing to further his education in his chosen profession may be granted educational leave for a maximum of one (1) year without pay or benefits. This leave may be extended by mutual agreement.

Section 4. Jury Duty. Employees shall be granted a leave of absence with pay when they are required to report for Jury Duty. Employees shall be paid the difference between any Jury Duty compensation they receive and their regular wages for time necessarily spent in jury service. Seniority will continue to accrue to the employee while on jury duty. Employees will be paid for the full day after endorsing the jury check to the Employer.

Section 5. Any request for a leave of absence shall be submitted in writing by the employee to the Employer. The request shall state the reason the leave of absence is being requested and the approximate length of time off the employee desires.

Section 6. Authorization or denial for a leave of absence request shall be furnished to the employee by the Employer in writing within a reasonable period of time.

CITY ISSUE 7: HOURS AND SCHEDULES OF EMPLOYMENT (NONECONOMIC)

LAST BEST OFFERS

Last, Best Offer of the City

ARTICLE XIII HOURS AND SCHEDULES OF EMPLOYMENT

Public Safety Officers will be assigned either to the Police Service Unit or the Fire Unit. Shifts may be of eight (8), twelve (12), or twenty-four (24) hours. Shifts shall be chosen by seniority every six (6) month period.

Section 1. Hourly Rate. The hourly rate shall be determined by dividing the annual rate of pay by 2080 hours (police) or the number of scheduled hours/year (fire).

Section 2. Scheduling. Work and shift schedules shall be posted by the City Employees shall be notified at least seven (7) days in advance of any schedule or assignment change unless the schedule or assignment change was with the consent of the employee involved.

Last, Best Offer of the Union

The POLC proposes that the introductory paragraph to Article XIII as proposed by the Employer be adopted by the Panel, except that the POLC proposes additional language to state as follows:

Shifts shall be effective on April 1 and October 1 of each year. The posting of shifts shall occur no later than the beginning of the pay period immediately preceding the April 1 and October 1 dates.

The POLC further proposes the elimination of old Section 1. It proposes that a new Section 1 read as follows:

Section 1. Hourly Rate. The hourly rate shall be determined by dividing the annual rate of pay by 2080 hours (police) or 2620.8 (fire) based on a work week of 50.4 hours.

The POLC further proposes that Section 3 (to be redesignated Section 2) remain status quo without change or modification.

DISCUSSION

Because hours of work and scheduling is a noneconomic issue (Tr. 421), the panel is not required to accept one or the other LBO. The City's LBO on hours is rational. The LBO's of both parties concur that shifts should be posted every six months. The Union's LBO specifying dates of April 1 and October 1 is rational and reflects the six-month time frame in the City's LBO.

A majority of the panel supports the City's LBO on the computation of the hourly rate. The hourly rate of all employees should be based on hours actually scheduled rather than on a base that is fixed regardless of scheduling. Employees should not receive a windfall, and the City should not be required to incur the additional cost, associated with an hourly rate based on fewer hours than the hours for which the employee is actually scheduled. Thus, the City's LBO on computation of the hourly rate is more consistent with the statutory criterion of ability to pay than the Union's LBO.

The City also has an interest in rational scheduling, consistent with the statutory criterion of "other factors." Finally, the Union has an interest, consistent with the statutory criterion of the "welfare of the public" in maintaining the police skills of police-certified employees who are assigned primarily to the fire unit..

CONCLUSION

The record and considerations of the statutory criteria dictate that aspects of the City's LBO and Union's LBO should be incorporated into a provision on scheduling. In addition, a majority of the panel is of the view that skills preservation is also relevant to the welfare of the public.

AWARD

Based on the foregoing, the panel awards as follows with respect to the issue of "Hours and Schedules of Employment."

ARTICLE XIII HOURS AND SCHEDULES OF EMPLOYMENT

Public Safety Officers will be assigned either to the Police Service Unit or the Fire Unit. Shifts may be of eight (8), twelve (12), or twenty-four (24) hours. Shifts shall be effective on April 1 and October 1 of each year. The posting of shifts shall occur no later than the beginning of the pay period immediately preceding the April 1 and October 1 dates.

Section 1. Hourly Rate. The hourly rate shall be determined by dividing the annual rate of pay by 2080 hours (police) or the number of scheduled hours/year (fire). Persons working 24-hour shifts shall be paid their regular rate based on the 50.4-hour work week for any 24-hour shifts.

Section 2. Scheduling. Work and shift schedules shall be posted by the City. Employees shall be notified at least seven (7) days in advance of any schedule or assignment change unless the schedule or assignment change was with the consent of the employee involved.

Section 3. The City will utilize a 28-day schedule (thirteen 28-day periods per year). Officers who are certified as police and fire may request temporary assignment into the police unit. To the extent feasible with scheduling and staffing requirements, officers requesting police unit assignments will be scheduled for at least one 28-day police unit

cycle per year. Officers so scheduled will accrue time in accordance with the appropriate 8/12/24-hours schedule and utilize it in hours when taking time off.

Section 4. Any police certified employee may, at his or her request, work 24 hours per month in 28-day cycle in police assignments, or more if the City so authorizes.

CITY ISSUE 8: OUTSIDE EMPLOYMENT (NONECONOMIC)

LAST, BEST OFFERS

Last, Best Offer of the City

ARTICLE XIV OUTSIDE EMPLOYMENT

All Public Safety Officers covered under this collective bargaining agreement shall be allowed to engage in supplemental outside employment under the following conditions:

Section 1. Equipment. Public Safety Officers who are engaged or may become engaged in outside employment shall not carry equipment issued by the Department including, but not limited to, weapons and uniforms or parts thereof.

Section 2. Police/Fire Agency. Employees are prohibited from engaging in outside employment on a part-time and/or any other basis with another police/fire agency.

Section 3. Liquor Control Commission. Employees are prohibited from working in an establishment controlled by the Michigan Liquor Control Commission, unless specifically approved by the Director and/or in his absence, the Deputy Director of Public Safety.

Section 4. Notification. The Department shall be notified of any and all types of outside employment and, for proper cause, may disapprove of any such outside employment.

Last, Best Offer of the Union

The Union is proposing the status quo with respect to Article XIV.

DISCUSSION

Because outside employment is a noneconomic issue (Tr. 421), the panel is not required to accept one or the other LBO. The panel observes that the parties have agreed on all provisions regarding outside employment with the exception of Section 4 on notification. There is no evidence on the record that the current language has not worked

well. Accordingly, consistent with the statutory criterion of "other factors," this language will be retained. At the same time, the panel is of the view that the current language is ambiguous regarding approval of outside employment for new requests for outside employment. The panel's award will address this ambiguity.

CONCLUSION

The parties have agreed on all provisions on outside employment except for Section 4. A majority of the panel finds that the Union's LBO is more consistent with the statutory criteria than the City's LBO. The panel will add wording regarding approval and disapproval.

AWARD ON CITY ISSUE 8: OUTSIDE EMPLOYMENT

The panel awards as follows on the issue of "outside employment:"

ARTICLE XIV OUTSIDE EMPLOYMENT

All Public Safety Officers covered under this collective bargaining agreement shall be allowed to engage in supplemental outside employment under the following conditions:

Section 1. Equipment. Public Safety Officers who are engaged or may become engaged in outside employment shall not carry equipment issued by the Department including, but not limited to, weapons and uniforms or parts thereof.

Section 2. Police/Fire Agency. Employees are prohibited from engaging in outside employment on a part-time and/or any other basis with another police/fire agency.

Section 3. Liquor Control Commission. Employees are prohibited from working in an establishment controlled by the Michigan Liquor Control Commission, unless specifically approved by the Director and/or in his absence, the Deputy Director of Public Safety.

Section 4. The employee shall annually make a written request of the City Administrator (or the City Administrator's designee) for approval of existing outside employment. The employee must notify the City Administrator (or the City Administrator's designee) in writing of proposed new outside employment. The employer must notify the employee in writing within 14 calendar days of receipt of said written request or notification by employee if said outside employment is approved or disapproved.

CITY ISSUE 9: UNION VISITATION

The record establishes that this issue has been resolved (Tr . 421). The parties have agreed, and the panel awards, as follows:

ARTICLE XV MISCELLANEOUS

...

Section 3. Union Visitation. Authorized Representatives of the Union shall be permitted to visit the operation of the Employer during working hours to talk with the Union Representatives of the Union and/or Representatives of the Employer concerning matters covered by this Agreement, without interfering with the progress of the workforce. The Union will arrange with the Employer for time and place prior to the occurrence of such visits.

CITY ISSUE 10: OVERTIME

LAST, BEST, OFFERS

Last, Best, Offer of the City

ARTICLE XVI OVERTIME, SHIFT DIFFERENTIAL, CLOTHING ALLOWANCE, OFF-DUTY POLICE ACTION, HIGHER CLASSIFICATION, COMPENSATORY TIME AND GUN ALLOWANCE

Section 1. Overtime.

- A. For forty (40) hour workweek employees, overtime pay shall be one and one-half (1-1/2) times the hourly rate for all hours in excess of eight (8) hours in any twenty-four (24) hour period or eighty (80) hours in any bi-weekly pay period. There shall be no pyramiding of overtime.
- B. For employees in the Fire Unit not working a forty (40) hour workweek, overtime will be paid as required by the Fair Labor Standards Act. Presently, that Act requires overtime to be paid for hours worked in excess of 212 in a 28-day cycle.

Last, Best Offer of the Union

ARTICLE XVI
OVERTIME, SHIFT DIFFERENTIAL, CLOTHING
ALLOWANCE, OFF-DUTY POLICE ACTION, HIGHER
CLASSIFICATION, COMPENSATORY TIME
AND GUN ALLOWANCE

Section 1. Overtime.

- A. For forty (40) hour workweek employees, overtime pay shall be one and one-half (1-1/2) times the hourly rate for all hours in excess of eight (8) hours in any twenty-four (24) hour period or forty (40) hours in any work week. Overtime shall be calculated based on the 2080 hour rate.
- B. For employees in the fire unit not working a forty (40) hour work week, the recalculation of hours for which overtime pay is required shall be determined by the Fair Labor Standards Act. Notwithstanding the above, overtime shall be calculated on 2080 hour rate.

DISCUSSION

The parties' LBO's are basically the same with respect to the 40-hour employees, the employees assigned to police duty. The only difference between the two LBO's is that the City's LBO triggers overtime payments after 80 hours in a two-week period, while the Union's LBO triggers overtime after 40 hours in a one-week period. The City's LBO is more likely to result in flexibility of scheduling over the two-week pay period because the overtime requirement is not triggered until the employee works 80 hours; thus the City is less likely to incur overtime costs. Given the financial condition of the City, the City's LBO is more consistent with the statutory factor of ability to pay than the Union's LBO.

With respect to non-forty hour employees, the fire unit, the City's LBO determines overtime in accordance with the Fair Labor Standards Act. Given that employees assigned to the fire unit often work more than 2080 hours in year, under the Union's LBO, the hourly rate on which overtime is computed for employees in the fire unit will be greater than 1.5. As the Fair Labor Standards Act requires a multiple of only

1.5, given the City's financial condition, the City is not in position to pay more than it is legally required to pay.

CONCLUSION ON OVERTIME

The City's LBO on overtime is more consistent with the statutory criterion of ability to pay than the Union's LBO.

AWARD ON OVERTIME

The City's LBO on overtime (Article XVI, Sections 1A and 1B) is accepted. The Union's LBO on overtime (Article XVI, Sections 1A and 1B) is not accepted.

CITY ISSUE 11: SHIFT DIFFERENTIAL

LAST, BEST OFFERS

Last, Best Offer of City

Section 2. Shift Differential. Police Unit employees assigned to the afternoon shift shall receive a premium of \$.20 cents per hour. Police Unit employees working the midnight shift shall receive a shift premium of \$.30 cents per hour. Shift premiums shall be added to the hourly rate of the employee so affected.

Last, Best Offer of Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

The difference between the City and Union LBO's is that the City LBO provides for a shift differential only for employees in the police unit, while the Union's LBO provides a shift differential for all employees. The record establishes, however, that only the employees in the police unit work different shifts; all the employees in the fire unit work 24-hour shifts (Tr. 285). Therefore, a majority of the panel finds that there is no need to include in the collective agreement a provision that provides a shift differential

for the fire employees. Such an unnecessary provision will result in confusion in the collective agreement, thereby contributing to grievances and unproductive disputes. The statutory criterion of "other factors" would dictate that such a result should be avoided.

CONCLUSION

The LBO of the City on shift differential is more consistent with the statutory factors than the LBO of the Union.

AWARD

The LBO of the City on shift differential is accepted. The LBO of the Union on shift differential is not accepted.

CITY ISSUE 12: COURT TIME

LAST, BEST OFFERS

Last, Best Offer of the City

Court Time. Employees who are subpoenaed to appear in Court on off-duty time shall receive a minimum of two (2) hours at straight-time.

Last, Best Offer of the Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

Comparability is a statutory factor that the panel has an obligation to consider. Although the City argues that no other city in Michigan is comparable to Highland Park because of the City's serious financial problems (City Ex. 54), the level of benefits received by other public safety officers in jurisdictions of somewhat similar size is relevant to the morale of employees. With respect to court time, the current agreement places the employees in the bargaining unit in the upper tier of the cities the Union

considers comparable (Un. Ex. 53N). The record does not establish that the savings to the City associated with its LBO on this issue justify reducing this benefit to employees. In addition, three hours for an off-duty employee to prepare for and testify in court is reasonable. The Union's LBO will improve the morale of the bargaining unit employees, public safety officers with high morale important are to the welfare of the public, and the welfare of the public is one of the statutory criteria.

CONCLUSION

The Union's LBO is more consistent with the statutory criteria than the City's LBO.

AWARD

The Union's LBO on court time is accepted. The City's LBO on court time is not accepted.

CITY ISSUE 13: CALL-IN TIME

Last, Best Offer of the City

Call-in Time. Employees required to report for work at a time other than their normal shift shall receive a minimum of three (3) hours at straight-time or time-and-one-half (1-1/2) for all hours worked, whichever is greater.

Last, Best Offer of Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

Both LBO's propose the status quo. Therefore, the panel will award the status quo.

AWARD ON CALL-IN TIME

The panel accepts the City and Union LBO's which are identical.

CITY ISSUE 14: COMPENSATORY TIME

LAST, BEST OFFERS

Last, Best Offer of the City

Delete current Article XVI, Sect. 1(E) and Section 6.

Last, Best Offer of the Union

- E. Compensatory Time. Employees "on call" will be granted one (1) hour of comp. time for each day of on-call status unless required to report for duty. The City, at its option, may pay the employee for the compensatory time, or may require the employee to take scheduled time off.

Section 5. Compensatory Time.

- A. An employee may accumulate compensatory or book time in lieu of overtime. Such compensatory time shall be liquidated either by a cash payment for the accumulated compensatory or book time or its equivalent in paid time off to be charged against the compensatory or book time.
- B. Accumulated compensatory or book time, if any, shall be liquidated on a straight-time basis. All accumulation over 75 hours shall be liquidated on June 30th of a given year, to be paid after July 1st of said year. In the event of retirement, the accumulated compensatory or book time, if any, shall be liquidated on a straight-time basis prior to retirement.

DISCUSSION

The City's LBO would eliminate compensatory time off and would remove from the agreement any right the employees currently have to have their compensatory time

accumulated prior to this award liquidated. The Union's LBO would protect the employees' currently accumulated compensatory time off but, in the future, provide the City with the right to schedule the employee for time off in lieu of payment. The City did not have the right to schedule time off in lieu of payment for compensatory time off under the previous contract. The Union LBO creates savings for the City through the scheduling of time off, consistent with the statutory criterion of "ability to pay." At the same time, fairness, which would be categorized under "other factors," dictates that employees should not be stripped of compensatory time off accumulated under previous contracts.

CONCLUSION

The Union's LBO on compensatory time is more consistent with the statutory criteria than the City's LBO.

AWARD ON COMPENSATORY TIME OFF

The Union's LBO on compensatory time is accepted. The City's LBO on compensatory time is not accepted.

CITY ISSUE 15: OFF-DUTY POLICE ACTION

LAST, BEST OFFERS

Last, Best Offer of the City

Section 3. Off-Duty Police Action. Any employee who becomes involved in a police action while off duty shall be paid at straight time for actual hours worked. However, this provision shall not apply if the police action taken was in the course of the employee being in the employment of an outside employer at the time of the occurring incident.

Last, Best Offer of the Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

The only difference between the two LBO's is the numbering of the sections. Under the status quo, the provision addressing off-duty police action is Article XVI, Section 4. The City proposes that the provision addressing off-duty police action be Article XVI, Section 3 because it proposes deleting current Article XVI, Section 3, on clothing allowance. As will be discussed below, however, the provision on clothing allowance will be retained. Accordingly, the Union's LBO on off-duty police action, which will maintain consecutive numbering in the agreement, and maintains clarity in the agreement, will be accepted. Clarity in the agreement is consistent with the statutory factor of "other factors."

CONCLUSION

The Union's LBO on off-duty police action is more consistent with the statutory factors than the City's LBO.

AWARD ON OFF-DUTY POLICE ACTION

The Union's LBO on off-duty police action is accepted. The City's LBO on off-duty police action is not accepted.

CITY ISSUE 16: HIGHER CLASSIFICATION PAY

LAST, BEST OFFERS

Last, Best Offer of the City

Section 4. Higher Classification. Employees working in a higher classification for a period of two (2) or more consecutive shifts will be paid the higher rate provided such employee performs that kind of work that takes fully under consideration the total job content that the higher rate is founded upon.

Employees who are performing a partial function of a higher classification shall not be deemed as meeting the criteria for a higher rate of pay for performing higher classification work. The City will not arbitrarily assign to avoid out of class pay.

Last, Best Offer of the Union

The Union proposes retaining the first two paragraphs of the status quo. The Union proposes adding the following sentence at the end of the section:

“(t)he extra compensation received for performing the work of a higher classification shall be paid to the employee in the pay period immediately following the period during which the work of a higher classification was performed by the employee.”

DISCUSSION

A majority of the panel considers this issue to consist of two separate issues: (1) the circumstances under which employees will entitled to receive higher classification pay, and (2) the timing of the payment of the higher classification pay. With respect to the circumstances under which employees will receive higher classification pay, a majority of the panel finds that the City's LBO is more consistent with the statutory factors than the Union's LBO. The City's LBO will relieve the City of some financial obligations by triggering the obligation after two consecutive shifts, rather than only one shift. This comports with the statutory factor of ability to pay.

This also maintains the Union's approximate position among the cities it considers comparable. With the “8-hour” language in the current agreement, the Union was in the middle of the distribution of cities. Berkeley and Centerline have superior provisions, from the point of view of the Union, while Grosse Pointe Park, Grosse Pointe Woods, and Huntington Woods, have inferior provisions from the point of view of the union (Un. Ex. 53U).⁶

⁶ Fraser pays on a different system, 40 hours in a twelve-month period (Un. Ex. 53U). Thus, for the purposes of this issue, Fraser is not considered relevant.

On the other hand, a majority of the panel agrees with the Union's additional language that employees shall be paid promptly after performing the higher classification work. This will permit the City to maintain currency in its financial obligations, and not be saddled with a financial obligation that it did not expect. This is also consistent with the statutory factor of ability-to-pay.⁷

CONCLUSION

A majority of the panel finds the City's LBO on the circumstances under which employees will be paid higher classification pay (first and second paragraphs of Article XVI-5), more consistent with the statutory factors than the Union's LBO. A majority of the panel finds the Union's LBO on the time of the payment for higher classification pay, more consistent with the statutory factors than the City's LBO.

AWARD ON HIGHER CLASSIFICATION PAY

The City's LBO on the circumstances under which employees will be paid higher classification pay (first and second paragraphs of Article XVI-5) is accepted. The Union's LBO on the circumstances under which employees will be paid higher classification pay (first and second paragraphs of Article XVI-5) is not accepted. The Union's LBO on the timing of the payment for higher classification pay (new third paragraph of Article XVI-5) is accepted. The City's LBO on the timing of the payment for higher classification pay is not accepted.

⁷ A majority of the panel also observes that this provision implicitly requires employees to make the claim for higher classification pay in a timely manner, so that they may be paid in the next pay period.

CITY ISSUE 17: CLOTHING ALLOWANCE

LAST, BEST OFFERS

Last, Best Offer of the City

Delete Article 16, Section 3.

Last, Best Offer of the Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

The City's LBO would eliminate the employees' clothing allowance. Although the record establishes that the City's financial condition is serious, there is nothing on the record that indicates that the clothing allowance for this bargaining unit is such a large expenditure that to permit it to continue would cause substantial hardship to the City. Thus, the City's LBO is not supported by the statutory factor of ability to pay.

The record establishes that all the cities that the Union considers comparable provide a clothing allowance for their police officers (Un. Ex. 53T). Thus, the statutory factor of comparability supports the LBO of the Union. In addition, the clothing allowance in the City is lower than the clothing allowance in all of the cities the Union considers comparable (Un. Ex. 53T), which means that the City, in its serious financial condition, will be paying a lower clothing allowance than other cities.

CONCLUSION

The Union's LBO on City Issue 17 is more consistent with the statutory factors than the City's LBO.

AWARD ON CLOTHING ALLOWANCE

The LBO of the Union on City Issue 17, Clothing Allowance, is accepted. The LBO of the City on City Issue 17, Clothing Allowance is not accepted.

CITY ISSUE 18: GUN ALLOWANCE

AWARD

Per an agreement of the parties, the provision on the gun allowance shall be as follows:

“Article XVI, Section 7. Gun Allowance.

Effective with the date of this award, all members certified as police officers and qualified to carry a gun shall receive a gun allowance based on years of service after completion of one (1) year of service.

\$500.00	gun allowance	(10+)
\$300.00	gun allowance	(10-)”

CITY ISSUE 19: EQUALIZATION OF OVERTIME

LAST, BEST OFFERS

Last, Best Offer of the City

Delete Article XVI, Section 1B effective January 1, 2005.

Last, Best Offer of the City

The Union proposes the status quo (Jt. Ex. 1).

DISCUSSION

Although the City proposes that the this provision be deleted, there is nothing on the record that indicates that the overtime equalization provision has caused problems for the City under the last agreement. Accordingly, under “other factors,” the principle that

the status quo previously agreed upon or awarded should not be changed unless there is a reason to do so, a majority of the panel prefers the Union's LBO.

CONCLUSION

The Union's LBO on equalization of overtime is more consistent with the statutory factors than the City's LBO.

AWARD ON EQUALIZATION OF OVERTIME

The Union's LBO on equalization of overtime is accepted. The City's LBO on equalization of overtime is not accepted.

CITY ISSUE 20: LONGEVITY PAY

Last, Best Offer of the City

The City proposes that the agreement confirm that no employee hired after December 15, 1994 is eligible for longevity and that the longevity step "21 or more" be deleted.

Last Best Offer of the Union

The Union proposes the status quo (Jt. Ex. 1).

DISCUSSION

The City proposes that the panel confirm that longevity payments apply only to employees hired before December 15, 1994. This is clearly stated in Article XVII, Section 1, however, and needs no confirmation.

The basic difference between the two proposals is in the longevity payment to be paid to employees with 21 years or more of service. The City proposes eliminating this step so that longevity payments will reach a maximum after 20 years of service. The City

has presented no evidence, however, that suggests that the current longevity payment to employees with 21 years or more of service causes a substantial hardship to the City. Equity, however, one of the "other factors," requires that the longest service employees not bear the burden of reduced payments. Based on the foregoing, a majority of the panel will award this issue to the Union.

CONCLUSION

The Union's LBO on longevity pay is more consistent with the statutory factors than the City's LBO.

AWARD

The Union's LBO on longevity pay is accepted. The City's LBO on longevity pay is not accepted.

CITY ISSUE 21: HOLIDAYS

Last, Best Offer of the City

The City proposes deleting the Employee's Birthday, Easter Sunday, and Flag Day from the list of holidays in Article XVIII-1A effective July 1, 2004 and deleting Article XVIII-1B effective July 1, 2004.

Last, Best Offer of the Union

The Union proposes the status quo (Jt. Ex. 1).

DISCUSSION

The holiday provision in the current collective bargaining agreement leaves the Union with fewer holidays than all but one of the cities it considers comparable (Un. Ex. 53R). There is nothing in the record that suggests that the holiday provision in the

collective agreement is, in and of itself, a substantial financial hardship to the City.

Accordingly, a majority of the panel finds that the factors of "comparability" and "other factors" (maintenance of the status quo) support the Union's LBO on the number of holidays.

The City also proposes deleting the provision that provides members who are required to work on December 24, December 31, or Good Friday compensatory or straight time off. There is no evidence that this provision causes the City financial hardship. Accordingly, a majority of the panel finds that the factor of "other factors" supports the Union's LBO.

CONCLUSION

A majority of the panel finds that the Union's LBO on holidays is more consistent with the statutory factors than is the City's LBO.

AWARD

The Union's LBO on holidays is accepted. The City's LBO on holidays is not accepted.

CITY ISSUE 22: FURLOUGHS

Per an agreement of the parties, the provision on furloughs (vacations) shall be as follows:

ARTICLE XIX FURLOUGHS

Section 1. The furlough periods shall be divided into twelve (12) periods. The furlough season shall be January through December. Selection shall be in October for January through June, and April for July through December. Employees shall receive the following hours for their current year furlough:

Years of Seniority	40-hour	50.4 hour
1 yr +	40	48
2-5	80	96
6-10	120	144
11-15	140	168
16-20	160	192
21-25	200	240
25 +	240	288

(*) Members must schedule a minimum of a forty-hour block of vacation time in each session, unless approved in writing by the City Administrator.

Section 2. Furlough leave shall be accrued on a monthly basis. Furlough time will not be earned or accrued if an employee is receiving Worker's Disability Compensation for more than three (3) months and/or is on duty disability status for more than three (3) months.

Section 3. Furlough pay will be paid at the current rate of the employee (exclusive of shift differential). Current salary shall include any increase in salary schedule by reason of length of service, or any percentage increase, which an employee is entitled to by reason of any increment plans.

Section 4. Employees with less than 11 years seniority may accumulate a maximum of 120 hours of furlough. Employees with 11 or more years of seniority may accumulate a maximum of 240 hours of furlough.

Section 5. **Sickness During Furlough.** Employees who become ill while on furlough shall be charged sick days and have vacation days reinstated if the employee presents the Employer with a doctor's certification as proof of illness.

Section 6. **Carry Over of Furlough.** Employees may carry over furlough days beyond December 31 provided the carry over is approved in writing by the Director of Public Safety and the City Administrator. The carry over is limited to no more than one year at any time.

Section 7. Effective July 1, 2000, upon termination for any reason other than discharge for just cause, an employee shall be permitted to extend his/her final payroll date by the number of accumulated furlough days, with a maximum of 60 furlough days, such that, as of the final payroll date, the employee has no further such days. There shall be no "earning" of more furlough, sick, or personal days, or other benefits while the employee is exhausting accumulated furlough days.

CITY ISSUE 23: PERSONAL LEAVE

Per an agreement of the parties, the provision on personal leave shall be as follows:

ARTICLE XX BUSINESS OR PERSONAL LEAVE

Employees regularly scheduled to work forty (40) hours per week shall receive twenty-four (24) hours business or personal leave each fiscal year. Employees regularly scheduled to work twenty-four (24) hour shifts shall receive twenty-four (24) hours business or personal leave each fiscal year.

Employees shall be eligible, pro rata, for business or personal leave upon successful completion of a six-month probationary period. Business or personal leave time shall not be carried over or paid out if not utilized.

CITY ISSUE 24: FUNERAL LEAVE

Last, Best Offer of the City

ARTICLE XXI FUNERAL LEAVE

Section 1. Employees shall be allowed funeral leave not to exceed twenty-four (24) hours for purposes of making preparations for and attending the funeral and burial of a deceased member of the employee's immediate family. If death occurs to a relative of the employee, such employee shall be granted leave not to sixteen (16) hours to attend the funeral and burial of the deceased. Proof of such employee attendance may be required by the Department Head prior to the authorization of payment for the leave time.

Section 2. For the purpose of this section, immediate family is defined as father, mother, husband, wife, brother, sister, child, grandparent, parent of husband or wife, foster parent, foster brother, foster sister, and foster child.

Section 3. For the purpose of this section, a relative is defined as grandson, granddaughter, uncle, aunt, brother-in-law and sister-in-law.

Section 4. Members will become eligible for this benefit upon completion of one (1) year of service.

Last, Best Offer of the Union

The Union's proposes the status quo (Jt. Ex. 1).

DISCUSSION

There is nothing on the record that indicates that the current funeral leave provision has been the cause of the City's financial problems. Therefore, the factor of ability-to-pay does not support the City's LBO. In addition, the factor of "other factors," the principle of retention of the status quo in the absence of a reason to change it, supports the Union's LBO.

An examination of funeral leave in the cities in the Union considers comparable also supports the Union's LBO. The four days of funeral leave in the current agreement is not excessive; it is in the middle of the distribution. Two cities, Grosse Point Park and Grosse Pointe Woods, provide employees with five days of funeral leave. Fraser provides employees with 3 to 5 days, depending on distance to be traveled. Berkeley, Centerline, and Huntington Woods provide 3 days. (Un. Ex. 530)

CONCLUSION

A majority of the panel finds that the Union's LBO on funeral leave is more consistent with the statutory factors and the City's LBO.

AWARD ON FUNERAL LEAVE

The Union's LBO on City Issue 24, Funeral Leave, is accepted. The City's LBO on City Issue 24, Funeral Leave, is not accepted.

CITY ISSUE 25: SICK LEAVE

Last, Best Offer of the City

ARTICLE XXII SICK LEAVE

Section 1. Police Unit employees shall earn eighty (96) hours sick leave annually with a maximum accumulation of 800 hours. Employees hired prior to January 1, 1985, had

their then current sick leave bank capped at his or her respective level of accumulation as of 12/31/84. Said capped sick leave accumulation is known as the non-paying sick leave bank. Fire Unit employees shall earn ninety-six (96) hours sick leave annually with a maximum accumulation of 800 hours.

Section 2. The paying sick leave bank shall be the sick leave bank that an employee taking sick leave must draw from first. If this bank should become exhausted from use, then the employee may draw upon his or her non-paying bank for sick time until such time as this non-paying sick bank has been exhausted.

Section 3. Upon retirement or death, the accumulated paying sick leave bank shall be paid to the employee being at the below rates of the accumulation, if any, then remaining in the employee's paying sick leave bank. For this payoff purpose, the accumulation shall be earned at the employees' base rate in effect in the fiscal year in which the paying sick leave is earned.

10-14 years seniority = 25% (max of 200 hours)

15-20 years seniority = 33% (max of 266.7 hours)

20+ years seniority = 50% (max of 400 hours)

Section 4. In the event that an employee sustains an injury arising out of and in the course of his employment, he shall be covered exclusively by the Worker's Disability Compensation Act. The employee, upon written request, may have the difference between the employee's regular bi-weekly pay and the Worker's Disability payments supplemented from the employee's sick leave bank.

Section 5. To become eligible for sick leave benefits, a member must have completed three (3) months of his probationary period.

Last, Best Offer of the Union

The Union proposes the status quo (Jt. Ex. 1).

DISCUSSION

With respect to Article XXII-1, the annual accumulation, under the Union's LBO retaining the status quo, bargaining unit members would accumulate 15 sick days per calendar year. The City's LBO would reduce this accumulation to 96 hours, or 12 sick days per calendar year. The City's LBO would bring this unit to the level of the City's supervisory and nonsupervisory units represented by the American Federation of State, County, and Municipal Employees (AFSCME) (Tr. 50; Jt. Exs. 4-5). It would also bring the bargaining unit to the level of the police units in Berkeley, Fraser, Grosse Pointe

Woods, and Huntington Woods, all cities that the Union contends are comparable. For these reasons, a majority of the panel finds that that the factor of comparability supports the City's LBO.

A sick leave provision with a high accumulation rate imposes substantial overtime costs on the City (Tr. 192). Given the City's serious financial condition, it is reasonable to attempt to reduce overtime costs. Thus, the statutory factor of ability-to-pay supports the City's LBO on sick leave.

With respect to the maximum accumulation in Article XXII-1, the City's LBO proposes 800 hours, while the Union LBO provides for continuing a 50% payout for nonretirement termination and 75% payout at retirement (Jt. Ex. 1; Un. Ex. 53P). The 800-hour maximum in the City's LBO is comparable to two of the cities that the Union considers comparable – Fraser and Huntington Woods (Un. Ex. 53P). It is a greater accumulation than is provided in Grosse Pointe Woods (Un. Ex. 53P). Although it is less than is provided in Berkeley and Grosse Pointe Park (Un. Ex. 53P), the City's LBO leaves the Union in the middle of the distribution. Given the City's serious financial situation, the City should not be required to pay anything greater than an accumulation that places the Union in the middle of the distribution. Thus, the statutory factors of ability-to-pay and comparability support the City's LBO.

The parties agree on retaining the status quo for Article XXII-2. With respect to Article XXII-3, the Union proposes retaining this provision, while the City proposes eliminating it. This provision, permitting drawing out of sick leave prior to cessation of employment, is likely to impose a substantial liability for the City. The City, with its financial problems, should not be required to incur such a liability. Moreover, there is

nothing on the record that suggests the collective agreements in the cities the Union considers comparable include such provisions (Un. Ex. 53P).

Finally, with respect to payout at separation, Articles XXII-4 and 5 in the current agreement, and Article XXII-3 in the City's LBO, the City's proposal has the potential to result in substantial savings for employees who resign or retire prior to reaching 20 years of service. While under the status quo and the Union's LBO, all employees receive a 50% payout, under the City's LBO, the 50% payout will be provided only to 20-year employees. When combined with a maximum accumulation of 800 hours, the savings to the City could be substantial. The best estimates indicate that six employees in the unit have accumulated more than 800 hours in sick leave (City Ex. 28). Although there are questions about the accuracy of this estimate, given the poor condition of the City's records (City Ex. 29; Tr. Tr. 93-107), the estimates do suggest that the City will realize substantial savings. Given the City's financial condition, such savings carry great weight with a majority of the panel.

The City would also realize savings by limiting a payout to employees who retire or die; employees who resign or are terminated would not receive the payout. Given the City's serious financial condition, it is financially prudent to deny a payout to employees who leave the City voluntarily or who are terminated for cause.

The data on the cities the Union considers comparable also support the City's LBO. The Union's proposed accumulation of 75% at retirement is above the comparables. All but Centerline, which does not address the matter of payout, have a 50% maximum (Fraser, Huntington Woods), a 50% maximum with a limit (Grosse Pointe Park, Grosse Pointe Woods), or another limit (Berkeley) (Un. Ex. 53P). In view

of the City's serious financial condition, it should not be above the maximum payout for the cities the Union considers comparable.

Current Articles XXII-6 and 7, which are incorporated in the Union's LBO, are identical to proposed Articles XXII-4 and 5 in the City's LBO.

CONCLUSION

A majority of the panel finds that the statutory factors of ability to pay and comparability support the City's LBO for provisions where the City's LBO and the Union's LBO differ.

AWARD ON SICK LEAVE

The City's LBO on sick leave is accepted. The Union's LBO on sick leave is not accepted.

CITY ISSUE 26: LIFE INSURANCE

Last, Best Offer of the City

ARTICLE XXIII LIFE INSURANCE

Section 1. The City shall provide \$30,000 life insurance for all members of the bargaining unit, including double indemnity for accidental death. The City reserves the right to self-insure, and/or to change carriers.

Section 2. Life Insurance for Retirees. All employees retiring after July 1, 2004, shall be eligible for \$2,000 life insurance coverage with appropriate retiree payroll deduction.

Section 3. Members will become eligible for life insurance upon the completion of six (6) months probationary period, effective upon signing of Agreement.

Last, Best Offer of the Union

The Union agrees with the City's LBO with respect to Section 1 and proposes the status quo for Section 2. The Union has provided no LBO for Section 3.

DISCUSSION

For the purpose of this Award, the panel decides that each section is a separate LBO. With respect to Section 1, the Union has agreed to the City's proposal. Therefore, this matter is not in dispute.

With respect to Section 2, a majority of the panel is unable to determine the rationale for providing the life insurance only to employees who retire after July 1, 2004. Moreover, there is no evidence that the savings associated with the City's proposal are substantial.

Section 3 will remain as in the current agreement. Although the Union has not provided an LBO on Section 3, the City has not proposed changing this provision.

CONCLUSIONS

The Union's LBO on life insurance for XXIII, Section 2 is more consistent with the statutory factors than the City's LBO. There is no dispute regarding Article XXIII, Sections 1 and 3.

AWARD ON LIFE INSURANCE

The City's LBO with respect to life insurance, Article XXIII, Sections 1 and 3 is accepted. The Union's LBO with respect to life insurance, Article XXIII, Sections 1 and 3, is not accepted. The Union's LBO with respect to life insurance, Article XXIII, Section 2 is accepted. The City's LBO with respect to life insurance, Article XXIII, Section 2 is not accepted.

**CITY ISSUE 27/UNION ISSUE 1: MEDICAL INSURANCE (ACTIVE
EMPLOYEES)**

Last, Best Offer of the City

The City proposes that it provide bargaining unit members with Blue Cross/Blue Shield Community Blue Plan 8, with a prescription co-pay of \$10 for generics and \$40 for brand name. The City and the employee shall share equally (50/50 split) the premium increases in excess of 5% annually.

Last, Best, Offer of the Union

The Union proposes that the language contained in Article XXIV remain status quo, all sections, without change or modification, except that the current \$2.00 co-pay for prescription drug coverage be changed to \$5.00 for each generic drug and \$10.00 for each brand name drug. It further proposes that the mail order plan applicable to the \$5.00/\$10.00 prescription drug coverage be made available to employees.

DISCUSSION

Article XXVI-1 addresses the main coverage and payment for that coverage. Article XXVI-2 addresses prescription drug coverage to be provided by the plan. The City has provided uncontroverted evidence that providing the bargaining unit members with Blue Cross/Blue Shield Community PPO Plan 8 with a \$10/\$40 prescription plan will generate savings for the City of \$85,142.16 during the first year of coverage as compared to the current plan (Tr. 78-81; City Ex. 34).

As regards the coverage on Plan 8 vis-à-vis the current plan, the record establishes that coverage is more extensive under Plan 8 than under the current plan, but for some services, there are co-pays and deductibles that did not exist under the current plan (City

Ex. 34; Tr. 359-63). Catastrophic coverage appear to be superior under Plan 8 than under the current plan (City Ex. 34, Tr. 36-63). While the mix of coverage, deductibles, and co-pays is different between the two plans, and Plan 8 favors in-network providers (City Ex. 34), there is nothing on the record that suggests that Plan 8 does not provide adequate coverage. Based on the foregoing, a majority of the panel finds that the statutory factor of ability to pay supports the City's LBO.

While the prescription drug coverage is clearly less generous than under the current plan, the \$10 co-pay on generics is standard among the cities the Union considers comparable; four of the six cities provide for a \$10 co-pay on generics (Un. Ex. 53L). The \$40 co-pay for brand name prescriptions is twice as high as the highest co-pay in the cities the Union considers comparables (Un. Ex. 53L). Given the City's serious financial condition, however, and the savings that Plan 8 will generate, greater weight will be given to the factor of ability-to-pay than to comparability with respect to the co-pay on brand name drugs. The Union's LBO proposes a mail-order option, and the record indicates such an option is available with Plan 8 (Tr. 363). Based on the foregoing, a majority of the panel finds that the statutory factors of ability to pay and comparability support the City's LBO.

Section 3 addresses eligibility, but neither side has proposed a change in this section. Section 4 addresses duty disability, but this will be addressed in a separate issue (City Issue 36). Section 5 addresses retiree medical coverage, which will be addressed in a separate issue (City Issue 28).

CONCLUSION

A majority of the panel finds that the City's LBO on medical insurance (for active employees) is more consistent with the statutory factors than the Union's LBO.

AWARD ON MEDICAL INSURANCE FOR EMPLOYEES

The City's LBO on medical insurance (active employees) is accepted. The Union's LBO on medical insurance (active employees) is not accepted.

CITY ISSUE 28/UNION ISSUE 1: POST-RETIREMENT MEDICAL INSURANCE

Last, Best Offer of the City

Retirement healthcare coverage will be paid by the City of Highland Park upon retirement of an employee covered under this Agreement as follows:

Vesting Schedule:

<u>Length of Service</u>	<u>City's Premium Coverage</u>
0-10 Years	No eligibility for post-retirement health care
11-14	50% Employee (single person) coverage
15-17	60% Employee (single person) coverage
18-20	70% Employee (single person) coverage
21-24	80% Employee (single person) coverage
25-26	90% Employee (single person) coverage
27-29	95% Employee (single person) coverage
30 or more	100% Employee (single person) coverage

Retiring employee may opt for two person or full family coverage, but they must pay the difference in premium (from single person or Medicare complimentary) coverage.

Retirees who take other employment with health coverage available will not be eligible for City paid coverage during the periods of such eligibility.

Retirees shall be required to certify in writing that they, nor spouse, are eligible to other employer paid or governmental paid health care to be eligible for City paid retiree health care. Failure to sign such certification, or falsification of certification, shall be deemed cause permanent termination of City paid retiree health.

Last, Best Offer of Union

The Union proposes that the language contained in Article XXIV remain status quo, all sections without change or modification, except that the current \$2.00 co-pay for Rx Drug Coverage be changed to \$5.00 for each generic drug and \$10.00 for each brand name drug. It further proposes that the mail order plan applicable to the \$5.00/\$10.00 Rx Prescription Drug Coverage be made available to employees.

DISCUSSION

Under the existing agreement, the City pays 80% or 100% of the premiums for retirees, depending on coverage (Tr. 365-66; Un. Ex. 53M). The City's LBO would change this to an increasing proportion of the premium depending on length of service at retirement, with the proportion starting at 50% with 11 years of service at retirement. The proportion reaches the 80% level after 21 years of service, and the 100% level after 30 years of service. Although the record does not establish the distribution of length of service of retirees, it is logical to believe that most employees retire from the City with at least 21 years of service. If this so, the percentage of the premium paid for retirees currently paying 20% will not change. For employees currently paying 20% with more than 24 years of service, their proportion will decrease. Thus the "other factor" of equity supports the City's LBO.

Although five of the cities the Union considers comparable provide for fully paid retiree health insurance, the City's financial condition is far worse than these cities (City Ex. 54). The City needs some financial relief. Therefore, a majority of the panel finds that the factor of "ability to pay" supports the City's LBO.

CONCLUSION

A majority of the panel finds that the City's LBO on post-retirement medical insurance is more consistent with the statutory factors than the Union's LBO.

AWARD ON POST-RETIREMENT MEDICAL INSURANCE

The City's LBO on post-retirement health insurance is accepted. The Union's LBO on post-retirement health insurance is not accepted.

CITY ISSUE 29: DENTAL INSURANCE

Last, Best Offer of the City

The City proposes the now-in-effect program as set forth in City Exhibit 35, with the right to change carriers to self-insure as long as substantially equal coverages are maintained. The Union to withdraw grievance no. 03-279 (City Ex. 37).

Last, Best Offer of the Union

The Union proposes the status quo (Jt. Ex. 1).

DISCUSSION

The Union proposal to maintain the status quo would provide the bargaining unit members with 100% coverage, fully paid by the City, with no maximum. This dental benefit is greater than the dental benefits provided by all of the cities the Union considers comparable (Un. Exs. 42-52). The City's LBO, which provides 100% coverage for

Class I benefits, and 50% coverage for Class II and Class III benefits, is closer to the dental benefits provided by the cities that the Union considers comparable than the dental benefits in the Union's LBO (City Ex. 35; Un. Exs. 42-52). The City's LBO is also close to the dental benefits provided by the City in the AFSCME agreements (City Exs. 4-5). Thus a majority of the panel finds that the statutory factors of comparability (external) and other factors (internal comparability) support the City's LBO.

Finally, although the record does not establish the savings associated with the City's LBO as compared to the Union's LBO, it is reasonable to believe the City's LBO will generate savings for the City. Given the City's serious financial condition, the statutory factor of ability to pay supports the City's LBO.

The conclusion of a majority of the panel will be that the City's LBO is more consistent with the statutory factors than the Union's LBO. This award will make grievance 03-279 moot.

CONCLUSIONS

A majority of the panel finds that the City's LBO on dental insurance is more consistent with the statutory factors than the Union's LBO.

AWARD

The City's LBO on dental insurance is accepted. The Union's LBO on dental insurance is not accepted.

CITY ISSUE 30: OPTICAL INSURANCE

This issue has been resolved (Tr. 421).

CITY ISSUE 31: WORKERS' DISABILITY COMPENSATION

ARTICLE _____ WORKER'S DISABILITY COMPENSATION

Section 1. In the event of an injury arising out of and in the course of the employment, an employee shall be subject to the provision of the Michigan Worker's Disability Compensation Act.

Section 2. An employee may supplement his Worker's Disability Compensation as provided in Article XXII, Sick Leave – Section 6.

Section 3. An employee who is injured on the job and required to leave the job by reason of such injury shall be paid for the whole day.

Section 4. An employee who is involved in an accident or is injured while in the course of his/her employment, shall immediately report the accident and injuries, if any. The employee shall submit a report on forms furnished by the Employer, and a list of names and addresses of witnesses, if any, in the report.

For any job-related injury, a Public Safety Officer shall be granted all benefits for ninety (90) days. The above does not include full pay. However, employee can use sick days to receive full pay.

Last, Best Offer of the Union

The Union proposes that the language of Article XXVII, Worker's Disability Compensation, remain status quo except that the POLC agrees to the modifications proposed by the City for Section 3.

DISCUSSION

Article XXVIII, Sections 1 – 4 are basically the same in both LBO's. The job-related injury language is retained in both LBO's. The statement on MERS credit in the Article XXVIII of the current agreement is redundant because the employees are granted all benefits for 90 days for a job-related injury. Such benefits include MERS credits. Thus, consistent with the "other factors" principle of avoiding redundancy, a majority of the panel favors the City's LBO, which removes the redundancy.

The Union's LBO incorporates retaining language in current Article XXVIII, Section 5 on an injury incurred while confronting criminals. A majority of the panel is of the view that such an injury is covered under Article XXVIII, Sections 1-4. Thus, current Article XXVIII, Section 5 is redundant language and should be deleted under the principle of avoiding redundancy.

CONCLUSION

The City's LBO on workers' compensation is more consistent with the statutory factors than the Union's LBO.

AWARD ON WORKERS' COMPENSATION

The City's LBO on Worker's Compensation is accepted. The Union's LBO on Worker's Compensation is not accepted.

CITY ISSUE 33/UNION ISSUE 2: WAGES

Last, Best Offer of the City

Regarding Article XXXIX and Appendix A, replace "PSO" designation with "PSO-PF" designation, indicating public safety officer, police officer, firefighter. Eliminate "Trainee" step. Wage adjustments as follows: 7/1/03 – 6/30/04, no increase; 7/1/04 – 6/30/05, 1% increase; 7/1/05 – 12/31/05, 1% increase.

Last, Best Offer of the Union

Wage adjustments as follows: 7/1/03 - 0%; 7/1/04, 0% increase; 7/1/05, 0% increase; wages to be those in effect on June 30, 2003.

DISCUSSION

This case presents the unusual situation of the City proposing a greater percentage wage increase than the Union. The panel infers that this is because the Union's wage

LBO was integrated with its other proposals for no change in insurance benefit levels. As a majority of the panel has awarded for the City on insurance benefits, which will result in a reduction in the insurance benefits received by employees, the "other factor" of "equity" dictates that the Union be awarded the higher wage LBO to offset some of the increased insurance costs the employees will incur. Moreover, all of the cities that the Union considers comparable have provided their employees with wage increases for the 2004 and 2005 (Un. Ex. 53). In addition, the panel finds that the City's proposed redesignation of positions as police officer or firefighter is consistent with the reality of job assignments in the City (Tr. 179-81).

CONCLUSION

The panel finds the City's LBO on wages is more consistent with the statutory factors than the Union's LBO.

AWARD

The City's LBO on wages is accepted. The Union's LBO on wages is not accepted.

CITY ISSUE 33: MAINTENANCE OF STANDARDS (NONECONOMIC)

Last, Best Offer of the City

ARTICLE XXIX MAINTENANCE OF STANDARDS

Section 1. Wages, hours and conditions of employment and economic benefits in existence at the execution of this Agreement shall be maintained during the term of this Agreement. No employee shall suffer a reduction in such benefits as a consequence of the execution of this Agreement, except as hereinafter provided.

Section 2. Any employee electing to become a Public Safety Officer shall be required to successfully complete each training program or certification program as required for continued employment as a Public Safety Officer. In the event that an employee fails to qualify or be certified in a required training program or course, the employee shall revert

back to the permanent rank previously held by the employee and receive a reduction in pay in accordance with Appendix A, Wages.

Last, Best Offer of the Union

The Union proposes the status quo.

DISCUSSION

A majority of the panel can find no basis in the record for changing the language of Section 1. The only difference between the Union and City LBO's involve the words "now in existence and legally in effect" (Union's LBO) as compared to "in existence" (City's LBO). Accordingly, based on the "other factors" principle that the status quo will be maintained in the absence of a reason to change, a majority of the panel supports the Union's LBO for Section 1.

Regarding Section 2, the panel finds ambiguous the language regarding failure to qualify after two attempts. The panel is of the view that the provision should include a time limit. Accordingly, the panel's award will substitute the phrase "certified in two attempts within 90 days" for the phrase "certified within two consecutive attempts."

AWARD

Section 1 of the "Maintenance of Standards" article shall remain as in the status quo. Section 2 of the "Maintenance of Standards" article shall read as follows:

Section 2. Any employee electing to become a Public Safety Officer shall be required to successfully complete each training program or certification program as required for continued employment as a Public Safety Officer. In the event that an employee fails to qualify or be certified in two attempts within 90 days a required training program or course, the employee shall revert back to the permanent rank previously held by the employee and receive a reduction in pay in accordance with Appendix A, Wages.

CITY ISSUE 34: PENSION

Last, Best Offer of the City

PENSION SYSTEM

Employees hired on or before 12/31/03 shall participate in the MERS B-4; F50/25 Plan. (Refer to MERS book for explanation). Effective, July 1, 2004, employees hired on and after 1/1/04 shall participate in the City's Defined Contribution Plan, and as it may be amended. For employees participating in the City's Defined Contribution plan, the employee contribution shall be 6% of salary plus overtime and the City contribution shall be 9% of salary plus overtime.

Last, Best Offer of the Union

As the Union has not provided the panel with a last, best offer on pensions, the panel presumes that the Union's last, best offer on pensions is the status quo.

DISCUSSION

The record establishes that pension funding has been a continuing problem for the City since 1994, when the former closed retirement system was replaced by City participation in the State of Michigan Municipal Employee Retirement System (MERS) (Tr. 53, 59; Jt. Exs. 3, 27). The record establishes that during the late 1990's, pension contributions from the City and the employees were not paid to MERS (Tr. 62). As a result, the City was substantially in arrears to MERS. In 2003, MERS took legal action against the City, with the result that Eaton County Circuit Court Judge Calvin Osterhaven ordered the City to pay MERS \$5 million by January 30, 2004 (Jt. Ex. 27).

Given the continuing legal and financial problems associated with City's pension plan, a majority of the panel will give the City's financial interests in pension matters

great weight. There is no evidence that the City's LBO is unfair to new employees. Accordingly, a majority of the panel finds that the statutory factors of ability to pay supports the City's LBO on pensions.

CONCLUSION

The City's LBO on pensions is more consistent with the statutory factors than is the Union's LBO.

AWARD ON PENSIONS

The City's LBO on pensions is accepted. The Union's LBO on pensions is rejected.

CITY ISSUE 35: DISCIPLINE

The parties have resolved the issue of discipline.

CITY ISSUE 36: DUTY DISABILITY

The parties have reached the following agreement regarding duty disability:

MEMORANDUM OF UNDERSTANDING

DUTY DISABILITY COORDINATION OF BENEFITS

An employee who retires on a duty disability pension is entitled to payment, inclusive of workers' compensation payments, duty disability pension, and LTD payments, if any are provided by the City, as follows:

- | | |
|----------------------------|--|
| Less than 10 years service | - no added payments; |
| 10-19 years service | - duty disability, workers' compensation, LTD and City Supplement to 50% of base pay; |
| 20+ years service | - duty disability, workers' compensation, LTD and City Supplement to 66.67% of base pay. |

Base pay shall be determined from wage table above and shall exclude any spousal or period certain actuarial reduction (i.e., 10-year certain or life).

The employer may verify, and offset, for earned income of the retiree, up to the limits above.

CITY ISSUE 37: AUXILIARY OFFICERS

The parties have reached the following agreement regarding auxiliary officers:

The City has the right to employ up to thirty (30) auxiliary personnel.
Auxiliary personnel with proper certification may drive fire apparatus.

ADDITIONAL PROVISIONS: ADDENDUM

In executive session, the parties agreed on the following.

ADDENDUM

The City has and has had for the period in question the authority and right to subcontract for services.

Any police certified employee may, at his or her request, work 24 hours per month in a 28-day cycle on police assignments, or more if the City so authorizes.

For purposes of hourly rate, persons on fire assignments can work 8, 12 or 24-hour shifts as assigned by the City.

Persons working 24 hours shifts shall have their regular rate based on the 50.4-hour work week for any 24-hour shifts.

All parties shall dismiss any/all other actions contesting subcontracting and take all necessary steps to end such challenges to the right of the City to subcontract.

SIGNATURES

October 19, 2004

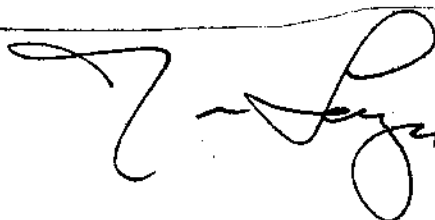
Date



Richard N. Block
Neutral Arbitrator and Panel Chair

October 19, 2004

Date



Janet L. Lazar, City Delegate*

October 19, 2004

Date



Richard Weiler, Union Delegate**

*Ms. Lazar concurs on all agreements and on all awards for the City's LBO. Ms. Lazar dissents on all awards for the Union's LBO.

**Mr. Weiler concurs on all agreements, on all awards for the Union's LBO, and on the award for Wages. Mr. Weiler dissents on all awards for the City's LBO with the exception of the award for wages. Mr. Weiler also dissents on the award on Article XVI, Section 4 (City Issue 8).