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STATE OF MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF

THE CITY OF EAST LANSING, EMPLOYER

AND

MERC CASE NO. L92 A-0356

CAPITAL CITY LODGE NO. 141 OF THE FRATERNAL
ORDER OF POLICE, LABOR ORGANIZATION

ACT 312 ARBITRATION OPINION AND AWARD

APPEARANCES:

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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East Lansing City of

I. INTRODUCTION AND BACKGROUND INFORMATION

The City of East Lansing, Employer (hereinafter referred to as the ("City")), and Capital City Lodge No. 141 of the Fraternal Order of Police (hereinafter referred to as "Union"), have been parties to a series of Collective Bargaining Agreements. The most current collective bargaining agreement expired on June 30, 1992. The parties engaged in a series of negotiations but could not reach an agreement on all of the outstanding issues. Subsequently, the parties met in mediation on December 17, 1992, and January 4 and February 16, 1993. The parties were still unable to reach a resolution of all the outstanding issues and on March 19, 1993, the City, by its Personnel Director, Michael Benedict, submitted a petition for Act 312 arbitration to the Michigan Employment Relations Commission ("MERC").

On April 27, 1993, MERC appointed Allen J. Kovinsky as the impartial arbitrator for the resolution of all outstanding disputes pursuant to Act 312 of the Public Acts of 1969, as amended. The parties were informed of the appointment of Mr. Kovinsky, and pursuant to the procedures set forth under Act 312, the parties met with Mr. Kovinsky on June 24, 1993, in a pre-arbitration conference. At that time all of the outstanding issues were reviewed and designated as either economic or non-economic issues. In addition, the parties stipulated that the following communities would be considered to be comparable communities: Battle Creek, Kentwood,

Portage, Bay City, Midland, Port Huron, Holland, Monroe, Jackson, and Muskegon.

The parties appointed their respective delegates, Michael Benedict, on behalf of the City, and Denise Barowicz, on behalf of the Union. At the time of the pre-arbitration conference and, subsequently on the record on the first day of hearings, the parties stipulated that an award could be issued more than six months after the date of the appointment of the arbitrator, due to the time frames set for the hearings, submission of last best offers, and submission of briefs which would have automatically extended beyond the time frame set forth in the statute as interpreted in the case of *City of Detroit v DPOA, MERC and Kiefer*, 174 Mich App Rpt 388 (1989).

The parties originally agreed that the following dates would be scheduled for hearings: August 23 and 24, 1993; September 13 and 14, 1993; and September 23 and 24, 1993. Subsequently, two additional days (November 1 and 2, 1993) were added as hearing dates.

The parties also reached agreement at the pre-arbitration conference with regard to dates for the exchange of exhibits and dates for the exchange of rebuttal exhibits, as well as dates for the last best offer and submission of briefs. Hearings took place and exhibits and testimony were introduced on the record on August 23 and 24, 1993; September 13 and 14, 1993; and November 1 and 2, 1993. In addition, the Panel convened on September 23 and 24, 1993, but no testimony was taken as the parties met for the purpose of attempting to negotiate a resolution of the outstanding issues.

On or about November 12, 1993, as a result of the efforts of the parties, an Interim Award was issued which is incorporated in this Opinion and Award by reference. The Interim Award resolved all of the outstanding issues with the exception of one issue regarding health care premiums and, specifically, whether or not the employees should be required to share in the cost of premiums for health care as hereinafter set forth. The Interim Award was executed by all of the panel members and copies were submitted to each of the panel members and each of the representatives of the City and Union, as well as nine copies being delivered to MERC.

After receipt of the transcripts of the final days of hearings, the parties in accordance with prior stipulations, submitted their last best offers on November 24, 1993, in the case of the Union and December 21, 1993, in the case of the City.

The last best offer of the Union was as follows:

It is the Lodge's last best offer with regard to the health care proposal being made by the City that the Collective Bargaining Agreement between the parties regarding this subject matter continue with the same language as is included in the parties' current Agreement.

Thus, it was the position of the Union that the status quo be maintained with regard to the issue of whether or not employees should share in the cost of health care premiums. It should be noted that prior to these proceedings, the employees did not pay any cost for coverage under either the WeyCo Premium Plan or the Health Maintenance Organization Plan ("HMO").

The last best offer of the City dated December 21, 1993, on the issue of health insurance premium co-pay was as follows:

Effective with the implementation of a Section 125 "Flexible Benefit Program" beginning with the calendar month of April 1994, the following premium co-share program shall be implemented for full-time employees of this bargaining unit:

Employee Premium Cost Per Month

Health Maintenance Organization Premium:

Single	\$14.92
Double	34.31
Family	38.88

WeyCo Premium:

Single	\$11.81
Double	27.87
Family	29.60

The amount of the premium co-share will not be increased during the term of this Agreement.

An employee, who does not wish to pay part of the premium for medical insurance, may elect the WeyCo Basic Plan offered by the City to commence effective with the next open enrollment period. An employee so electing will not have a premium co-share obligation from April 1, 1994, to the next open enrollment period, provided he or she elects in writing the WeyCo Basic option on or before April 1, 1994.

There shall be no co-share payment obligation for the medical premium for the Health Maintenance Organization Plan or the WeyCo Premium Plan for retirees.

In the event of a plan premium reduction, the employee contribution toward the premium will be reduced so that the percent of the City contribution and the employee co-share contribution to the total monthly premium shall remain the same.

After the receipt of the final transcripts, the Union submitted its Brief in support of its position on or about February 3, 1994.

The City submitted its Brief in support of its position on or about January 27, 1994.

The City, subsequently, indicated that it might wish to have an Executive Panel Session prior to the preparation of the award. Subsequently, the City indicated that the award could be prepared prior to the actual executive session of the Panel. Accordingly, this award has been prepared within the time frame originally established by the parties based upon the receipt of the Briefs of the respective parties and the interim extension granted by the arbitrator to the City for it to make a determination as to whether or not an Executive Panel Session should be convened prior to the preparation of the award.

The last Executive Panel Session was convened on March 15, 1994, and at that time, this Opinion and Award was executed by the arbitrator and the panel members.

Act 312 of the Public Acts of 1969, as amended (MSA § 17.455[31], et seq.) was passed by the Michigan legislature in order to eliminate strikes and work stoppages which had occurred in police and fire units throughout the State of Michigan. It is designed to resolve disputes between members of those bargaining units and their employers in a manner which best provides for the preservation and advancement of the public interest. Section 8 of Act 312 requires the Panel to decide economic issues separately by adopting the last best offer of the party which most nearly conforms to the factors set forth in Section 9 of said Act. Those factors are as follows:

- (A) The lawful authority of the employer.
- (B) Stipulations of the parties.
- (C) The interests and welfare of the public and 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 employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospital 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 Panel in arriving at its decision has taken into account each of the nine factors hereinabove set forth which were supported by testimony and documentary evidence.

The City has not pled poverty. However, it has pled fiscal responsibility. The evidence indicates that the City is located in the middle of the State of Michigan and is contiguous to the City of Lansing, the state capital of Michigan. It has a current

population of approximately 50,677 and is the home city for Michigan State University. The City's residents include a diversity of business and professional persons with families of various configurations and ethnic backgrounds, including a number of educators who work at the University, as well as international residents, politicians, and artists. A large proportion of the City's population consists of students.

Geographically, the City consists of nine and one-half square miles, with nearly half of that land area being the campus of Michigan State University. The University has its own police force with separate on-campus jurisdiction. The East Lansing Police Department has jurisdiction over the area of the City which is not considered to be a part of the campus of Michigan State University. The student body, in so far as residency is concerned, is divided between those who live on campus and those who live off campus, with approximately 20,000 living on campus. The remaining 30,000 of population constitute the individuals over whom the police department has jurisdiction as residents. Clearly, at one time or another, all students fall within the jurisdiction of the East Lansing police in terms of using the facilities within the City.

Beyond the University and the typical facilities which service the University, such as retail restaurants, bars, clothing stores, etc., the City is basically a residential community. The City, while having a large number of commercial establishments, does not have any heavy industry or manufacturing companies and, accordingly, has

not been subjected to the blight which is considered to be characteristic of major urban areas. The City officials tend to believe that their public safety demands are less than those of cities with comparable populations due to the residential characteristics of the community and the fact that the community houses the University. The crime statistics tend to be less than in comparable communities, and the officials of the community believe that the residents are concerned about their neighborhoods and their community and tend to engage in activities which discourage crime.

The City also introduced testimony that, in general, the police department is respected by the citizens and, in general, the employees of the department have been fairly and competitively compensated in pay and benefits; thus, a large percentage of the police officers hired by the City work throughout their entire careers with the City and eventually retire from the City. The City has been an attractive place in which to work, as evidenced by the fact that there are hundreds of applicants whenever the City posts notices for entry-level positions within the police department.

The police department currently has 86 full-time and 5 part-time employees. The full-time complement of employees represents approximately twenty-four percent (24%) of the entire full-time complement of City employees and twenty-one percent (21%) of the entire City work force, including part-time employees.

The employees who are covered in this Collective Bargaining Agreement represent police officers and jail service officers who

possess a non-supervisory status. The bargaining unit includes 44 full-time employees which represents 12.3% of the full-time City work force and 10.1% of the total City work force.

The City engages in the normal full range of public service functions and the police department includes a 911 emergency dispatch system. The City, due to increasing expenditures and lagging revenues, has engaged in cutbacks on services provided, due to a reduction in staff among the general City employees. The police department has been substantially insulated from those problems and, in the past year, the size of the department was minimally increased.

It should be noted that the Police Support Unit Contract covers a separate bargaining unit but contains a "me-too" clause, which provides that "whatever is decided with non-supervisory police officers per the Act 312 proceeding will be binding on the Employer and the Union with respect to this Collective Bargaining Agreement and bargaining unit." In short, the decision by the Panel, with respect to this bargaining unit, will also have determined whether or not employees in the Police Support Unit pay a premium co-share or co-payment for their health care coverage as set forth in the last best offer of the City.

II. POSITION OF THE CITY OF EAST LANSING

The City notes that, under its proposal, the employees would not be required to contribute anything for health care costs prior to April 1, 1994. The plan would be consistent with the implementation of a flexible benefit option which would allow

employees to use pre-tax income if they so wished for their contribution to the premium. Thus, depending upon the employee's tax bracket, a portion of the required premium would have been paid in federal and state taxes, thus, reducing the actual cost to the employee. For example, if the employee were in the 28% federal tax bracket and was paying an additional 4.6% in state taxes and, if the employee deferred the total cost of co-sharing a family HMO premium through a 125 Flexible Benefit Plan, the employee could defer the sum of \$465.56 into the Section 125 Flexible Benefit Plan. This would cover twelve (12) months of family premiums for the HMO co-payments. If the employee had not deferred the money in a Section 125 Flexible Benefit Plan, the employee would have paid 32.6% in federal and state taxes on the sum of \$465.56, or \$149.30 in state and federal taxes. By deferring the monies into the Section 125 Flexible Benefit Plan, the employee pays no taxes, and accordingly, the net cost to the employee would be the amount of the premiums paid, less the taxes saved. Thus, the employee would save just less than one-third of the premium cost, reducing the employee's actual cost to approximately two-thirds of the premium paid by the employee through the Section 125 Flexible Benefit Plan. In addition, the City notes that an employee can elect to opt out of any coverage and receive \$135 per month in additional income as opposed to the current payment of \$41.67 per month if an employee elects to opt out of current coverage.

The City further notes that the premium amount which is contained in its last best offer represents the same premiums as are being paid by other non-union employees within the City.

The City also notes that the premium amount is fixed for the life of the agreement and could not be increased (nor could it be reduced), except through the collective bargaining process and/or an Act 312 award.

The City also notes that an employee who does not wish to pay any premium may elect a new health plan offered by the City known as the WeyCo Basic Plan. Thus, the employee actually has a choice of at least three different health care plans, two of which (the HMO Plan and the WeyCo Premium Plan) require monthly contributions and one of which (WeyCo Basic Plan) does not require any contribution.

The City further notes that it is not asking for any contribution toward premiums by the City's retirees or spouses of retirees. That includes both current and future retirees.

The City also notes that, in the event the premiums for the HMO Premium Plan and the WeyCo Premium Plan are reduced, the City would share the savings on an equivalent basis with employees who are paying premiums for that coverage. Thus, if the total premium were to be reduced by 10%, the employee's share would also be reduced by 10%, so that, in the case of an employee's electing the HMO Premium Family Plan, the employee's share in the event of a ten percent (10%) reduction would be reduced by the sum of Three and 89/100 Dollars (\$3.89) per month. In addition, the City would grant the Union the

right to request information as to how the premium is determined.

The City suggests that it is reasonable to expect the employees to pay a part of the medical premium. In support of that conclusion, the City notes that, under the current stipulated agreement, employees will receive wage increases of 6 1/2% (4% effective July 1, 1992 and 2.5% effective July 1, 1993). In addition, the City has increased retirement benefits by adding a B-4 benefit at City expense under the MERC and universal service credit which would allow an employee to purchase up to five (5) years of time at his or her expense. The City also notes that, in the current Stipulated Interim Agreement, the Lodge president and director have broader choices of shift selection; New Year's Eve has been added as a holiday; the longevity bonus was eliminated and hourly additives were substituted; shift rotations have been modified; representation on internal investigations has been granted; procedures have been established for reimbursement of damage to personal property; educational bonuses have been eliminated and additives have been made in place thereof to the hourly rate; two part-time jail service officers have been added with half benefits with the exception of insurance; jail service officers' sick leave payouts have been increased and made comparable to those of police officers; new promotional and evaluation procedures for sergeant have been negotiated; the City will replace protective vests as determined necessary by the City with due regard to the safety of the officers; the prescription drug co-payment has been modified; insurance coverage has been modified

and extended for new employees; the City has or will inaugurate, at no cost to employees, a Section 125 Flexible Benefit Plan which will allow employees to defer monies from their income into the Plan for the payment of various medical and dental expenses and premiums, thus, allowing the employees to pay for those premiums with pre-tax income; the employees who elect to opt out of medical coverage will have their monthly payment in lieu of coverage raised to \$135 per month rather than the current payment of approximately \$45 per month; and, finally, improvements have been made to retiree health care coverage.

The cost of the improved package to the City from July 1, 1992, through June 30, 1994, approximates 7.9%. In addition, the retirement benefit costs are actually one percent higher, but since they do not become effective until midway through the second year of the agreement, the City has only attached the actual one percent increase for the life of this agreement as part of its overall costing process.

The City further notes that, in the last ten years, the wages of employees within the bargaining unit have risen by 50.5% which represents approximately 5 1/2% more than the rise in the consumer price index during a comparable period of time.

The City also notes that, in addition to the state and federal tax savings associated with the flexible benefit program, both the City and the employee will receive an additional benefit in respect to the fact that social security taxes will not have to be paid by

either the employee or the City on monies which are deferred into the flexible benefit program. The police officers currently do not pay the full cost of social security, but new employees do pay the 1.45% medicare rate. The City and the employees will obtain the full benefit of reduced social security taxes in the jail service division since the employees are covered by social security.

The City also alleges that, on an internal comparability basis, the benefits of the employees in this bargaining unit when compared to benefits provided to other City employees are equal to or superior to those employees and further that those employees who are non-union currently are paying part of their health insurance premium. In terms of comparability, police officers rank No. 1 in benefits such as vacations over twenty-five (25) years, personal leaves, holiday compensation, sick leave accumulation, sick payout at duty-death, retiree health insurance, dental insurance, flexible spending account, retirement-benefit, retirement-employee contribution, longevity, educational bonuses, health-master medical and medical buyouts. (It should be noted that, in a number of those areas, the bargaining unit is tied with one or more other bargaining units.) The bargaining unit ranks second in terms of holiday leaves, sick payout at retirement and long-term disability. The bargaining unit members rank third in terms of worker's compensation offsets and health prescription co-payments and fourth in terms of life insurance. The jail officers rank first or are tied for first in terms of personal leave, sick leave accumulation, sick payout at

duty-death, retiree health, dental insurance, flexible spending accounts, retirement employee contributions, longevity, educational bonuses, health care-master medical and medical buyouts. The jail officers rank second or are tied for second in terms of holiday leave, sick payout at retirement, and long-term disability. The jail officers rank third in terms of worker's compensation offsets and health care prescription co-payments; fourth on life insurance; fifth on vacations over 25 years of service; and ninth on retirement employer contributions. However, with respect to the employer retirement contributions, it should be noted that the City does pay an additional 7.65% on behalf of each employee for social security which it is not required to pay for its police officers.

Currently, of the 359 full-time City employees, approximately 143 are required to pay part of their medical premium. The group of employees who currently pay a portion of their medical premium, include all full-time non-union employees from the City Manager to department heads to professional, technical, and clerical staff. The co-payment by these employees commences on July 1, 1993. Should the City's last best offer be awarded in this proceeding, the number of employees who would be required to pay a portion of their health care premiums could increase to 209 or approximately 58% of the full-time work force. The City further alleges that the issue has been raised with the FOP due to the fact that it happened to be the first union whose contract expired after the implementation of the co-premium payments with the City's non-union employees. The contracts

of the other union-represented employees do not expire until July 1994. The City intends to place the same type of offer on the table with its bargaining unit as each of their contracts comes up for negotiations. It is alleged to have been a critical issue to the City Council and the City Administration.

The City notes that one of the Union's objections to the initial City proposal was based upon the fact that the City had proposed a percentage of the total premium as the employee's share, and it was the feeling of the Union that the City could control the actual total amount of the premiums, thus placing the employees in an untenable position. By offering a fixed amount, the City believes that that objection has been eliminated.

The City further denies two Union objections to its plan based upon allegations that the City had not made any adequate or meaningful efforts to contain health care costs and further, that the City had not made any meaningful effort to educate the employees of the City with regard to health care costs and City concerns. The City maintains that, as early as April 8, 1992, the City began contacting employee groups through their Union representatives concerning budgetary problems in the City and various efforts that the City would be considering in order to reduce costs. A meeting with various employee groups took place on June 11, 1992, at which time the City presented information concerning the three-year health care cost analysis, an eight-year health care cost analysis, a wage and benefit cost analysis, and a retiree health cost analysis. The

City also presented a synopsis of the financial condition of the City, including a projected budget shortfall for fiscal year 1993 and a review of reductions in the City staff in the prior two fiscal years. An additional information meeting took place on June 17, 1992, and subsequently, each employee received a newsletter which summarized the important issues and points which had been discussed at the earlier meeting.

The City further notes that the health care premium costs have increased by a quarter of a million dollars in each of the last two fiscal years. This necessitated a reduction in staff which the City felt required discussions with the employees in order to make them aware of the financial consequences associated with increased health care premiums.

The City notes that the Union chose to refrain from participating further in any conferences or discussions by indicating that it was an issue which it believed would be more appropriately taken up at the bargaining table. The City states that, in fact, that is what occurred in the collective bargaining process with the City making numerous proposals and amended proposals with regard to the issue of health care in general and co-pay premiums specifically. The City notes that Mr. Langdon, who is an officer in the Union, never indicated that he was opposed to the City's offer based upon a lack of educating the employees or providing information. Mr. Langdon's objections concerned themselves with items such as the possibility of national health care, accelerated funding credits,

etc. Mr. Langdon's principal objection was based upon the fact that it would take money out of the pocket of each of his members.

The City further alleges that there is a fundamental concept or issue of fairness when a portion of the City employees are required to pay for a portion of the health care premium and others are not simply because they are protected by the collective bargaining process and/or Act 312 proceedings. Mr. Langdon, on behalf of the Union, indicated that he did not feel that it was unfair for certain City employees to pay a portion of their premium while those who are represented by unions currently do not. The City believes that it is fundamentally unfair for an employee who is protected by Act 312 to have equal or better benefits than co-workers who do not have the protection of Act 312 and are required to share in the cost of a benefit while the protected employees do not share in those costs.

The City, in support of its position, also contends that, on an issue of external comparability, the City is entitled to have its last best offer approved by the Panel based upon the fact that there are other public and private sector employees who are paying part of their health insurance premiums. The sharing in premiums, according to the City, is likely to result in employees paying closer attention to the cost of services and also in employees being less likely to require the services of a physician for a minor complaint. In short, the City believes that sharing the cost results in a more careful health care consumer. City Exhibit 7-1 indicates that 48%

of employers surveyed required premium co-payments by their employees. Of the remaining 52% who currently pay the full premium, approximately 45% indicated that they intended to implement or increase employee contributions. In addition, City *Exhibit 8-1* indicates that there have been marked decreases in the number of noncontributory plans among companies throughout the United States, both in terms of individual and family coverage. The City notes, pursuant to *Exhibit 6-5*, that General Motors requires its white collar employees to pay a portion of their medical premiums up to as much as \$1,766 per year for family coverage, depending upon the plan selected by the employee. In addition, the State of Michigan, implemented a flexible benefit program effective October 10, 1993. Employees may receive cash in lieu of higher costs if they select certain options and employees may also be subject to a co-payment in the premium for their health care coverage should they select certain types of so-called premier insurance. The City's expert witness, Mr. Papazian, testified that there has been a marked trend toward premium co-payments. In addition, he indicated that the amount suggested by the City in its last best offer does not constitute an unreasonable contribution from the employees based upon his knowledge of co-payment premium plans among employers in the general area.

The City notes that recent awards in the cities of Dearborn Heights, Grosse Point Park and Hastings decided by arbitrators, Peter Jason, Mark Kahn, and Mark Kahn, respectively, allowed for the

sharing of the cost of premiums in various bargaining units representing police officers in those cities.

With regard to the stipulated comparable communities, the City notes that only one other city, Portage, requires no employee contribution for retirement benefits. The City of East Lansing does not require an employee contribution for retirement benefits. The other cities require contributions for retirement benefits from a low of three percent (3%) to a high of nine percent (9%), with the average contribution being 8.26%.

The City urges the Panel to consider any increase in retirement benefits as being the equivalent of a wage increase in accordance with the decision issued by Mr. Jason in the City of Dearborn Heights. The City notes that, when the new wage adjustments are taken into account, the average wage of an East Lansing police officer will be \$2,741 more than the average wage of a police officer in the comparable communities. The City also notes that only one other city, Battle Creek, utilizes a higher multiplier for its pension retirement calculations, but in Battle Creek, it uses a five-year versus a three-year final average compensation in its calculation and does not provide a post retirement cost of living adjustment as does the City of East Lansing. The City also notes that East Lansing police officers over a twenty-five year career average approximately six days more per year off than do police officers on the average in the other comparable communities.

The City also alleges that its dental coverage is better than all of the comparable cities with the exception of the City of Portage, and further, in two of the comparable cities, a premium co-payment for dental insurance is required, contrary to East Lansing where no such premium is required or sought at this time. In addition, East Lansing is one of only two cities with long-term disability insurance which currently requires no co-payment but would in the event the premium exceeds \$13 per month. The City, also, is the only one among the comparable cities which provides a Section 125 Flexible Benefit option for its employees. The City also alleges that, in terms of other benefits such as sick leave, longevity, life insurance, worker's compensation and supplemental benefits, it is competitive with the comparable communities.

With respect to the health care co-pay premiums, the City of Battle Creek requires employees who select an HMO option to pay any costs over and above that of its traditional health care plan. In Bay City, employees selecting the Blue Care Network Plan pay a monthly premium of \$35, \$55, or \$75, depending upon their status as single, double, or family coverage, respectively. In the City of Holland, special riders become the obligations of the employees, and dependent coverage beyond nineteen years of age is paid by the employee. In the City of Kentwood, dependent coverage over the age of nineteen requires an employee co-payment of \$2.50 per month. In Midland, the city expense is capped at the rate which existed on June 30, 1990, and employees are required to pay all premiums in

excess thereof. In the City of Portage, an employee pays a premium for any amount which exceeds the sum of \$450 per month. In addition, a number of the cities do not provide various other benefits and riders such as health waivers, retiree health coverage until older ages, wards versus semi-private facilities, etc.

The City, also in support of its position, suggests that the cost of the health care benefit has changed in relation to the cost of living. In the past eight years from March of 1985 to July of 1993, the cost of living increased by 35.7%. During the same period, the premium rates for WeyCo, Health Central and PHP increased by 71.9%, 144.7% and 131.9%, respectively. The City has no control over the increases in those costs related to higher labor costs in the medical field, higher costs of medical technology, rising malpractice insurance rates and other economic considerations. The City has worked toward developing a public sector consortium with other communities in the area in an attempt to contain and/or reduce the cost of health care. However, the City notes that "at the top of every consultant's list" is a recommendation to increase cost sharing by employees in the form of increased premiums or increased medical deductibles. This is based upon the philosophy that, when consumers pay for their health care, they are likely to pay closer attention to what various services cost and to be less quick to go to the doctor for minor complaints. The City has studied other plans offered by insurance carriers, but since the plans are not equivalent and the costs are not substantially less, the City has determined

to stay with the WeyCo Plan for its traditional insurance. The City does not believe that offering an HMO is a viable consideration since there are many retirees who live outside the service area for the HMOs. The City has attempted to control costs through the use of employee assistance plans and preferred provider of Michigan group plans. Nevertheless, the City's costs have been increased from \$1,267,000 in March of 1989 to February of 1990 to \$1,834,000 from March of 1991 to February of 1992. Costs were somewhat contained during the fiscal year ending July 1, 1993, but the trend seems to again be in an upward direction.

Finally, the City notes that the employees in this bargaining unit are not the only ones who are being asked to make a sacrifice. It notes that the public, in general, is also being asked to accept reduced services while incurring increasing costs for other services. For example, the City has eliminated the commercial rubbish service without an attendant reduction in taxes for commercial property owners. The City has initiated and increased fees for its Advanced Life Support Service operated by the Fire Department. Water and sewer rates have been increased by a total of 31% in the past two years. The City has essentially eliminated free rubbish collection by requiring the public to utilize a bag system to dispose of waste with each bag costing \$1.00. In addition, green matter is subject to a special \$1.00 per yard waste sticker attached to each bundle and a special sticker is required in the sum of \$15 for large items

such as sofas or beds, with increased fees if the item requires the disposal of freon or other coolants.

III. POSITION OF CAPITAL CITY LODGE NO. 141 FRATERNAL ORDER OF POLICE - EAST LANSING NON-SUPERVISORY DIVISION

The Union initially contends that, since the City is the proponent of the issue representing a change in the status quo, the burden of proof becomes the burden of the City. The decision of the Panel is to be based upon the applicable factors set forth in Section 9 of Act 312 of the Public Acts of 1969. The Union further notes that, as to each economic issue, the Panel is required to adopt the last offer of settlement which, in the opinion of the Panel, more nearly complies with the applicable factors set forth in Section 9. The Union and the City have both stipulated that the issue before the Panel is economic and, accordingly, the Panel must accept either the last best offer of the City or the last best offer of the Union. Accordingly, if the City fails to meet its burden of proof with regard to the applicable factors set forth in Section 9, the Union maintains that its last best offer requiring the maintenance of the status quo should be accepted by the Panel. The Union argues that the City has failed to meet its burden of proof and, in support of that contention, states with respect to the applicable statutory criteria as follows:

First, the Union acknowledges that the City, as the Employer, has the lawful authority to propound the issue of employee co-pay or co-share of health care premiums. The Union next indicates that

there was no stipulation regarding this issue nor was it included in the Stipulated Award and, accordingly, the statutory provision regarding stipulations of parties is irrelevant to the present inquiry. Moreover, the Union concedes that the present issue was properly preserved by the City for determination by the Panel.

The Union maintains that the next factor set forth in Section 9 of Act 312 regarding the interest and welfare of the public and the financial ability of the unit of government is also irrelevant to the present dispute, based upon its contention that the City is not claiming that it cannot afford to continue to provide the disputed health care benefits because of lack of funds, but rather because the City does not desire to continue to provide the benefit because of its increasing cost without participation in the payment by the bargaining unit employees.

The Union maintains that the fourth criteria regarding comparison of wages, hours, and conditions of employment of employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services both within the City and in comparable communities in the public and private sectors is relevant. However, the Union states that the City's expert witness, Mr. Papazian, failed to present convincing evidence with regard to the City's contention that there is a trend in either public or private employment with regard to employees contributing to the cost of health care premiums. The Union notes that the City's witness acknowledged that he had very

little experience in the public sector with regard to the issue of contributions for health care benefits. The witness indicated that his testimony did not relate to other police agencies in the area. In addition, he acknowledged that the issue of competitiveness with regard to health care premiums among police officers would be relevant and further acknowledged that he had not performed an evaluation of the City's current plans to determine whether or not they were efficient in operation, competitive in relation to the benefits provided, or whether or not the City's proposal with regard to co-payments in the public sector were comparable to other communities. However, he did indicate a degree of familiarity with a state program requiring contributions which had just been formulated. In addition, the City's witness acknowledged that only a small percentage of organized employees were currently making contributions to health care premiums in the private sector. He had indicated that out of about one hundred corporations with which he was familiar, approximately 80% provided for co-payment of health care premiums but he did not know if that 80% actually were unionized and paid health care co-pay premiums although he estimated that perhaps a half dozen did so. The Union concludes, based upon what it terms sketchy testimony, that there certainly is not a trend as alleged by the City's witness for the co-payment or contribution by employees of health care premiums.

The Union also maintains, pursuant to various exhibits, that it is clear that, of the comparable communities agreed upon, there

is no indication of a trend toward the sharing of health care premiums. Specifically, the Union alleges that employees in police departments in the comparable communities are not required to make the type or degree of contributions toward premiums that is sought by the City in this proceeding. The Union states that even in comparable communities where some form of contribution is required to be made by the employee, the degree of contribution is not fixed at an amount equal to what the employer is currently seeking in the instant case. According, the Union states that the City either did not present supporting data from comparable communities because it did not believe that the evidence from those communities would support its position or, in the alternative, the City did not seriously advocate the change which is being addressed by the Panel.

The Union states that based upon its exhibits the comparable communities of Kentwood, Midland, Monroe, Muskegon, and Port Huron provide health care benefits to its officers without any contribution from the employees regardless of the plan chosen. Furthermore, the remaining comparable communities, though they require a contribution under the technical terms of their agreement, as a practical matter do not assess premium costs because the applicable premiums do not exceed the premium required for the base plan as is the case in the cities of Battle Creek, Bay City, Holland, and Jackson. The Union further states that none of the comparable communities require the payment of a flat sum by an employee toward health care premiums as is being advocated in the instant case. Accordingly, the record

established by the City, in support of its proposal, according to the Union, is totally lacking in the kind of empirical data a fact-finder must have to justify the adoption of a plan of contribution to premiums that so radically changes the method of financing health care with regard to the group of employees who will be affected by this decision.

The Union notes that the City has provided fully paid health care benefits to members of the bargaining unit for as long as anyone can remember. Thus, the benefits should not be eliminated without strong evidence supporting the change.

In so far as internal comparables are concerned, the Union alleges that the City's position is equally weak. It notes that none of the other employees of the City of East Lansing, who have been subjected to the co-payment of health care premiums, are subject to the last best offer proposal the City now has at issue in these proceedings. The employees who have been included in a contributory plan are not represented by the unions. None of the organized units of the City currently make any contribution to the cost of health care. Those who currently make contributions were unilaterally subjected to the program without having an opportunity to bargain over the City's changes. In addition, the change in the co-pay premiums with the non-represented City employees did not occur until it became apparent that the police non-supervisory bargaining unit issues would be resolved in Act 312 arbitration.

The Union further states that the program was so hastily established that the terms of the City's proposal and program, which had been adopted for non-bargaining unit employees, had never been presented to the Union as a formal proposal during the bargaining and mediation process. The first time that the Union had been presented with the details of the proposal was when its representatives received the City's Act 312 exhibits. Thus, the Union alleges that the hastily fabricated health care contribution was put into place merely so that the City could posture itself during Act 312 proceedings with regard to the police bargaining unit and present evidence that at least a portion of the City's employees were, in fact, contributing toward the cost of health care benefits received by them because of their employment with the City.

In its analysis of the City's proposal on the impact to its membership of the proposed change, the Union states that the set contribution to be made by the employees of the bargaining unit does not bear any reasonable relationship to, nor is it based upon any actual costs or increase in expenditures related to health care benefits. The Union believes that it is simply an arbitrary amount put forth by the City in an effort to establish a token contribution to health care costs on the part of bargaining unit employees. Nevertheless, the Union maintains that the amounts on an annualized basis represent a significant cost to the employees. It notes that the annualized costs would be \$179.04, \$411.72, and \$466.50 for employees based upon single, double, or family coverage,

respectively, under the HMO Premium Plan; and \$142.92, \$334.44, and \$355.20, respectively, on the WeyCo Premium Plan. The costs represent more than one percent of an employee's wages for a family plan. Accordingly, the costs would, according to the Union, significantly and unfairly dilute any wage increase already agreed to between the parties.

The Union acknowledges that health care costs represent a significant problem with regard to increases which have occurred during recent years, but claims that it has attempted to make a contribution toward the increase in health care costs by negotiating lower wages and benefits than it would otherwise have negotiated but for the fact of the double digit increases in health care costs. The Union states that it would have sought much higher wage increases than those to which it agreed in the current case if it had not given consideration to increasing health care costs and the fact that such benefits currently are the obligation of the City and would continue to be the obligation of the City if its last best offer is rejected by the Panel.

The Union further believes that the impact of the City's proposal unfairly impacts its membership based upon the fact that members would contribute different amounts of money based upon their status as a single, double, or family insured. The same would also be true depending upon which plan the employee chose to select since the rates for the two plans are significantly different.

The Union notes that the WeyCo Plan, which is the City's principal health care benefit program, is a program that is essentially a health care plan which is owned and operated by the City and simply administered by WeyCo. The Union alleges that the premium cost applicable to the Plan is established by "collusive efforts" between the WeyCo administrator and the City. It notes that neither the employees nor the employees' bargaining representative have any input as to what the premiums are or how they will be established. The Union notes that the effect of the City's proposal would be to impact the instant bargaining unit and other employees of the City by requiring them to pay a portion of the premium cost which is in effect and to underwrite and pay for the City's previous contract commitments to employees who are not making contributions but who are currently on the City's payroll as well as existing retirees who will not be required to contribute to the cost of their health care premiums. Thus, the Union believes that the City's proposal unfairly impacts its membership while allowing retirees and other represented employees to continue to have similar coverage without incurring any costs whatsoever. Since no cost analysis or study was performed by the City with regard to the cost associated with this bargaining unit, there is no equitable basis by which the Panel can adequately assess the fairness of the City's proposal. Neither the City nor the administrator, according to the Union, is willing to segregate the members of this bargaining unit and perform a cost study analysis.

The Union believes that it is the employer rather than the employees who has the greatest control over curbing health care costs. Furthermore, the Union alleges that the employer failed to introduce any evidence during the course of the proceedings to indicate that it has made a good faith attempt to curb the rise in health care costs. The employees in the bargaining unit have no control over the City's selection of a plan nor of a plan administrator. Those decisions remain under the sole discretion and control of the City. The Union further alleges that the City has not made any recent efforts to seek other plan administrators or other private plans which offer comparable benefits at a lower cost. If the City proposal is accepted by the Panel, the City would have no incentive to seek out more cost effective programs through other competitive sources since a portion of the cost would now be borne by the bargaining unit employees. The bargaining unit employees cannot on their own seek out other administrators and/or programs which will offer comparable benefits at reduced costs. Those avenues should have been explored by the City prior to attempting to impose a contributory feature into their health care package.

The Union also voices a concern that because the City has the power to change the premiums to meet its total obligations to other employees and retirees, it can, by simply adjusting the premium cost attributable to the plan, assess payroll deductions with regard to the health care benefit to offset its obligations to members of other bargaining units, as well as retirees. The members of the bargaining

unit would not have any recourse to disagree with the method or means by which premiums and costs were established or rated and otherwise dispute the amount assessed. The Union concludes that, if the Panel were to adopt the City proposal, the City eventually would have sole discretion and sole power to determine what, if any, payroll contribution the employee would have to make under the terms of its proposal.

Finally, the Union notes that the City's proposal would only be from April 1, 1994, to June 30, 1994, if adopted by the Panel. Thus, since the City has indicated that it intends to re-evaluate its entire health care system in the near future, coupled with the fact that the proposed contract change is insignificant during the period of time involved, the Union argues that the change should not be implemented at this time but rather should be left to future negotiations and/or Act 312 proceedings.

IV. DISCUSSION AND DECISION

At the outset of this discussion and decision, it should be noted that, although each exhibit and every word of testimony cannot be reviewed during the course of this decision, the arbitrator has, in fact, reviewed all six volumes of testimony and all exhibits introduced by the respective parties. In considering the statutory criteria, I have arrived at the following conclusions:

The parties agree that the employer has the authority to engage in the Act 312 proceeding and further agree that the employer has the authority to propound the issue which is in dispute, namely, that

the members of the bargaining unit be required to contribute to the cost of health care premiums.

The stipulations of the parties have been taken into consideration, including the Stipulated Interim Award and the wages and benefits set forth therein. The parties, obviously, have not been able to stipulate with regard to the conclusion of the issue in dispute.

I find that the City has the financial ability to pay the wages and benefits set forth in the Stipulated Interim Award. I also believe that the interest and welfare of the public and the financial ability of the City are relevant with regard to the issue of whether or not employees should be required to contribute to the cost of health care premiums. The City has had increasing costs associated with the members of this bargaining unit, as well as with its other employees in the health care area. Those costs, on a percentage basis, have outdistanced any increases that the City has been able to generate on a percentage basis in its overall revenues. In addition, the City has taken other measures which directly impact upon the citizens, including the reduction of staff, the elimination of commercial rubbish service, increasing Advanced Life Support Service ambulance fees, increasing sewer and water charges, and increasing residential rubbish collection fees. In addition, the City has effectuated reductions in its staffing and other bargaining units and among non-represented employees while maintaining or increasing the staffing levels in the bargaining unit represented

by this Union. A comparison of the wages, hours, and conditions of employment of the employees involved in this bargaining unit with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in public employment in comparable communities and in private employment in comparable communities leads me to the following conclusions:

The wages and benefits received by the employees in this bargaining unit are equal to or greater than the wages and benefits received by employees in public employment in the comparable communities. The wages are above the average of the comparable communities; and when one considers the fact that, with the exception of one community, all of the other communities require their employees to contribute to their retirement funds, the wages and retirement benefits of the employees in the City far exceed those of employees in comparable communities. City Exhibit 2-3 indicates that, in July of 1992, the wages in the comparable communities averaged \$35,358. The wages in the City averaged \$35,339. However, the average retirement contribution in the comparable communities equaled 8.19%, whereas there is no retirement contribution in the City. Accordingly, the net pay received after retirement contributions in the comparable communities averaged \$32,463 and the net pay in the City averaged \$35,339. Thus, the employees in the City received approximately ten percent (10%) more in net pay than did police officers in the comparable communities. It should be noted that the figures for 1992 take into consideration the City's

offer, which is incorporated in the Interim Award, of a four percent (4%) wage increase. Likewise, City Exhibit 2-1 reflects that, as of July 1993, the average wages in the comparable communities equaled \$36,157, whereas the average wage in the City equaled \$36,046. This includes an estimated offer of two percent (2%) in wage increases for the employees in this bargaining unit. In fact, the employees received an additional one-half percent (1/2%) which would mean that, as of July 1993, their wages were approximately \$36,230. When one factors the retirement contributions paid in the comparable communities, the average net pay is \$33,171 versus an average net pay among the employees in this bargaining unit of \$36,230. Again, the employees in the City received a net pay almost ten percent (10%) more than their counterparts in the comparable communities during the current fiscal year. City Exhibit 2-1 also indicates that between 1987 and January of 1994, the same differentials existed with the percent of differential fluctuating between a low of 2.8% and a high of 8.1%.

City Exhibit 2-4 demonstrates that in terms of vacation days for a 25-year career employee, the average among comparable communities would be 439 days, whereas the average in the City is 511 days. Employees in comparable communities over the same 25-year period would receive 55 personal days, whereas the employees in this bargaining unit would receive 100 personal leave days. In terms of holiday leave, employees in the comparable communities would receive 240 days and employees in this bargaining unit would receive 275

days. Thus, over a 25-year career, the average number of leave days in the comparable communities would total 734 days versus 886 days in the City. In terms of sick leave benefits, virtually all of the communities, including the City, grant one day per month. The City allows an unlimited accumulation of sick leave days, whereas seven of the comparable communities cap accumulated sick leave from a low of 60 days to a high of 230 days. The City allows a fifty percent (50%) payout at retirement of accumulated sick leave with a maximum payout of 60 days. Most of the other communities also provide for a fifty percent (50%) payout with the maximum number of days ranging from one-half of 200 days in Bay City, to one-half of the excess of 720 hours in Holland, to a maximum of 90 days in Jackson, to 50% of accruals beyond 132 days on an annual basis in Muskegon, and 50% of the accumulated sick leave days up to a maximum of 61 days in Muskegon, to 50% of accumulated sick leave at termination in Port Huron, based upon a 140-day accumulation.

In terms of longevity payments, the City provides for a 2% payment to a maximum salary level of \$14,000 for between 5 and 10 years of service; 4% between 10 and 15 years of service; 6% between 15 and 20 years of service; and 8% for service in excess of 20 years. Pursuant to the Interim Award, the annual longevity bonus has been eliminated and converted into cents per hour which has been added to the base pay based upon 13 cents per hour; 27 cents per hour, 40 cents per hour, and 54 cents per hour for each of the seniority groups hereinabove set forth. Several of the comparable communities

provide maximum salary levels upon which longevity payments are made, including Bay City and Kentwood, others provide for maximum payments which are approximately equivalent to those paid by the City, such as Battle Creek. The City of Holland pays only two percent. The City of Jackson has three scheduled payments in the sums \$842, \$1,708, and \$2,590. The City of Muskegon pays a flat amount ranging from \$100 to \$500 based upon years of service. The City of Monroe pays \$25, \$30, or \$35 per year of service based upon years of service. The cities of Midland, Portage, and Port Huron pay percentage amounts with maximums of 8%, 7½%, and 10%, respectively, for 20 years of service. Clearly, the City payments compare favorably in this area as well.

In the field of educational bonuses, the City pays \$175, \$300, and \$350 annually for associate, bachelor, or masters degrees, respectively. Five of the comparable communities pay nothing, and four of the comparable communities pay various amounts up to a maximum of \$750 for a masters degree. Again, the City would compare favorably in the area of educational bonuses.

In the area of retirement benefits, as previously noted, only one other city does not require a percentage contribution by the employee. The remaining cities require contributions from a low of 3% to a high of 9%. Virtually all of the cities require service and age as an eligibility factor for retirement benefits. The City requires the age of 50 with 25 or more years of service. This is identical to the cities of Battle Creek Monroe, and Port Huron. Bay

City and Holland require 55 years of age, or in the case of Bay City, a minimum of 28 years of service regardless of age. Jackson requires 25 years of service; Midland, 23 years of service; and Muskegon, 25 years of service at age 53.

The City, effective December 1993, has increased its multiplier to 2.5%. Only one other city, Battle Creek, has a higher multiplier. In terms of final average compensation, the City allows the best three consecutive years within the last ten years of service. Three of the comparable communities require five years with the remainder requiring three years. In terms of cost of living adjustment, the City increases the retirement benefit by the cost of living or 2 1/2% whichever is lower. Eight of the comparable communities provide no such adjustment and the City of Monroe provides for a \$200 per year adjustment for each year of retirement.

It is clear that the City's retirement benefits compare favorably and, in fact, are as good or better than comparable communities with the possible exception of Battle Creek, which has a higher multiplier, but which also requires more years of service for purposes of final average compensation calculations and also requires a 7 1/2% employee contribution.

The health insurance comparables indicate that each of the cities has at least one HMO, with the exception of Midland and Monroe, and each offers at least one traditional plan. The City offers MVP, with MasterMed Option 2, with two free office visits and \$150 annually for a physical exam. The City also offers prescription

drugs with co-payments effective January 1, 1994, of \$3.00 for generic and \$6.00 for non-generic prescriptions. The City's major medical plan requires a payment of \$150 per person or \$300 per family and includes dependent coverage to the age of nineteen and up to the age of twenty-five if the dependent is a student. Currently, the City does not provide for employee contribution, but does provide coverage for retirees who retire at age 55 with at least 25 years of service. Those who retire at age 50 with 25 years of service are covered at the City's expense between the ages of 50 and 55 if they do not have alternative coverage. All of the other comparable communities provide for dependent coverage and most provide for additional coverage if the dependent is a student up to ages 23, 24, or 25. All of the comparable communities provide major medical coverage with the employee being required to pay on the average \$100 per individual and \$200 per family. All of the comparable communities have drug or prescription riders providing for co-payments between \$2 and \$5. Most of the comparable communities provide Blue Cross/Blue Shield coverage under either MVF-1 or MVF-2.

In terms of employee contributions, the cities of Holland, Jackson, Kentwood, Monroe, Muskegon, and Port Huron are indicated as requiring no contribution on City Exhibit 2-4. The City of Battle Creek requires a contribution for any costs over the cost of the traditional plan if an employee elects an HMO. The same is true with respect to Bay City if an employee selects the Blue Care Network.

The City of Midland has capped its expense at its rates which were in effect on June 30, 1990, with employees paying any additional amounts. The City of Portage requires employees to pay any amounts in excess of the cost of \$450 per month.

Union Exhibit 5 indicates that the total cost of traditional health care insurance for employees and its bargaining unit in 1993 would be \$213,270. If the employer's contributory plan were adopted during that year, the cost to employees would be \$19,114 and the cost to the employer would be \$194,155. Thus, the employees on an annualized basis would be required to pay just under ten percent of the total cost of their health care premiums. The amounts paid per employee would obviously vary, based upon whether they select the WeyCo Basic Plan, which would require no contribution or the WeyCo Premium Plan which would require contributions of \$11.81, \$27.87, or \$29.60 based upon single, double, or family coverage, respectively, or the HMO coverage which would require premiums of \$14.92, \$34.31, or \$38.88 per month based upon single, double, or family coverage, respectively.

The City by virtue of the Interim Award has agreed to adopt an IRS § 125 Flexible Benefit Plan for this unit. The cities of Midland and Holland are the only two comparable cities which offer that plan.

Union Exhibit 12 indicates that the cities of Kentwood, Midland, Monroe, Muskegon and Port Huron pay 100% of all medical insurance premiums. The cities of Battle Creek, Bay City, Holland, Jackson, and Portage pay 100% of the insurance for one plan, with employees

potentially paying a portion of the premium should they choose an alternative plan. Although, in the case of the cities of Jackson and Portage, due to current premium levels, the employer is paying 100% of the alternative plan premium as well. The exhibit also indicates that, in the cities of Battle Creek, Bay City, Holland, Jackson, and Portage, employees are required to contribute to certain plan premium costs; but again, in the cities of Jackson and Portage, because of premium levels built into the contract, the employees have not as yet had to contribute to the cost since the premium has not exceeded the city's contractual liability.

In terms of internal comparables, the coverage afforded the police bargaining unit is the same as that which is afforded other employees. As previously noted, the non-bargaining unit employees are currently contributing to the cost of their health care coverage. The other bargaining unit employees are not contributing to the cost of their coverage at this time since their contracts do not expire until July 1, 1994, at which time according to the City, it intends to propose identical provisions to the other bargaining units as are contained in its last best offer in the instant case.

In terms of private employment within the City, evidence was introduced indicating that one of the biggest employers in the area, General Motors, currently required its white collar employees to contribute to the cost of health care. The same is true with regard to employees currently employed by the State of Michigan. A great deal of testimony was given with respect to the trend in private

employment with regard to employees paying a portion of the health care premium and clearly the evidence adduced, as well as numerous exhibits indicate, that the overwhelming percentage of employers in the private sector now require employees to pay a portion of the health care premiums.

In terms of the statutory requirement with regard to considering average consumer prices for goods and services, commonly known as the cost of living, it is clear that the wages of the members of this bargaining unit have exceeded the cost of living increases in the past decade. Between July of 1983 and July of 1993, the Consumer Price Index rose by 44.9%. During the same time frame, police officers' wages rose by 49.8%. However, during the period of 1985 to 1993, when the Consumer Price Index rose from 106.4 to 144.8 for a net change of 38.4, the premiums for health care coverage rose by 144.7% for the HMO coverage and 131.9% for PHP coverage and 71.9% for the WeyCo coverage for employees in the City. The cost of the City plans include a blended factor taking into consideration that it includes both bargaining unit and non-bargaining unit employees, as well as retirees. While the Union in its Brief indicated that it did not believe that the cost-of-living should be considered a factor in this case, I must respectfully disagree. The Union has enjoyed wage and benefit increases in excess of the increase in the Consumer Price Index while at the same time health care costs have doubled or tripled in terms of the percentage increases in those costs as compared to the increases in the Consumer Price Index. Any

employer would have to be concerned with a situation in which their costs are increasing annually at double digit rates. Thus, it is my belief, that the reference to the consideration of the Consumer Price Index in Act 312 requires consideration for both the employer and the employee in determining which offer most nearly complies with the statutory criteria.

I have already discussed in detail in comparing the wages, hours, and conditions of employment of the employees in this bargaining unit with other employees, both internally and externally. The overall compensation 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 other benefits received, it is my belief, based upon the evidence and the exhibits which were introduced during the course of the hearings, that the employees in this bargaining unit compare favorably in all of those areas with their fellow employees in the City and with other police officers in public employment in the comparable communities. The wage structure for the employees in this bargaining unit, when taken along with the lack of employee pension contributions, certainly compares more than favorably with employees in comparable communities. The same is true of the various fringe benefits as hereinabove set forth. It is equally true that the employees in this bargaining unit, when compared with their fellow employees in the City, do not suffer in terms of the various fringe benefits which make up a part of their

compensation package. In fourteen of the categories, they are either first or tied for first in terms of the benefits. In four categories they are either second or tied for second and in only three categories are they as low as third or tied for fourth. With respect to the jail officers, they are either first or tied for first in eleven categories and second or tied for second in four categories and are only ranked third or below in five categories.

With respect to the statutory criteria involving changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, the only change which has occurred with respect to any of the issues raised in the parties presentations occurred recently with respect to the City's repealing an ordinance or resolution which considered giving health care coverage to employees' alternate lifestyle partners. The Union strenuously objected to the fact that the City would be utilizing revenue for the purpose of providing health care coverage to non-employee non-dependents. That issue has now been resolved by virtue of the fact that the City has repealed its ordinance or resolution which considered giving those benefits to the alternate lifestyle partners.

With respect to factors 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, it is my belief that the issue of fairness lies within that criteria. That is to say, has the City by virtue of its proposal

attempted to treat the employees in this bargaining unit in a fair and equitable manner? The other side of that coin is, has the Union responded in a fair and equitable manner to the proposal of the City? It is my belief that the City has, in fact, acted in a fair and equitable manner. The City conducted studies and seminars commencing more than a year prior to the termination of this Collective Bargaining Agreement. The issues were fairly presented in negotiations, mediation, and arbitration. The proposal of the City in its last best offer takes into consideration certain of the objections raised by the Union with respect to the amount being fixed rather than a fluctuating percentage. In addition, by introducing the Section 125 Flexible Benefit Plan, the City has allowed the employees to avail themselves of the deferred compensation benefits set forth in Section 125, thus, reducing the financial impact upon the employees who select either one of the two health care plans for which the City seeks a co-payment of the premium cost. In addition, the City has offered a third plan which would not require any contribution by an employee if the employee so chooses. The City has also acted in a fair and equitable manner by proposing a plan which is either identical to or virtually identical to the plan under which its non-bargaining unit employees are currently receiving health care coverage. It is asking the Union employees to do no more in terms of offsetting the premium costs incurred by the City than it has asked of its own City Manager, administrators, clerical employees, and other non-bargaining unit employees. Moreover, I have

no reason to question the City's position that, if it is successful in obtaining its last best offer in these proceedings, it will bargain for the same type of provisions with its other organized bargaining units. Thus, if the City is successful in those negotiations, or in the case of uniformed services, in Act 312 all of its employees will have been treated in a similar fashion.

On the other hand, it should not be concluded that the Union has acted in an unfair or inequitable fashion. The membership in the Union quite naturally has grown accustomed to receiving health care benefits without contribution over a long period of years. By the same token, no employee jumps for joy at the thought of monies being deducted from his or her pay check for benefits which have historically cost the employee nothing. Quite naturally, the employees of this bargaining unit may well feel that somehow or other they have been singled out, based upon the fact that this is the first bargaining unit in which this proposal has been advanced. However, there is a reasonable and rational explanation for that fact based upon the fact that this bargaining unit's Collective Bargaining Agreement is the first one to have come up for re-negotiation after the implementation of the contributory plan and Section 125 Flexible Benefit Plan by the City for its non-organized employees.

The Union has argued that the impact upon its membership is significant in terms of annual cost for contributory co-payments. Using the highest family figures for the HMO and the WeyCo Premium Plan, the maximum that employees would be required to pay would be

\$466.50 per year for the HMO and \$355.20 per year for the WeyCo Plan. While the amount is not insignificant, it only represents approximately ten percent (10%) of the total premium cost to the City. In addition, as previously noted, approximately one-third or more of that cost will have been saved by the employee in lieu of the payment of federal and state taxes if the employee diverts a sufficient amount of money into the Section 125 Flexible Benefit Plan to pay for the premium cost. Thus, most employees will only pay family premiums of about \$313 per year in actual out-of-pocket dollars for the HMO and about \$237 for the WeyCo Premium Plan. Each of those amounts represents one percent or less of the employee's gross wages and is more than offset by the 6 1/2% wage increases the employees received for the two fiscal years in question.

The Union has also objected to the imposition of the City's last best offer based upon the fact that it will be of short duration. That is to say, this contract will expire on June 30, 1994. Unfortunately, due to the length of the collective bargaining process as well as the Act 312 proceedings, that observation would be equally true in many of the years in which collective bargaining agreements terminate. Moreover, the Union will have the opportunity to bargain over these premiums virtually immediately after this decision is reached; and if it still disagrees with the payment of those premiums, proceed to another Act 312 case in an attempt to convince a different arbitrator of the justness of their position.

The Union has also objected to the imposition of the last best offer based upon the fact that the premium costs are a blend of current and retired employees. I do not consider this objection

significant since some of those retirees were members of this bargaining unit and the benefits they are receiving are a direct result of the efforts of this bargaining unit on behalf of past, current, and future retirees. Since most insurance plans are written on a group basis, it would be virtually impossible to factor out the retirees and receive as favorable a premium. Even if that were to be the case, those retirees who were former members of this bargaining unit clearly would have to have their premium costs chargeable to this bargaining unit for purposes of determining overall costs of compensation in benefits.

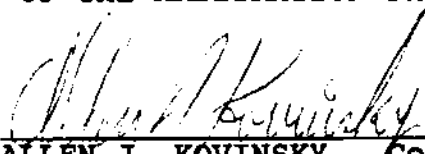
Finally, for the reasons hereinabove set forth, I must reject the Union's contention that the employer failed to attempt to curb the rise in health care costs and/or take other steps to contain said costs. The City has attempted to contain costs through the establishment of three separate plans; and, in addition, has explored the possibility of a consortium with other communities in the same geographic area in order to increase the group membership which theoretically may lead to lower premiums. There is ample testimony in the record which indicates that the City had explored other Plans and other types of coverage. The Union has also objected on the basis of the fact that the City through its administrator has the power to change the premium to meet its total obligation to other employees and retirees and adjust the premium cost attributable to the Plan, thus assessing larger and larger payroll deductions with regard to the benefits granted the members of this bargaining unit. Since, the amount is fixed for the duration of this contract, and under the terms of Act 312 for as long as the parties continue to

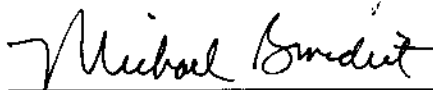
engage in collective bargaining agreement, through mediation, and finally through arbitration if such is required, it is obvious that no increase in the premiums could be effectuated unilaterally by the City. The City is subject to the same laws regarding collective bargaining as are other employers, and clearly, the City could never unilaterally within its sole discretion determine what, if any, payroll contribution employees would have to make for the co-payment of insurance premiums unless the Union agreed to such an open ended provision.


For all of the reasons hereinabove set forth, it is the determination of this Panel that the last best offer of the City of East Lansing more nearly meets and complies with the statutory criteria. Accordingly, the last best offer of the City of East Lansing is hereby accepted and awarded. Pursuant to the last best offer, the contributory feature of the City's last best offer and all other aspects shall be implemented on April 1, 1994. The City shall give each employee the opportunity to determine which plan the employee wishes to be covered by prior to April 1, 1994.

IT IS SO ORDERED BY A MAJORITY OF THE ARBITRATION PANEL.

DATED: MARCH 15, 1994


ALLEN J. KOVINSKY - Concurring


MICHAEL BENEDICT - Concurring


DENISE BAROWICZ - Dissenting