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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT NO. 312 ARBITRATION PROCEEDING
BEFORE JOHN B. SWAINSON, CHAIRPERSON,
VICTOR MITEA, EMPLOYER DELEGATE
ANN MAURER, UNION DELEGATE
DETROIT, MICHIGAN

IN THE MATTER OF:

CITY OF ECORSE,

Public Employer,

and

POLICE OFFICERS ASSOCIATION
OF MICHIGAN,

Public Employees.

Case No. D81 H-1731¹⁷³²

ACT 312

FINDINGS, DETERMINATION AND AWARD

May 17, 1985

Corse, City of

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT, MICHIGAN

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DISCUSSION AND OPINION

22-31

LAST BEST OFFER

UNION ISSUE NO. 1

EMPLOYER ISSUE NO. ____

DURATION

Union Last Best Offer:

Term of the contract shall be July 1, 1981 through and including June 30, 1985:

Employer Last Best Offer:

Not specified.

Award: The Last Best Offer of the Union is adopted.

Concur:

Dissent:

[Handwritten signatures: J. S. [unclear], Ann Trauer, [unclear]]

LAST BEST OFFER

UNION ISSUE NO. 2

EMPLOYER ISSUE NO. ____

RETROACTIVITY

Union Last Best Offer:

Retroactivity, effective date or prospective implementation date for each Union issue shall be included as an inseparable portion of each issue in each Union Final Offer of Settlement.

Employer Last Best Offer:

Not specified.

Award: The Last Best Offer of the Union is adopted.

Concur: [Signature] Ann Maurer

Dissent: [Signature]

LAST BEST OFFER

UNION ISSUE NO. 3

EMPLOYER ISSUE NO. 12

WAGES

Union Last Best Offer:

Appendix B

Retroactive to July 1, 1981

	<u>Base Salary</u>
Corporal	\$ 26,542
Detective	26,494
Patrolman	
3 years	24,826
2 years	23,225
1 year	21,624
6 months	20,023
start	18,422

Retroactive to July 1, 1982

	<u>Base Salary</u>
Corporal	\$ 26,542
Detective	26,494
Patrolman	
3 years	24,826
2 years	23,225
1 year	21,624
6 months	20,023
start	18,422

Retroactive to July 1, 1983

	<u>Base Salary</u>
Corporal	\$ 27,604
Detective	27,554
Patrolman	
3 years	25,819
2 years	23,970
1 year	22,121
6 months	20,271
start	18,422

Retroactive to July 1, 1984

	<u>Base Salary</u>
Corporal	\$ 27,836
Detective	27,786
Patrolman	
3 years	26,036
2 years	24,133
1 year	22,229
6 months	20,326
start	18,422

Wages to be retroactive to July 1, 1981.

Employer Last Best Offer:

Wages for bargaining unit members should remain the same. The Employer offers one thousand five hundred (\$1,500.00) dollars single one-time payment in lieu of a wage increase.

Award: The Last Best Offer of the Union is adopted.

Concur: Deane J. Johnson Ann Maurer

Dissent: Kurt [Signature]

LAST BEST OFFER

UNION ISSUE NO. 4

EMPLOYER ISSUE NO. 13

PENSION - 25 AND OUT

Union Last Best Offer:

Add language to contract:

Normal retirement for present and future bargaining unit members - 25 or more years of service regardless of age.

[The Union requests that the appropriate changes be made in the pension plan to reflect the above.]

Pension - 25 and out to be effective June 30, 1985.

Employer Last Best Offer:

City offers normal retirement for bargaining unit members after completion of twenty-five (25) years or more of service regardless of age. Effective date of this offer is June 30, 1985.

Award: The Last Best Offer of the City is adopted
Concur: [Signature]
Dissent: Ann Maurer

LAST BEST OFFER

UNION ISSUE NO. 5

EMPLOYER ISSUE NO. 14

PENSION - MULTIPLIER FACTOR

Union Last Best Offer:

Add language to contract:

The pension multiplier factor shall be computed for present and future bargaining unit members as -

2.5% first 25 years of service
1.0% each year in excess of 25

[The Union requests that the appropriate changes be made in the pension plan to reflect the above.]

Pension - Multiplier Factor to be effective June 30, 1985.

Employer Last Best Offer:

Multiplier factor to remain the same.

Award: The Last Best Offer of the City is adopted.

Concur:

Dissent:

James Swanson John Smith
John Travers

LAST BEST OFFER

UNION ISSUE NO. 6

EMPLOYER ISSUE NO. 15

PENSION - FINAL AVERAGE COMPENSATION

Union Last Best Offer:

Add language to contract:

Final average compensation shall be computed for present and future bargaining unit members as average of highest 3 years of last 5 years of service immediately preceding retirement.

[The Union requests that the appropriate changes be made in the pension plan to reflect the above.]

Pension - Final Average Compensation to be effective June 30, 1985.

Employer Last Best Offer:

Final average wage computation. The Employer proposes that this remain the same.

Award: The Last Best Offer of the City is adopted.

Concur:

Dissent:

George Swanson John Maurer

LAST BEST OFFER

UNION ISSUE NO. 7

EMPLOYER ISSUE NO. 16

PENSION - EMPLOYEE CONTRIBUTION

Union Last Best Offer:

Add language to contract:

The Employer shall fund the pension plan. Employees shall make no contribution to such plan.

[The Union requests that the appropriate changes be made in the pension plan to reflect the above.]

Pension - Employee Contribution to be retroactive to July 1, 1981.

Employer Last Best Offer:

Employee contributions. The City proposes that the present contribution by employees remain the same.

Award: The Last Best Offer of the City is adopted.

Concur:

Dissent:

[Handwritten signatures: Ann Swanson, Peter D. ...]
[Handwritten signature: Ann Maurer]

LAST BEST OFFER

UNION ISSUE NO. 8

EMPLOYER ISSUE NO. 17

RESIDENCY

Union Last Best Offer:

Employees shall not be subject to any residency restriction.

Residency to be effective date of award.

Employer Last Best Offer:

All members of the bargaining unit must remain residents of the City of Ecorse as a condition of continuing employment.

Award: The Last Best Offer of the City is adopted
Concur: [Signature] [Signature]
Dissent: [Signature]

LAST BEST OFFER

UNION ISSUE NO. 9

EMPLOYER ISSUE NO. ____

GRIEVANCE ARBITRATION

The Union has withdrawn this issue from consideration and award by the Panel. Therefore, the status quo shall prevail.

LAST BEST OFFER

EMPLOYER ISSUE NO. 1

UNION ISSUE NO. ____

RECOGNITION

Employer Last Best Offer:

- 3.1: The Mayor and Council of the City of Ecorse recognize the Union as the sole and exclusive bargaining agent for Patrolmen, Corporals and Detectives, hereinafter referred as bargaining unit members, or police officers in the City of Ecorse Police Department, and the Mayor and Council, agree to negotiate with the Union on items relating to rates of pay, wages, hours and conditions of employment.
- 3.2: The Union recognizes the Mayor and Council as its sole and exclusive Employer for collective bargaining, wages, hours, and conditions of employment. Further, the Union recognizes the Mayor and Council as the sole and exclusive administrator of this collective bargaining agreement.

The Mayor and Council may from time to time, designate its representatives to act in and on its behalf.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur: [Signature] [Signature] [Signature]

Dissent: [Signature] [Signature]

LAST BEST OFFER

EMPLOYER ISSUE NO. 2

UNION ISSUE NO. ____

EMPLOYER IDENTITY, AUTHORITY

Employer Last Best Offer:

3.4: The parties hereto recognize the duties, power and authority vested in the Police and Fire Commission pursuant to the Ecorse City Charter, and further recognizing that the parties desire greater efficiency in management, improved labor-management relations, and efficient administration of this agreement, it is agreed that the Police and Fire Commission shall not possess authority to:

- a. Manage, direct, or supervise members of the bargaining unit regarding their hours of employment, conditions of employment or performance of their duties, or,
- b. To receive, adjust or otherwise act upon bargaining unit member's complaints or grievances or bargain collective with the Union, or,
- c. Promote, lay off, demote, discipline, discharge or take other similar action against bargaining unit members, or,
- d. Compel attention or obedience to directives, orders, regulations, or rules.

It is expressly agreed and understood by the City and the Union that the authority as has been previously exercised by the Police and Fire Commission is held for naught, and that the said authority shall hence forth be exercised by the Mayor and Council.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur: [Signature] Swanson Ann Frauer

Dissent: [Signature]

LAST BEST OFFER

EMPLOYER ISSUE NO. 3

UNION ISSUE NO. ____

GRIEVANCE PROCEDURE

Employer Last Best Offer:

7.2: Step 1: The Union may file a grievance with the Chief of Police to attempt to settle dispute. The Chief shall answer the grievance within ten (10) days.

7.3: In the event that the Step 1 answer is unsatisfactory to the Union, it may appeal the grievance to the Mayor and Council. The Mayor and Council shall answer the grievance within twenty (20) days from the date it was filed, or the meeting at which the grievance is discussed, whichever is later. However, in no event shall longer than forty-five (45) days lapse between the time the written appeal of the grievance to the Mayor and Council was taken and the date written decision was rendered.

*return
add 7.3*

7.6: Grievances must be filed in writing within thirty (30) days of the date of the incident or occurrence giving rise to the grievance.

*from 30 days from the
date that the employee
has reasonable knowledge
thereof.*

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the City *as amended* is adopted.

Concur: *John S. [Signature]*

Dissent: *John Maurer*

LAST BEST OFFER

EMPLOYER ISSUE NO. 4

UNION ISSUE NO. ____

JOB VACANCIES AND JOB ASSIGNMENTS

Employer Last Best Offer:

~~26.4:~~ Job vacancy is defined as job created by transfer, promotion or
27.7 leave of absence over six (6) months, provided: That nothing
in this agreement shall be so construed so as to deny the City
the right to abolish or leave positions vacant.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present
language and/or practices regarding employer issues, thereby maintaining
the status quo.

Award: The Last Best Offer of the City is adopted.

Concur: [Signature]

Dissent: [Signature]

LAST BEST OFFER

EMPLOYER ISSUE NO. 5

UNION ISSUE NO. ____

PROMOTION STANDARDS

Employer Last Best Offer:

- 49.3: All promotion shall be based solely upon seniority, provided that the senior unit member shall satisfy qualifications for the position for which he is to be promoted. Such promotional qualifications shall be reasonable, relevant, and objective and shall not be arbitrary, but may be competitive.
- 49.4: Written qualifying examinations shall be required as a condition of promotion. The Employer shall use written qualifying examinations from a reputable source, and may determine in its discretion the minimum qualifying score for such written qualifying examination.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur: William Ann Trauer

Dissent: Voter

LAST BEST OFFER

EMPLOYER ISSUE NO. 6

UNION ISSUE NO.

OVERTIME - WORK ASSIGNMENTS - SCHEDULES

Employer Last Best Offer:

Strike from the labor agreement 40.8.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur: [Signature] Swanson Ann Trauer

Dissent: [Signature] [Signature]

LAST BEST OFFER

EMPLOYER ISSUE NO. 7

UNION ISSUE NO. ____

VACATIONS

Employer Last Best Offer:

44.1 a. Eligibility:

Each bargaining unit member shall be eligible for vacation each year after he or she has been in the continuous employ of the City for not less than twelve (12) continuous months. Each year thereafter that a bargaining unit member works one thousand six hundred (1,600) straight time hours he/she shall then be eligible for a full vacation. Bargaining unit members who perform less than one thousand six hundred (1,600) straight time hours shall receive a pro-rated vacation.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the City is adopted.

Concur:

James Swanson Veto Don

Dissent:

John Maurer

LAST BEST OFFER

EMPLOYER ISSUE NO. 8

UNION ISSUE NO.

SICK TIME

Employer Last Best Offer:

44.1: Each bargaining unit member shall be allowed to accumulate an unlimited number of sick days. Sick days shall be accumulated at the rate of twelve (12) sick days per year. In the event a bargaining unit member uses less than three (3) sick days in any year between January and December, he or she shall then be granted an additional two (2) sick days for a total accumulation of fourteen (14) sick days during that year. The foregoing provision is lieu of the Employer and Union's previous sick time policies.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur: *[Signature]* *[Signature]* *[Signature]*

Dissent: *[Signature]* *[Signature]*

LAST BEST OFFER

EMPLOYER ISSUE NO. 9

UNION ISSUE NO.

PENSION - FINAL AVERAGE WAGE COMPUTATION RE: SICK TIME

Employer Last Best Offer:

Computation of a bargaining unit members final average wage shall have added to it the unused sick time credited to that bargaining unit member but not to exceed one hundred and fifty (150) days total, for the purpose of arriving at a retiree's pension benefit.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

This is added language to the contract.

Award: The Last Best Offer of the City is adopted.

Concur:

Dissent:

[Signature]
[Signature]
[Signature]

LAST BEST OFFER

EMPLOYER ISSUE NO. 10

UNION ISSUE NO. ____

HEALTH INSURANCE

Employer Last Best Offer:

Bargaining unit members, their married spouse, and dependent off-spring children eighteen (18) years of age or younger; and upon written application, dependent off-spring children who are nineteen (19) to twenty-five (25) years of age and attending full-time school, will be provided one of the following three health care insurance options:

a. Blue Cross/Blue Shield MVF-2 with one (\$1.00) dollar co-pay drug rider. Bargaining unit employee selecting this will be required to contribute to the cost of this insurance in the following manner:

1. Single Person Coverage - \$ 4.40 per week
2. Two Person Coverage - \$ 9.60 per week
3. Family Coverage - \$10.40 per week.

Such monies shall be deducted from the employee's wage on a weekly basis.

b. Independence Health Plan (HMO). This Plan will be provided without cost to the bargaining unit employees.

c. Health Care Network (HMO). This Plan will be provided without cost to the bargaining unit employees. Both HMO's will have equivalent coverage to Blue Cross/Blue Shield Insurance.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Replaces 38.1, only

Award: The Last Best Offer of the City is adopted.

Concur:

Dissent:

LAST BEST OFFER

EMPLOYER ISSUE NO. 11

UNION ISSUE NO.

MAINTENANCE OF CONDITIONS

Employer Last Best Offer:

The Employer does not agree to the continuation of this clause. Furthermore, a maintenance of condition clause is not a mandatory subject of bargaining, therefore, this Panel is without jurisdiction to grant the continuance of it and therefore, must grant the Employer's request to strike it from the agreement.

Union Last Best Offer:

The Union rejects any changes, additions or deletions to present language and/or practices regarding employer issues, thereby maintaining the status quo.

Award: The Last Best Offer of the Union is adopted.

Concur:

Dissent:

[Handwritten signatures]
[Signature] *[Signature]* *[Signature]*
[Signature] *[Signature]* *[Signature]*

DISCUSSION AND OPINION

Pursuant to the Police-Firefighters Arbitration Act, Act 312 Public Acts of 1969, as amended, a panel was appointed to hear and decide the dispute between the Police Officers Association of Michigan (non-supervisory police unit) and the City of Ecorse. Bargaining unit classifications affected are: Corporal, Detective, and Patrolman. The dispute arose when the parties were unable to negotiate a collective bargaining agreement covering wages, benefits and other conditions of employment as a successor agreement to that which expired on June 30, 1981. The Panel was comprised of John B. Swainson, Chairman; Victor Mitea, designated by the Employer; Ann Maurer, designated by the Union. The initial pre-hearing conference was held on September 10, 1984. A second pre-arbitration conference was held on October 10, 1984. The parties were remanded for bargaining and such bargaining took place on November 2, 1984 without agreement being reached. Formal hearings were held on November 21, December 19, 1984, February 11, February 18, April 15, April 25, and April 26, 1985. The Executive Session of the Panel took place May 10, 1985.

Under the provisions of Act 312, the Panel is required to evaluate which of the last best offers on each issue "more nearly complies with the applicable factors" prescribed in Section 9 of that Act. The factors enumerated are the following:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

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

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

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

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

(g) Changes in any of the forgoing 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment."

The Award of each issue was determined in accordance with these factors after extensive review of all evidence on the record as a whole and the respective final offers of the parties. Of especial significance was the testimony and evidence received through Employer witness John R. Axe, President of Municipal Financial Consultants, Inc., whose Financial Recovery Plan was received as City Exhibit 16 on April 25, 1985 (Attachment A). Witness Axe summarized by memorandum:

I. Discussion of the City's current financial difficulties, together with preliminary recommendations on ways to correct the severe operating deficiencies which have resulted in steady deterioration of the City's financial condition over the last few years.

II. Recommendation on the settlement of a number of pending claims by various creditors against the City, some of which claims are currently in court, and other of which claims are about to be filed, culminating with the entry of various judgments against the City in an amount totalling approximately \$3,880,000, which judgments will be funded out of a judgment of bond issue in the amount of \$4,000,000 to be issued pursuant to court order.

III. A levy of additional millage in future years, both to pay the amounts necessary to retire the judgment bonds as well as to repay certain contractual or other debt obligation which were issued by the City prior to 1978 and which may be levied outside the City's charter limit.

IV. The adoption of a balanced budget based on realistic revenues and with provision for a modest contingency fund, which budget along with future budgets for the next 5 years will be subject to review and monitoring by the Trustee, who will receive payments from the City to retire the judgment bonds as well as by the court, which authorize the issuance of the judgment bonds.

V. Termination of the current receivership for the police and fire commissions, effective on the date of issuance of the judgment bonds."

The statement of facts as recited above was not unknown and did not require an Act 311 arbitration to discover them. The Panel further relies upon the statement of Witness Axe:

"One of the difficulties which seemingly persists, is that many people within the city, both residents and employees of the city, do not really believe that their city is in severe financial difficulty. Because the residents did not believe it, the city administrations have been unable to mount sufficient political support for the drastic necessary steps which were necessary over many of the past 8 years. The theory seemed to be that if there were enough money to pay the employees and the lights were still on, the city was O.K. Unfortunately, that is an illusion which is not only inaccurate, it is an extremely dangerous illusion and one which can lead quite quickly to the complete collapse of the city's government and the imposition of a court ordered receiver to operate the entire city."

The statements and facts by John R. Axe and other evidence presented on the record appeared to be a constant source of wonderment only to the City's advocate Gabriel D. Hall doing business under the name of Industrial Relations, Inc. This arbitration to provide a successor agreement to that which expired nearly 4 years ago commenced with the appointment of the Impartial Chairman by the Michigan Employment Relations Commission on July 10, 1984. The first pre-arbitration conference was held at the Detroit offices of the Commission on September 10, 1984. From that date to the preparation of this Award only seven days of hearings were accomplished over seven months' time. For this I apologize as the Chairman of the Panel. Hearing dates were scheduled, adjourned, and re-scheduled at the request of Mr. Hall.

The Chairman at all times attempted to accommodate the parties as to preparation of exhibits and the securing of expert witnesses, only to be served by process by Mr. Hall's organization requiring an appearance at the Wayne County Circuit Court on May 3, 1985 to resist a motion to

enjoin the further proceedings and expeditious conclusion of this Act 312 arbitration (Attachment B). When asked by the Court whether there were costs involved in such an appearance, the Chairman waived the assessment of any costs inasmuch as he felt that the delay over a four year period to conclude a successor agreement had alone extracted unreasonable labor relations costs. The conduct of the City's representative throughout the arbitration proceeding could only be characterized as obstructive thus further draining precious resources from the treasury of the City of Ecorse. By example, on April 25, 1985, the costs for two of the witnesses produced that day by Mr. Hall totalled \$4,250, monies which the City could ill afford especially when the deficit financial condition of the City of Ecorse had been the subject of an earlier stipulation between the parties.

In addition to devoting a great amount of consideration to the evidence on the record regarding the financial condition of the City, the Panel also carefully studied and deliberated the standard of comparability. The Union asserted a "traditional" group of 15 downriver communities. The Employer argued strongly only one city, River Rouge, was comparable. The Chairman recognizes River Rouge as the only common comparable of both parties and thereby adopts it. Although the Panel believes that other cities in the downriver area possess degrees of relevance, it was persuaded in the specific instance of this arbitration that River Rouge should receive the greatest weight as a comparable. The Employer produced Dr. David Veriway of Wayne State University who testified to the particular relevance of population-based characteristics between Ecorse and River Rouge. Additional significant evidence, in this Chairman's opinion, was Employer exhibit 18 received on April 26, 1985 setting forth a composite comparability index derived by 26 variables including both population and financial criteria. This exhibit demonstrated Ecorse to be 100% comparable to River Rouge. This Chairman therefore, does not disagree that there should be comparability of wages for Ecorse police officers relative to River Rouge police officers. The Union's final offer was adopted being identical to wages for patrol

officers in River Rouge for July 1, 1981, 1982 and 1983. The July 1, 1983 River Rouge salary is the product of the Act 312 arbitration award of Joseph P. Girolamo (Union Exhibit 14). The River Rouge pattern has been adopted including the wage freeze between 1982 and 1983. The Chairman further acknowledges the Union's willingness to freeze the starting rate over a five year period which offers potential savings to the City.

The Chairman was not inclined to grant significant changes as requested by the Union in the pension plan, nor to remove the obligation of employees to contribute to the plan. The parties made identical offers to permit normal retirement after 25 years of service regardless of age. The Chairman feels that the parties are to be commended for reducing the number of issues in dispute by their final offers on this issue thereby obviating the necessity of additional deliberation by the Panel. The Chairman acknowledges the potential relief which may result from employee attrition through retirements in the necessary period of restructuring and recovery ahead.

The Chairman was not inclined to award some of the Employer's proposals as he believes that certain aspects of those proposals lie outside of the authority of this arbitrator and must be addressed otherwise. Other issues advanced by the City may be the subject of fruitful negotiations in the future but deficiencies could not be corrected and the proposals amended by this Panel as they were economic issues.

The Panel did award the Employer's request regarding time limits for grievances after amending this non-economic issue. The Panel did award the Employer's request to abolish or leave positions vacant as the Chairman believes this is necessary to insure flexibility in future restructuring and recovery. The Panel was unable to repair the inconsistency in the Employer's language on promotion standards and therefore maintained the status quo. The Chairman believes that the Employer's request to allot vacation time on a pro-rata basis for employees working less than 1,600 straight time hours per year is reasonable and thereby adopted the City's final offer. The Chairman also

believes that the City's request to limit sick days to 150 in the computation of final average compensation was also reasonable and again adopted the City's position.

The Issue of employee participation in the cost of health care premiums is recognized as an issue which evokes strong opinions from unions and management during this current era of labor relations. The Employer's proposal requests a monthly fixed dollar contribution towards premiums by employees who elect the Blue Cross MVF-2 plan with \$1.00 prescription rider. The Chairman further recognizes that this specified level of Blue Cross coverage is the "Cadillac" of Blue Cross plans. Considering the equities of all parties, the Chairman does not believe it unreasonable for an employee who desires the enhanced Blue Cross plan to make a set dollar contribution toward its cost. The Chairman further considered in making this award, that employees who do not desire to make such contribution will have the option of enrolling in either of two HMO plans. This award regarding health insurance, by concurrence of the panel, relates only to active and future employees and does not disturb the status quo for retirees or future retirees. Further, such award is not retroactive and shall take effect upon the date of this award. The Chairman has made his award incorporating by agreement of the Panel these clarifications.

The Chairman found the record lacking competent evidence to support the Employer's jurisdiction assertion regarding its Maintenance of Conditions proposal and has therefore maintained the status quo.

The Chairman commends his Panel members, Mr. Mitea and Ms. Maurer for the thorough review each performed regarding all aspects of the evidence and testimony which was offered before this arbitrator on the record as a whole. Both provided immeasurable assistance to the Chairman in insuring that no aspect of the standards set forth by the Act or any evidence received on the record was ignored or received only cursory consideration. The competency displayed by the respective delegates reflects the high degree of serious deliberation which this Chairman demanded of the Panel.

The problems which have faced the City of Ecorse for several years are of the most serious nature. The financial dilemma will only be solved by drastic action. The report of Financial Consultant John Axe is illustrative:

"As indicated the city has a number of very large creditors and also has a substantial number of other smaller creditors, all of who are entitled to be paid. Because of the logistics of a multitude of court actions, it is not practical for each of the city's small creditors to bring an action against the city and have the court ordered judgments entered against the city and thereafter to order the city to issue judgment bonds to make payments. Instead of following that course, it is our recommendation that a few of the major creditors be the only ones to actually receive judgments against the city and thereafter those judgments will be funded with the necessary amounts by the issuance of the judgment bonds. ...

In order to proceed effectively, we have met on a preliminary basis with all of the major creditors referred to above and are proceeding to arrange for these creditors to file the necessary pleadings so that judgments may be entered. It is our plan to request that Judge Dunn consolidate all of the current actions in his court since he is the presiding judge in the Wayne County Circuit Court and has been handling the city's Police and Fire Commission receivership matter as well.

Once this is accomplished, we will thereafter notify pursuant to court order the city taxpayers and other creditors the city intends to proceed with the entry of judgment against it and that in addition that the judge intends to order the city to issue its judgment bonds. Accompanying that order will be an order from the court to irrevocably provide for a tax levy sufficient in size to repay the principal and interest on the judgment bonds.

We have currently estimated that it will take approximately 3 mills per year over a 15 year period to retire the judgment bonds. I have enclosed herewith a pro forma schedule (Schedule A) indicating possible debt retirement for such bonds.

It is entirely possible that some taxpayer or creditor may challenge the entry of the order and that this matter may be appealed to a higher court. If that occurs, we will recommend that appeal to be expedited and it is our belief that it will be possible to obtain an expedited hearing on the matter so that the judgment bonds if they are not issued by July 1 will be issued very soon thereafter."

Had there been good faith bargaining, this Chairman believes the necessity of this Act 312 arbitration could have been avoided. The obstructive conduct of Gabriel Hall in this proceeding, as well as in the concurrent Act 312 arbitration which involved the City of Ecorse firefighters, has been a disservice to the citizens of the City of Ecorse and is most regrettable. Were Mr. Hall a member of the Michigan Bar

Association, this Chairman questions whether his conduct would warrant disciplinary action by that organization. The results of such a labor relations policy have been aptly captured by Mr. Axe:

"The relations between the city and its employees over the last few years can be described as hostile at best. The mayor and the city council are unable to control the expenditures because of the archaic provisions allowing the Police and Fire Commission to operate a department regardless of amount of money available for such operation. This has led to many situations where the mayor and council, quite understandably, reacted to certain requests on the part of the employees in a hostile way. That situation took a significant turn for the worse when the city's Police and Fire Commissions were placed in receivership under control of court-appointed receiver who had the power to operate these departments on a day-to-day basis, subject to court approval.

Rather than encouraging responsible action on the part of the city administration this receivership has had quite the opposite effect of leaving those in the city's administration ready to criticize the Police and Fire Commissions and their Receiver for anything which is proposed and in a frame of mind to resist in court at every opportunity over most proposals.

It is useless to blame either the Police and Fire Commission, the Receiver or the Courts or indeed, on the other side to blame the city administration, including the Mayor, Council and other city officials for the present acrimony of each side. What has happened is exactly what you would expect when the parties who are responsible to make a city run effectively are squared off against each other in court, with a judge serving as the ultimate arbiter. The courts cannot be expected to run a city. City officials and city employees cannot be expected to happily acquiesce when there are lawyers representing two different parties in a litigation over minute details of city policy. It doesn't matter which side is right on any particular point; the other side will not accept the imposition of policy since the framework of the setting (the court system) encourages dispute, not reconciliation.

From the standpoint of various city employees and their unions, there is understandable hostility and a considerable lack of trust which is also understandable, if, for no other reason, because the city has so miserably failed to meet its pension fund obligations and has been making up some of these obligations only after court order requiring it to do so. It is certainly not the fault of the city employees that the current city charter provides for an unmanageable structure insofar as the operation of the Police and Fire departments is concerned (even if they may have supported it at one time politically), since from their perspective, they were trying to look out for what they perceived to be their own interests. Also, from the standpoint of the city's unions and its various employee groups, it should be noted that the city administrations have not in the past 7 or 8 years demonstrated an especially frugal attitude toward their own operations. While the city administrations may have argued vigorously that they could not afford wage increases and in fact have successfully resisted wage increases for a number of years, the employees have noted, without a doubt, that various city administrations have continued to attend conferences and otherwise operate as though business were as usual. Perhaps these various administrations did not appreciate the fact the situation was as serious as it is.

From the standpoint of the various city administrations, the unions have refused to permit the city operate within its budget. Without any question, the city's budget, especially its expenditures for personnel, is far out of line for the size of the city and volume of services which it provides.

The net result has been that labor relations have been difficult, protracted, often acrimonious and this has generally resulted in a failure to reach agreement on a voluntary basis with the attendant further expense of a lengthy arbitration process which has resulted most recently in an arbitration agreement for the city Firemen which the city cannot possibly afford.

Unfortunately, the city can ill afford the expense of protracted negotiations and arbitrations and the city employees perhaps do not realize that for every dollar spent arguing about what the wage settlement should be (and there have been many of those spent) that dollar is not available to be paid to the employees.

The ultimate arbitration award or indeed ensuing court suit may result in an order for a certain payment, but it cannot raise the money necessary to make the payment."

Whether there is a present ability of the City of Ecorse to pay its employees for personal services rendered does not negate the purpose of an Act 312 arbitration but must be considered with all other relevant factors in arriving at an award.

This Chairman relies upon the argument presented by Union which set forth in part:

It is well settled that the term judgment is defined as "an adjudication upon a record." Horner v. Nerlinger, 304 Mich 225, 7 NW2d 281 (1943). At a minimum, however, for a judgment to exist, it must be issued by a judicial or quasi-judicial body. The terms "order," "award," "judgment," and "decree" are often used interchangeably. The word "order" is used in section 12 of PA 312, being MCLA 423.242, in reference to the form of the decision of the arbitration panel. The issuance of an arbitration order or award, pursuant to PA 312 of 1969, as amended, is made upon record by a quasi-judicial body, and, therefore, can be termed a "judgment." "Orders" may be termed as "judgments." See: Auditor General v. Olesniczak, 302 Mich # 36, NW2d 679 (1942). Pursuant to section 12 of Act 312, the order of the arbitration panel is reviewable in Circuit Court, hence an arbitration panel's decision must be considered as a final judgment. In any event, the ability of a Circuit Court to enforce an arbitration award results in the issuance of a judgment by that Court.

In City of Detroit v. Detroit Police Officers Association, 408 Mich 410, 294 NW2d 68 (1980), the Supreme Court held that a compulsory arbitration award was not a "money judgment in a civil action," hence interest pursuant to MCLA 600.6013 was not obtainable. See also: City of Hamtramck v. Hamtramck Firefighters Association, Mich App _____, 340 NW2d 657 (1983). These cases, however, were concerned with interest issuing, hence, the reference to a PA 312 award not constituting a money judgment must be construed only in the light of the explicit statutory language regarding interest and

not as a blanket statement that a a PA 312 award does not constitute a judgment of any kind.

Since a monetary PA 312 judgment creates a financial obligation on the part of a city to pay the award issued, then it is clear that issuance of judgment bonds to meet the financial obligation are appropriate and within "the lawful authority of the employer," as set forth in section 9(a) of PA 312.

Perhaps, having finally arrived at the award contained herein, there can be a new beginning for labor relations between the City and its employees. It is evident that there is little hope that the City of Ecorse can recover without such mutual cooperation and good will. In the opinion of this Chairman, continued residency of police officers through the period of recovery will provide a basis of cooperation necessary to make the City of Ecorse a better place to live.

John B. Swainson
Chairman

May 17, 1985

Attachment A

MEMORANDUM

TO: Mayor, City Council, and City Controller, City of Ecorse
FROM: John R. Axe
President, MFCI
RE: FINANCIAL RECOVERY PLAN - PARTS I - III
DATE: April 9, 1985

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

We are enclosing herewith our financial recovery plan for the City of Ecorse, which plan involves several distinct phases:

I. Discussion of the City's current financial difficulties, together with preliminary recommendations on ways to correct the severe operating deficiencies which have resulted in steady deterioration of the City's financial condition over the last few years.

II. Recommendation on the settlement of a number of pending claims by various creditors against the City, some of which claims are currently in court, and other of which claims are about to be filed, culminating with the entry of various judgments against the City in an amount totalling approximately \$3,880,000, which judgments will be funded out of a judgment of bond issue in the amount of \$4,000,000, to be issued pursuant to court order.

III. A levy of additional millage in future years, both to pay the amounts necessary to retire the judgment bonds as well as to repay certain contractual or other debt obligation which were issued by the City prior to 1978 and which may be levied outside the City's charter limit.

IV. The adoption of a balanced budget based on realistic revenues and with provision for a modest contingency fund, which budget along with future budgets for the next 5 years will be subject to review and monitoring by the Trustee, who will receive payments from the City to retire the judgment bonds as well as by the court, which authorizes the issuance of the judgment bonds.

V. Termination of the current receivership for the police and fire commissions, effective on the date of issuance of the judgment bonds.

Ecorse, City of

The first phase of our financial recovery plan report will contain specific references to items I, II and III. The details of IV must be worked out with the City Controller, with the approval of the City's unions. Action on this phase may not begin until the details are well under way for II and III since the entire plan must be ready for implementation by June. V will not be detailed in our report, but will be a condition precedent to the issuance of the bonds and will have to be approved by the Wayne County Circuit Court before the bonds can be issued.

A handwritten signature in black ink, appearing to be 'Jmk' or similar, located in the center-right of the page.

FINANCIAL RECOVERY PLAN

FOR

THE CITY OF ECORSE

Parts I - III

I.

DISCUSSION OF THE CITY'S CURRENT FINANCIAL DIFFICULTIES,
TOGETHER WITH PRELIMINARY RECOMMENDATIONS ON WAYS TO
CORRECT THE SEVERE OPERATING DEFICIENCIES WHICH
HAVE RESULTED IN STEADY DETERIORATION OF THE
CITY'S FINANCIAL CONDITION OVER THE LAST
FEW YEARS

The City of Ecorse ("city") is today in severe financial distress. The city is currently levying the maximum millage permitted by its Charter (and has been for some years) but despite that fact, had a general fund deficit of \$2,494,130 on June 30, 1984. In addition, the city's water fund showed a deficit at year end 1984 of \$928,136. If this were not enough, the notes to the city's audited financial statements for the period ending June 30, 1984 stated that as of that date the city's pension fund assets were deficient to meet the actuarially computed value of vested benefits by approximately \$9,051,964.

On a more immediate basis, the city is currently unable to meet its operating expenses and cannot pay vendors when bills are rendered. For instance, as of March 19, 1985, the city owed vendors more than \$1,635,000, yet had on hand in the general fund less than \$300,000, none of which could be used to make such payments if the city's payrolls due in the remainder of March and in the month of April, totalling \$390,000 were to be met.

Also, on March 19, 1985, the city was indebted and unable to meet payments to the County of Wayne in accordance with a consent judgment entered on June 27, 1984, which called for payments to be made in the amount of \$185,232.88 on May 1 of 1985. The city was also seriously in arrears with payments owed to the city pension fund which were due in 1983 as well as 1984 and 1985, which overdue payments totalled on March 19, 1985 the sum of \$968,000.

Pursuant to Michigan law, the city must adopt a balanced budget and whenever its financial statements show a deficit on an overall basis in the city's various funds, the city must adopt a plan which will allow it to eliminate the deficit in the next fiscal year. Unfortunately the current city budget which was adopted in 1984 will not only permit the elimination of the prior deficit, but in all likelihood will result in an even larger deficit by the end of June 30, 1985.

While the reason for the city's financial difficulties are myriad, there are some general situations which have contributed in a major way to the present catastrophic situation:

A. Large Operating Budget for Size of City

The City of Ecorse has a population of less than 14,000, but in the current fiscal year, its total general fund budget, including contributions to the Police and Fire pension funds amounted to more than \$6,500,000. This is an extraordinarily large general fund budget for a city of that size and indeed is probably from one to one and one-half million dollars larger than a city of this size would normally spend. In addition to this, the city's water fund currently is not collecting enough revenue to meet its required payments to the City of Detroit, which city provides water to the City of Ecorse by contract. When the additional expenditures from the city's water fund for personnel, supplies, equipment, maintenance and other incidental expenses are added to those of the general fund, the total amount spent by the city in its normal operation (without consideration of the cost of the water purchased, which in theory should be covered by the sale of such water to the city's customers) approaches \$7,000,000.

B. Deteriorating Tax Base

For the last few years, the city has experienced a deterioration in its tax base. For instance, in the fiscal year ended June 30, 1983, the real property taxes were \$4,641,785. In the current fiscal year, property tax revenue had shrunk to \$4,215,788. An even more dramatic decrease will be felt in the fiscal year beginning July 1, 1985 since the new city property tax valuations have been reduced as a result of the March board of review hearings so that the property tax revenue will be \$688,000 less in the next fiscal year than in the current fiscal year.

This loss of tax base, can be attributed in a substantial part to the financial difficulties experienced by the city's largest taxpayer, Great Lakes Steel ("Great Lakes"). In addition the city has granted very substantial tax abatements to Great Lakes in connection with very substantial capital improvement programs which will be put into effect and which are currently being constructed within the city. While these tax abatements were granted for the purpose of inducing Great Lakes to remain within the city limits, the length of the abatement is so long that when coupled with the insistence by the Great Lakes corporation that its remaining real and personal property within the city has fallen substantially in value (Great Lakes has received reductions in its assessed valuation totalling 40% in the last 3 years) it is not difficult to see why the city's tax base has eroded.

When you add to that the fact that general real estate values in the past several years have not risen and in fact residential real estate values in the rest of the city have declined, the city's present decreased tax base is understandable.

**C. Failure of the City to Cut Expenses as
City's Revenues Decreased**

The decline in the city's tax revenues did not occur all in one year. These occurred over a period of time, during a period when other revenues, such as state revenue sharing, sales tax and other outside revenues were diminished as well. Rather than adjust the city's operating budget downward with the necessary layoffs of personnel, the city failed to take appropriate measures. By 1982 the city could only pay its bills because of the failure of the city to make the necessary payments into its pension fund. While this type of avoidance of coming to grips with financial situation has been used in other cities in similar financial straits, (such as Detroit) the result is always the same: ultimately the city's financial situation becomes so desperate that massive layoffs must be initiated.) By that time the city's financial resources have become so seriously depleted, that it is impossible for the city to meet the legal obligation which it has ignored over a number of years without resort to some kind of financial recovery plan, which will involve, among other things, significant long-term reductions in payroll expenses and the attendant city services.

Had these erosions in the city's revenues been met in a prompt and forthright manner over the past 8 or 9 years as they developed, the more drastic steps which were taken in 1982 and which must be now taken would not have been such a shock, since they would have occurred gradually over a period of time.

One of the difficulties which seemingly persists, is that many people within the city, both residents and employees of the city, do not really believe that their city is in severe financial difficulty. Because the residents did not believe it, the city administrations have been unable to mount sufficient political support for the drastic necessary steps which were necessary over many of the past 8 years. The theory seemed to be that if there were enough money to pay the employees and the lights were still on, the city was O.K. Unfortunately, that is an illusion which is not only inaccurate, it is an extremely dangerous illusion and one which can lead quite quickly to the complete collapse of the city's government and the imposition of a court ordered receiver to operate the entire city.

**D. Outmoded Structure of City Government
Because of an Antiquated Charter**

The city Charter was adopted in 1942 and while it has been amended on several occasions since that time, it is a basically antiquated document with a structure of city government not conducive to close knit operation and susceptible to wild political machinations which stand in the way of making the

necessary hard decisions which the city has been faced with over the past 8 or 9 years. Without attempting to be all encompassing, there are a number of serious drawbacks to the current structure of government which are provided for in the outdated city charter. The ones discussed here are only those which are most obvious, and this is not an attempt to recommend detailed changes in the charter (although that would be a good idea) but merely to point out some of the serious defects which have contributed to the present chaotic financial situation.

First and foremost, the present Police and Fire Commission is not subject to the control of the mayor and city council but is chosen partly by the mayor, partly by the council, partly by each of the two employee groups with a fifth member chosen by the other four. This system was not always the case, since the original charter provided for a commission which was, in fact, responsible to the city council and mayor since the mayor appointed and the council confirmed. While all such boards and commissions are somewhat difficult to manage in the event of a financial crisis, one which depends for its political appointment from the mayor and council can be expected to respond somewhat responsibly when the mayor and council take whatever actions are necessary with respect to a financial crisis.

The current situation, however, finds the Police and Fire Commissions operating totally independently of the city administration. A series of sharp confrontations with a part of the city administration led to the filing of a lawsuit several years ago which resulted in the appointment (unprecedented in this state) of a receiver to operate the Police and Fire departments. The result has been that the city which is already financially strapped has been forced to bear the extra costs and continued and acrimonious litigation between the city administration and the receiver over how the department should be managed and how much should be spent. The flaw here was not that the receiver was petitioned for or the fact that the city administration and the receiver have been unable to agree on many matters (these are the natural outgrowth of any type of litigation and would be exactly what would happen in the event the entire city were to go into receivership); rather the flaw is the structure which permits the Police and Fire Commission to have control of the operation of departments but with no responsibility to appropriate the funds necessary to pay for the same.

Unless this charter provision is amended, the city will be subject to continual difficulties of the sort which it has experienced in the last 5 or 6 years since the Police and Fire departments constitute a major portion of the city's budget and the commission does not have to be responsible to the city administration which in turn has to raise the taxes and find the other necessary revenues to pay for the operations. Without a

change in this system there is an open and continuing invitation to chaos. In the future, all persons involved on all sides of this matter at the city level (including the city's residents and taxpayers) must be made to realize that this system doesn't work and that, in addition, it is very expensive.

Another area which is cause for some substantial difficulty is the election of various independent city officers (especially a city treasurer) who is not directly responsible or responsive to the city administration with respect to the city's finances and particularly with respect to the investment of those moneys which may be lawfully invested and the earnings thereon added to the city's revenues. This difficult situation recently came to light when the city treasurer, despite direct instructions from the city controller to the contrary, distributed a large amount of money to one of the city's school districts approximately 12 days earlier than she was required to do so by law.

The excuse given was that this had always been done in the past and that the money belonged to the school district.

The fact that some system of mismanagement occurred and had been continuing over a period of time is no excuse for repeating the same. In fact the money did not belong to the school district until and unless the city transferred the same to the school district in accordance with statutory provisions which required that it be distributed some 12 days later.

The net loss to the city in this one transaction in investment earnings was probably in excess of \$6,000 and the net loss to the city because the elected city treasurers over the past decade or two have failed to properly invest moneys under the city's control during the period when such moneys could be legally invested have undoubtedly cost the city hundreds of thousands of dollars in lost revenues to which the City was entitled.

The loss of such revenues in a prosperous city which has a large general fund balance, low tax rates and high levels of services would not be as critical and of course it would never occur. The reason some cities have budget surpluses and high levels of service is that the city officials take the necessary steps to maximize the yield on the city's investments.

If the city of Ecorse is to have any real chance for financial stability in the coming years, substantial changes in the city charter must be made and there must be attendant changes in the attitude on the part of all city officials to work in harmony and cooperate toward the efficient and economical operation of the city, the careful shepharding of its various assets and the avoidance of litigation, pitting one city department commission or board against the city administration or another city department commission or board.

**E. Relations Between City and Its Various
Employees Represented by Unions Have Been Acrimonious,
Have Led to Protracted Collective Bargaining
Disputes and Ultimately to Various Awards and
Forced Settlements Which City Cannot Afford**

The relations between the city and its employees over the last few years can be described as hostile at best. The mayor and the city council are unable to control the expenditures because of the archaic provisions allowing the Police and Fire Commission to operate a department regardless of amount of money available for such operation. This has led to many situations where the mayor and council, quite understandably, reacted to certain requests on the part of the employees in a hostile way. That situation took a significant turn for the worse when the city's Police and Fire Commissions were placed in receivership under control of a court-appointed receiver who had the power to operate these departments on a day-to-day basis, subject to court approval.

Rather than encouraging responsible action on the part of the city administration this receivership has had quite the opposite effect of leaving those in the city's administration ready to criticize the Police and Fire Commissions and their Receiver for anything which is proposed and in a frame of mind to resist in court at every opportunity over most proposals.

It is useless to blame either the Police and Fire Commission, the Receiver or the Courts or indeed, on the other side to blame the city administration, including the Mayor, Council and other city officials for the present acrimony on each side. What has happened is exactly what you would expect when the parties who are responsible to make a city run effectively are squared off against each other in court, with a judge serving as the ultimate arbiter. The courts cannot be expected to run a city. City officials and city employees cannot be expected to happily acquiesce when there are lawyers representing two different parties in a litigation over minute details of city policy. It doesn't matter which side is right on any particular point; the other side will not accept the imposition of policy since the framework of the setting (the court system) encourages dispute, not reconciliation.

From the standpoint of various city employees and their unions, there is understandable hostility and a considerable lack of trust which is also understandable, if, for no other reason, because the city has so miserably failed to meet its pension fund obligations and has been making up some of these obligations only after court order requiring it to do so. It is certainly not the fault of the city employees that the current city charter provides for an unmanageable structure insofar as the operation

of the Police and Fire departments is concerned (even if they may have supported it at one time politically), since from their perspective, they were trying to look out for what they perceived to be their own interests. Also, from the standpoint of the city's unions and its various employee groups, it should be noted that the city administrations have not in the past 7 or 8 years demonstrated an especially frugal attitude toward their own operations. While the city administrations may have argued vigorously that they could not afford wage increases and in fact have successfully resisted wage increases for a number of years, the employees have noted, without a doubt, that various city administrations have continued to attend conferences and otherwise operate as though business were as usual. Perhaps these various administrations did not appreciate the fact the situation was as serious as it is.

From the standpoint of the various city administrations, the unions have refused to permit the city to operate within its budget. Without any question, the city's budget, especially its expenditures for personnel, is far out of line for the size of the city and the volume of services which it provides.

The net result has been that labor relations have been difficult, protracted, often acrimonious and this has generally resulted in a failure to reach agreement on a voluntary basis with the attendant further expense of a lengthy arbitration process which has resulted most recently in an arbitration agreement for the city Firemen which the city cannot possibly afford.

Unfortunately, the city can ill afford the expense of protracted negotiations and arbitrations and the city employees perhaps do not realize that for every dollar spent arguing about what the wage settlement should be (and there have been many of those spent) that dollar is not available to be paid to the employees.

The ultimate arbitration award or indeed ensuing court suit may result in an order for a certain payment, but it cannot raise the money necessary to make the payment.

F. Changes Essential in Current Operations

While the following report certainly does not contain recommendations on the operation of all city departments or even on the operation of most city departments, it will contain recommendations on several changes which should be made immediately, either to maximize revenues or avoid unnecessary expenditures.

One of these problem areas has already been alluded to above with respect to the failure of the city in the past to maximize

its investment yield on money which the city has collected and which it may lawfully invest, keeping the interest earnings. The city has either failed to invest such money or has failed to retain the same for the permitted period of time so that it could be invested.

A second area where the city can save money involves the operation of the city's building authority. Specific recommendation on how the building authority should be reorganized in order to save approximately \$20,000 in unnecessary operating costs every year will be made.

G. Termination of Receivership of City's Police and Fire Commissions

As mentioned above, the city's Police and Fire Commissions have been operating with a court-appointed receiver for the past several years. This arrangement is exceptionally costly and while it may have been the only apparent solution at the time it was instituted, it has not alleviated the difficulties which led to its being requested (since these could only really be corrected by an amendment to the city charter). This is costing a substantial amount of money since in any court appointed and court supervised situation, the various litigants must be represented by counsel, attorneys have to be employed on both sides and the city pays everyone.

As a result in this situation, the city of Ecorse is paying not only the cost of the receiver, but the cost of an attorney to represent the city to set forth the city's position with respect to actions taken by the receiver as well as the receiver's attorney to support the actions taken by the receiver.

The total amount expended for this receivership, just to pay the cost of both attorneys and the receivers during the period the receivership has existed exceeds \$97,000.

Without any question, the receivership must be terminated; the city simply cannot afford it.

II.

RECOMMENDATIONS REGARDING THE SETTLEMENT OF VARIOUS PENDING CLAIMS BY CERTAIN LARGE CREDITORS WITH THE CLAIMS TO BE PAID IN CASH BY THE PROCEEDS OF JUDGMENT BONDS TO BE ISSUED BY THE CITY

A. Background

As indicated in Part I of this report, the city has a substantial number of creditors, some of which are owed very

large amounts, which amounts are currently overdue and which far exceed the capacity of the city's current financial resources. In a situation such as this, the city has perhaps three possible options, Receivership, Payments of Massive Judgments or Reorganization as recommended in this Plan. The first two options are as follows:

1. Receivership.

The city of Ecorse is not permitted by Michigan law to seek protection in federal bankruptcy courts and therefore any attempt to seek protection of the courts would have to be made under Michigan law - permitting the appointment of a Receiver. The city's Police and Fire Commissions are currently being operated under similar provisions of Michigan law and in fact a receiver has been appointed for these two city commissions under the jurisdiction of the Wayne County Circuit Court.

If the city were to proceed into full receivership the most likely outcome of any receivership action brought against the city or by the city would be consolidation with the current receivership action presently in the Wayne County Circuit Court under Judge Dunn since he already is overseeing the other receivership.

In the event such a receivership were to become a reality, it is somewhat difficult to predict exactly what might happen since there have been no Michigan municipalities in receivership since the Great Depression in the 1930's. However, if a full receivership were to ensue, it is certain that several things would happen:

(a) Receiver Would Be Appointed With Power to Operate the City and to Hire Attorneys and Others to Assist in the Running of the Receivership

Such a receivership would be very expensive since the city's taxpayers would have to bear the burden of paying the cost of the receiver as well as any attorneys who would be representing the receiver. The city has already had some experience with its current receivership for the Police and Fire Commissions; it has proved costly indeed. Because of the nature of receiverships and the need to have the court approve most actions of the receiver, a great deal of time would be spent in court by the receiver's attorney, by the attorneys for the various creditors for the city, by the attorneys for the various labor unions of the city and possibly even by attorneys representing the public officials themselves.

The annual cost of such a receivership, just to pay the cost of the receiver's fees and the attorneys' fees would probably exceed one-half million dollars a year.

(b) No Access to Borrowings of a Municipality in Receivership

In addition to the expense of the receivership, once the city goes into receivership, there would be no possibility that it could issue judgment bonds or any other type of bonds since the investment community would not be willing to risk purchasing obligations.

The very fact of going into receivership would indicate the city's finances were totally beyond repair. This would indeed be sufficient to prevent the sale of any obligations.

(c) Bad Effect on Credit of Neighboring Municipalities

A further ramification of the receivership of the city would be the spillover on all neighboring communities. Municipal receiverships are rare indeed. No Michigan municipality has gone into receivership for more than 40 years. The impact of such a receivership on surrounding municipalities and on the general downriver area would be devastating, with the investment community not being able to distinguish exactly what community is in trouble (since they are not usually interested enough to find out exactly what happened or what the situation is); but they do know that a problem exists and as a result all of the neighboring communities would receive an adverse effect to their own financial image.

(d) Cancellation of Labor Agreements

From the standpoint of the city's unions, a receiver probably would set aside all of the existing labor contracts (this often happens in federal bankruptcy proceedings). If the receiver were to order all the labor contracts rescinded and attempt to impose new labor contracts, this would undoubtedly be challenged and very expensive litigation among the receiver and the labor unions and possibly all of the city's creditors.

(e) Long Receivership

It would be unreasonable to anticipate that if the city did go into receivership that it would emerge from receivership in as little as a year. More likely, it would take 2 or 3 years for a complete reorganization to be effected.

2. The Entry of Judgments Against the City by Its Major Creditors and the Imposition of Court Order Authorizing Those Creditors to Have the City Collect an Additional Tax Payable to Those Creditors on the Next Year's Taxes

Another possibility facing the city would be the entry of substantial judgments against the city by some of its major creditors. Both the County of Wayne and the city's pension fund

already have entered large judgments against the city which the city cannot currently pay. In addition to that, the city of Detroit has a claim for more than \$900,000 against the city and numerous other creditors have other amounts which are currently overdue, owing to them.

(a) Large Tax Increase to Pay Judgments

If each of these creditors were to pursue their claims to judgments, the court might very well order the city to levy sufficient taxes to pay all of these judgments on the city's next tax bill, which will go out on July 1. Since the total amount of these judgments could easily exceed \$1,600,000 and since one mill currently raises approximately \$177,000 this would require the city to levy an additional 9 mills in 1985-86 to pay off judgments on the amounts currently overdue and currently owing.

Since there would be no way for the city to meet those amounts which are due next year, either, this process might be expected to be repeated for each of the next several years; and while the next levy ordered might not be as high as 9 mills, it probably would be more than 6 mills a year for some time and might even be higher.

(b) Continuation of Current Crisis Followed by Receivership

At the same time this was occurring, there would be no real way for the city to balance its budget which is currently not in balance, and since the city would continue to owe large amounts, it would not be able to meet those obligations as they came due in the next fiscal year. The likelihood is that if this approach were taken, the creditors, might in fact, achieve the entry of an order providing for 9 or more extra mills to be levied on July 1, but even so, the city would ultimately be forced into receivership before July 1, 1986.

Because neither of the alternatives outlined in (a) and (b) above are very palatable, and it our recommendation that the third alternative, the issuance of judgment bonds to pay off amounts currently owing over a 15-year period, is the only responsible and realistic way to avoid either a massive tax increase, receivership or both. Moreover, it will also offer the prospect of the city's having an effective and balanced budget for at least the next 4 or 5 years.

3. Reorganization, Entry of Judgments Against the City and Issuance of Judgment Bonds

As indicated the city has a number of very large creditors and also has a substantial number of other smaller creditors, all of whom are entitled to be paid. Because of the logistics of a multitude of court actions, it is not practical for each of the

city's small creditors to bring an action against the city and have the court ordered judgments entered against the city and thereafter to order the city to issue judgment bonds to make payments. Instead of following that course, it is our recommendation that a few of the major creditors be the only ones to actually receive judgments against the city and thereafter those judgments will be funded with the necessary amounts by the issuance of the judgment bonds.

We have identified and have been in communication with three major creditors of the city who are the following:

1. Pension Funds.

1 The trustees of the Policemen's and Firemen's pension fund of the city of Ecorse have already obtained entry of a judgment in the amount of \$352,000 against the city in January of 1985 and they are in a position to obtain judgments for amounts owed as of July 1, 1984 and July 1, 1985, totalling \$616,000 which will come to a total of \$968,000. In addition, the city is required pursuant to its collective bargaining agreements to make certain continued payments into the pension fund to make up arrearages. This was to compensate in part for the large amount of unfunded pension fund liability which would have been referred to above and is noted in the city's annual report from its auditors. The city has no realistic prospects of making these payments in the future in the next 4 or 5 years in the agreed-upon amount. It would be in the best interests of both the city as well as the pension fund if a judgment could be entered only covering the back amounts owing as of July 1, 1985 but also rearranging payments to be made in future years under the agreements which currently exist with the pension fund. The extent to which these amounts can be reduced by an up-front cash payment will have to be negotiated between the city and the pension fund, but in any event, we recommend that a total judgment in the amount of \$1,722,000 be entered in the favor of the pension fund with \$968,000 amount to be applied toward those amounts which the city will owe in arrears on July 1, 1985 and the balance to be applied through amounts which the city would otherwise have to have paid in the next 4 or 5 years as a part of each year's budget.

In effect, this judgment will not only clear up the massive current indebtedness to the pension fund which will be overdue in the total amount of \$968,000 on July 1, 1985 but it will alleviate somewhat the city's budget difficulties in the fiscal year beginning July 1, 1985 and will permit the city to adopt balanced budgets in the years ahead, therefore allowing it to return to some measure of financial stability.

2. Wayne County. The City has entered into a stipulated agreement to repay a large amount of money owed to Wayne County for sewer treatment which amount the city has paid to date but

which it will not be able to meet in the future. The annual amount which the city has been ordered to pay pursuant to the consent judgment entered on June 27, 1984 totalled \$1,614,172.29, which amounts are to be paid in semi-annual installments of principal and interest beginning May 1, 1985 which semi-annual payments in the balance of 1985 will exceed \$360,000. In addition, more than \$280,000 of the amount will be paid in future years will be interest.

In addition, the city will owe by June 30, 1985 another \$377,345.53 with late penalties of \$19,155.63 for current sewer service between January 1, 1985 and May 30th.

We recommend that the city permit an entry of judgment against it in an amount sufficient to pay off all of the above amounts owed to the county of Wayne under this consent judgment and that the proceeds of the judgment bond be issued in an amount of \$1,376,000 be used to pay these amounts owing to Wayne County as soon as the bonds are issued this year.

In addition, amounts currently owing or which will be owing as of June 30, 1985 of \$417,000 should be added to this amount for a grand total of \$1,793,000.

With this approach, the city will be able remove from its budget obligations to be met in the fiscal year ending July 1, 1985 more than \$350,000 it will also be able to remove additional substantial sums from its budgets in the next 5 years thereafter. Because of the declining revenues from taxes and other sources which the city already faces and which may continue to deteriorate in future years, this rearrangement is absolutely essential if the city is to continue to function on a financially sound basis through the balance of the 1980's.

3. Detroit Edison Judgments. By July 1, 1985, the city will owe to Detroit Edison Company approximately \$365,000 for electrical service. There is no immediate ability of the city to pay the amounts which are already overdue or those amounts which are coming due in the next three months. For this reason, we are recommending the city include in the judgment bonds an amount of \$365,000 to pay off all of the arrearages so that the city can begin the new fiscal year with a clean slate and may thereafter keep its utility bills paid on a current basis out of regularly budgeted funds. This is an essential component to any effective reorganization plan since the city cannot expect anyone to purchase its judgment bonds unless it has a realistic opportunity to operate in the future with a balanced budget and on a responsible basis so that revenues and expenses balance off and when revenues fall, expenses are cut.

C. Logistics of the Judgment Proceedings

In order to proceed effectively, we have met on a preliminary basis with all of the major creditors referred to above and are proceeding to arrange for these creditors to file the necessary pleadings so that judgments may be entered. It is our plan to request that Judge Dunn consolidate all of the current actions in his court since he is the presiding judge in the Wayne County Circuit Court and has been handling the city's Police and Fire Commission receivership matter as well.

Once this is accomplished, we will thereafter notify pursuant to court order the city taxpayers and other creditors the city intends to proceed with the entry of judgment against it and that in addition that the judge intends to order the city to issue its judgment bonds. Accompanying that order will be an order from the court to irrevocably provide for a tax levy sufficient in size to repay the principal and interest on the judgment bonds.

We have currently estimated that it will take approximately 3 mills per year over a 15 year period to retire the judgment bonds. I have enclosed herewith a pro forma schedule (Schedule A) indicating possible debt retirement for such bonds.

It is entirely possible that some taxpayer or creditor may challenge the entry of the order and that this matter may be appealed to a higher court. If that occurs, we will recommend the appeal be expedited and it is our belief that it will be possible to obtain an expedited hearing on the matter so that the judgment bonds if they are not issued by July 1 will be issued very soon thereafter.

D. Adoption of Balanced Budget and Settlement of All Outstanding Wage and Benefit Claims of City's Unions Covering Fiscal Years Ending June 30, 1986, June 30, 1987 and June 30, 1988

In order to issue any judgment bonds, the city will have to prior approval of the Michigan Department of Treasury. Since the city has continually failed to balance its budget for the last few years the Michigan Department of Treasury will undoubtedly require that the city demonstrate that it has a real and effective plan in place to balance its budget for the future fiscal years and that in addition there are no major outstanding wage and other claims pending against the city particularly by way of unsettled labor negotiations which could have an adverse effect on the city's operations in the next several years.

III.

LEVY OF ADDITIONAL MILLAGE TO RETIRE JUDGMENT BONDS AND TO REPAY CERTAIN CONTRACTUAL AND OTHER DEBT OBLIGATIONS WHICH WERE ISSUED BY CITY PRIOR TO 1978 AND WHICH CITY IS AUTHORIZED TO LEVY OUTSIDE CITY'S CHARTER LIMIT

A. Millage Levy to Retire Judgment Bonds

Attached to this report as Schedule A there is enclosed a proforma of debt retirement schedules for a judgment bond issue in the amount of \$4,000,000. This schedule assumes that the judgment bonds could be issued at an interest rate averaging 10-1/2% which when spread over 15 years, along with the amounts of repayment as shown in the attached schedule would require debt service payments based upon the city's new SEV for the year 1985, 1986, slightly in excess of 3 mills each year. In fact, if the SEV were to decline, an additional amount would be necessary for levy purposes. Similarly, if the SEV of the city increases in future years the amount of millage would be reduced.

While the attached schedule is merely an estimate of what the city might have to pay if such bonds were issued today, there is no assurance that the actual interest rates would be exactly as shown. The bond market changes from time to time, and of course with an issue such as this, there is a possibility that a higher interest rate would be required to market the bonds.

On the other hand, cities with good credit ratings have been able to sell bond issues somewhat similar to those shown on the attached schedule at an average interest rate of 8-1/2% or less. The extra 2% premium suggested on the attached schedule should be sufficient inducement to sell these bonds.

As a part of the provisions of the judgment bonds authorizing documents, a trustee will be appointed into which the city treasurer will be required to deposit first a prorata amount of all of the city's tax collections equivalent to the approximate millage necessary to retire the bonds each year. This will provide a guarantee to the bondholders that the bonds will, in fact, be paid on time and should assist in marketing the bonds.

It may also be possible to provide for some form of credit enhancement which would be purchased at the time the bonds are issued which might, in turn, lower the interest rate and save some additional money.

B. Additional Levies to Repay Pre Headlee Debt

Because the city of Ecorse has outstanding several bond issues which were issued prior to the adoption of the Headlee

Amendment in 1978, the city is empowered by law to levy amounts in excess of its ordinary charter limits to meet principal and interest requirements on such bonds, even though the bonds were issued by other agencies (the city's building authority and the County of Wayne). The total amount of payments due on those obligations within the fiscal year beginning July 1, 1985 for which the city can levy additional millage equals approximately \$331,000. In order to meet that payment, the city will be authorized to levy approximately 1.9 mills during their fiscal year beginning July 1, 1985.

C. Total Additional Millage Proposed for Fiscal Year
Beginning July 1, 1985

Because of the additional mills proposed to be levied to pay the judgment bonds and the other bonded and current bonded indebtedness of the city which the city is authorized to levy outside its charter limits, the city of Ecorse will be required to levy an additional 4.9 mills during its next fiscal year.

In future years, the additional millage to be levied will be in the same general area although it might be slightly higher or lower depending on changes in the city's SEV and in addition it will diminish as the city retires the pre-Headlee debt in future years.

We will prepare an actual schedule showing how the pre-Headlee debt will be retired in future years so the city council will be aware of the amount of extra millage which will be required in each of the next 15 years to be applied to that debt.

0063J

SCHEDULE A

DEBT RETIREMENT SCHEDULE
CITY OF ECORSE
JUDGEMENT BONDS

PRINCIPAL AMOUNT: \$4,000,000.00
ESTIMATED INTEREST ON BONDS: 10.50%
BONDS DATED JULY 1, 1985
LENGTH OF ISSUE 15 YEARS

DATE	PRINCIPAL PAYMENT	INTEREST DUE	TOTAL DUE	YEARLY TOTAL DUE
JAN 1 1986		\$210,000.00	\$210,000.00	
JUL 1 1986	\$100,000.00	\$210,000.00	\$310,000.00	\$520,000.00
JAN 1 1987		\$204,750.00	\$204,750.00	
JUL 1 1987	\$100,000.00	\$204,750.00	\$304,750.00	\$509,500.00
JAN 1 1988		\$199,500.00	\$199,500.00	
JUL 1 1988	\$150,000.00	\$199,500.00	\$349,500.00	\$549,000.00
JAN 1 1989		\$191,625.00	\$191,625.00	
JUL 1 1989	\$150,000.00	\$191,625.00	\$341,625.00	\$533,250.00
JAN 1 1990		\$183,750.00	\$183,750.00	
JUL 1 1990	\$200,000.00	\$183,750.00	\$383,750.00	\$567,500.00
JAN 1 1991		\$173,250.00	\$173,250.00	
JUL 1 1991	\$200,000.00	\$173,250.00	\$373,250.00	\$546,500.00
JAN 1 1992		\$162,750.00	\$162,750.00	
JUL 1 1992	\$250,000.00	\$162,750.00	\$412,750.00	\$575,500.00
JAN 1 1993		\$149,625.00	\$149,625.00	
JUL 1 1993	\$250,000.00	\$149,625.00	\$399,625.00	\$549,250.00
JAN 1 1994		\$136,500.00	\$136,500.00	
JUL 1 1994	\$300,000.00	\$136,500.00	\$436,500.00	\$573,000.00
JAN 1 1995		\$120,750.00	\$120,750.00	
JUL 1 1995	\$300,000.00	\$120,750.00	\$420,750.00	\$541,500.00
JAN 1 1996		\$105,000.00	\$105,000.00	
JUL 1 1996	\$350,000.00	\$105,000.00	\$455,000.00	\$560,000.00
JAN 1 1997		\$86,625.00	\$86,625.00	
JUL 1 1997	\$350,000.00	\$91,875.00	\$441,875.00	\$528,500.00
JAN 1 1998		\$73,500.00	\$73,500.00	
JUL 1 1998	\$400,000.00	\$73,500.00	\$473,500.00	\$547,000.00
JAN 1 1999		\$52,500.00	\$52,500.00	
JUL 1 1999	\$450,000.00	\$52,500.00	\$502,500.00	\$555,000.00
JAN 1 2000		\$28,875.00	\$28,875.00	
JUL 1 2000	\$450,000.00	\$28,875.00	\$478,875.00	\$507,750.00
TOTAL	\$4,000,000.00	\$3,953,250.00	\$7,953,250.00	\$8,163,250.00

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF ECORSE,
Plaintiff,

vs.

Case No: 85-51155-CL

JOHN B. SWAINSON, PUBLIC ACT
312 ARBITRATOR,
Defendant.

ORDER TO SHOW CAUSE

At a session of said Court held in the
City-County Building, City of Detroit,
County of Wayne, State of Michigan,
on _____

PRESENT: HONORABLE RICHARD C. KAUFMAN
CIRCUIT COURT JUDGE

Upon the reading and filing of the Motion and Supporting
Affidavit of the Plaintiff herein; and the Court being fully
advised in the premises;

IT IS HEREBY ORDERED that said JOHN B. SWAINSON, Defendant,
shall appear before this Honorable Court on the 3rd day of
May, 1985, at 12 in the fore noon to
show cause why he should not be enjoined from requiring the
Plaintiff to file a brief by May 3, 1985, without benefit of the
transcript of proceedings, and why he should not be mandatorily
directed to allow filing of an adequate brief within a reasonable
time after the transcript has been received by the Plaintiff's
representative.

IT IS FURTHER ORDERED that copy be served upon Defendant on
or before 5-1-85.

A TRUE COPY
JAMES R. KILLEEN
CLERK

RICHARD C. KAUFMAN
CIRCUIT JUDGE

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT	SUMMONS AND COMPLAINT	CASE NO. 85-51155-CL
--	-----------------------	-------------------------

Court address

Court telephone no.

Plaintiff name(s), address(es) and telephone no(s). City of Ecorse 3869 W. Jefferson Avenue Ecorse, MI 48229 (313) 285-8120	v	Defendant name(s), address(es) and telephone no(s). John B. Swainson 10301 Hogan Road Manchester, MI 48158 (313) 428-8009 <i>Sued 8:45</i> <i>Served 5:45 P.M. 5/1/85</i>
Plaintiff attorney, bar no., address and telephone no. Joseph B. Clark, Esq. 20600 Eureka Rd., Ste. 900 Taylor, MI 48180 285-8120		

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. You have 21 days after receiving this summons to file an answer or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued April 30, 1985	This summons expires Oct 29-85	Court clerk Gerald F. Dziedyc
--------------------------	-----------------------------------	----------------------------------

*This summons is invalid unless served on or before its expiration date.

- ☐ No other civil action which arises from the same transaction or event as stated in this complaint is pending or was previously filed in this court.
- ☐ Another civil action is now on file in this court which arose from the same transaction or event as stated in this complaint:

Case no.	Judge	Bar no.
----------	-------	---------

VENUE	
Plaintiff(s) residence City of Ecorse	Defendant(s) residence Same as above
Place where action arose or business conducted City of Ecorse	

I declare that the statements above are true to the best of my information, knowledge and belief.

April 30, 1985.
DateSignature of attorney/plaintiff
Joseph B. Clark
P11933

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

RETURN OF SERVICE

SUMMONS AND COMPLAINT

Case No. _____

TO PROCESS SERVER: You are to serve the summons and complaint not later than 182 days from the date of filing. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE/AFFIDAVIT OF SERVICE/NON-SERVICE

☐ **OFFICER CERTIFICATE**

or

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notary not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____, on the defendant(s):

Attachment

Defendant's name	Complete address of service	Day, date, time
Defendant's name	Complete address of service	Day, date, time
Defendant's name	Complete address of service	Day, date, time

- ☐ After diligent search and inquiry, I have been unable to find and serve the following defendant(s):

I have made the following efforts in attempting to serve process: _____

- ☐ I have personally attempted to serve the summons and complaint, together with _____

Attachment

on _____ at _____
Name Address

and have been unable to complete service because the address was incorrect at the time of filing.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____

Date

Signature: _____

Deputy Court Clerk/Notary Public

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____

Attachment

on _____

Day, date, time

on behalf of _____

Signature _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF ECORSE,

Plaintiff,

vs.

Case No:

JOHN B. SWAINSON, PUBLIC ACT
312 ARBITRATOR,

Defendant.

05-011173 CL 04-30-85 KAUFER
CITY OF ECORSE V SWAINSON

COMPLAINT FOR INJUNCTION

NOW COMES the above named Plaintiff, by and through its attorney, JOSEPH B. CLARK, and says as follows:

1. That the Plaintiff is currently involved in a Public Act 312 Compulsory Arbitration matter with the Police Officers Association of Michigan for the City of Ecorse.

2. That the proceedings have been in progress for approximately six (6) months.

3. That John B. Swainson is the Chairman of the Act 312 Arbitration Panel.

4. That the testimony of said proceedings concluded on April 26, 1985.

5. That the Representative for the Plaintiff, Gabriel D. Hall, requested the Defendant allow the City to file a brief thirty (30) days after the receipt of the transcripts of the proceedings, but was denied. He was directed to file, without benefit of a transcript, a Statement of Facts of no more than two (2) pages 8½ x 11 inches, and an Argument of no more than five (5) pages 8½ x 11, postmarked no later than Friday, May 3, 1985.

6. That the Defendant has scheduled a meeting of the Panel for May 10, 1985, and has indicated he will make a final ruling on the matter on May 17, 1985, without the submission of adequate written briefs based upon transcripts.

7. That the denial of the Plaintiff's request was a denial of rudimentary due process because it denies the Plaintiff an effective opportunity to present its arguments to the 312 Panel and thereby plead the Plaintiff's case.

8. That by reason of the wrongful denial of the motion of the Plaintiff, the Plaintiff has been, is now, and will be denied the protection guaranteed it by virtue of the laws of Michigan, to wit: P.A. 1969, No. 312, M.C.L.A. 423.231, to its irreparable damage unless this Court exercises the power and authority vested in it to enjoin the Defendant from denying Plaintiff the right to file an adequate brief, after referring to the transcript of said proceedings.

9. That the denial of the Defendant to allow briefs to be filed after reading the transcripts could cause irreparable damage to the Plaintiff City as a major issue is wages for the City's police force, and a decision based upon incomplete argument could possibly be an erroneous decision, affecting the taxpayers of the community for inestimable years, and additionally having the possibility of bankrupting the City.

10. That the Plaintiff herein has no adequate remedy at law and has no means of redress for the wrongs whereof it here complains, except through mandatory injunction proceedings restraining the Defendant from requiring an inadequate brief

within an inadequate time, without benefit of the transcript of the proceedings.

WHEREFORE, Plaintiff prays:

A. This Court issue a Temporary Restraining Order directing the Defendant to allow the Plaintiff to file a brief after receipt of the transcript of the proceedings within a reasonable time.

B. This Court issue a Temporary Restraining Order restraining the 312 Arbitration Panel from making a final decision in this matter until adequate briefs have been prepared and filed after receipt of the transcripts of the proceedings.

C. This Court issue an order to Show Cause to be heard on May 3, 1985, or later, why the Temporary Restraining Order issued herein should not be made into a Preliminary Mandatory Injunction.

D. This Court grant other relief it deems necessary under law and equity.

Respectfully Submitted,



JOSEPH B. CLARK (P11933)
Attorney for Plaintiff
20600 Eureka Road
Suite 900
Taylor, MI 48180
(313) 285-1324

Dated: April 30, 1985.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF ECORSE,

Plaintiff,

vs.

Case No:

JOHN B. SWAINSON, PUBLIC ACT
312 ARBITRATOR,

Defendant.

AFFIDAVIT IN SUPPORT OF MOTION
FOR RESTRAINING ORDER

STATE OF MICHIGAN)
) §
COUNTY OF WAYNE)

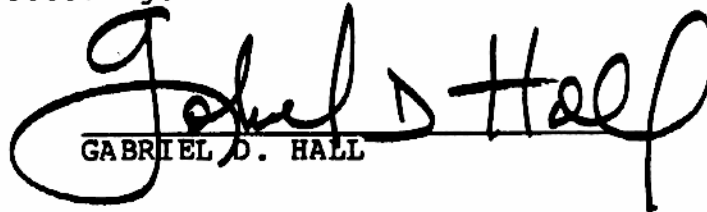
GABRIEL D. HALL, being first duly sworn, deposes and says;

1. That he is the Representative of the Plaintiff in the within cause.


2. That he has read the Complaint requesting a Temporary Restraining Order and a Preliminary Injunction, and the contents of the Complaint are true to the best of his knowledge and belief.

3. That a Restraining Order is necessary in order that irreparable harm not befall the City insomuch as the denial of time to file a brief by John B. Swainson was a denial of rudimentary due process and will result in irreparable harm to the City insomuch as any decisions of the Chairman of the 312 Panel may be based upon incomplete knowledge, fact, or incomplete argument by the Plaintiff, causing an erroneous decision as to wages for the Police Department which may in turn result in possible bankruptcy of the City.

4. That the Plaintiff has no other recourse but to seek a mandatory injunction from this Court restraining the decision of the Defendant, and directing the Defendant to allow a proper brief to be filed within thirty (30) days after the receipt of the transcripts of the proceeding.


GABRIEL D. HALL

Subscribed and sworn to before me this
30th day of April, 1985.


YVONNE OWEN
Notary Public, Wayne County, MI
My commission expires: September 1, 1986

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF ECORSE,

Plaintiff,

vs.

Case No:

JOHN B. SWAINSON, PUBLIC ACT
312 ARBITRATOR,

95-51155 CL 04 30-85 KAUFER
CITY OF ECORSE V SWAINSON

Defendant.

**BRIEF IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

FACTS

The City of Ecorse and the Police Officers Association of Michigan have been engaged in an exhaustive Act 312 Arbitration over wages and other economic considerations since approximately September of 1984. On April 26, 1985, at the close of the City's proofs, the Representative for the City, Gabriel D. Hall, requested that he be allowed to file a brief within thirty (30) days after receipt of the transcripts of the proceedings. The Representative requested this because this matter is extremely complex, has taken over six (6) months for completion of the presentation, and it involves as well twenty-nine (29) exhibits on the behalf of the City, fourteen (14) exhibits on the behalf of the Union, and also consisted of approximately seven (7) days of hearing in which there were nine (9) City witnesses of whom three (3) were expert witnesses, and two (2) witnesses for the Union.

On April 26, 1985, the Chairman of the 312 Panel, John B. Swainson, denied the City's request. He directed that the parties file, without benefit of a transcript, a Statement of Fact on no

more than two (2) page of 8½ x 11 inch paper, a five (5) page Argument, and the last best offers on an item by item basis, each offer on a single page. This document was to be post-marked no later than Friday, May 3, 1985.

POSITION

It is the position of the Plaintiff herein, that rudimentary due process requires that it be allowed to effectively and fully present its written argument, after receipt of transcripts, particularly where there was no oral argument and panel members were absent from many meetings. The denial of the City's Motion to submit briefs supported by transcripts is a denial of rudimentary due process. Furthermore, the denial is an arbitrary and capricious decision which constitutes an abuse of discretion.

ARGUMENT

In the matter of Sponick v. City of Detroit Police Dept., 49 Mich. App. 162, 211 NW 2d 674 (1973), the Court of Appeals held that a Trial Board hearing affected an "important interest" i.e., the officer's employment future, and as such the hearing for the affected officer must comply with rudimentary due process. In addition to determining that a Trial Board Hearing required rudimentary due process because of the important interest, the Court of Appeals defined rudimentary due process in part as "An effective opportunity to defend by confronting an adverse witness and by being allowed to present in person witnesses, evidence, and ARGUMENTS;..." (emphasis added)

The 312 Arbitration in question here affects important interests on both sides: increased wages and other benefits

for the police officers vs. further burdensome obligations being imposed on a City teetering on the brink of financial collapse.

The question arises as to the ability of the City of Ecorse to pay additional wages for police officers, and of course, that issue is of paramount interest of the City, the City Administration, the tax payers of the municipality. Surely, then, there is an important interest at stake here and because of that the hearing must comply with rudimentary due process.

Furthermore, a Court reviewing an appealed 312 award should have the opportunity to consider the arguments of law and testimonial consistency pointed out in a fully developed closing brief to the 312 Panel. Testimonial consistency, important as it is to credibility determinations, cannot be pointed out without benefit of transcripts or in argument limited to five (5) pages.

In deciding whether a Temporary Restraining Order or Preliminary Injunction should issue, the Court should also consider the matter of Bundo v. City of Walled Lake, 1976, 395 Mich. 679, 238 NW 2d 154. There the Supreme Court of Michigan held that when a showing could be made that the local bodies (here John B. Swainson) have acted arbitrarily and capriciously, then judicial review is appropriate.

In footnote 17 of Bundo v. City of Walled Lake, Supra, the Court defined the terms "arbitrary" and "capricious", stating:

"The words. . . have generally accepted meanings. The United States Supreme Court has defined the terms as follows:
Arbitrary is: '[W]ithout adequate determining principal. . . Fixed or arrived at through an exercise of will or by caprice, without

consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned'


Capricious is: '[A]pt to change suddenly; freakish; whimsical; humorsome'. [citations omitted]," 238 NW 2d 154, at 165.

An additional case that is clearly on point is Bengal v. State Board of Pharmacy, 1971, 2 Pa. Cmwlth. 347, 279 A. 2d 374. In that Pennsylvania case the Commonwealth Court of Pennsylvania held that the opportunity to file briefs in Administrative proceedings is a constitutional due process requirement. In that case, the Court pointed out that in many cases, and that case particularly, less than a full board was present at the hearing. Because of that, the only opportunity that the law afforded individuals to plead their case to the very people who would decide the case was by brief, since some of the members were not present at the hearing.

The 312 Panel in this case consists of three (3) people, John B. Swainson, Chairman, Victor Mitea and William Birdseye. Unfortunately, Victor Mitea was unable to attend approximately one-third (1/3) of the hearings, and therefore, does not have adequate knowledge of what occurred, without benefit of the transcript and written brief. To deny Plaintiff the opportunity to receive and review the transcripts and prepare a written brief based upon those transcripts, then, would deny Plaintiff opportunity to plead its case to the very people who will decide this matter. Clearly, such a decision would be a denial of due process as pointed out by the Court in Pennsylvania.

Clearly, the decision of the Chairman in the instant matter to not permit the Plaintiff to prepare an adequate brief with appropriate time limits after having the opportunity to examine the transcript of the proceedings is an arbitrary decision. When one considers the facts of this matter and the significance of this decision to both the parties involved, it cannot be held to be anything but an arbitrary decision. Accordingly, the decision should be restrained, reversed, and the Chairman should be directed to allow the parties to submit an adequate brief within a reasonable length of time after securing the transcript of the proceedings.

Accordingly, it is the position of the City from its arbitrary rulings that this Court should restrain JOHN B. SWAINSON from his arbitrary ruling and require that he allow the parties to submit complete briefs, after receipt of the transcript of the proceedings.



JOSEPH B. CLARK (P11933)
Attorney for Plaintiff
20600 Eureka Road
Suite 900
Taylor, MI 48180

Dated: April 30, 1985.