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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CITY OF TRENTON,

Petitioner

-and-

MERC Case No. D05 K-1200

MICHIGAN ASSOCIATION
OF POLICE

Respondent

_____ /

Panel of Arbitrators

Thomas L. Gravelle, Chairperson
Steven H. Schwartz, City Delegate
Fred Timpner, Union Delegate

STEVEN H. SCHWARTZ, ESQ.
For the City

FRED TIMPNER
For the Union

FINDINGS, OPINION AND AWARD

JULY 1, 2005 – JUNE 30, 2008
COLLECTIVE BARGAINING AGREEMENT

Dated: July , 2007

INTRODUCTION

The hearing of this matter was held in Detroit, Michigan on December 6 and 13, 2006, January 4, 2007, and February 2, 2007.

Some of the outstanding issues are economic. Under the law, the Panel is required to accept the last offer of settlement made by one or the other party for each economic issue. In deciding which offers to accept, the Panel has considered the applicable factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

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 on the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

The parties' last best offers are incorporated by reference.

STIPULATIONS

The parties have stipulated that the new collective bargaining agreement will consist of the following:

(a) The new collective bargaining agreement will run from July 1, 2005 to June 30, 2008.

(b) The new agreement will consist of the parties' previous collective bargaining agreement as modified by the parties' signed tentative agreements and by this Award.

(c) The parties' will codify their existing practice regarding Vacation - Article 9, Section 1.

(d) The parties' agreed-upon external comparable communities are the following local units of government:

Brownstown Township;
Monroe;
Riverview;
Southgate;
Woodhaven; and
Wyandotte

(e) All of the City's active employees are deemed internal comparables; and.

(f) All time limits are waived.

The Panel adopts the above stipulations.

FACTUAL BACKGROUND

The City of Trenton is the Employer.

The Michigan Association of Police (the "Union") represents the police officers employed by the City in the classifications of staff sergeant, sergeant, corporal and patrol.

There are three other bargaining units in the City: the Trenton Fire Fighters Union representing fire fighters; AFSCME representing civilian employees; and the Police Command unit representing police command officers.

The City also has some unrepresented employees.

On November 7, 2006, the City and the Trenton Fire Fighters Union reached a settlement agreement continuing its prior agreement as modified to June 30, 2008.

The City provided its non-union employees with the same economic package as agreed to with the Fire Fighters Union except that the bonus was \$600 instead of \$1,200.

The City and the AFSCME unit are engaged in fact-finding.

The Police Command unit's agreement expired on June 30, 2007, and bargaining had not yet begun on the last day of hearing in the present case.

The parties' unresolved economic issues are:

1. Wages
2. Shift Premium
3. Conversion from Defined Contribution Plan
4. Long-term Disability
5. Health Insurance – Community PPO
6. Prescription Drug Co-Pay
7. Health Insurance – Dual Coverage

8. Insurance Benefits – Laid Off Employees
9. Personal Leave Days
10. Accumulation of Sick Leave Credits

The parties' unresolved non-economic issues are:

11. Promotion Process – To Sergeant
12. Promotion Process – Suspensions
13. Promotion Process – To Lieutenant - Written Test
14. Promotion Process – Personnel Evaluations – Lieutenants
15. Layoff and Recall Procedure

After discussing ability to pay, the 15 unresolved issues will be reviewed in the above order.

OVERVIEW: ABILITY TO PAY

A key issue in this case is the City's ability to pay. It is deemed a part of the Panel's findings on all economic issues.

In recent years, the City of Trenton – like many local units of government in Michigan – has experienced financial difficulties. The parties' proposals must be considered with this fact in mind.

The City's financial condition includes the following:

– Between 2000-2001 and 2006-2007, the City's revenues from the sum of state shared revenue, the court, and interest declined **46%** from \$4.1 million to \$2.2 million.

– As of June 30, 2006, the City's General Fund balance was \$8.4 million. U. Ex. 13, p. 11. Standing alone, this is a healthy fund balance. However, for 2005-2006, the City's expenditures exceeded its revenues by \$0.44 million (*Id.* p. 12), thereby reducing its General Fund balance by that sum. *Id.* Also, the City has estimated ("in conformity with accounting principles generally accepted in the United States of

America”) that only \$0.41 million of the General Fund balance is undesignated and unreserved. The remainder has been designated by the City to pay for various estimated liabilities. U. Ex. 13, p. 28.

– In other words, at the end of 2005-2006, the City’s undesignated unreserved General Fund balance was only **2%** of General Fund expenditures for that period. City expert witness Frank Audia explained that a prudent undesignated unreserved general fund balance should be at least **10%** of general fund expenditures.

– The City’s Police Department accounts for 24% of General Fund revenues. Between 2001-2002 and 2005-2006, the Police Department’s health care and pension costs increased by 33% from \$0.86 million to \$1.14 million. C. Ex. 55.

– Health insurance for current retirees is 11% of the General Fund’s total expenditures.

– The City’s industrial base is declining. Four of the City’s seven largest taxpayers are in bankruptcy, with some in the process of demolishing their buildings. Further, 24% of the City’s total tax base is taxes on personal property. The personal property tax is applied substantially to large industrial enterprises. Between 2001-2002 and 2006-2007, personal property taxable value declined slightly, and PA 198 industrial facilities property value declined by 42%. C. Ex. 41. Further, in an effort to assist Michigan’s struggling manufacturing sector, the Michigan government is poised to slash personal property tax rates.

– As to Chrysler’s recent announcement that it would replace its existing Trenton plant with a new plant, City Administrator Robert Cady testified that if the new

plant is built, it “would basically maintain the current revenue status” by reason of the tax abatements the City would give Chrysler.

- Because the City is already about 90% developed, it cannot realistically “grow” itself to increase revenues. Further, taxable value in the City increased by only 1% between 1990 and 2000.

- Between 1980 and 2006, the City’s population declined by 18%. C. Ex. 35.

- The City has sought to balance its budget in recent years by eliminating through attrition **25** employment positions since 2001 (including three police officers and a police sergeant) representing about 12.5% of the City’s earlier work force, and by deferring about \$2.75 million in capital improvements and equipment purchases in recent years. C. Exs. 29-31. The City is legally required to perform various services, with the result that it cannot continually try to balance its budget through attrition (continuing to not fill vacancies) and deferring capital investments.

- Liability insurance has increased in recent years.

- At the hearing, City expert witness Frank Audia of Plante & Moran explained that Michigan municipal finance may be viewed as “a three-legged stool.” One leg is **(a)** property taxes. Another leg is **(b)** state shared revenue. The third leg is **(c)** other revenue (such as fees and construction permits).

(a) Property taxes. Under the 1978 Headlee Constitutional Amendment, increases in real estate taxes are limited to increases in the inflation rate, which have been low for a number of years. Further, the following interplay of the Headlee Amendment, the Proposal A Constitutional Amendment, and the Michigan General Property Tax Act, as amended in 2000, creates a perverse result when real estate is

sold (or transferred): When real estate undervalued for local millage taxation is sold (or transferred) above the inflation rate, the millage rate must be reduced for every remaining taxable real estate parcel within the community. In other words, such sales or transfers have the consequence of reducing taxable value below millage value. When millage rates are reduced, the only way to restore them is by the vote of the citizens of the City.¹

(b) State shared revenue. The Michigan Constitution requires the State of Michigan to share a percentage of the state sales tax collection with local units of government. However, the state legislature has been using a significant portion of the state sales tax collection to fund the State's own enormous deficits. Under this program, the State of Michigan's payments to the City between 2000-2001 and 2005-2006, **declined by 29%**, from \$3.1 million in 2000-2001 to \$2.2 million in 2005-2006. For the five years beginning in 2001 and ending in 2006, the City received **\$3.2 million less** than what it would have received if its 2000-2001 shared revenue merely had remained constant. C. Ex. 40.

(c) Other revenue. In *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998), the Michigan Supreme Court held that a "fee" which exceeded the cost of regulation was a disguised tax which was unenforceable under the Headley Amendment because not approved by the city's voters. *Bolt* has had the effect of reducing the use of "fees" to generate local government revenue. Similarly, a 2000 amendment to

¹ Although the City has not sought a vote to restore the lost millage, the last three bond proposals of the Trenton School District were defeated by Trenton's voters. Therefore, it is unlikely that these same voters would vote to increase their millage rates. C. Ex. 34.

the State Construction Code Act has redefined much more narrowly how costs are calculated in setting fees on plumbing, electrical, mechanical and certain other building permits.

Because of the above facts, the City has been forced in recent years to not fill vacancies, and to restrict its capital expenditures. Even with this belt-tightening, the City ran a deficit for 2005-2006 of \$0.44 million. Because employee compensation is a major part of the City's budget, caution is necessary in making financial commitments to the City's employees.

ISSUE 1: WAGES

The parties' wage offers are as follows:

	<u>Period</u>	<u>City</u>	<u>Union</u>
A.	7/1/05 – 6/30/06	0%	3.0%
B.	7/1/06 – 6/30/07	2.0% effective 1/1/07 plus \$600 lump sum payment	3.5%
C.	7/1/07 – 6/30/08	2.5%	2.5%

FINDINGS AND OPINION

As the Act 312 panel did in the recent *Woodhaven* case, the offers for the three one-year time periods are being considered separately.

The City's offer on wages is identical to what it agreed to with the firefighters union except that the firefighters received a lump sum of \$1,200: The City explains that it is offering a lower lump sum of \$600 because it has incurred additional expenses by

reason of the Union's lack of agreement regarding health care changes. The non-union employees received 0% on July 1, 2005 and 2% on July 1, 2006. The AFSCME contract expired June 30, 2005 and the parties are in fact-finding. Under the agreement negotiated in 2002, the Command Officers received 3% on July 1, 2005 and 3.5% on July 1, 2006. C. Ex. 46. The Command Officer raises are the primary reason offered by the Union for its requests for these two years.

Among the six comparable external local units of government, patrol officers at the maximum rate as of July 1, 2005 had average base pay of \$53,939, whereas the maximum base pay rate of Trenton patrol officers at that time was \$53,582. As of July 1, 2005, these Trenton patrol officers' base pay was fourth among seven. C. Ex. 47.

	Pre-7/1/05 Max. Rate	7/1/05	7/1/06	7/1/07
Monroe	\$49,279	2.75%	2.25%	1% to 3.5% per insurance formula
Brownstown	\$49,612	No contract since 12/31/02		
Wyandotte	\$53,125	0%	0%	0%
Trenton	\$53,582			
Southgate	\$54,868	0%	2%	2%
Riverview	\$56,089	2%	2.5%	2%
Woodhaven	\$58,182	3%	2.25%	2.25%

"Overall compensation" is the total of wages and fringe benefits paid to employees. City Exhibit 50 shows that straight time overall compensation paid by the City for a patrol officer with eight years' seniority who is on the DC Plan and had full-

family health care was \$79,743. Further, City Exhibit 49 shows that patrol officers' reportable W-2 income for 2005 ranged from \$58,016 to \$77,659, with an average of \$67,270. City Exhibit 47 is a partial overall compensation exhibit showing overall compensation other than health insurance and pensions. Here, as with base pay, Trenton patrol officers at the maximum earned \$58,460 under this formula as of July 1, 2005, which placed them fourth among seven.

The City's three uniformed services bargaining units are most closely "comparable." Here, a tension exists between the Police Command wage increases for 2005 and 2006 and the lower wage increases for the Fire Fighters unit. On the one hand the Police Command unit received raises of 3% on July 1, 2005, and 3.5% on July 1, 2006 (under its contract expiring on June 30, 2007). On the other hand, the Fire fighters unit received raises of 0% on July 1, 2005, 0% on July 1, 2006, 2% (plus a \$1,200 lump sum) on January 1, 2007, and 2.5% on July 1, 2007.

The City's financial condition is worse today than it was when it agreed to the Command Officers wage increases. In addition, the City has incurred additional expenses by reason of its not having obtained the Union's agreement to modify health care payments. Further, none of the external comparables have (or will) receive wage increases totaling 9% over three years (as requested by the Union). On this point, three of the external comparables – Brownstown, Wyandotte, and Southgate – received no wage increase for the fiscal year beginning July 1, 2005. To be added is that the increase in the consumer price index for calendar year 2006 was 2.08% – a low rate of inflation.

For the above reasons, the Panel adopts the parties' final offers on wage increases as follows:

- A. Effective July 1, 2005 0%
- B. Effective July 1, 2006 3.5%
- C. Effective July 1, 2007 2.5%

ISSUE 2. SHIFT PREMIUM

The Union is proposing that the afternoon shift premium be increased to \$0.50 per hour, and that the midnight shift premium be increased to \$0.65 per hour.

The City proposes that the status quo be retained.

FINDINGS AND OPINION

The Union's proposal would be a substantial increase in shift premium pay, *i.e.*, 25% for afternoons and 30% for midnights.

Internal comparables support the City. The other two units with shift premium – Police Command and AFSCME – also receive \$0.40 for afternoons and \$0.50 for midnights.

The external comparables show the following:

<u>Employer</u>	<u>Afternoon</u>	<u>Midnight</u>
Monroe	\$0.65 hr.	\$0.65 hr.
Trenton (Union)	\$0.50 hr.	\$0.65 hr.
Woodhaven	\$0.42 hr.	\$0.56 hr.
Southgate	\$0.50 hr.	\$0.50 hr.
Trenton (City)	\$0.40 hr.	\$0.50 hr.
Riverview	\$0.36 hr.	\$0.36 hr.
Wyandotte	\$0.15 hr.	\$0.25 hr.
Brownstown Twp.	\$0.00 hr.	\$0.00 hr.
Average (w/out Trenton)	\$0.38 hr.	\$0.42 hr.

Based on the average shift premium pay of the comparables, the officers' overall compensation, and the City's ability to pay, the Panel adopts the City's final offer on this issue.

ISSUE 3. CONVERSION FROM DEFINED CONTRIBUTION PLAN

The Union is proposing that officers hired after January 1, 1996 and covered by a Defined Contribution (DC) plan, be allowed to transfer to the parties' Defined Benefit (DB) plan.

The City proposes that the status quo be retained.

FINDINGS AND OPINION

In 1996 the parties agreed that future officers hired by the City would participate in a defined contribution plan (DC plan). In exchange for the Union's agreement on this issue and the elimination of a sick pay roll-in, the City agreed to increase the DB plan multiplier for existing employees by 25%, from 2% to 2.5 %.

In the Act 312 case for the parties' 2002-2005 collective bargaining agreement, the Union sought coverage in the DB plan for its newer members covered by the DC plan. The panel majority denied the Union's request.

Seven patrol officers are in the DC plan.

Under the Union's proposal – which includes a 7% employee contribution plus an additional 3% to cover unfunded accrued liability after the DC plan participants transfer their DC account balances to the DB plan – an actuarial report estimates that the City's contributions for these transferring employees would be at least 19%

(whereas under the City's DC plan, the City contributes 12%). The actuarial statement (U. Ex. 10, p. 3) explains:

As of July 1, 2006, the employer contribution [to the DB plan] is approximately 19% of payroll for the 2007-2008 fiscal year. If both the current DC account balance and additional member contributions are transferred in the DB plan, the employer contribution would remain at approximately 19% of payroll. If additional member contributions are not made, additional employer contributions would need to be made in the amount of \$171,434 [in unfunded accrued liability] representing the difference between actuarial accrued liability if the seven employees joined the DB plan and the sum of their DC account balances they would transfer into the DB plan.

Among the City's internal comparables, every unit except the Police Command unit has DC plans for employees hired since 1996. C. Ex. 52. However, Police Command hires since 1996 have been internal promotions of officers who were hired by the City prior to 1996.

Of the seven officers under the DC plan, the earliest scheduled retirement eligibility date is May 4, 2026. C. Ex. 57. As of November 10, 2006, their current DC plan balances range from \$47,000 to \$103,000, with a cumulative return of 27% on all City and officer contributions. C. Ex. 68.

The City also maintains a Section 457 deferred compensation program to which six of the DC plan officers are currently contributing, on average \$3,358.33 per year. C. Ex. 58.

Under the closed defined benefit plan (DB plan) for employees hired before 1996, the City's contributions increased **33%** between 2001-2002 and 2006-2007, from \$4.45 million in 2001-2002 to \$5.94 million in 2006-2007. C. Ex. 55. In contrast, the

City's DC plan contributions between 2001-2002 and 2006-2007 increased **17%**, from \$41,000 in 2001-2002 to \$48,000 in 2006-2007.

The Union argues that because payments for the DB plan are provided by a special millage vote, the City's General Fund – which is the source of the City's contributions to the DC plan – would save this money.

On this point, the City argues:

The Union may argue that switching from a defined contribution plan, which is funded by the General Fund, into a defined benefit plan, which is funded by act 345 millage, would assist the General Fund. However, this is merely moving money from the left pocket to the right pocket. In order to stay within the 21 mill cap, the General Fund millage would have to be reduced by the amount the Act 345 millage would be increased.

The parties' 2002-2005 collective bargaining agreement was reached by reason of an Act 312 Award. C. Ex. 4. In that proceeding, the Union also requested that officers covered by the DC plan be given the option of joining the DB plan. In denying this request, Act 312 panel Chairperson Karen Bush Schneider, Esq., writing for majority, stated in part at page 29:

[I]t is not up to this arbitration panel to take a step which would most likely set in motion a domino effect for all employee groups. That is an endeavor which is best left to collective bargaining. It is likely that the perceived inequity in pension plans will take care of itself through the City's need to address continued volatility in the DB plan and the departure of post-January 1, 1996 employees, who may just decide to take advantage of their "portable" pension plan and leave the city's employ for what they perceive to greener pastures.

In a recent Act 312 case involving an external comparable community – *City of Wyandotte –and– POAM*, MERC Case No. D04 C-0543, the Union requested that newer patrol officers under a DC plan be allowed to convert to the parties' DB plan,

Chairperson Mario Chiesa, Esq., writing for the majority, denied the request. He doing so, he stated in part at pages 13-15:

[T]he Union has outlined some very interesting concerns and touched upon valid considerations.

...

Given the nature of this benefit and the complexity and far-reaching ramifications of pension plans, this panel is very reluctant to accept the Union's Last Offer of Settlement. There are a number of reasons why the status quo should continue.

... [I]n essence, an award adopting the Union's Last Offer of Settlement would lead to further negotiations rather than settling the issue.

... [T]he problems related to the Union's evidence regarding investment and the return individual investors receive when investing pursuant to their Defined Contribution Plan can be addressed if employees seek professional assistance.

As with the union in the *Wyandotte* case, the Union in the present case “has outlined some very interesting concerns and touched upon valid considerations.” However, I share the concerns of Chairpersons Schneider and Chiesa, quoted above. A conversion from a DC plan to a DB plan in the Michigan public sector is very difficult to reverse, and becomes a variable cost for the employer because the employer's liability is based on fund performance. In addition, the conversion would cause the City to face an immediate unfunded liability; and its current liability would increase substantially under such a conversion. As I wrote in the *City of Adrian – and – POAM*, Case No. L99 G-8015 (February 5, 2002):

The next question is whether the proposed increase is revenue neutral. In support, the Union relies on an actuarial study showing that by increasing the patrol officers' pension contributions from 6% of their compensation to 9.3% of their compensation, the cost of the proposed multiplier increase would be paid by the patrol officers themselves.

Putting aside the one-time \$6,000 cost to the City for increasing the multiplier as a "non-conforming plan," the patrol officers' pension contribution would again be a mandatory subject of bargaining when the parties' collective bargaining agreement expires a few months from now, on June 30, 2002, whereas there is a Constitutional question as to whether the increased multiplier would be subject to reduction. A section 9 factor is "the lawful authority of the employer."

...

As a result, while the Union's proposal may be revenue neutral in the short run, i.e., until June 30, 2002, it cannot be said that it will remain so. On this point, the 3.3% increase in patrol officer contributions reflects only a current actuarial analysis. It does not account for vagaries in the future value of the pension fund's investments, or in the parties' future negotiations. For the above reasons, the Panel adopts the City's final offer on this issue.

For the above reasons, the Panel adopts the City's final offer on this issue.

ISSUE 4. LONG-TERM DISABILITY

The City proposes that in lieu of current disability coverage it provides employees in the DC plan, it substitute Long Term Disability (LTD) coverage that would provide 60% of base wages until age 65 or Social Security Normal Retirement Age, whichever is later.

The Union proposes that if the DC plan is retained, the status quo on disability coverage for officers in the DC Plan be retained.

FINDINGS AND OPINION

The Union explains that the proposed LTD program does not provide life time benefits unless one is totally and permanently disabled as defined by the Social Security Administration.

The City explains that (a) fire fighters under the DC plan also have the LTD coverage; (b) under the current system, whether an employee's injury was work-related

or non-work-related, the employee would forfeit his defined contribution balance; (c) the LTD coverage provides better coverage for non-work-related disability, and the employee would be entitled to keep all of his DC balance; (d) the LTD coverage would be available to any employee with one year's service, whereas under the current system the employee must have five years of service to qualify for a work-related disability or ten years of service to qualify for a non-work-related disability; (e) the LTD program provided educational, vocational and rehabilitation incentives if they suffer an off-duty injury; and (f) the LTD coverage is more fiscally responsible and avoids the risk of large out-of-pocket liability in the event of a career-ending injury.

For the above reasons, the Panel adopts the City's final offer on this issue.

ISSUE 5. HEALTH INSURANCE – COMMUNITY PPO

The City proposes that (a) Blue Cross PPO, Option 2 replace Blue Cross PPO Option 1, and (b) an HMO, Blue Care Network (BCN), be eliminated by replacing Article XIV, Section 2(A)(3) with the following:

Effective upon the issuance of the 2007 Act 312 arbitration award or as soon thereafter as possible, employees shall be provided with Community PPO, Option 2, with a \$10 office visit and chiropractic co-pay, no annual maximum on covered preventative care services provided In-Network, calendar year deductible of \$100 member/\$200 family In-Network (\$250/\$500 Out-of-Network), and maximum calendar year co-pays of \$500 member/\$1,000 family In-Network (\$1,500/\$3,000 Out-of -Network), or an equivalent health insurance plan offered through a carrier other than Blue Cross/Blue Shield.

Coverage prior to the issuance of the 2007 act 312 arbitration award shall be as described in the 2002-2005 collective bargaining agreement.

The Union proposes that the status quo be maintained.

FINDINGS AND OPINION

Health insurance premiums have risen dramatically in recent years. The City's annual expenses for health care and prescription drugs more than doubled between 1996 and 2006, from \$1.6 million in 1996 to \$3.7 million in 2006. In 2005, the annual increase was 22%, and in 2006 the increase was 20%. C. Ex. 16. The City estimates that by reason of the Union's failure to agree to the City's proposal the City was required to pay an additional \$36,000 in 2006. C. Ex. 20.

The City's offer is consistent with its recent settlement with the Firefighters Union and with the health insurance program for its non-union employees.

As to external comparables, there is a patchwork of employee premium co-pays. C. Ex. 22A. Under the recent Woodhaven Act 312 award, the City of Woodhaven is to provide PPO 2 at no cost and will only provide PPO1 to current employees who contribute \$480 per year. Because the City's proposal does not require the employees to contribute toward a health insurance premium, it is comparable.

As to eliminating the Blue Care Network, the record shows that only one bargaining unit member is enrolled in it, and that employee's spouse is a City employee who is enrolled in Blue Cross PPO. In addition, because few employees City-wide are enrolled in the Blue Care Network, the City pays a high premium for it.

For the above reasons, including the City's ability to pay and the soaring costs of health coverage, the Panel adopts the City's final offer on this issue

ISSUE 6. PRESCRIPTION DRUG CO-PAY

The City proposes that Article XIV be amended by replacing Section 2(A)(4) with

the following:

Effective upon the issuance of the 2007 Act 312 arbitration award or as soon thereafter as possible, the drug co-pay per prescription shall be \$5 generic, \$25 brand name. A mail order program providing up to a one hundred (100) unit dose supply of maintenance drugs will be provided subject to a co-pay of \$7.50 generic, \$37.50 brand name.

Coverage prior to the issuance of the 2007 act 312 arbitration award shall be as described in the 2002-2005 collective bargaining agreement.

The Union proposes the same \$5/\$25 prescription drug co-pays, but not the discounted mail order program for larger doses.

FINDINGS AND OPINION

The mail order program is an option for employees to save money if they need long-term medications for a chronic condition such as high cholesterol or blood pressure.

The parties otherwise agree on prescription drug co-pays.

Because the mail order program can only benefit employees, the Panel adopts the City's last offer on prescription co-pays.

ISSUE 7. HEALTH INSURANCE – DUAL COVERAGE

The City proposes that Article XIV, Section 2 be amended by adding subsection E as a new section:

Effective upon the issuance of the 2007 Act 312 arbitration award, employees who are married to other City employees may not enroll in City-provided Hospitalization Insurance under both their name and their spouse's name as the subscriber. The employee shall receive the opt-out payment described in subsection D of this Article if his/her spouse enrolls as the subscriber; if the employee enrolls as the subscriber, his/her spouse will be entitled to any opt-out payment as may be provided under the applicable collective bargaining agreement or policy.

The Union proposes comparable language:

Effective July 1, 2007, the Employer shall not be responsible for providing health care insurance for both City of Trenton employee and spouse if both are employees of the City of Trenton. In the case that both the husband and spouse are employees of the City of Trenton, then only one will be offered the insurance with the other being listed as a dependent. The one listed as the dependent will be eligible for the opt out allowance for not taking the health care in accordance with the collective bargaining agreement. It shall be the choice of the employees as to which one will be the primary insured and who will be eligible for the opt out allowance.

FINDINGS AND OPINION

The parties' are in agreement on dual coverage. The City's language is slightly clearer, and so this language is adopted.

ISSUE 8. INSURANCE BENEFITS – LAID OFF EMPLOYEES

The City proposes to amend Article XIV, Section 5 by replacing the current language with the following underscored new language:

The City shall provide health and prescription drug insurance benefits for up to one year after an employee is laid off from the City of Trenton, or until such time as the employee is otherwise eligible for insurance benefits, whichever is sooner. Such coverage will be equivalent to that provided to active employees, and subject to the same deductibles and co-pays.

The Union proposes to retain the current language of Article XIV, Section 5, which states:

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

FINDINGS AND OPINION

The key difference in the above two offers is that under the City's offer life, dental, and optical insurance would be eliminated for laid off employees. The City argues that because life insurance is based on an employee's salary, there is no way to provide life insurance to a laid off employee who has no salary. Under COBRA, a laid off employee could elect to continue optical or dental insurance by paying the premiums.

In its recent settlement, the firefighters have agreed to the City's proposal. C. Ex. 9.

Testimony at the hearing shows that the City's offer exceeds the benefits received by laid off employees in the private sector, many of whom when laid off receive no benefits.

The Union argues that the City provided no proof that it had incurred any costs as a result of the current language, and therefore there was no proof of any reason to change. However, if an employee were laid off under the current language, the City would be required to "pay the full cost for . . . dental, optical and life insurance benefits for a maximum of one year after an employee is laid off from the City."

The City's proposal is not a block buster. It merely is an attempt to provide a just, short-term benefit limited to "health and prescription drug insurance benefits" for a laid off employee.

On balance, the City's proposal is a reasonable restriction on benefits to be provided to laid off employees. The Panel adopts the City's final offer.

ISSUE 9. PERSONAL LEAVE DAYS

The City proposes that the personal leave days language in Article X, Section 2 be deleted in its entirety and replaced with the following:

- A. Personal Days: Effective March 1, 2008, and on March 1 of each subsequent year, employees covered by this contract shall be credited with three (3) personal days. Two (2) of these personal days are subject to a minimum shift complement/scheduling requirements and may only be taken upon authorization of the Chief of Police or Deputy Chief. The remaining one (1) personal day will be a "super personal day" that may be used at the sole discretion of the employee and is not subject to minimum shift complement.

- B. Bonus Personal Days: Effective March 1, 2008, employees may accrue up to an additional four (4) "super" personal days, which may be used at the sole discretion of the employee and are not subject to minimum shift complement. Super personal days are intended to serve as an attendance reward for those employees who come to work as scheduled. Super personal days are credited on March 1 of each year and are calculated based on the prior year's unexcused sick leave (i.e., no doctor's note verifying absence) usage from March 1 to February 28. Super personal days are accrued as follows:

<u>Super personal Days</u>	<u>Unexcused Sick hours used</u>
4	24 or fewer
3	>24 to 32
2	>32 to 40
1	>40 to 48
0	more than 48

- C. Prior to March 1, 2008, personal leave days and super personal leave days shall be administered according to the 2002-2005 collective bargaining agreement.

The Union proposes that the current language be retained:

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

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

1. Personal Days: Two (2) personal days per year are subject to scheduling requirements and may only be taken upon authorization of the Chief of Police or Deputy Chief. These personal days may be subject to minimum shift complement.
2. Super Personal Days: The remaining four (4) or five (5) personal days may be used at the sole discretion of the employee and are not subject to minimum shift complement. These personal days are not subject to approval by the Chief of Police.

FINDINGS AND OPINION

In the parties' Act 312 proceeding for their 2002-2005 agreement, the Act 312 panel awarded six personal leave days, plus one additional day based on the employee's use of unexcused sick leave. The panel did so for the reason that this was the system used by the Police Command officers. Previously, the non-command officers received four personal days, with the opportunity to earn three additional personal leave days as a bonus, if the officers did not use more than five days of sick leave.

City Exhibits 10 and 11 strongly suggest that several officers are taking advantage of the new system by taking numerous sick days under suspicious circumstances and thereby forfeiting their seventh personal leave day. Such unexcused sick days were often taken on Fridays, weekends or on days immediately after leave days. Prior to the implementation of the change, in the March 2000 – March 2003 years, about five officers on average lost their seventh personal leave day. However, in the March 2005 year, 18 officers lost their seventh day, and in the March 2006 year, 21 officers lost their seventh day.

Overtime due to sick time increased from \$49,701 in 2003 to \$73,977 in 2005.

C. Ex. 10.

In addition, the City explains that it lacks the resources to investigate suspected false sickness claims.

For the above reasons, the Panel adopts the City's final offer on this issue.

ISSUE 10. ACCUMULATION OF SICK LEAVE CREDITS

The City proposes that officers who separate from the City must have five years' of service to be eligible to be paid unused, accrued sick pay.

The Union proposes: "There shall be no payout of accumulated but unused sick time for any new hire employee who is terminated for failure to make probation."

FINDINGS AND OPINION

Under the current language, the payoff of sick leave credits is made regardless of when an employee separates from the City.

Employees are credited with sick leave days on March 1 of each year.

Ordinarily, the probation period for new officers is one year. In this sense, the Union's proposal is akin to the one year eligibility period contained in the LTD program.

Internally, the fire fighters have agreed to the City's proposal, and this policy has been established for non-Union employees. The City is proposing this change in its AFSCME fact finding.

Among external comparables, only Southgate pays one-half of the accumulated credits upon separation. C. Ex. 15. Brownstown and Woodhaven offer no payoff upon separation. Monroe, Riverview and Wyandotte only make a payoff at retirement (inapposite under either party's proposed change). Wyandotte also offers payoff at death.

The Union argues that the the City's proposal could encourage sick leave abuse for an employee with less than five years of service who learns that he is going to be laid off.

I agree with the Union that its offer on this issue "makes the most sense." In addition to avoiding sick time abuse (a serious concern of the City as explained in ISSUE 9 – PERSONAL LEAVE DAYS) "it restricts payout of unused but accumulated sick time to employees who are not new hire probationary employees."

For the above reasons, the Union's final offer is adopted.

ISSUE 11. PROMOTION PROCESS – TO SERGEANT

The City proposes (in its City issue 12) that promotions to the rank of sergeant be based on seniority, a written examination and performance evaluation.

The Union proposes that the status quo – by which officers are promoted to sergeant solely on the basis of seniority – be retained.

FINDINGS AND OPINION

Issues 11 through 15 are related.

The Union seeks to retain strict seniority in promotions to sergeant. It explains that in seeking testing, the City "is seeking to overturn a half-century old practice of no testing for the Staff Sergeant or Sergeant's position. It adds that the City's firefighters unit "has a similar provision for advancement."

As to external comparables, promotions in Riverview are made at the Chief's discretion. In the other external comparables, except Woodhaven, interviews or performance reviews are used. All external comparables are authorized to use testing

for promotions, C. Ex. 26. Further, promotions in the City's Fire Department including testing.

To help to frame this issue, the following excerpts from treatises may be helpful.

– T. ST. ANTOINE, *THE COMMON LAW OF THE WORKPLACE*, 2nd Ed. (BNA Books 2005) 154 states:

Strict Seniority. Since strict seniority provisions elevate the concerns of longevity over those of efficiency, they are not typical. See Elkouri, at 872.

– ELKOURI & ELKOURI, *HOW ARBITRATION WORKS*, 6th Ed. (BNA Books 2003) cited above, states at 872:

There are two basic types of seniority provisions. The more rigid type requires the recognition of strict seniority – that is, the employer must give preference to the employee with the longest continuous service without regard to any other considerations. The principal thesis underlying this approach is that, as between a junior person of superior qualities and a senior person of inferior qualities, the social claim of the latter should override both the needs of the business and the interest of the public in its efficient operation. The more usual provision, however, is written so as to serve the basic aims of seniority, while recognizing other factors, especially the relative “fitness and ability” of the employees, in determining preferences in employment. Such factors may include skill, ability, aptitude, competence, efficiency, training, physical fitness, judgment, experience, initiative, and leadership.

If the Union's offer were adopted, it would remain unique among externals which base promotions either on management discretion or on seniority, testing and work history.

For the above reasons, the City's final offer is adopted.

ISSUE 12. PROMOTION PROCESS – SUSPENSIONS

The Union proposes to eliminate the current provision in Article XXI Section 2 B 1 that an employee who has been disciplined within two years prior to a promotional opportunity be ineligible for promotion.

The City proposes to modify this contractual language by adopting the following language:

- B. Qualified is determined by:
 - 1. No internal disciplinary actions (suspensions without pay):
 - a. three (3) or four (4) days rendered against the officer within one (1) prior year of the promotional opportunity;
 - b. Five (5) or more days rendered against the officer within two (2) prior years of the promotional opportunity.
 - 2. Disqualification shall be measured from the final day of the suspension.

FINDINGS AND OPINION

In their 1999-2002 collective bargaining agreement, the parties negotiated a provision which contained the following eligibility provision for a promotion: “No internal disciplinary actions (suspensions without pay) rendered against the officer within two (2) years of the promotional opportunity.” Art. XXI, Sect. 2B1.

Further, under the City’s proposal, promotions to corporal and staff sergeant will continue to be made by strict seniority.

The City explains: “Employees only receive suspensions of at least three days if they commit a major violation of Department rules.”

Internally, the City may consider the disciplinary records of non-union candidates for promotions; and AFSCME and the Police Command bargaining units do not have promotions within their bargaining units.

All external comparables are authorized to base promotions on seniority and testing, and all – except Woodhaven – also are authorized to base promotions on interviews and/or performance reviews. C. Ex. 26. Performance reviews necessarily include disciplinary suspensions.

As explained in ELKOURI AND ELKOURI, *supra*, performance evaluations are the rule, rather than the exception, in deciding who is to be promoted. The advantage to officers under the City's proposal is clarity, *e.g.*, a written reprimand is not a bar to promotion, and time limits for considering disciplinary suspensions are explicit.

For the above reasons, the City's final offer on this issue is adopted.

ISSUE 13. PROMOTION PROCESS – TO LIEUTENANT - WRITTEN TEST

The Union proposes that the job related written test for lieutenant promotions in Appendix A “must also be based in part on the policies and procedures of the City of Trenton Police Department Policies and Procedures, and that a 70% grade is “is the minimum passing score,” in place of “is minimally required.”

The City proposes that the current language in Appendix A be retained.

FINDINGS AND OPINION

Under the current contract, candidates for Lieutenant must score at least 70% on a written, validated exam prepared by an independent testing agency. The test

must be job-related to the operations of a suburban Detroit police department. C. Ex. 3, p. 32.

Of the seven candidates who took the last two tests, five passed the first time and six passed the second time.

The City argues: "If a veteran officer cannot get 70% correct on a validated test, he is not qualified to be promoted to Lieutenant."

At least five of the six comparable communities use written testing as part of the promotional process to Lieutenant. C. Ex. 26. It appears that only Southgate does not require a written test. U. Ex. 10 B. In the City's Fire Fighter bargaining unit, in order to be promoted to sergeant, lieutenant or captain, the fire fighter must obtain State certification, including passing a written examination.

The record does not establish a need for the validated test to include an indeterminate number of questions based on the City's policies and procedures.

For these reasons, the City's final offer of status quo is adopted, except that the Union's proposed language change that a 70% grade "is the minimum passing score," replace "is minimally required" also is adopted.

ISSUE 14. PROMOTION PROCESS – PERSONNEL EVALUATIONS – LIEUTENANTS

The Union proposes specific provisions concerning the manner the Lieutenants and Chief of Police review candidates' personnel files ("separately"), submit their evaluations ("in sealed envelopes" without any discussion with other evaluators), and

the manner of opening the sealed envelopes (by “the personnel department, at a prearranged time”).

The City proposes the current language in Appendix A be retained.

FINDINGS AND OPINION

In their last Act 312 arbitration, the parties agreed to the current system regarding the use of personnel evaluations. C. Ex. 4, p. 66.

The record shows that the current agreed-upon procedure has not been violated, or is otherwise unfair in any way.

For these reasons, the City’s final offer maintaining the status quo is adopted.

ISSUE 15. LAYOFF AND RECALL PROCEDURE

The City proposes (in its Issue 11) that the layoff and recall procedure in Article XXI, Section 6 be amended to provide the following new underscored language:

All layoffs shall be in reverse order of seniority in classification. A laid off employee may bump an employee in a lower rank who has less departmental seniority. Employees who are laid off and who bump to a lower classification shall be recalled to the higher classification prior to the City filling a vacancy in that classification. All recalls shall be in order of seniority in classification. Nothing in this paragraph shall be construed to require the City to recall an employee to a higher classification before filling a vacancy in a lower rank.

An employee who is laid off and unable to bump shall retain recall rights for two (2) years or the length of his/her seniority, whichever is less.

An employee shall be notified of a recall by a certified mail to his/her last known residence. An employee who does not return to work within one (1) week of a recall shall forfeit his/her seniority, unless an extension in writing is granted by the Chief of Police.

The Union proposed that the current language be maintained.

FINDINGS AND OPINION

Article XXI, Section 6 of the parties' 2002-2005 agreement simply states:

All layoffs shall be in reverse order of seniority. All recalls shall be in order of seniority.

The City argues that because there is no past practice regarding layoffs to guide the parties in layoffs and bumping, future disputes easily could occur.

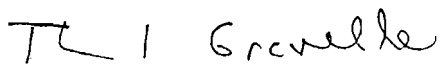
The Union argues that any change is unnecessary because for over 50 years there have been no layoffs in this bargaining unit.

Because of the City's ongoing financial challenges, it is possible that there could be one or more layoffs in the future.

The language proposed by the City is reasonable, and is designed to avoid disputes which could arise under the unqualified current contractual language.

For the above reasons, the City's final offer is adopted.

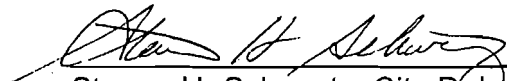
Dated: ~~July~~ ^{August 3}, 2007



Thomas L. Gravelle, Chairperson

The City dissents on Issues 1 B and 10, and otherwise concurs.

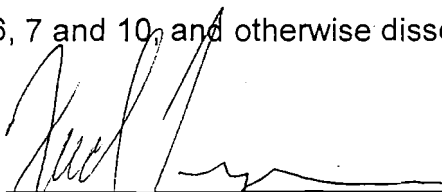
Dated: July 18, 2007



Steven H. Schwartz, City Delegate

The Union concurs on Issues 1 B, 1 C, 6, 7 and 10, and otherwise dissents.

Dated: July 30, 2007



Fred Timmer, Union Delegate