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**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)
ACT 312 ARBITRATION**

IN THE MATTER OF:

THE CITY OF FLINT, PUBLIC EMPLOYER AND THE
FLINT POLICE OFFICERS ASSOCIATION, LABOR
ORGANIZATION

Arising pursuant to Act 312, Public Acts of 1969,
as amended,
Case No.L05 C-8026

OPINION AND AWARD

MERC ACT 312 ARBITRATION PANEL:

Allen J. Kovinsky, Esq., Panel Chairperson
Thomas Smela, Esq., Employer- Designee
Keith Speer, Labor Organization Designee

ADVOCATE/ADVOCATES:

For the City of Flint:
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For the Flint Police Officers' Association
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I. RELEVANT STATUTORY AND COLLECTIVE BARGAINING PROVISIONS.

A. MCL §423.239, 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 interest and welfare of the public and financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding, with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) in public employment in comparable communities.
 - (ii) in private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the Employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

B. RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT - COMPENSATION SCHEDULE.

- (a) A one-time only gross lump sum payment to each officers with five (5) or more years of seniority, actively employed on the date of ratification as provided herein.

Said lump sum shall be \$6,000.00, minus applicable deductions, including City, State and Federal withholding.

- (b) For employees with at least one year of seniority on the date of ratification, but less than five (5) years, the lump sum will be prorated at the rate of \$1,200.00 for each full year of seniority.

- (c) Employees promoted to a position outside the bargaining unit or retiring on or after July 1, 2005 shall be eligible for the lump sum payment. Said lump sum shall be prorated based on the agreement of the parties for any employee who has been off on extended workers' compensation leave.
- (d) The lump sum shall be paid within thirty (30) days following the date of ratification.

C. ARTICLE 12 – SENIORITY – SECTION 1. DEFINITIONS

- (a) CITY SENIORITY. The employee's original hire date adjusted for time not worked. City Seniority shall be used for determining step increases in pay, annual leave accrual, and pension credits (excluding prior service credits restored).
- (b) DEPARTMENTAL SENIORITY. Date employee joined his current department adjusted for time not worked.
- (c) CLASSIFICATION SENIORITY. The date employee was appointed to his present permanent job classification, adjusted for time not worked. Classification Seniority shall be used for lay offs, vacation pick and shift preference.
- (d) TIES. Any ties in Classification Seniority shall be resolved by final academy ranking, then by civil service test scores in absence of academy ranking, then by the date of application, and then by the time of application.
- (e) GENERAL. Except for those instances specifically noted otherwise, seniority for purposes of this agreement shall be Classification Seniority.

II. STIPULATIONS:

- A. The comparables will only be utilized for purposes of determining the scheduling issue.
- B. The panel will determine which cities are comparable.
- C. The bonus issue, although the subject of an individual grievance, will be determined by the panel.
- D. All issues which were not contained in the Petition and Answer have been settled or waived by the parties with the exception of the bonus issue and the scheduling issue.
- E. There are no timeliness issues with regard to the filing of the Petition, the conduct of the hearing and the time frame within which the decision is to be issued.
- F. The issues that are to be determined by the panel are properly before the panel, and the panel has the jurisdiction to determine the issues.
- G. All of the prior contractual provisions will be carried forward except as modified by the parties and/or the arbitration panel.

III. ISSUES

- A. Is the lump sum bonus to be paid based upon City Seniority or Classification Seniority?
 - 1. The Union maintains that the bonus is to be paid based upon City Seniority
 - 2. The City maintains that the bonus is to be paid upon Classification Seniority.

- B. Shall the scheduling of employees be maintained based upon the status quo, which provides that the employees receive a four-day weekend (Friday, Saturday, Sunday, and Monday) every third week, or should the schedule be changed to provide that the employees receive a four-day weekend (Friday, Saturday, Sunday, and Monday) every fourth week?
 - 1. The Union maintains that the status quo should prevail.
 - 2. The City maintains that the schedule should be changed to provide that the employees are only entitled to a four-day weekend every four weeks.

IV. DETERMINATION OF COMPARABLES.

The City of Flint has proposed that the cities of Battle Creek, Jackson, Lansing, Muskegon, and Saginaw be utilized as comparables. The Union has offered the cities of Ann Arbor, Lansing, Pontiac, Troy, Sterling Heights, and Warren as comparables. The City notes that pursuant to Section 9(d) of the statute, the Panel is to consider wages and conditions of employment in comparable communities. It further notes that the comparable communities are only applicable with regard to the City's scheduling issue. Since both the City and the Union have proposed the City of Lansing as one comparable, the Panel accepts the City of Lansing as a comparable community. With respect to the remaining comparables proposed by the City, each is an out-state community as opposed to a suburb of the City of Detroit. The City maintains that the cities proposed by the Union, other than Lansing, (Ann Arbor, Pontiac, Sterling Heights, Troy and Warren), are within the metropolitan Detroit area, and as such have routinely been rejected by other arbitrators when choosing comparable communities for out-state communities. The City notes that arbitrator, Paul E. Glendon, in the City of Jackson Arbitration Award stated:

“Neither will Allen Park, Lincoln Park and Southgate, which are contiguous downriver suburbs of the City of Detroit (be considered comparables with the City of Jackson). They are an integral, albeit rather small, part of the uninterrupted urban patchwork that makes up the Detroit metropolitan area. As such, they are significantly influenced by the metropolitan Detroit wages and employment and law enforcement conditions. All three cities are innately dissimilar to the City of Jackson, which despite its relatively modest size, is the largest city and must be considered the dominant, economic and social influence in Jackson County.”

The City further notes that arbitrator, Keith E. Grotz adopted the same rationale in rejecting Detroit-area communities as being comparable to the City of Saginaw. (City of Saginaw and Police Officers' Labor Council, MERC L00-G-3020).

The City believes that a factor of 50% more than or less than the applicable Flint figures should be the acceptable range. It notes that the City of Flint lost 11.24% of its population in the decade of 1990 to 2000, which is more than any other city among the comparables. Only Saginaw approached the size of the loss. The City notes that among the Union comparables, Ann Arbor, Troy and Sterling Heights actually gained population. In addition, if one were to add an additional four years from 2000 to 2004, the Flint overall loss of population was 14.95% with only Saginaw losing more, while again, three of the Union's comparables, Ann Arbor, Troy and Sterling Heights gained population. The City of Flint's taxable value base has increased the least over the eight year period, while four of the Union's proposed comparables (Ann Arbor, Troy, Sterling Heights, and Warren) had a taxable value that was not within 100% of the City range, whereas the City's comparables all were within its plus or minus 50% proposed comparable comparative.

The City notes that the same type of disparities continue through issues such as taxable value per capita, median household income, per capita income, and median housing value.

Based upon the eight points of comparison contained in the City exhibits, the City notes that all of its proposed comparables fell within the relevant range as proposed by the City. However, with respect to the Union's proposed comparables, Ann Arbor, Troy and Sterling Heights failed to fall within the relevant range for all eight items used as a basis of comparison; Warren falls within the relevant range only two out of eight times; while Pontiac falls within the relevant range seven of eight times.

In conclusion, the City believes that none of the Union comparables should be adopted, but if any are to be adopted, the only relevant one would be the city of Pontiac.

The Union, in support of its position, states that currently the Flint officers work the most days in a row. It notes that while none of the other municipalities have the exact same contract provisions as those which were negotiated between the City of Flint and the Flint Police Officers' Association, none require their officers to work more than five days in a row. It notes that Pontiac, Sterling Heights, and Troy officers work four days on and three days off each week. Officers in Muskegon work four days on and two days off, and the officers in Jackson, Battle Creek, Saginaw and Ann Arbor, work five consecutive days before receiving two days off.

The Union further notes that the City of Flint, having one of the worst crime rates in the State, gives its officers fewer days off than the officers in Pontiac, Sterling Heights or Troy. It further notes that as an additional comparable (internal) the City of Flint sergeants are entitled to a four day weekend every third week. It believes that the Flint sergeants are probably the most compelling comparable as it illustrates the importance of maintaining a third weekend off schedule in a city such as Flint.

With respect to the Employer comparables, it is noted that there is no specific contractual language in the Battle Creek, Jackson, Lansing and Muskegon contracts. There is contractual language in the Saginaw contract which provides for five consecutive days of duty, with two consecutive days off. With respect to the other proposed comparable communities, the Employer exhibit indicates that in the case of Battle Creek, employees receive five consecutive eight hour days bid by seniority twice annually; in the case of Jackson, the employees work five consecutive eight hour days with one chance annually to bid for days off by seniority; in the case of the city of Lansing, the officers work a 10 hour day and must work 12 days in a 28-day cycle, with leave requests submitted to the shift lieutenant and granted based on team area manning requirements and seniority; in the case of the City of Muskegon, the officers work four days on and two days off and bid every six months by district and by seniority; and in the case of the City of Saginaw, the officers work five consecutive days of duty with two consecutive days off.

With respect to the comparables proposed by the Union, the City of Ann Arbor works five consecutive days on with two consecutive days off, which are bid by seniority

quarterly. The City of Pontiac works four consecutive days on and three consecutive days off bid by seniority every six months; the City of Sterling Heights works four consecutive days on and three consecutive days off which are bid by seniority every April and October; the City of Troy works four consecutive days on and three consecutive days off bid by seniority every six months; and the City of Warren has three officers assigned to each car of eight sectors of the city every 28 days by seniority. These officers select their eight days off for the cycle, four days can be "red-dotted" which means they are, for the most part, guaranteed off.

For purposes of this arbitration proceeding, it is the decision of the Panel that the cities of Jackson, Lansing, Saginaw, and Pontiac are determined to be the most comparable within the requirements of the statute and prior arbitration determinations. The cities of Muskegon and Battle Creek are simply not within the same geographic parameters as the City of Flint. Accordingly, even though they may otherwise be similar to the City of Flint with respect to the various items enumerated as a basis for comparability by the City of Flint, the fact that they are so geographically remote, removes them from consideration. With respect to the cities of Sterling Heights, Troy, and Warren, I adopt the rationale hereinabove set forth by previous arbitrators and do not believe that they fall within the appropriate parameters normally considered to be utilized for comparable purposes based upon their proximity to the City of Detroit. Finally, the City of Ann Arbor is rejected based upon the items set forth for purposes of comparability by the City of Flint, since the City of Ann Arbor does not remotely resemble the City of Flint with respect to changes in population, taxable value and/or changes in taxable value, taxable value per capita, median household income, median family income, per capita income, and median housing values.

V. INTRODUCTION AND FACTUAL BACKGROUND.

The City of Flint and the Flint Police Officers' Association have a long-standing collective bargaining relationship. The last contract in effect commenced on July 1, 1998, and was to terminate on June 30, 2002. After prolonged negotiations, the Union filed a Petition for Arbitration pursuant to Act 312 of the Public Acts of 1969, as amended. On September 7, 2005, Arbitrator Allen J. Kovinsky was appointed Chairperson of the Arbitration Panel. The parties met in a series of pre-arbitration conferences, and as a result, the parties reached agreement on all issues with the exception of the scheduling issue discussed hereinafter. However, one of the issues which was resolved by the parties (a \$6,000.00 lump sum bonus) subsequently became the subject of a grievance. The grievance will be discussed hereinafter but basically sets forth an issue as to whether City Seniority, as defined in Article XII, Section 1 of the Collective Bargaining Agreement, should be utilized for purposes of determining the bonus eligibility or Classification Seniority should be utilized. The parties stipulated that it was an economic issue and that the comparables would not be utilized for that particular issue.

The other issue to be determined by the Panel involves the scheduling of the officers. Currently, the officers work seven days with two days off, then work eight days and receive a four-day weekend (Friday through Monday). Thus, the officers essentially work a 21-day cycle, in which they receive a total of six days off and work 15 days. However, the officers work two extensive period of time (seven days and eight days without any days off).

The City, for reasons hereinafter set forth, wishes to have the schedule changed so that the officers would only receive four consecutive days off (Friday through Monday) once every four weeks. This would essentially result in a 28 day cycle, where the officers would work seven days and have two days off, work another seven days and have two days off, and work six days and have four days off. Thus, the officers would work 20 days and have eight days off within the 28 day cycle and would have one four-day extended weekend off every four weeks, as opposed to every three weeks under the current collective bargaining language. Essentially, the officers currently have 17 four-day weekends off per year for two years and 18 four-day weekends off in a third year. Under the City proposal, the officers would have 13 four-day weekends off per year.

As a result of the meetings that took place prior to the actual 312 Hearing, the parties reached an agreement with an effective date of February 27, 2006 and a termination date of June 30, 2008.

Since the parties were unable to reach agreement with regard to the bonus issue as well as the scheduling issue, a hearing took place on Monday, June 18, 2007. The parties were given the opportunity to introduce exhibits as well as oral testimony and subsequent to the Hearing, the parties were given an opportunity to provide the panel with Briefs, supporting their respective positions. The Briefs were in fact timely filed.

It should be noted that where applicable, each of the statutory standards has been considered and utilized by the Panel in order to reach a determination with regard to the issues before the Panel. The Panel has carefully considered not only the statutory requirements, but also the testimony of the witnesses, the exhibits, and the positions adopted by the respective parties in their Briefs.

VI. THE LUMP SUM BONUS ISSUE.

As previously noted, the parties, for purposes of the new collective bargaining agreement, which terminates on June 30, 2008, instead of negotiating an increase in wages provided for a one-time lump sum bonus in the sum of \$6,000.00 per employee with five years or more seniority (minus the applicable deductions for city, state and federal withholding). The parties further provided that for employees who had at least one year of seniority on the date of ratification, but less than five years, the lump sum would be prorated at the rate of \$1,200.00 for each full year of seniority.

As a result, virtually all of the employees in the bargaining unit received the \$6,000.00 lump sum bonus. However there were nine employees who have five years or more of City-wide Seniority, but did not have five years of Classification Seniority. This is due to the fact that the employees worked in other positions outside the police department, but within the City or did not have the full five years of Classification Seniority, unless the time spent at the police academy was included. Based upon the testimony, it would appear that seven of the nine employee affected did not meet the five year Classification Seniority requirement based upon being short three or four months for the time spent at the police academy, which counts for City Seniority purposes, but not for Classification Seniority purposes. It also would not count for Departmental Seniority purposes, a definition which is contained in Article XII, Section 1 of the Seniority Provision. The remaining two employees apparently worked in other non-police department City positions which are counted for purposes of City Seniority, but are not counted for Departmental and/or Classification Seniority. In addition, while the City Seniority provision is used to determine step increases in pay, annual leave accrual and pension credits, the Classification Seniority is used for lay offs, vacation picks and shift preference. Further, in the event that there is an issue with regard to seniority which is not contained within the parameters set forth in Section 1(a) or Section 1(c), Section 1(e) of the Seniority Article provides:

“Except for those instances specifically noted otherwise, seniority for purposes of this Agreement shall be Classification Seniority.”

Thus, the dispute between the Union and the City is over phrase utilized in the lump sum settlement “seniority.” The lump sum settlement did not define seniority and the Union argues that it was meant to be City Seniority since all of the monetary issues normally are determined by City Seniority, while the City argues that the term Seniority in the lump sum settlement should be interpreted to be Classification Seniority based upon the fact that the bonus is not a step increase in pay, nor an annual leave accrual, nor a pension credit, and accordingly, it would fall under Section (e) of Section 1 of Article VII, which is a general catch-all provision requiring all other items not covered by Section (a) or (c), for seniority purposes, which is to be determined pursuant to Section (e) by Classification Seniority rather than City Seniority. The parties indicated that approximately \$7,400.00 total was involved based upon various amounts due each of the nine employees, with most of the employees having lost between \$300.00 and \$400.00 per employee, one of

the employees having lost approximately \$3,200.00 and the other employee having lost approximately \$1,400.00.

On behalf of the Union, Keith Speer testified that he has been employed as a police officer in excess of 21 years and has been President of the Police Flint Officers' Association for slightly more than four years. When asked what seniority was applicable in terms of his understanding, he testified that City Seniority refers to the date you were actually hired by the City and that all of the raises in the past, representing a wage increase or increase in longevity or an increase in vacation time, had been based upon City Seniority. This was true with respect to officers who had worked for the City in positions other than a police officer. Those positions were not covered by the Police Bargaining Unit, but the day that they were hired on as a police officer, if they had five years or more of service with the City, they were immediately put at the top of the police officer pay scale. This was true with respect to vacation time and all other monetary benefits as well. Officer Speer testified that at no time was it his understanding that the term Seniority as used in the lump sum bonus settlement, meant anything other than City Seniority. He further testified that Departmental Seniority was only used for purposes of lay off and shift preference (vacation picks are also determined by Departmental Seniority pursuant to the contract). Officer Speer further indicated that there was no contractual provision that indicated that Departmental Seniority would be used to determine Seniority in connection with a signing bonus.

On cross examination, Officer Speer stated that under the settlement agreement reached by the parties for the new collective bargaining agreement, a new pay schedule went into effect on March 1, 2006. That pay schedule did not provide for retroactivity. In response to whether or not in lieu of retroactivity the \$6,000.00 lump sum payment was made to those persons who had five or more years of service, Officer Speer indicated that that fact was true. He further testified that as far as he could recall, officers had not received any wage increase from 1998 to March 1, 2006. Subsequently, in response to the question as to whether or not he would agree that the payment of \$6,000.00 was a lump sum payment in lieu of retroactivity, Officer Speer responded:

“I wouldn't say it was in lieu of; I'd say it was just a signing bonus. I don't think we agreed not to pursue retroactivity. I don't know if you want to call it in lieu of; I don't – I don't know if that was ever, you know mentioned, in lieu of, or not.”

Officer Speer further indicated that the original Act 312 Petition sought retroactivity, but as a result of the Settlement Agreement, the request for retroactivity for wages had been withdrawn by the Union.

Finally, Officer Speer noted that he had been hired in on May 12, 1986, and sent to the police academy until August 15, 1986, at which time he joined the Department. He indicated that for wage step increases, his original hire date of May 12, 1986, had been utilized. Officer Speer further stated that the May 12 date was also utilized for purposes of his longevity payments. He did not become an actual police officer nor a member of

the Flint Police Officers' Association until August 15, 1986, when he actually joined the Department after graduation from the academy.

With respect to the nine individuals for whom the grievance was filed with respect to the proration to the bonus as opposed to receiving the entire lump sum, Officer Speer indicated that he believed that seven of the individuals had had their bonus reduced by either three or four months that were spent in the police academy per officer. An eighth officer had his bonus reduced by \$3,200.00, based on the difference between his City Seniority and his Departmental Seniority since he had worked as a police service officer for the City, a position which was not covered by the Flint Police Officers' Association, nor considered to be equivalent to the rank of a police officer within the Department. However, Officer Speer noted that that individual, when hired into the police department, was placed on a pay scale which reflected his overall seniority for the City. Thus he didn't hire in like a new recruit at the bottom of the pay scale, but was put at approximately a three year level. With respect to the ninth officer, Officer Speer felt that he had had approximately \$1,400.00 deducted from his lump sum bonus, but he wasn't sure what the reason for it was.

Pursuant to Tab 6 of City Exhibit 1, the Grievance and the Response of the City, along with numerous other documents were filed and received with respect to the bonus issue. The City maintained that:

“The purpose of the signing bonus was to give a lump sum payment to individuals who had been in the police department for five or more years, partly as payment to the officers who had not received any wage increases for eight years. If City Seniority was used instead of Departmental Seniority, the purpose of rewarding those who had not received wage increases would have been diminished.”

The Union indicates that the issue of using City Seniority vs. Departmental Seniority was discussed. This issue was not discussed, the Union instead made an assumption that City Seniority was going to be used.

There is no violation of the Collective Bargaining Agreement, and as a result, the Grievance is denied.”

Under Tab 6, one of the documents indicates the list of aggrieved officers. As previously noted, most of the officers had the bonus reduced based upon the time that was spent at the police academy; in five of the cases it amounted to three months and 27 days; in one case four months and 26 days; in another case four months and 10 days; and for the two longer term prorations, in one case fourteen months and 26 days, and in the other case, 32 months and 21 days.

Thomas Smela testified on behalf of the City that he has been the Labor Relations Coordinator for the City for approximately 8.5 years. He handles grievances and contract negotiations among other items. Mr. Smela identified the grievance filed by the F.P.O.A.

with regard to the seniority and payment of bonus issue, as well as the City's response. He testified that the lump sum bonus was meant to be for individuals that were in the bargaining unit, because it was partly in lieu of any retroactive back pay for the last contract, which was from 1998 to 2002. Thus, the City wanted to reward employees who had actually been in the bargaining unit for five years. Accordingly, in determining the amount an individual is entitled to with respect to the lump sum bonus, Classification Seniority was utilized. Mr. Smela testified that the lump sum bonus was not a step increase in pay, a payment for annual leave accrual, nor a pension credit. He further testified that it was his belief that the lump sum bonus fell within the general provisions of Paragraph E of Article Twelve, Section 1, which requires all other items not specified in Paragraphs A or C to be determined by the utilization of Classification Seniority, which is the time spent in the employee's present permanent job classification, as opposed to the time spent by the employee as a city employee.

On cross examination, Mr. Smela testified that the document which provided the basis for the settlement between the F.P.O.A. and the City of Flint had been drafted by the city attorneys. He further admitted that the word "Classification Seniority" had not been used anywhere within the document insofar as the lump sum bonus was concerned. He further testified that neither the word "classification" nor the word "departmental" was used with respect to seniority insofar as the lump sum bonus was concerned. He further admitted that with respect to pay raises, the City, for purposes of retroactivity, would consider overall City Seniority, based on the individual's step in the pay scale. He also indicated that some individuals who were no longer in the bargaining unit received all or a portion of the \$6,000.00 bonus, based upon the time that they were in the bargaining unit for the relevant years in question. He also testified that to the best of his knowledge, neither City Seniority nor Departmental or Classification Seniority was ever discussed insofar as the bonus was concerned. Mr. Smela further testified, on cross examination, that the City and the Union had agreed to allow the Act 312 Panel to decide the issue that was set forth in the grievance, as opposed to an outside arbitrator under the grievance and arbitration provisions of the Collective Bargaining Agreement.

On redirect examination, Mr. Smela testified that only employees who promoted outside of the bargaining unit after July 1 of 2005, would be eligible for the lump sum payment. This was also true with respect to retirees. However, individuals who were promoted or retired in 2001 or 2002 or 2003 or 2004, would not be eligible for the lump sum bonus.

DISCUSSION AND DECISION

While the Union argument and position is appealing on the surface, since at first glance it would appear that employees have in fact received less than they should be entitled to if Departmental or Classification Seniority is utilized, the simple fact of the matter is that there are two irrefutable reasons why the Union position must fail. First, the lump sum bonus is not an item that is covered by the specific terminology of Article Twelve, Section 1(A). It is not an increase in the steps in step pay, nor is it an increase in annual leave accrual, nor does it involve a pension credit. It is a one-time, stand alone bonus that the employees with five or more years of service received in lieu of any retroactive pay

increase. Thus, rather than applying a dollar figure to each of the step increases for each of the five previous years, the City and the Union agreed to simply pay the employees a lump sum in the amount of \$6,000.00, provided the employees had five years of seniority. It would make no sense to apply a portion of that bonus to time spent by the employee in the service of the City, but not within the Department itself. If, instead of utilizing a lump sum bonus, the City and the Union had merely applied the sum of \$1,200.00 annually for each of the previous five years to the pay schedules on the various steps, the employees would not have received retroactive monies for time spent in the City, but not in the Department. Clearly, time spent elsewhere in the City is to be found on a different payroll, as would the hours spent in the service of the City. Thus, there would have been no retroactive pay increases to those employees who are the subject of the grievance, when in fact they were not on the payroll of the police department itself.

While it would appear that in prior instances, employees may have received retroactive increases based upon their City Seniority, that was as a result of having been in the actual pay step at the time that the retroactive increase was negotiated. Thus, the employee was actually on the City-Department payroll for the affected period of time. The fact that he may have been in a particular step as a result of his City-wide Seniority as opposed to his Departmental Seniority does not in any way provide a basis for the current grievance. The employees received the retroactive pay increases, based not only on the step that they were in, but also based upon the fact that they were actually working within the Department for the period of time that the retroactive pay increase was assigned. That, of course, is not true with respect to the lump sum bonus. While it is true that the employees in question were in fact on some City payroll, or perhaps in the police academy, they simply were not working within the Department for the relevant periods of time that the City deducted on a prorata basis from the lump sum bonus, which was, I believe, utilized in lieu of a pay increase, and as noted, if it had been prorated among the various steps for the various years, the employees in question, since they were not on the police department payroll for the periods of time for which deductions were made, would not have received the monies in any event.

The second compelling reason for ruling against the Union position and in favor of the City position, is based upon the contract itself. It is clear that there was never a meeting of the minds with regard to the utilization of the word "Seniority" in the lump sum bonus settlement. I believe that the Union Members thought that City-wide Seniority would be utilized for determination of the lump sum bonus payments and any prorations that may have been applicable, and I believe that the City representatives thought that Departmental or Classification Seniority would be utilized. Unfortunately, for the Union, in the absence of a clear reference to City-wide Seniority by utilizing the word Seniority, without any qualification, from a strictly contractual point of view, the lump sum bonus would have to fall within the provisions of Article 12, Section 1(E). That is to say that if the lump sum bonus is not covered by the language of Section (A) [and I do not believe that it is covered by the language of Section (A)], and if the lump sum bonus is not covered by the provisions of Article 12, Section 1(C) (and I do not believe it is covered by that provision as well), then it falls within the catch-all language of Article 12, Section 1(E), which provides that except for the instances specifically noted otherwise, Seniority

for purposes of the Collective Bargaining Agreement is to be Classification Seniority (as opposed to City Seniority). Thus, based on strictly a contractual interpretation, it is Classification Seniority which must be utilized and the Classification Seniority provision provides that it is the date the employee was appointed to his present permanent job classification, adjusted for time not worked. Accordingly, the City utilized the Classification Seniority date in accordance with the provisions of Article 12, Section 1(E) in an appropriate fashion.

Accordingly, the Last Best Offer of the City, with respect to this particular issue, is awarded and it is so ordered.

VII. SCHEDULING ISSUE

At the outset it should be noted that the parties have stipulated that the Scheduling Issue is to be considered a non-economic issue. Accordingly, the Panel may adopt the Last Best Offer of the Union, the Last Best Offer of the City, or in the alternative, the Panel may fashion an award which it considers to be more appropriate pursuant to the statutory standards hereinabove set forth.

As previously noted, the Panel has selected as comparables, the cities of Jackson, Saginaw, Pontiac, and by stipulation of the parties, the City of Lansing. In the case of the City of Jackson, police officers work five consecutive eight hour days, with one chance annually to bid for days off by seniority. In the City of Lansing, the Union Exhibit indicates that there is no pattern of days off; officers work ten hour days and must work 12 days in a 28 day cycle, with leave requests being submitted to shift's lieutenant, and granted based on a team manning requirement and seniority. In the case of the City of Saginaw, officers work five consecutive days, with two consecutive days off. In the City of Pontiac, officers work four consecutive days, with three consecutive days off, which are bid by seniority every six months.

The Union proposes to maintain the current schedule in which officers work seven consecutive days, have two consecutive days off, work eight consecutive days, and have four consecutive, so-called, "weekend" days off (Friday through Monday).

The City wishes to alter that schedule to provide for a 28 day cycle in lieu of the current 21 day cycle. The City proposes that officers would work seven consecutive days, with two days off; another seven consecutive days with two days off; and six consecutive days with four weekend days off (Friday through Monday).

The difference between the two proposals essentially is, over a three year period of time under the Union proposal, police officers would receive 52, four day weekends (17-17-18) while under the City proposal, police officers would receive 39 weekends off (Friday through Monday). Thus, pursuant to the City proposal, officers would enjoy four less four-day weekends in each of two years, and five less four-day weekends in a third year.

In support of the City position, Police Chief Gary Haggler testified that he has been employed for approximately 21 years and has been the Chief of Police since July 1, 2004. Prior to that time, he had been a Deputy Chief, Captain, Lieutenant, Sergeant, and Police Officer. The Department consists of approximately three captains, 13 lieutenants, 60 sergeants, and 180 police officers. Chief Haggler, in support of the City position stated that the City has an ever increasing crime rate over the past several years. Although there had been some improvement in the first quarter of 2007. However, Flint has been ranked as the third City in terms of most violent crimes per 100,000 of population within the United States. In addition, it was the Chief's understanding that the City of Flint would be ranked number one in terms of violent crimes by the FBI, based upon data accumulated for the calendar year 2006. Recently, the City had experienced a dozen shootings on one Saturday evening. That would add to and increase the aggravated

assault rate. According to a City Exhibit, based on calls for service by hour, 13.7% of the calls occur on Sundays; 13.3% on Mondays; 14.1% on Tuesdays, 14.4% on Wednesdays; 14.2% on Thursdays; 14.6% on Fridays; and 15.3% on Saturdays. The highest volume of calls occur between 3:00 p.m. and 3:00 a.m. In terms of numbers, there were calls for service of 23,736 for a high on Saturdays, with a low of 21,401 on Mondays. The second highest volume day is Friday, while Sunday actually is a bit lower than several other days during the middle of the week. However, the first few hours from midnight to 3:00 a.m. or 4:00 a.m. on Sunday which are a carryover from the late hours on Saturday evening, represent an increased number of calls for service.

Chief Haggler indicated that because individuals tend to be off of work from early Friday evening through Monday morning, more partying occurs on Friday nights and Saturdays and inevitably more drinking, which leads to more cases of violence. He also opined that there is more drug consumption during that 48 to 60 hours of time. Chief Haggler testified that if the City proposal were to be adopted, approximately 13.41% more officers would be on duty with respect to Friday/Saturday/Sunday than are currently available pursuant to the current scheduling under the Collective Bargaining Agreement. That testimony pertained to the first shift. With respect to the second shift, the Chief believed that approximately 20.69% more officers would be available and on the third shift approximately 16.47% more officers would be available on Friday/Saturday/Sunday. On the other hand, if the City schedule were to be adopted, then less officers would in fact be available on Tuesday, Wednesday and Thursday, than are currently available since the officers who currently enjoy the third weekend off, if they only had every fourth weekend off, would necessarily have to have more days off during the middle of the week.

While Chief Haggler admitted that it would be nice if the officers could continue to have four days off (Friday through Monday) every third week as opposed to the City proposal of every fourth week, he indicated that in the best interest of the City, the City proposal allows the Department to have more officers on the street on high crime days of the week when the severity of calls increases. He also indicated that it is not merely a higher volume of calls, but also the type of calls that occur on the weekend, which are more dangerous in nature (felonious assaults, armed incidents, and homicides).

Chief Haggler also indicated that it would be beneficial for the officers on duty, since it would allow for more available back up. This helps to alleviate safety concerns, since the officer on the street will not have to wait as long for a back up to go out on a call, and that in turn, benefits the public as well, since response time is decreased. The Chief noted that the most homicides occur on Friday, Saturday, and Sunday, with Saturday having approximately 17% of the homicides; Friday, 16% ; and Sunday, 14%. The rest of the days vary between 7% (unknown); 7% on Thursdays; and 10% on Tuesdays, with 12% occurring on Mondays and Wednesdays. All of those statistics were related to the year 2004. 62% of the homicides occurred on Friday, Saturday, and Sunday in 2005, and 49% of the homicides occurred on Friday, Saturday, and Sunday in 2006.

Chief Haggler indicated that the general fund of the police department could not support bringing 10 or 15 additional officers in on overtime on the weekend. Any extra officers on duty bear a direct relationship to the availability of grant funding from the federal government. Chief Haggler further denied that any contractual provision granted sergeants, lieutenants or captains a four-day weekend every third week. Nor did he believe that there was any contractual provision with respect to a four-day weekend every fourth week.

On cross examination, Chief Haggler testified that he believed that when he was hired in, the Department utilized a four-days weekend once every four weeks, as is being proposed by the City. He further testified that based on studies conducted in Kansas City and Houston, additional police visibility positively impacts the rate of crime by resulting in reduction in the various types of crimes. Police visibility and an increased presence to respond, according to the Chief, make criminals nervous and can have an impact. In response to a question as to whether or not the summer months produced a greater level of crime, the Chief indicated that you never know from month to month when crimes may spike upward as for example, January of 2006, which was a particularly bad month for crime in the City of Flint. While Chief Haggler acknowledges that there was not a significant difference in total calls for service based on the various days of the week, he indicated that you also have to look at the number of officers working per day and the number of officers working per shift, in order to determine the workload on a per officer basis. Accordingly, it would appear that there are significantly more calls for service per officer on the weekend days because of the increased numbers of officers who are off duty as opposed to the middle of the week days. Chief Haggler also noted that the calls on Friday nights and Saturday nights and into early Sunday morning may be significantly more difficult since they tend to involve more violent crimes in greater numbers of individuals.

Chief Haggler acknowledges that officers would prefer to have every third week contain a four-day weekend that they would be off, but that had to be balanced against the Department and the City being good public servants to the community and hopefully, reducing the crime rate, the homicide rate and the assault rate. The Chief further acknowledged that he had spoken with the Union President, who indicated that the City proposal would have a negative impact upon his membership. The Chief understood that it would be more beneficial to have more weekends off with their family insofar as the individual officers are concerned, but it is also more beneficial for the community to have more officers on the streets on the weekend. He believed that the City proposal would help to drive the crime rate down, which in turn, would reduce the stress level suffered by the officers, by reducing the amount of violence and the volatility of the workplace.

The Chief further testified that under the City proposal, the officers would work less consecutive days than they currently work. Currently, officers work seven consecutive days, then are off two days, then work eight consecutive days, then are off on their four-day weekend. Under the City proposal, officers would work six consecutive days, then get two consecutive days off, then work an additional seven days in a row, then get two consecutive days off, then work seven more consecutive days in a row, then receive their

four-day weekend off. Under the City proposal, the two consecutive days off in each of the periods would be mid-week days. That is also true with respect to the current schedule for the two days off being mid-week days, consisting of either a Tuesday, Wednesday or a Wednesday, Thursday.

Keith Speer was recalled as a Union witness with respect to the issue of scheduling and testified that in 1988 or 1989, the City and the Union came to an agreement with respect to scheduling, which allowed for four days off every third week, and that that had been in place ever since. The four-day weekend was inaugurated because of the stress levels suffered by officers. As a result, officers utilize less sick leave and bank more time. They also, according to Officer Speer, utilize less vacation time for reasons of stress. Nevertheless, Officer Speer acknowledged that Flint is in fact a dangerous city, and is somewhat more dangerous on weekends, but every day, according to Officer Speer is an adventure. Officer Speer opined that there is not only a shortage of officers on weekends, but every day of the week. He further opined that it would be in the best interest of the police department to eliminate a citizens service bureau which was recently established and to which five officers were transferred, who, in his opinion, could be utilized in the patrol division, thus creating a greater presence of officers in the City. He also indicated that a ten hour work day, four days a week, might, although he was far from certain, place more officers on the street. Officer Speer indicated that if Flint had less crime the schedule proposed by the City might be more agreeable, but based upon the nature of the City, the stress levels are so high that the officers need the four- day weekend every third week, as opposed to every fourth week. He further indicated that crime in the City had in fact decreased in the first quarter of 2007.

Officer Speer testified that in a meeting with Chief Haggler and Mr. Smela, he was advised that if the Union dropped a grievance regarding an overtime issue, the City would drop its scheduling issue and allow the police unit to continue to have a four-day weekend, every third week off. In fact, Officer Speer testified that as late as a week before the arbitration hearing which took place on Monday, June 18, 2007, the City had made the same offer. It should be noted that the City neither objected to, made a motion to strike, nor offered any rebuttal testimony with regard to the testimony of Officer Speer insofar as the Union dropping the overtime grievance in return for which the City would drop its scheduling demands was concerned. As a result, Officer Speer concluded it could not be much of a safety issue if the City was willing to drop its scheduling issue in return for the Union dropping an overtime grievance issue involving the payment of certain monies.

On cross examination, Officer Speer acknowledged that he had hired in at a time when the officers received a four-day weekend every fourth week, and that it did not prevent him from hiring in. He further acknowledged that Friday and Saturday nights were more serious in terms of violent crimes and the volume of violent crimes being committed. He also acknowledged that when there are bar fights erupting, it is beneficial to the members of the Department to have more patrol officers available. Officer Speer indicated that with the current schedule, approximately 1/3 of the officers are off duty on the four-day weekends and with a change to only allowing a four-day weekend every fourth week, it

would result in 25% of the officers being off, which is an overall difference of approximately 8%. However, the 8% can be translated into 25% more officers being on duty every weekend, since 8% of 33% constitutes approximately 25%. 8% more of the current bargaining unit is approximately 15 officers, spread over three shifts, would allow perhaps as much as five additional officers per shift on the weekends.

Dunell Chaney testified on behalf of the Union that he is the Vice President of the Union for the past three years, and that he has in fact surveyed the officers as to their feelings with respect to the contested issue. The officers want every third weekend because of their personal life and their family life. They are willing to work seven days straight with two days off, and then an additional eight days straight in order to have the four days off every third weekend. Since many of the officers have children who are in school during the week, it limits the amount of time that the officers can spend with them on the weekdays and in the evenings. Many officers have spouses who also work during the week, but have weekends off. Accordingly, it is not beneficial for the officers to be away from their family three out of every four weekends as proposed by the City. Officer Chaney also opined that it would not benefit the citizens either. Officer Chaney testified that the sergeants do in fact receive four days off every third weekend.

John Ryan testified that he is on the third shift as a patrol officer. He is also Treasurer of the Union. He attended role calls Thursday night prior to the Arbitration Hearing and received a 100% negative response from all of the officers with whom he spoke regarding going to the City proposal as opposed to the current practice. Officer Ryan testified that the third shift is a violent shift since it runs during the late evening and early morning hours. From time to time it is supplemented with officers from other units within the Department. There is a large volume of violent calls all night long. It occurs every night of the week, not just on weekends. There is a great deal of absenteeism on the third shift. Only three annuals are allowed to be off per shift, and one flex (comp time) per shift. Officer Ryan stated that if the staffing proposal of the City were to be adopted, moral would go down immensely. However, he admitted that the third shift is currently inadequately staffed and could use far more officers.

On cross examination, he testified that shifts are selected contractually by seniority. However, there is a provision that allows officers with two years or less seniority to be placed on a shift in preference to senior officers for a specific period of time. Accordingly, he had been bumped from the first shift to the third shift by virtue of that provision. After an officer has two years of service, they are no longer allowed to be placed on a shift in preference to a senior employee. He admitted that the volume of calls increases on the weekends. Two units have helped increase the presence of officers on the weekends. One is COPS (Community Officers Patrolling the Streets) and the other is CATT (Community Active Target Team). The CATT unit targets guns and drugs, while the COPS unit is assigned to certain designated high crime areas. According to Officer Ryan, the officers assigned to the COPS and CATT units do not have any specialized training other than that which is received by all the other officers in the Department.

Mr. Smela was recalled and testified that an offer of settlement had been made with respect to the overtime grievance so that the Department could equalize overtime by division, rather than by the whole classification of patrol officers, which would allow the Department to target certain groups that they needed on an overtime basis at certain times of the day or night. However, the Union rejected the City's offer.

Chief Haggler was recalled and testified that "COPS" actually stood for Community Oriented Policing Unit which is primarily funded by local millage. Members of the Unit involve themselves in community meetings, addressing situations within the community, blight situations involving abandoned vehicles or trash in yards and also respond to some 911 calls. They also work on weekends. The Crime Area Target Team is a tactical unit assigned to what are considered to be "hot spots of the City where there is drug or gang activity." They operate in either uniforms or on occasion, plain clothes. Their Unit functions as a special initiative in order to help reduce crime in high crime areas. They also work on weekends. Chief Haggler testified that the members of both units have received additional training over and above that received at the police academy. They work with special operations on enhanced surveillance techniques, such as being able to follow cars, or stationary surveillance. In addition, they have had bicycle training and training in other areas. Sergeants received gang training in Chicago in order to recognize gangs, what to do with gangs, what to do with the data pertaining to gangs, intelligence information, and handling other gang-related matters.

In addition, Chief Haggler indicated that at least three of the five individuals assigned to the Citizens Service Bureau do, in fact, work on weekends.

In support of its position, the City states that pursuant to Section 9 (the interest and welfare of the public) the City of Flint has a high crime rate and a significantly higher crime rate on the weekends. The City proposals would place more officers on the streets during weekends, which would benefit the community through greater police visibility, safer streets, and an improved city image with which to attract economic investment.

The City notes that with respect to Section 9(c) of the statute, referring to the financial ability of the unit government, the City is currently in a state of financial stress. It had been under a receivership for a period of time, and even though the current fund balance has approximately \$13,000,000.00 in it, the projections for 2007 and 2008 will reduce the fund balance to less than \$2,000,000.00. Nevertheless, the citizens bear a very high burden in terms of high property tax millage and an income tax. Through no fault of its own, the City has lost taxable value, City income tax revenues and state and federal revenue sharing. Thus, the City cannot simply engage in placing officers on an overtime basis in order to have more officers on the street on weekends.

The City believes that no other comparable city is in as poor a financial condition with as high a crime rate as the City of Flint. The City acknowledges that most of the comparables do not have any specific contract provision addressing the specific work schedule or guaranteed four-day weekend in any given period of time. The City believes that most of the comparables follow a procedure in which it determines the number of

officers who will be working each day and then post a schedule of five consecutive work days and two days off. Officers then bid on the work schedule and a particular slot based on seniority. To the extent that the other departments schedule personnel off on Fridays, Saturdays or Sundays, the most senior personnel seem to have preference. This is true in Jackson and Saginaw. In Lansing, there is no set pattern of days off which are bid for and awarded based on seniority. The same procedure is followed in the City in Pontiac. Thus, for most unit members in the comparable cities, there are no guaranteed weekends off because the unit members would have insufficient seniority to bid for those slots on particular days. The City believes that most of the comparables first determine required staffing for Friday, Saturday, and Sunday and build a work force from that schedule. The remaining days are left open as pass days and employees select, based on seniority, the pass days they prefer. On the other hand, Flint prepares its schedule based on guaranteed weekends off and then the days which may be worked and the remaining other pass days.

The City maintains that it is the only one that provides a guarantee to all unit members of any number of weekends off each year. Thus, if the number of weekends off was reduced from one in every three to one in every four weeks, the City opines that it would be closer to and supported by the proposed comparables. Even if the City proposal were to be adopted, the personnel in the police department would still be better off than police personnel in other comparable communities.

The City also asserts that no other bargaining unit in the City working a 24 hour seven day a week operation, has a contract provision guaranteeing a weekend off every third, or for that matter, every fourth weekend. Accordingly, the internal comparables support the City.

Finally, with respect to Section 9(h), the City asserts that its demand for service and need for personnel is greater on Friday, Saturday and Sunday, and therefore, it must have the ability to schedule personnel to meet the needs of its operation. The current provision undercuts the City's ability to provide service to the community, and as a result, the community suffers. The City does not seek to eliminate all guaranteed weekends off, but rather to reduce the number of guaranteed weekends off by four each year, which in turn will allow the Department to better serve the community.

The Union asserts that the City, as the party proposing a dramatic change from the Agreement, which has been in place for nearly 20 years, bears the burden of establishing why its proposal should be adopted and demonstrate the need for a change from the prior agreement. (Schoolcraft Memorial Hospital vs. Michigan Nurses' Association, MERC Case No. LOSG-5007(2007) and Detroit Police Officers' Association vs. City of Detroit, MERC Case No. D04-D-0919). The Union does not believe that the City has met that burden. The Union does not believe that the City has proven that there is a significantly higher incidence of calls on Saturday and Sunday to justify the reduction in the number of four-day weekends that officers are currently allowed. According to the Union, the number of 911 calls on Monday, Tuesday, Wednesday, and Thursday are nearly as high as those which occur on Fridays. In addition, Saturday evening hour numbers reveal that the number of calls during certain hours is actually less or statistically insignificant when

compared to the weekdays. For example, calls on Saturday at 7:00, 8:00, and 9:00 p.m. are 1,253; 1,303; and 1,292, respectively. The calls for the same hours on Monday, Tuesday, Wednesday and Thursday are greater at 7:00 p.m., greater on Tuesday, Wednesday and the same on Thursday at 8:00 p.m., and greater on Tuesday and Wednesday at 9:00 p.m. Thus, if the City proposal were to be adopted, a decreased police presence during the week, when crime calls are as high or higher, would only result in less officers being available during the week, and according to the Union would only increase officers on duty during the weekend nights by an average of 2.7 officers.

The Union also asserts that adoption of the City proposal would create a police force which would be stressed beyond its capabilities. This is based on the fact that the testimony indicates that the City is an extremely dangerous city, with a high incidence of murders, rapes and assaults. Both parties, according to the Union, agree that the City of Flint is one of the most dangerous cities in the nation.

The Union notes that the job description of a police officer includes running, jumping, lifting and moving more than 100 pounds, withstanding exposure to traffic hazards, withstanding exposure to weather, wet weather, high noise levels, hazardous materials and personal danger, being at risk for personal danger, including intentional attacks by people or animals, and environmental hazards, working with moving mechanical parts in high precarious places, and with explosives, and exposure to fumes, airborne particles, toxics and/or caustic chemicals, as well as extreme cold, and extreme heat and vibration.

The Union notes that the police officers spend their entire shift, be it a weekday or weekend, on high alert, in a constant state of stress and are often exhausted by the end of their shift. The subtraction of four, four-day weekends, according to the Union, would result in the officers increasing the risk to their safety, the safety of their partners and the safety of the citizens in general.

High stress, high risk jobs require down time sufficient to enable the officers to recharge and to approach their jobs with the sharpness necessary to perform their jobs adequately. The Union opines that the reduction of the four-day weekends would result in increased injuries to the officers and members of the public. Further, the Union notes that as a result of the new Collective Bargaining Agreement, the officers will accrue nine fewer annual days per year, which was agreed to in part in order to address the City's concern of placing more officers on the street. Thus, the Union believes that by depriving officers of four days off every third weekend, the public interest would be harmed.

The Union for Factor D of the statutory requirements alleges that since the officers work in a high crime community and work more days in a row than officers in any of the comparable cities identified by either party, and have fewer days off than officers in several of the proposed comparable communities, there is no real comparison. The Union believes that the officers require the four-day weekend every third week in order to be able to physically and emotionally recover from the rigors of the job.

With respect to Factor F of the statutory requirements, the Union believes that having nine fewer sick and annual days available to them, imposes a greater burden upon the officers by requiring them to work 20 days before receiving the four-day weekend under the City proposal. Thus, again, the officers in the Union's opinion, would be required to use more sick and annual days in order to address their mental and physical health care issues, thus compelling the existing officers to shoulder an even greater burden. The Union notes that the City's general fund balance has increased.

With respect to the statutory Factors, the Union asserts that it is in the best interest of the public that officers be well rested and as sharp and focused as possible. Reducing the number of four-day weekends would compromise the safety of the public according to the Union. If the officers are tired, stressed and burned out, they cannot provide optimal crime prevention, enforcement or investigation and are more likely to have an increased incidence of error.

In terms of the statutory comparison of wages, hours and conditions of employment, etc., the Union notes that its officers work in a higher crime community, yet work more days in a row than officers in any of the comparable cities identified by either party. The Union further asserts that the officers have fewer days off than the officers in several of the comparable communities. In addition, the Union again asserts that Flint sergeants do have a four-day weekend off every third week. In no other community do officers work as many days in a row, in as precarious an environment.

With respect to Paragraph F of the statutory standards concerning overall compensation, the Union indicates that the number of sick and annual days has been reduced by giving up nine days off per year in the current Collective Bargaining Agreement. By moving to a four-day weekend only once every four weeks, the Union asserts that officers will be required to utilize more sick and annual days in order to address their mental and physical health issues. It notes that under the City proposal, officers would have to work 20 days before receiving a four-day weekend. (However, the Union fails to note that the officers do in fact receive two days off after the first six days and an additional two days after the next seven days).

VIII. DISCUSSION AND DECISION

Pursuant to MCLA 423.239 Section 9(a), I find, based upon the testimony and exhibits presented by the parties, that the Employer has the lawful authority to enter into a provision in the Collective Bargaining Agreement providing for scheduling time off and days to be worked by the police officers. I further find that the Employer would have the lawful authority to enter into an agreement based upon either the Last Best Offer of the Union or the Last Best Offer of the Employer.

With respect to (b) of the Statute, I find that there are no stipulations of the parties which are relevant for a final determination with regard to the scheduling issue.

With respect to (c) of the Statutory provisions, I find that the City of Flint does indeed have a high crime rate which is significantly higher on the weekends. I further find that the types of crimes which occur on the weekends are those which are considered to be higher felonies such as murder, robbery and burglary as well as various types of assaults. I further find that the City proposal would place more officers on the streets during the high crime periods of time on the weekends. I further find that the community would benefit through greater police visibility, safer streets, as well as an improved city image, which may, in turn, attract economic investment.

I also find that with respect to paragraph (c), the City has been, in the past, under a receivership which indicates that the City was indeed in a state of financial distress. I further find that even though the current fund balance is approximately \$13,000,000.00, the projections for fiscal years 2007 and 2008 will, if met, reduce the fund balance to less than \$2,000,000.00, which is far less than a city the size of Flint should have as an adequate fund balance. I believe that the citizens of the City of Flint already bear a high burden in terms of high property tax millage, as well as an income tax, and further, that the City is faultless with regard to the loss in taxable value of property, city income tax revenues and reductions in the State and Federal revenue sharing. Thus, I find that the City cannot simply hire more officers or place more officers on an overtime basis on duty on the weekends in order to combat the higher crime rates. It simply would not be fiscally responsible of the City to do so at this time in its history.

I concur and so find that the comparable units of government do not have specific contract provisions addressing a four day weekend on either an every third weekend or, for that matter, every fourth weekend basis. The simple fact of the matter is that most of the comparable communities work five consecutive days on and two consecutive days off.

It should be noted that the panel discussed with the parties the possibility of utilizing a 28-day schedule in which the officers would work approximately five days in every seven day period, with two consecutive days off. The officers, based upon that proposal, would have worked 20 days and been off eight days in every 28 day cycle. In addition, the officers, based upon the rotation of the two days off, would have received, within the cycle, two Fridays, two Saturdays, two Sundays and two Mondays for a total of eight

days off within the 28 day cycle associated with the so-called four day weekend. Currently, the officers receive four weekend days off in every 21 day cycle, plus two weekdays. Under the City proposal, the officers would receive four weekend days, plus four week days off in every 28 day cycle. Unfortunately, it is the position of the Union that they would prefer to retain their current schedule of a four day weekend to every third week, and if that is not possible, the preference indicated would be for the City proposal as opposed to the five and two schedule which seems to be common among most police departments.

I further find that the City apparently is the only unit of government either on an internal or external basis which guarantees weekend days off every third week to the departmental employees.

I concur with the City position that the demand for services and the need for personnel is greater on the weekend days and accordingly more nearly meets the provisions of Section 9(h) of the Statute. The City proposal will allow it to schedule personnel to more nearly meet its needs as well as those of the public, as opposed to the current schedule. It should be noted that the City, through its proposal has not eliminated the guaranteed weekends off, but merely reduced them from approximately 17 per year or a total of 52 every three years, to 13 per year for a total of 39 every three years.

I concur with the Union assertion that the burden for establishing a change in the scheduling lies with the City. This is due to the fact that the current scheduling has been in place for nearly two decades. However, contrary to the Union assertion, I find that the City has met its burden. While it seems to be true that the numbers of crimes does not significantly vary from day to day as asserted by the Union, I do believe that based upon the statistics, the more violent crimes, as well as crimes involving large number of officers being called to the scene occur more frequently on weekends than weekdays.

I believe that the Union has presented adequate testimony as well as exhibits indicating that the nature of the job, as well as the duties associated with the job place a high degree of stress and strain upon the officers. I also find that the Union is correct that undoubtedly the officers, because of the nature of police work, are in a constant state of stress and strain whether their shift is on a weekday or a weekend. However, I do not believe that it is necessarily in the best interest of the officers to simply have a four day weekend every third week, which requires the officers to work eight straight days and seven straight days, with only two days off in between those two work periods in order to achieve the four day weekend. It seems to me that based upon the strain and stress of the job, the less consecutive days the officers work, the better it becomes for the officers in terms of their individual safety, the safety of their partners and the safety of the citizens in general.

I concur with the Union assertion that high stress, high risk jobs require sufficient down time in order to enable the officers to recharge their batteries (so to speak) in order to allow them to approach their jobs with the sharpness necessary to perform their jobs on a day-to-day basis. I do not believe that the reduction of the four-day weekend would

necessarily result in a greater number of injuries to either the officers or the members of the public. I do believe that more officers on duty on the weekends is in fact in the interest of the public based upon the nature of the crimes and the volume of the crimes which occur on weekends.

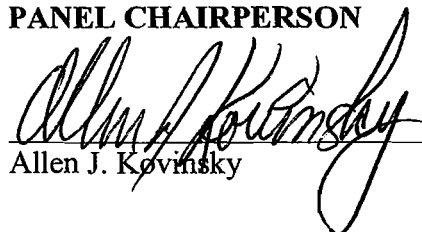
The Union has indicated that as a result of the new collective bargaining agreement, officers will accrue nine fewer annual days of leave per year, which the Union asserts was necessary in order to address the City's concern of placing more officers on the street. However, as the Union knows, the scheduling issue is separate, distinct and apart from whatever it may have agreed to with regard to the number of annual leave days. Moreover, that was not an issue before the panel, but rather was resolved by the parties themselves. I do not believe that the four-day weekend, if approved on a fourth week basis rather than every third week basis, would harm the public interest. Rather, to the contrary, I believe that the public interest will benefit as a result of having a greater number of officers on duty during the high violent crime times.

Based upon the statutory factors, and in particular, MCLA 423.239 §9(a), (c), (f), and (h), I find that the Last Best Offer of the City more nearly meets the statutory factors and will result in a greater benefit to the interest and welfare of the public. I further find that the financial ability of the City would be negatively impacted if it were to hire additional officers or bring more officers in on an overtime basis in order to have more officers on the streets during the high violent crime periods of time which, as previously noted, occur most often between approximately 6:00 p.m. on Friday and 6:00 a.m. on Sunday.

Accordingly, the Last Best Offer of the City is found to more nearly meet the statutory criteria and is hereby awarded. However, since it is close to the holiday season, and officers may have already made other plans, the City's Last Best Offer may not be implemented before January 2, 2008. The City is free to implement its Last Best Offer with regard to a four-day weekend every fourth week for each officer on and after January 2, 2008.

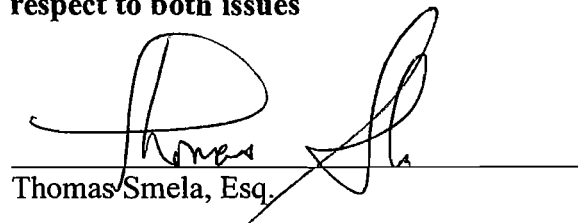
December 18, 2007.

MERC ACT 312 ARBITRATION PANEL
PANEL CHAIRPERSON



Allen J. Kovinsky

**EMPLOYER DESIGNEE, concurs with
respect to both issues**



Thomas Smela, Esq.

**LABOR ORGANIZATION DESIGNEE,
dissents with respect to both issues.**



Keith Speer