

2271

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Statutory Interest Arbitration between:

CITY OF BIRMINGHAM,

Employer

-and-

BIRMINGHAM FIRE FIGHTERS ASSOCIATION,

LOCAL 911, IAFF,

Union.

MERC Case No. D07 C-0591

Hearings: July 2, Oct. 9, Oct. 10, Oct. 14, Oct. 23, Oct. 28, Dec. 1, Dec. 12, Dec. 22,
2008; Feb. 3 and Feb. 4, 2009.

Briefs filed by: July 8, 2009

ARBITRATION PANEL'S
FINDINGS, OPINION and ORDERS

Benjamin A. Kerner, Neutral Chair

Dan Schulte, Employer Delegate

James McCulloch, Union Delegate

Appearances:

For the Employer: Dennis B. DuBay
Keller Thoma, P.C.

For the Union: Alison L. Paton
Alison L. Paton, P.C.

Dated: August 11, 2009

TABLE OF CONTENTS

| | |
|--|----|
| Background..... | 2 |
| Union Issue IA—Wages, first year..... | 4 |
| Union Issue IB---Wages, second year..... | 6 |
| Union Issue IC---Wages, third year..... | 8 |
| Union Issue 2---Paramedic Coordinator Wage Adjustment..... | 10 |
| Union Issue 3—Advanced Life Support Program..... | 12 |
| Union Issue 4—Fire Inspector..... | 14 |
| Union Issue 5—Food Allowance..... | 17 |
| Union Issue 6—Dental/ Orthodontics..... | 19 |
| Union Issue 7—Personal Time..... | 21 |
| Union Issue 8—Vacation..... | 23 |
| Union Issue 9—Cotwatch (non-economic)..... | 26 |
| Union Issue 10—Promotions (non-economic)..... | 28 |
| Union Issue 11a—Overtime procedure (non-economic)..... | 33 |
| Union Issue 11b—Overtime work..... | 35 |
| Union Issue 121—Uniform Cleaning Allowance..... | 36 |
| Union Issue 13—Illness Allowance | 39 |
| Union Issue 14—Acting Pay..... | 41 |
| Union Issue 15—Daily Duties (non-economic)..... | 45 |
| Union Issue 16—Maintenance of Conditions (non-economic)..... | 47 |

| | |
|--|----|
| Employer Issue 1—Consolidation..... | 49 |
| Employer Issue 2—Health Insurance Premium..... | 51 |
| Employer Issue 3—Health Insurance Opt-Out..... | 54 |
| Employer Issue 4—Attendance Policy..... | 56 |
| Employer Issue 5—New Hires’ Retirement Health Saving plan..... | 58 |
| Employer Issue 6—Defined Pension Contribution Plan for new hires..... | 60 |
| Employer Issue 7—Current employees’ Retirement Health Insurance..... | 65 |
| Employer Issue 8—Retirees’ Contributions to cost of retiree Health Insurance..... | 66 |
| Employer Issue 9—Overtime-FLSA work period; elimination of compensatory time..... | 69 |
| Employer Issue 10--Health Reimbursement Accounts..... | 70 |
| Attestation of Panel Members..... | 74 |

Present for some or all of the proceedings: Mark Buis, Chris Caton, John Chapman, David Greenwood, Joseph Heffernan, William Johnson, William Jordan, Leon LaBrecque, Keith Lamphear, Mike Metz, Sharon Ostin, Joe Valentine, Tim Wangler, Larry Winkelman, Christian Wuerth.

BACKGROUND.

City of Birmingham is located in the middle of Oakland County, and is one of the most affluent cities in the State. Median household income is over \$108,000. Those in poverty number below 3%.

The population is 19,555 and is expected, for the time period 2009 to 2030, to decline 9%. That is mainly because the current population will age, with average losses in the 35-64 age range, and fewer entrants at the younger ages.

The City is blessed with multiple cultural and arts opportunities, from public statuary at Birmingham-Bloomfield Art Center to a free concert series in the Park throughout the summer months. Recreational opportunities also abound, from the open school recreational facilities to the two nine-hole golf courses, and the Birmingham Ice Sports Arena.

The City's real taxable value in 2008-09 decline 0.5%. The estimate for 2009-2010 is a 4.0% decline. For 3 or 4 more years, according to the City's audit partner, there will continue to be a decline in taxable value. [Tr. 186-88] This is significant because real property taxes account for 66% of Birmingham's revenues.

The Fire Department is staffed with 29 regular, full-time members, of whom 13 are licensed Advanced Emergency Medical Technicians (AEMTs, also known as paramedics). Two of those licensed paramedics are not now assigned to the AEMT pro-

gram. Three firefighters are assigned to the Chesterfield Station (on the West side of the City); and 8 firefighters are usually assigned to the Adams Station (near the downtown area). A minimum shift staffing pattern of 9 firefighters and officers is maintained at all times.

The various "rigs" of the Fire Department are located as follows: the Chesterfield Station has an engine, a reserve engine and a Hazardous Materials unit. The Adams Station has an aerial platform, an engine, a rescue unit and a reserve rescue unit (as well as staff vehicles). The response of the Department in 2007 has included 14 structure fires; 23 other fire calls; 953 emergency medical runs; 845 other calls (public services runs, hazardous conditions, system malfunctions and false alarms). [E'er. Exh. 93].

The parties have been collective bargaining partners since the early 1970's. Their latest collective bargaining agreement is effective July 1, 2004 through June 30, 2007. The contract to be formed by these proceedings will be effective July 1, 2007, through June 30, 2010. A total of 21 issues designated economic by the Panel are in dispute; an additional 5 non-economic issues are in dispute. [Non-economic issues are so noticed. Otherwise, the issues referred to below are economic.]

The Panel has the job under the statute, 1969 P.A. 312, MCL 423.231 of deciding each issue separately. The standards to be utilized by the Panel are spelled out in the statute at Section 9. They are:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employee involved in the arbitration proceeding with the wages, hours and con-

ditions 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.

In preliminary hearing, the following communities were determined to be appropriate comparables: Bloomfield Twp., Eastpointe, Ferndale, Harper Woods, Hazel Park, Independence Twp., Madison Heights, Mt. Clemens, Roseville, and Royal Oak. [See Decision & Order dated August 13, 2008]. Hearings were held from July 2, 2008, to February 4, 2009. The parties submitted Last Best Offers on April 8, 2009, and briefs on July 8, 2009. The Panel is ready to state its findings, conclusions, and orders.

ISSUES IN DISPUTE.

UNION ISSUE #1(a)--Wage Adjustment first year.

The Union's last best offer is an across-the-board wage increase of 2% effective July 1, 2007 plus a 2% increase effective January 1, 2008.

The City offers 3% effective July 1, 2007.

DISCUSSION.

The Union offers that the two-phase increase for the first contract year is identical to the wage increase voluntarily agreed to by the Police patrol unit for 2007-08. In addition, the Union's offer is supported by the cost-of-living which for 2007-08 was 3.47%. Further, says the Union, the external comparables indicate that 3 comparables – Eastpointe, Independence Twp., and Madison Heights—have wage increases for 2007-08 of more than 3%.

The City points out that the wage increase of 2%/ 2% granted to the police patrol unit was partially to balance out the fact that firefighters had received other increases. (an increase in the AEMT bonus; an increase in officer pay differential together affecting 21 members of the bargaining unit). The cost-of-living utilized by the Union, says the City, did not show the cost of living without medical expenses, which were entirely, or almost entirely paid by the City. Thus, the cost-of-living factor cited by the Union is artificially high, says the City.

The Panel has considered these factors, and finds that the City's last best offer more nearly complies with the relevant Act 312 factors. The 2%/2% wage offer of the Union if compared to the patrol officer's wage increase for 2007-08 is the same; however, I find that the 1% of the patrol officers' wage increase was slated to balance the de facto raises received by a very sizeable majority of the members of the firefighters' unit. Thus, I conclude that parity with the patrol officers is achieved by the 3% wage increase offered by the City. (Act 312, factor 9(d) in regard to internal comparables).

In addition, I find that the City's offer is more than the average of the wage increases received by firefighters in comparable communities. The average for 2007-08 was 2.19%; and the median wage increase was 2.0%. (Act 312, factor 9(d) in regard to external comparables.) Thus as compared to the comparables, it must be concluded that the City's offer is the more nearly applicable.

ORDER

The Panel endorses the City's offer on first year wage increase as more nearly in keeping with the relevant factors of Act 312.

UNION ISSUE 1(b)—Wage Adjustment second year.

The Union's last best offer is an across-the-board wage increase of 2.5% effective July 1, 2008.

The City offers 2% across the board effective July 1, 2008.

DISCUSSION.

The Union says its offer is supported by the percentage wage increases for the comparables, as follows;

| | |
|--------------|-------|
| Bloomfield | 3.25% |
| Hazel Park | 2.0% |
| Independence | 2.0% |
| Mt. Clemens | 2.5% |
| Roseville | 2.0% |

The mean of these figures is 2.35%, closer to the Union's offered wage increase than the City's offered wage increase. The Union also says that the total cash compensation

for Birmingham firefighters is in the mid-range of comparable communities. A wage increase of 2.5% would keep Birmingham in the mid-range. [factors 9(f) and 9(d)]

The City says that its offer for the second year of this contract, 2008-09, would boost a firefighter's salary from \$60,013 to \$61,213. That figure is above the mean for comparable communities with determined wages for 2008-09. The mean is \$57,703. Similarly, for the rank of Lieutenant, the City offer would boost a Lieutenant's salary from \$67,215 to \$68,559. This figure compares favorably with the mean of the comparables, which is \$64,866.

The evidence indicates that the percentage increase for the comparables, including the late-breaking settlements in Roseville and Eastpointe, is 2.46%.

The evidence indicates that there is no applicable settlement in the internal comparable of the Patrol Officers; there is no applicable settlement in the Police Command unit.

Inasmuch as the average wage increase for the comparables is 2.46%, and in reliance on Act 312, Section 9(d) and (f) the Panel finds that the relevant Act 312 factors more nearly support the Union's last best offer.

ORDER

The Panel endorses the Union's offer on the second year wage increase as more in keeping with the applicable Act 312 factors.

UNION ISSUE 1(c)—Wage Adjustment third year.

The Union's last best offer is an across-the-board wage increase of 2.5% effective July 1, 2009.

The City offers 1% across the board effective July 1, 2009.

DISCUSSION.

The Union's position is that the percentage settlements for the comparable communities is as follows;

| | |
|--------------|-------|
| Bloomfield | 3.25% |
| Hazel Park | 2.0% |
| Independence | 2.0% |
| Mt. Clemens | 2.0% |
| Roseville | 2.0% |

These increases result in a mean of 2.25%. The Union says this figure is closer to its offered wage increase than is the Employer's offer.

The City acknowledges that its offer is further from the average of the comparables than the Union's offer. However, says the Employer, its offer still generates a third year firefighter wage which is more than the average. The third year wage increase offered by the Employer would bring the wage of a firefighter from \$74,043 to \$74,783. This compares favorably with the mean of the comparables at \$72,776.

The City also stresses in its brief, as it did in its evidentiary presentation, the serious impact that the stock market crash of October 2008 and the surrounding housing debacle will visit upon this Employer. The most pertinent fall-out from these events are

(i) the drop in housing values and the attendant reduction in property taxes, and (ii) the anticipated reduction in State revenue sharing funds. The City's audit professional, Joe Heffernan, testified that the drop in housing values means a reduction of approximately 4% in property taxes for fiscal year 2009-10. (Tr. 29). The July 1, 2009 tax bills are based on assessed value for December 31, 2008. "When things are measured at December 31, 2008, and the assessors will have to put a value, we know that homes from 2007 to 2008 appeared to continue to be declining," opined Mr. Heffernan (Tr. 187).

In addition, several witnesses, including Mr. Heffernan and the City's own Treasurer, Sharon Ostin made it quite clear that the State revenue sharing monies will be reduced in 2009-10. As of this writing, the Legislature is still trying to close a budget gap of \$1.8 B. for 2009-10; and where that may leave the municipalities of this State is anybody's guess.

The net of these factors is that the former bright and sunny economic climate of Birmingham has been and will continue to be tarnished by the bad economic news that engulfs the State. Available revenues to fund salary increments, not to mention the legacy costs of retiree health care and pensions will be curtailed, without a doubt. Thus, in view of these factors, and certainly within the scope of Act 312, Section 9(c), "the financial ability of the unit of government to meet those costs" it appears prudent and warranted to accept a wage offer for 2009-10 that is a reduction of the usual wage increase experienced over the last several years in Birmingham; in addition, the Panel bears in mind that even a wage increase of 1% for 2009-10 leaves the firefighters in an advantageous position as compared to those comparables which have already registered a

wage increase for the period. Thus, a majority of the Panel endorses the last best offer of the Employer for the third year of this contract.

ORDER

The Panel accepts the last best offer of the Employer on the third year wage increment.

UNION ISSUE #2—Paramedic Coordinator Wage Adjustment.

The Union proposes that the wage rates for Paramedic Coordinator at all grades be the same as Lieutenant, effective upon issuance of the Award.

The City offers to maintain the status quo.

DISCUSSION.

The Union shows that there is a history to the treatment of this position in the collective bargaining agreements, dependent on who actually filled the position and related positions. In the 1990's the Paramedic Coordinator had the same wage rate as a Lieutenant (10% above Firefighter). Subsequently, it was reduced by 5% on the understanding that Assistant Chief Jacobson fulfilled many of the duties of the Paramedic Coordinator. When he retired, the full set of duties of Paramedic Coordinator devolved upon the incumbent. However, the wage rate has not been readjusted to parity with the Lieutenant rate.

Both parties claim that the evidence on comparable communities supports their position. The City argues that five of the comparables do not have a Paramedic Coordinator, and so those communities cannot shed light on the appropriate wage. Roseville

has a combined position—Chief of Training and Paramedic Coordinator—who receives parity with the Lieutenant's wages in that jurisdiction. The four remaining communities have a wage for Paramedic Coordinator which is set at parity with the Lieutenant wage. The City claims that only a minority of the comparable jurisdictions thus have a wage rate for Paramedic Coordinator which is at parity with the Lieutenant's wage. Furthermore, there is no record evidence of what the duties of a Paramedic Coordinator consist of at the comparable communities.

In relation to the comparables, the Union says that all five comparables that have Paramedic Coordinator positions have a dollar pay rate for them which is higher than the dollar pay rate in Birmingham.

The evidence indicates in effect that the parties made a deviation of a historically accepted wage rate when an unnamed firefighter assumed the position of Paramedic Coordinator and a strong Assistant Chief assumed some of the duties of that position. Now, argues the Union, the situation has reverted to the status quo ante before the time of Assistant Chief Jacobson. While history cannot be reversed, the norm, or status quo ante can be reinstated in some cases, if circumstances warrant it. I find that the situation of the current and likely increasing duties of the Paramedic Coordinator warrants reinstatement of the status quo ante, namely a wage rate set at parity with the Lieutenant wage rate. A majority of the Panel, relying on Act 312, Section 9(d) and Section 9(h) [historical precedent] finds for the Union's last best offer.

ORDER

The Panel accepts the Union's last best offer on the subject of Paramedic Coordinator Wage Adjustment.

UNION ISSUE #3—Advanced Life Support Program (ALS)

The Union proposes as follows:

36. For the period of time that the City decides to operate an Advanced Life Support EMS program, the city shall determine the number of EMS units in service, the number of Advanced Life Support trained EMS (AEMTs) *assigned*, ~~the number of such trained persons~~ to operate such units, and the following provisions of this Section shall apply:

In addition, the Union offers that the City will pay Firefighters and Fire Officers assigned by the City as AEMT's an annual payment of 5%, for AEMT's with less than 2 years, effective upon issuance of the Award, and 8% for AEMT's with 2 or more years.

In addition, the Union offers that the City will pay to employees holding AEMT certification but who are not assigned as AEMT's 3.5% retroactive to 7/1/07 (for Firefighters, Lieutenants, and Paramedic Coordinator); and 1.0% retroactive to 7/1/07 for captains.

Furthermore, the Union offers that the Union recognizes the City's right to select Firefighters and Fire Officers to be trained and work as assigned AEMTs and provides for a procedure to handle reduction in force of assigned AEMT's.

The City offers 2.5% (on 7/1/07), 4.0% (on 7/1/08), 4.0% (on 7/1/09) for AEMT's with less than 2 years of service as AEMT's plus 8.0% for all three contract years for AEMT's with more than 2 years of service as AEMT's.

Otherwise, the City would leave the wording of the current Article 36.1 intact. The Employer proposes to maintain the status quo, except for proposed wage premiums, as shown above.

DISCUSSION.

The most significant issue in regard to the Advanced Life Support article of the contract, in addition to the amount of premium pay, is the question of whether the Employer will provide or pay for training of members of the bargaining unit who may not be currently assigned to the ALS program, but who want to maintain their eligibility for the program. There is no problem or disagreement about what happens when new recruits to the ranks of AEMT are needed. Subsection (g) requires the lowest seniority member to obtain and maintain a valid AEMT license, if required to meet the needs of the program. Taking that provision together with the language of subsection (i), the current regime allows the City to tell a low seniority member that he will be needed for the ALS program, and the City, of course, will pay for his or her training and licensure.

Thus, the problem that the City has with the Union's proposal is the asserted modification of the first paragraph of Article 36, which currently provides that the City "shall determine the number of such trained persons." Without this language, argues the City, the Union could claim that the City has waived its right to determine the number of AEMT's and the number of employees who would be offered training. That's the first part of the "training" conundrum.

The second part of the City's objection to the Union's proposal is that it contractually requires the provision of training to members who hold an AEMT license but are

not assigned to the program (such as AEMT's who were once active but have withdrawn from the program). The City says that such employees are not necessary to the functioning of the Advanced Life Support program, and it is an unnecessary burden on the Employer to have to provide continuing ALS training for them.

The resolution of this item is simple and straightforward. The City, by tradition, and by prior contract and by any right understanding of management's rights, must retain control over who is trained and who is not trained. If a member is no longer active in the Advanced Life Support program and providing services through his advanced training, it is no business of the City's why he dropped out. But it is also of no benefit to the City to continue to train such individual. He provides no services—at the level of an AEMT—for which the City is responsible. He continues to provide the full range of services as a firefighter, or fire lieutenant, but has no claim on the City for a continuation of abandoned specialized past training.

While there are other issues in this Article, the above discussion disposes of the key provisions of this Article. The Panel relies on Section 9(c) [the interests and welfare of the public] and Section 9(h) [traditional understanding of management rights].

ORDER

A majority of the Panel accepts the Employer's last best offer on Advanced Life Support Program.

UNION ISSUE # 4--Fire Inspector.

The Union proposes to modify Section 36.1 on the subject of Fire Inspector to indicate that the Employer must either select and maintain one employee per shift as a

Fire Inspector or create a new full-time Fire Inspector position. Further, the Union makes explicit the procedures to apply if the City opts to create a single 40-hour Fire Inspector, rather than the current program of one Fire Inspector per 24-hour shift. The pay for 24 hour shift firefighters is specified, in the Union's proposal, to be 6% of the employee's base salary, retroactive to 7/1/07 (up from \$600). In the alternative, if the City opts to create a single 40-hour Fire Inspector his pay shall be 18% over that of a top-grade firefighter.

The City offers to continue the current contract language, which allows for payment of \$600 to a member who is assigned Fire Prevention duties. In addition, under current contract language, "Light duty personnel, occasional Fire Prevention activities and special assignments to the Fire Prevention Bureau are not eligible for this payment."

DISCUSSION.

The current program of fire prevention at Birmingham is supervised by an Assistant Chief of Fire Prevention, who functions as a Fire Marshall. The inspection and public education work is carried out by 3 Fire Inspectors, who are given long-term assignments based on their expressed interest and qualifications. By contrast, Fire Inspection positions in 7 of the comparable communities are treated as a promotional. The other three comparables do not have a Fire Inspector's position or assignment; rather, the duties are carried out by a Fire Marshall.

The Union says that the Fire Inspectors currently perform the full range of fire prevention activities, with the exception that code enforcement on new construction is

carried out by the Building Department. The Union says the manner of filling vacancies in the Fire Inspector's role should be accomplished by usual promotional procedures. (Section 30 of the expired contract).

The Union says that additional compensation is warranted for Fire Inspectors, to the extent of approximately \$3,500 per year per person. The Union points to the fact that pay for Fire Inspectors in 7 of the 10 comparables that have Fire Inspectors is more than what would accrue to Birmingham Fire Inspectors (in at least 6 of the 10) if they were to receive the proposed 6% bonus.

The City asserts that the first provision in this proposal infringes its managements' rights to determine how the work of fire inspection will get done. The City may not decide to utilize 3 Inspectors forever. It may voluntarily go to a 40-hour Fire Inspector position, but it has not decided to do that, and it does not want language preempting the City's right to determine how and when.

Secondly, the City asserts that the traditional approach in Birmingham has worked well, in that for 31 years individual firefighters have volunteered for Fire Inspector assignments, and have been picked for such assignments on personal authority of the Fire Chief.

Regarding compensation, the City says that the increase proposed by the Union would result—for Fire Inspector incumbents—in a pay increment of \$3,495 compared to \$600, a six-fold increase. The City says there aren't enough facts to determine whether the proposed 18% pay increment for a full-time Fire Inspector would be warranted. It would be subject to bargaining at the time such a position is created.

I am persuaded that the management right to determine the number and job responsibilities of fire prevention jobs weighs critically in favor of the City's position. Where the Union proposes that the function may continue to be carried out by three assigned Fire Inspectors, and one Fire Marshall, or, alternatively by full-time Fire Inspectors, the City rightfully observes that there is no requirement that these options be considered the only available options. There may be others that meet the City's need for a fire prevention program. The time for bargaining about those future possible positions will have arrived when the City re-decides how it wants to meet the fire prevention function. Thus, in reliance on Section 9(c) [the interests and welfare of the public] and Section 9(h) [traditional understanding of management rights] a majority of the Panel finds for the City's position.

ORDER

A majority of the Panel accepts the Employer's last best offer on the subject of Fire Inspector.

UNION ISSUE #5—Food Allowance.

The Union proposes to increase the food allowance payable to firefighters and not subject to tax withholding from \$700 to \$800 per year effective July 1, 2007, to \$825 per year effective July 1, 2008 and to \$850 per year effective July 1, 2009.

The Employer proposes keeping the food allowance at \$700 per year until July 1, 2009 when it shall be increased to \$750 annually.

DISCUSSION.

The evidence shows that there are no food allowance payments to employees of other Birmingham employee bargaining units; and no other employees of the City of Birmingham are on duty for 24-hour shifts. Thus, the other employee groups do not afford a compelling basis of comparison on this issue.

Regarding external comparables, there are 8 or 9 comparables where the food allowance is equal to or greater than the food allowance in Birmingham. However, the average allowance for those external comparable communities in which the payment is equal to or greater than Birmingham's is only \$790. Only one external comparable has a payment of \$1000, Roseville. The median payment with Birmingham in the mix is \$750; the median payment with Birmingham out of the mix is between \$750 and \$800. Five of the 10 communities listed on the parties' external comparison tables have expired contracts, and will presumably (when their contracts are renegotiated) have some unknown number and amounts of increases. One of these communities, Eastpointe, has settled their contract [Jt. Exh. 107A] in which they provided for an increase of food allowance from \$705 in the expired contract to \$805 effective July 2008, rising to \$845 effective July 2010. [p. 5 of Jt. Exh. 107A]

In evaluating external comparables, one is confined to look at current conditions of employment, and may not reasonably take into consideration the future expected settlements. To do so would be to engage in mere speculation. Counting the new figures for Eastpointe in the mix, the averages rise slightly, and the median distribution shows Harper Woods (or Hazel Park or Madison Heights) to be the median community at \$800

annual food allowance. Thus, it appears that a small increase (of around \$100) would be warranted, as is demanded by the Union here in its last best offer.

Thus on the basis of the employees of external comparable communities [Section 9(d)] a majority of the Panel determines and finds that the Union's offer more nearly complies with the Section 9 factors of Act 312.

ORDER

A majority of the Panel accepts the last best offer of the Union on the subject of Food Allowance.

UNION ISSUE #6--Dental /Orthodontics.

The current program provides 80% of covered dental services for type I services; 80% of covered dental expenses for type II services, and 60% for type III services with a maximum benefit to \$1000 for all expenses incurred in a calendar year. Orthodontic expenses are covered separately.

The Union demands to increase the maximum dental benefit for each individual covered by the plan to \$2,000 (annual benefit). And, the Union seeks to increase the maximum benefit for orthodontic services (lifetime benefit) from \$1,800 to \$2,000.

The City offers to maintain the status quo and continue the current contract language.

DISCUSSION.

The Union claims that the dental benefit is dated, and should be up-dated. The current \$1,000 per person dental benefit has been in place since 1990; and the current orthodontic per person lifetime benefit has been in place since 1990. In addition, at least three of the external comparables have higher benefits: for dental, Hazel Park has a \$2,000 benefit; Bloomfield has a dental benefit of \$1,800. For orthodontics, Hazel Park has a benefit of \$2,000 while Bloomfield has a benefit of \$3,000 and Royal Oak has a benefit of \$2,500.

The City shows that for the dental benefit, 6 of the 10 comparables have maximum benefits the same as or lower than Birmingham's. For the orthodontic benefit, 6 of the 10 have a benefit which is the same or lower than Birmingham's. In addition, the internal comparables show that both the police patrol unit and the police command unit have annual dental benefit maximums of \$1,000—the same as for the firefighters. Likewise, for the police patrol unit and the police command unit the orthodontic per person lifetime maximum is the same or lower than the firefighters' benefit. [E'er. Exh. 265]

Based on these facts, the argument that the dental benefit is outmoded falls flat. The firefighters' benefit is in the upper ranks of comparables, whether we are looking at external comparables or internal comparables. Based on Act 312, Section 9(d) a majority of the Panel finds that the City's last best offer should be accepted.

ORDER

A majority of the Panel accepts the Employer's last best offer on the subject of dental / orthodontic benefits.

UNION ISSUE #7—Personal Time.

Article 45(b) governs the grant of paid personal time off. It currently provides for one day, upon completion of 6 months of service. A special provision applies if the employee seeking personal day off wants to tie that time to a vacation. Otherwise, the request for use of a personal day must be submitted 48 hours in advance except in extenuating circumstances.

The Union proposes to eliminate the provision attaching personal leave to vacation time. It proposes that notification of use of personal time must be 24 hours in advance, rather than 48 hours in advance. And it proposes that the time may be used in a minimum 3 hour increment, rather than the 24- hour increments under current language. In addition, the Union would allow for use of personal time in ¼ hour increments over and above the minimum 3 hour increment.

The City offers to continue the current provision in force, except as of July 2009 it would allow for 24 hours' notice, instead of 48 hours' notice for use of personal time. No alteration is countenanced in the use of the whole 24-hour day as personal leave time.

DISCUSSION.

The Union bases its request on the factor of comparable communities. Three communities have 2 days' of personal leave time; Eastpointe has 3 days' leave time. Bloomfield has 36 hours' leave time. Independence Twp. has 1 day graduating up to 2 days for Firefighters with 9 years' seniority. All the rest of the comparables have 24 hours of personal leave time. The median of the group of 10 comparables is between Bloomfield (36 hours) and Independence Twp. (1-2 days, depending on seniority).

The Employer presents a table showing that all the other internal comparables have exactly 24 hours of personal leave time. In addition, the Employer presents a table showing the estimated cost of this benefit, specifically evaluating the cost of the increase as proposed by the Union. The total cost increase is estimated at \$121,708 for a three year contract. In addition, the Employer argues that there will be substantial disruptions to normal scheduling, necessitated by firefighters taking blocks of 3 hours off, and having to fill with overtime for such short blocks of time.

The Union proposal, though attractive on its surface, presents serious obstacles to ordinary scheduling of time to achieve minimum manning and other daily objectives. A call for overtime, due to a firefighter taking off 3 hours of time, is going to be a recurring headache for management to meet, under this proposal. In addition, as the Employer points out, there is likely to be significant disruption to training activities. In short, the proposal is operationally taxing, even though it would be nice to take exactly the 3 hours off that you need, instead of scheduling a whole day's personal leave time. For

these reasons, and in reliance on Act 312, Section 9(h) [operational feasibility of the proposal], a majority of the Panel finds in favor of the Employer's last best offer.

ORDER

A majority of the Panel adopts the Employer's last best offer on the subject of Personal Time.

UNION ISSUE #8--VACATIONS.

The Union offers to amend the language of Article 42(d) to permit unlimited splits of vacation time, as contrasted with the current procedure of allowing one split of 6 duty days. The Union would allow a minimum of 2 employees from the same unit to be on vacation at the same time where only one employee from any unit is permitted to be on vacation under current practice.

Also a new provision in the Union's proposal is to allow an employee to save back 3 days from the bid process, to be designated as "floating" vacation days. They can be used at any time during the year provided their use does not cause overtime at the time of request. Days not utilized are to be paid off at the end of the year at current hourly rate.

The Employer offers to amend Article 42(d) to permit unlimited vacation splits. Otherwise, the Employer's last best offer on Article 42 is status quo.

DISCUSSION.

The majority of external comparables (7 out of 10) permit an employee to get paid for accrued vacation days at the end of the year. Some allow only 2 days to be

paid in this fashion, but others (Eastpointe and Independence Twp.) allow up to a week to be paid. Roseville allows up to ½ the current accrual.

Currently the Birmingham firefighters operate under a “use it or lose it” system regarding vacation time under the expired collective bargaining agreement. The Union proposes a plan with more flexibility, either to be paid for accrued overtime or to carry it forward. The Employer’s opposition to this more flexible alternative is based mainly on the fact that it will cause additional overtime.

The evidence is persuasive that the option to allow pay-off of accrued vacation time is generally permitted among the group of comparables. There is no strong reason not to permit, as another element of flexibility, the carry-forward of vacation time.

The component of the Union proposal that allows two members to be on vacation at the same time benefits generally junior members of the Department, who currently may be frozen out of desirable vacation slots, in the once-per-year pick. The external comparables provide support for this part of the proposal. Six of the 10 comparables allow 2 or more members to be off on vacation at the same time. One—Bloomfield Twp.—even allows 3 members to be off at the same time. And Harper Woods, Eastpointe, Madison Heights, Mt. Clemens and Roseville permit—as does the proposal here—2 members to be off on vacation at the same time. Among the other four comparables, there is no express contractual restriction on this point. As the Employer’s brief recites, this fact gives management a free hand to disallow proposed vacation selections which cause overtime.

On the part of the proposal calling for 3 “floater days” the purpose of this innovation, according to the Union, is to provide needed flexibility, which the members do not have. Says the Union in its brief, “This will provide some needed flexibility to members with regard to using their precious vacation time, without completely eradicating the single annual pick procedure in place at present.” [Brief, p. 36] Management says the 3 floating vacation day proposal “will result in very substantial additional costs to the City.” [Brief, p. 71]. Not only would the possibility exist that firefighters may bank their 3 days, resulting in a payout of \$1500 or more per firefighter per year; but also there would be predictably additional overtime costs to cover for some of the floating days. Thus, the Employer relies on Section 9(c) in regard to the cost of the Union’s proposal, as well as the traditional factor that the limitation of one firefighter taking vacation at one time has been a part of the collective bargaining agreements since 1974.

The City makes a strong case, based on the ability to pay for this new proposal. However, the Union makes a stronger case based on the practices and contract provisions of comparable communities. In addition, the evident need for junior members of the Department to have access to prime time is significant. Based on Section 9(d), the Union’s proposal appears to be more nearly in accord with relevant Act 312 factors.

ORDER

A majority of the Panel accepts the last best offer of the Union on the subject of vacations.

UNION ISSUE #9 ---COTWATCH (non-economic)

The current collective bargaining agreement defines, "Cotwatch' ...as the practice of a Firefighter remaining in the watch room between the hours of 11:00 p.m. to 7:00 a.m., during which time he has the responsibility to alertly and efficiently respond to telephone calls, police dispatch communications, walk-in traffic and any other emergency that may arise. Cots will be permitted in the watch room only between the hours of 11:00 p.m. and 7:00 a.m. Nothing in this section shall be construed to change the current 'cotwatch' practice at the Chesterfield fire station."

The Union's last best offer is to eliminate the cotwatch; and substitute the following language:

At any time during the duty shift, an employee or employees may be designated to be on "watch", i.e., responsibility for responding to telephone calls, dispatch communications, walk-in traffic, etc. However, other than normal Monday-Friday business hours (i.e., 0800-1700 and excepting holidays), no employee will be required to remain confined to a designated area for such "watch" purposes.

The Employer's last best offer is to continue the status quo.

DISCUSSION.

Union President McCulloch testified that the purpose of the cotwatch is to pick up regular business calls, as well as to deal with occasional visitors. It is his opinion that the same function could be exercised by having a phone in the dormitory. In 1994, when he started at the Birmingham Fire Department, there were 3 or 4 phones in the Adams Station house. Currently, there are 11 phones. There is a phone in every room, it appears, except the dormitory. Aside from the discomfort and inconvenience of sleeping on a cot, the firefighters miss the camaraderie of the dormitory.

The external comparables show that 3 communities have a nighttime cotwatch; 7 do not.

Management argues that the system has worked well over many years. It localizes responsibility for handling phone calls during the nighttime hours to one designated firefighter. The cotwatchman is also supposed to field any in-person inquiries that may be made at the Adams Station house.

The importance of having a single location where members of the platoon on duty at night can receive phone calls is undercut by the technology available today, and by the installation of multiple phone receiver sets throughout Adams Station house. In addition, it bears noting that management does not maintain that the integrity of the emergency dispatch system requires the maintenance of a cotwatch; rather, all hands agree that the emergency dispatching is done through an independent 911 system manned by non-bargaining unit employees and operated out of separate facilities. Thus it would appear that the need to handle non-emergency communications at nighttime could be answered by the installation of a phone receiver set in the dormitory at Adams Station house.

Based on the traditional or other factor of Section 9(h), namely the change in the communications available in 2009 as compared to 2002, it is submitted that there is no need for a cotwatch at Adams Station house. In addition, the external comparables, Section 9(d), tend to support the elimination of cotwatch: 7 external comparables out of 10 communities manage to run efficient fire operations without having a cotwatch. Ac-

cordingly, the Union's last best offer is adopted. It goes without saying, of course, that the pro for this quid is that *a member* will be assigned to answer the phone.

ORDER

A majority of the Panel finds and determines that the Union's last best offer on the subject of Cotwatch more nearly complies with the relevant factors of Section 9 of Act 312 and adopts that offer.

UNION ISSUE #10 --Promotions (non-economic).

The Union proposes a comprehensive reformation of the system for selecting line staff for a promotional position. The current system provides for a written exam (40%), an oral exam (40%), service ratings (10%), and seniority (10%). An eligibility list is maintained for 12 months of persons who pass the written and oral examinations: Promotions are made from that list based on the highest total score.

The Union proposes as follows:

30. Promotions of employees covered by this Agreement to classifications within the bargaining unit shall be determined in accordance with the following:

- (a) Notice of promotional openings in the fire department shall be posted at each fire station and the procedure for applying and the selection procedure for the particular position shall be clearly outlined in the notice.
- (b) [Eliminated]

Promotions within the Fire Department shall be on the basis of a total composite score consisting of and weighted as follows:

- 50% written exam score
- 10% oral review board rating
- 40% seniority points (4 points for each year of service...)

The applicant must achieve a raw score of 70% or better on the written examination in order to proceed to the oral review board rating.

[Source book for written test shall be subject to agreement.]

- (c) Those who complete the promotional process shall be ranked on an eligibility list in order of their total composite scores, highest to lowest. The top-ranked person on the eligibility list shall receive the promotion.
- (d) [status quo]
- (e) [status quo]

Paragraph 31 of the parties' prior agreement, in the Union's proposal, remains the same except for the addition of qualifying language specifically applicable to the Paramedic Coordinator:

To be qualified for promotion to Paramedic Coordinator, the employee must have passed their initial probationary period and have achieved the maximum rate of their position, must have served a minimum of two (2) years as an assigned AEMT in the ALS Program, must be a Michigan licensed paramedic, ACLS certified, and within 12 months of promotion must acquire a Michigan instructor /coordinator license.

The Employer proposes the status quo.

DISCUSSION.

The Employer in defense of the status quo says that since 1984 the Fire Department has had a testing program to measure merit, qualifications, ability. It has been operated without challenge by grievance or otherwise, these many years. It provides efficiently and fairly a qualification list for open positions. Seniority plays a role in the overall ratings, but not a dominant role. The Employer called former Chief Wangler, who testified that the oral boards were an important part of the process. "[Y]ou're trying to get a

feel for, one, communication skills...but also, too, they're trying to see how their reasoning is, how they're going to react, how quick they can think on their feet." [Tr. 1698]

The Employer also cites the other critical service department, the police department where both command officers and patrol officers function under the same system as the firefighters currently have. And the Employer cites to the external comparables. Although the evidence is not entirely commensurate between the Union summary of comparable communities' promotional systems and the Employer's summary, the following can be gleaned:

Bloomfield Twp. has a written plus an oral exam. An outside agency conducts the written test (75%). A Panel of two outside fire professionals evaluates the qualifications relevant on oral exam (25%). Points are added for seniority. Then the three top candidates may be required to undergo a psychological evaluation. One of the top three is selected to fill the promotional position.

Eastpointe has no exams or testing procedures. The City Manager or his designee must select the most senior candidate.

Ferndale uses a scoring system similar to Birmingham's. A Civil Service Board is the appointing authority and it relies on a written exam (40%), an oral examination (20%), with 40% designated for "training and experience" which includes points for seniority. The candidate with the highest total score gets the promotion.

Harper Woods does not have a testing requirement. Minimally qualified employees are placed on a list by seniority. The Employer chooses any of the top four candidates on the list (for Lieutenant) or any on the list (for Captain).

Hazel Park provides a written exam, and seniority points count 50% of the total scoring. Employer must choose the highest scoring candidate.

Independence Twp. has an examination system scored 70% for the written exam; 20% for the oral exam, and up to 10 points for seniority. The candidate with the highest total score is offered the promotion.

Madison Heights has an examination system scored 60% for the written exam; 35% for the oral exam; and up to 5% for seniority. The candidate with the highest total score is promoted.

Mt. Clemens has an examination system scored 100% for the written exam. There is no weight assigned to seniority or other factors. The person with the highest score on the exam is promoted.

Roseville has no examination process. Promotion is based on seniority, from among the minimally qualified candidates.

Royal Oak has an examination process, which establishes minimally qualified candidates through written exams and performance evaluations. From among those deemed qualified, the most senior candidate gets the promotion.

With the exception of Hazel Park, Mt. Clemens, and Roseville, there is some element of discretion allowed in the above summarized promotional procedures. It may be expressed through the oral examination, or it may be expressed through the ability to select from a pool of top candidates (Harper Woods). There is some human judgment

being made, in the process; it is not an automatic spitting out of test scores, or seniority dates. This, according to the Employer is desirable, it is traditional, it has been retained in the police service, and it should be retained as part of the firefighter promotional system.

The Union commends its reformulation of the promotional system on the grounds that basic qualifications can be assessed on the written test, and supplemented by the oral board examination. The service ratings, typically done by an employee's supervisor in December /January, only serve to introduce subjective elements in the promotional system, where there is no need to do so, says the Union. The Union cited one example of such subjectivity in the testimony of Union President McCulloch. In general, says the Union, the need to make the promotional system as free of personal and subjective judgments as possible supports its view of the reformulation it demands in Article 30, 31, 32.

The delicate part of a promotional system is to allow sufficient play for individual managers' judgments to enter the picture, in a non-biased way, and so as to select capable supervisors, while at the same time to provide regularity and predictability based on other traditional factors.

I am persuaded that the existing system is satisfactory, and accomplishes its purpose of fairly and sensibly allowing the best to rise. I am persuaded further in the reasoning of Arbitrator Theodore St. Antoine that:

A promotion system is a basic, ongoing element in the parties' relationship, where stability is a highly desired quality and periodic adjustments to meet developing problems best lend themselves to the give-and-take accommodation of

collective bargaining. Only compelling circumstances should warrant an outsider's massive intrusion ...
City of Livonia, 1998 MERC FF/Act 312, 432-22.

Thus based on Act 312, Section 9(d) (the comparables) and Section 9(h) (factors normally and traditionally taken into account, such as cited by St. Antoine), the Panel finds there is no reason to change the promotional system used in the Birmingham Fire Department.

ORDER

A majority of the Panel adopts the last best offer of the Employer on the subject of Promotions.

UNION ISSUE #11A—Overtime Procedure. (non-economic)

The Union proposes to add the following sub-section (f) to Article 39 of the current collective bargaining agreement:

- (f) Current overtime lists (Firefighters list and Officers list) and overtime distribution will be continued as in the past except as provided herein. Employees will be charged on their overtime card only for overtime actually worked and when that overtime (as initially scheduled) is more than 12 hours. Employees will not be charged overtime for refusing overtime offered; nor for mandated overtime; nor for working overtime on Christmas Eve, Christmas Day, New Years Eve, New Years Day, Thanksgiving, or any other holiday that requires the use of an advance sign-up sheet. If all employees offered the overtime refuse it, then the lowest seniority off-duty employee will be mandated to work the overtime. Each January 1, the hours total on all employee overtime cards will be reduced to zero, but employee names will remain in the same order on January 1 that they were in as of December 31 (the day prior).

The Employer offers to maintain the status quo on the subject of Overtime procedure.

DISCUSSION.

The Employer points out that the Union's revision of the current system for calling and charging overtime results in some problems. Said Acting Chief Wangler:

Without a penalty declining, yeah, they get to pick and choose when they want to work and when they don't want to work and, yeah, I could see where that could go through the list, and then you end up having to follow this guy, try and get a hold of that lowest seniority guy. [Tr. 1757]

The concept of equalizing overtime has always been in labor relations the attempt to equalize overtime *opportunities*. Some members of the unit may not care to actually work any significant amount of overtime. Other employees may be avid for it. Priorities may change over time, and even from season to season. And, of course, the system must work so as to afford the Employer easy and efficient access to its work force for filling vacancies. The solution that generations of collective bargainers have found to be appropriate for both Employer and diverse employee interests is the equalized overtime system that credits overtime on the eligibility roster whenever an employee is successfully contacted to work it. Thus, in reliance on the historical experience of generations of bargainers, in a host of industries, Section 9(h), I find that the Employer's statement of the overtime system is more workable.

ORDER

A majority of the Panel adopts the last best offer of the Employer on the subject of Overtime procedure.

UNION ISSUE # 11B—Overtime Work

The Union proposes to add the following sub-section (g) to Section 39:

- (g) Anytime a Birmingham Fire Department employee is working overtime at an event where a Birmingham Police Department patrol officer command officer is working overtime (e.g. , the Fair, Woodward Dream Cruise, public classes taught jointly by fire and police employees; etc.), the Fire Department employee(s) will be paid overtime at the rank-and-seniority-equivalent Birmingham Police Department patrol officer or command officer overtime rate, as applicable.

The Employer proposes to maintain the status quo and continue current contract language.

The Union's theory is that this proposal would provide equity with members of the Police Department "who because of their 40-hour schedule enjoy an hourly rate which is 44% higher than that of a fire employee." (Brief, p. 53).

The Employer points out that the overtime rates of police and fire are not comparable because the pay rates per hour have always been different, reflecting the fact that police officers work 2,080 hours per year and firefighters work 2,816 hours per year. Thus, a dollar equivalent salary will equate to two markedly different hourly rates of pay. And, further, "Under the Union's proposal, members of the police units would receive their normal 1.5 overtime rate while members of the Fire unit would receive a 2.05 overtime rate."

The Union's proposal is an untenable one. It would not only provide "equity" between the police and fire employees both working special events. It would provide a windfall to fire employees, whose hourly rates for the special events would be inflated by utilizing the police overtime rate. I would not want to be a party to starting a fire-police equity battle on the basis of long understood and transparently different work

weeks. In addition, working side-by-side with police officers *does not change a firefighter's general conditions of work*. The City's proposal on the subject of Overtime Work is compatible with the Act 312 factor of history and tradition, Section 9(h).

ORDER

A majority of the Panel adopts the last best offer of the Employer on the subject of Overtime Work.

UNION ISSUE #12—Uniform/Cleaning Allowance

The Union proposes, effective July 1, 2007, a yearly uniform allowance of \$400 instead of the current \$250 allowed under Article 65(a). In addition, the Union proposes a \$200 cleaning allowance where none is provided in the current contract.

The City proposes a uniform allowance of \$250, as provided under the current contract, for the first two years of the next contract. The City also proposes, "Effective July 1, 2009, the yearly allowance shall be increased to \$400 provided that no more than \$250 of the annual allowance may be banked and carried-over by the employee." In addition, the City would not provide a cleaning allowance.

DISCUSSION.

In support of its proposal the Union shows that 4 out of the 10 comparables have combined uniform + cleaning allowance in excess of \$600 per year, as follows:

| | |
|--------------|-------|
| Eastpointe : | \$675 |
| Ferndale: | 650 |
| Roseville: | 850 |

Royal Oak: 625.

The other comparables have combined uniform + cleaning allowances in the neighborhood of \$600, or in any event more than \$250, as follows:

| | |
|-----------------|-----------------------------------|
| Bloomfield | \$300 |
| Harper Woods | 585 |
| Hazel Park | 500 |
| Madison Heights | 550 |
| Mt. Clemens: | 440 |
| Independence: | full cost of replacement uniforms |

In addition, the Union points out that the Union proposal for uniform allowance is what the police patrol and the police command unit have been receiving. In addition, the cash payment of \$200 per year being proposed as a cleaning allowance is what the police patrol and the police command officers receive.

In opposition to this proposal, the Employer shows that as of June 2007 the vast majority of firefighters had positive uniform allowance balances, ranging from \$71 to \$2,835. Seven, however, of the total enrollment of 29, had negative balances with the City for their uniform allotment. In addition, the City shows that for retirements occurring around mid-2007, two had balances of \$2,622 in their uniform account; one had a balance of \$944, and one had a balance of \$76. Argues the Employer, these facts are evidence that the uniform allotment need not be increased.

The Employer expects per Article 65(b) that, "The employee shall be responsible for maintain his uniform to the standards established by the Department." Regarding cleaning of uniforms, the City says that only the coat of the Class A uniform needs dry

cleaning. The remainder of the uniform and all of the day-to-day "fatigues" are wash-and-wear, and do not require any expense to wash. This is different, according to the Employer, than the uniform for police officers which frequently entails sweaters or turtlenecks that require dry cleaning. Thus, the Employer sees no need to provide for a uniform cleaning allowance for the firefighters.

The Panel relies on the comparable external bargaining units, as well as the internal police units. It is not unreasonable, and it is clearly supported in the above showing of the practices of comparable communities to provide a cleaning allowance. It is also determined that the basic uniform allowance in Birmingham has been level for at least 22 years. The increased cost of the items which the firefighters can elect to purchase with their uniform allowances would justify an increase of the magnitude that the Union seeks here. Furthermore, the limitation that the City would introduce--no carry-forward of more than \$250 per year-- is unsupported by the police patrol officers and police command units' contracts. The Panel relies on Section 9(d), both external comparables and internal comparables.

ORDER

Thus, a majority of the Panel concludes that the last best offer of the Union on Uniform / Cleaning Allowance is more in keeping with the relevant factors of Act 312 and it is adopted.

UNION ISSUE # 13—Illness allowance.

The Union proposes changes in Article 46, as follows:

To allow illness leave, with regular pay, of 6 days per year (144 hrs), as opposed to 5.5 days under the current contract. The Union would make this retroactive to July 1, 2007.

To allow accumulation of sick days, without limit (whereas the current contract allows accumulation up to 5 times the annual allowance; and for hours over 5 times the annual illness allowance, accumulation at ½ the full rate).

Upon retirement or death, to receive pay for 50% of unused hours up to a maximum of 1800 hours. (Under current contract, the employee who dies or retires receives a graduated increasing percentage of unused accumulated illness time.)

To allow payment of a bonus of 12 hours' personal time, for employees who do not use any sick leave during a calendar year. (Under current contract, an employee with perfect attendance who has not used sick leave may be awarded a bonus of 12 hours' personal leave time, provided he has a balance of 660 or more sick leave hours.)

The City offers to maintain the status quo and to continue current contract language.

DISCUSSION.

The Union points out that the comparable communities are generally at the level of at least 144 hours of illness leave per year:

| | |
|--------------------|---------------------------|
| Bloomfield: | accrue 145.6 hours / year |
| Eastpointe: | accrue 144 hours / year |
| Ferndale: | accrue 144 hours/ year |
| Harper Woods: | accrue 288 hours/ year |
| Hazel Park: | accrue 144 hours / year |
| Independence Twp.: | accrue 240 hours/year |
| Madison Heights: | accrue 180 hours/ year |
| Mt. Clemens: | accrue 180 hours/ year |
| Roseville: | accrue 240 hours /year |
| Royal Oak: | accrue 144 hours/ year. |

Regarding the current condition of employment whereby a firefighter who retires or dies gets a graduating percentage of accumulated sick time, the Union would characterize this provision as bizarre and legally questionable. As to legality, the Union shows an example of how a firefighter with a disability could be denied access to his or her unused sick time, solely on account of disability. The Union concludes, "Not only is there an overwhelming need to provide for one single formula applicable to one and all, the single formula proposed by the Union is well-supported by the comparables." (Brief, p. 63).

The Employer takes the position that there is no need to alter the current sick leave article. Further, the Employer points out that the current illness allowance—4.2% of hours worked—is the same as that received by police patrol officers. The Employer also points out, relying on the totality of benefits offered, Section 9(f), that "when all of the illness and injury benefits provided to Fire Fighters by the City are considered, it becomes obvious that the benefits offered by the City to Fire Fighters are some the best available among other City units and comparable communities." (Brief, p. 100). For instance, says the Employer, the firefighters receive long-term and short-term disability benefits. They also receive workers Compensation and supplemental benefits.

A majority of the Panel is persuaded that the external comparables provide the key to the proper understanding of what is required in Article 46. The external comparables specify that all comparable jurisdictions allow firefighters to accrue 144 hours or more per year. In addition, the external comparables allow illness-hours payout upon retirement, but Birmingham has the graduated percentage system. [Section 9(d)].

The City says that its present plan acts as an incentive for members not to use sick time. But it may also act as a punishment for members, who—as the Union posits in its example—may have to use sick time more than the average. In any event, an incentive for non-use of sick time is provided in the bonus of 12 hours per year of personal time. There is no need to condition an additional bonus on the provision that a member should have 660 hours of sick time accumulated. Thus based on Section 9(d), the Panel awards the changes in Article 46 advocated by the Union.

ORDER

The Panel adopts the last best offer of the Union on Illness Allowance.

UNION ISSUE #14—ACTING PAY.

The Union proposes a new section to the contract specifying that when a Captain is absent or vacant, the Lieutenant on duty at the Adams station will serve as Acting Captain and will receive Acting Captain's pay equal to the difference between a top-paid Lieutenant and an entry-level Captain.

Similarly, in the Union's proposal, when a Lieutenant is absent or vacant (at the Adams Station) then the senior Firefighter on duty at the Adams station will serve as Acting Lieutenant and will receive Acting Lieutenant pay equal to half the difference between a top-paid Firefighter and an entry-level Lieutenant.

When both the Captain and the Lieutenant are absent from Adams, an officer would be brought in on overtime to serve as Captain. The Senior Firefighter at Adams would serve as Acting Lieutenant, and will receive Acting Lieutenant's pay equal to half the difference between a top-paid Firefighter and an entry-level Lieutenant.

In the event a Lieutenant is absent at Chesterfield, the Lieutenant at Adams shall be moved to Chesterfield. The Senior Firefighter at Adams would be moved up and would receive Acting Lieutenant's pay.

If the Lieutenants at Chesterfield and Adams are both absent, then an officer shall be brought in on overtime to serve as Lieutenant at Chesterfield.

The Employer proposes the status quo on this subject.

DISCUSSION.

The Employer argues that the current system has been in place since 1974 except for a brief period of time in the 1980's when there were some budget cuts, according to the testimony of Acting Chief Wangler. The practices have served the purpose of keeping one officer in charge at all times in each station. In view of this history, there is no reason, says the Employer, to change what works.

The Union supplies evidence from the 10 comparable communities, showing that all but 2 have provisions similar to what it is proposing. To summarize:

Bloomfield Twp. pays the senior Firefighter on duty the Lieutenant's rate of pay for substituting for a Lieutenant when there no Lieutenant on duty.

Eastpointe pays an employee who is assigned to perform supervisory duties at the supervisor's rate of pay (for sick leave absences of 14+ days)

Ferndale pays a Firefighter who is upgraded to Acting Sergeant \$100 for a full day; lesser amounts for partial days. Assignment is made only if no Fire Officer is available for call-in.

Harper Woods pays a Lieutenant who is assigned to perform a Captain's job at the Captain's rate for all hours worked; similarly for a Firefighter assigned to a Lieutenant's job. The latter assignment is made only if there is no Lieutenant on duty.

Hazel Park pays a Firefighter who performs as a Lieutenant at the Lieutenant's rate of pay.

Independence Twp. pays a Lieutenant to perform a Captain's job 50% of the difference between the Lieutenant's rate and the Captain's rate for all hours worked.

Madison Heights will pay a member who assumes the duties of a higher position the rate of the higher position for all hours worked. Assignment is made only where there is not at least one officer at each station.

Roseville will pay a Firefighter who assumes the duties of Lieutenant the Lieutenant's rate for all hours worked; but the Firefighter must be qualified for the Acting position.

Mt. Clemens--No provision for acting pay.

Royal Oak—No provision for acting pay.

[U. Exh. 303]

The Employer's point of view essentially relies on the history of positive experience over a long stretch of time—25 years—to show that its objective of covering each station house at all times with an officer is met by current procedures. In essence, says the Employer, in many or most instances, the Lieutenant who covers for the Captain who is absent performs minimal duties, specifically including scheduling; and acts as

incident commander; and may ride a rig. "However, other than these few select Captain duties, there are not a significant number of Captain duties which a Lieutenant must perform." (Brief, p. 106). In addition, says the Employer, when a Captain is absent, the Lieutenant doesn't just step into the shoes of the Captain and perform only Captain's duties: the Lieutenant performs his own duties and additionally performs the one or two duties that may necessarily have to be performed on behalf of the Captain. Thus, there is no need for the Lieutenant's position to be filled by the senior Firefighter.

Furthermore, the Employer presented evidence regarding other City bargaining units. Only 2 of the 5 bargaining units have acting pay provisions and they are different in character from the Union's position here. In the Police Command unit, the provision is designed to cover an absence expected to last weeks. For shorter absences, only if both the Sergeant and Corporal call in sick is the acting-Sergeant provision utilized. The Union's proposal here allows the assignment of a Lieutenant even if there are two officers on duty.

A majority of the Panel is persuaded by the Employer's analysis that only a few duties of a Fire Officer need to be performed in his short-term absence; and in the case of a Lieutenant acting as a Captain, the Lieutenant can continue to perform his or her own duties. There is thus no compelling need, in this relatively moderate sized Department, to institutionalize the role of acting Fire Officers. Nor are the practices of the comparable communities compelling. In two of them, there is no provision for acting pay. Among the other 8 comparables, 5 have distinguishable practices concerning acting pay. Those, mostly, call for acting pay provisions to be activated only when there are no command officers available, or no Lieutenants on duty. Here, the Union would

have the senior Firefighters step up to Acting Lieutenant in a range of situations which is broader than we find applicable at the comparable communities. In addition, the practice of other City bargaining units, including primarily the Police Command unit, is persuasive that the broad-form Acting Pay provision of the Union is not supportable. The Panel relies upon Act 312, Section 9(d).

ORDER

A majority of the Panel hereby adopts the last best offer of the Employer on the subject of Pay for Acting Lieutenants/ Acting Captains.

UNION ISSUE #15—Daily Duties (non-economic).

The Union proposes to modify Article 38(e) of the current agreement, to be effective upon issuance of the Award, as follows:

Employees will, as in the past continue to do basic cleaning of the Fire Department offices, kitchens, restrooms, dorms, training rooms, basement, apparatus room, etc. Employees will also, as in the past, continue to do basic care of the Fire Department grounds including mowing, weed whipping, and edging.

However, on-duty employees will no longer do any painting (including hydrant painting), electrical, plumbing, carpentry, drywall, new construction, or repairs (except for repairing damage done by an employee).

In addition, the Union proposes that the "no daily scheduled routine work" clause of section (e) shall apply to Saturdays as well as Sundays and holidays "*and any other day that City offices are closed to the public.*"

The Employer proposes to maintain the status quo and add no new language.

DISCUSSION.

The Union proposal is supported by the telephone survey of President James McCullough. (U. Exh. 306) He found that only 2 of the ten comparables had full station duties on Saturdays. Seven did not. (And one, Independence Twp. had light duty, dependent on the discretion of the officer-in-charge.) In addition, all of the comparables granted light duty on City recognized holidays. Maybe this was a case of the Union president talking to other union officers.

The City evidence contradicts the Union's, in that their survey found that Saturday is a regular work day in 7 communities of the 10 comparables; 2 had training activities; and 1 (Mt. Clemens) had light duty. Maybe this was a case of the Chief talking to a selection of chiefs and other high-ranking officials.

In any event, the evidence also shows that in regards to "skilled trades" type of labor, the vast majority of communities did not require their firefighters to do painting, electrical, plumbing, carpentry, or drywall. In 9 out of 10 communities, there was no requirement for firefighters to paint hydrants.

The City says in regard to "skilled trades" work that, "Having Fire Fighters perform the work related to these projects made these projects possible which the City could not have otherwise afforded." (Brief, p. 111). Thus, concludes the City, if the Panel opts for the Union's arguments on this subject, the City may be prevented by contract language from performing up-grades to the facilities.

The Panel is persuaded by the evidence of comparable employees that the provision of "skilled trades" work is best left to the skilled trades work force, or contractors,

whom the City will have to hire, in the event of needed or desirable improvements at the fire stations. The Panel relies on Act 312, Section 9(d).

ORDER

A majority of the Panel accepts the Union's last best offer on the subject of Daily Duties.

UNION ISSUE #16—Maintenance of Conditions (non-economic).

The Union proposes to add the following new section:

There shall be no unilateral changes in wages, hours, or other terms and conditions of employment (i.e., mandatory subjects of bargaining under PERA), and all such existing conditions shall be maintained unless there is a mutual agreement for modification.

The Employer proposes to maintain the status quo and add no new contract language.

DISCUSSION.

The Union says that the operation of this proposed language is limited to mandatory subjects of bargaining: there is no intent to challenge every change of procedure. Yet, the proposed language allows the firefighters to challenge genuine changes in working conditions, including changes in underlying, proven binding past practices. Furthermore, the key reason for the inclusion of this clause is that it allows access to a reasonably swift and reliable procedure (grievance arbitration) for an alleged unilateral change of working conditions, rather than waiting for the turn of the wheel to progress a refusal-to-bargain proceeding. Finally, the Union shows that the comparables tend to provide maintenance of conditions language of some sort, by a margin of 8-2.

The City is fearful that the proposed maintenance of conditions clause will allow the Union to “be free to grieve anything it doesn’t like on the ground that it was a change in the ‘conditions of employment.’” (Brief, p. 112) The City contends that the number of comparable communities with a maintenance of conditions clause is not as sweeping as contended by the Union: Roseville references “previous agreements” as remaining in effect, not really a maintenance of conditions clause; Independence Twp. excepts changes permitted under the management rights clause and not in conflict with specific provisions of the agreement (arguably a clause consistent with traditional maintenance of conditions language).

The City’s worries about the operation of the proposed maintenance of conditions clause appear to be exaggerated. The only types of past practice that would be successful in grievance arbitration are those that had matured to *binding* past practices under criteria that are now universally known and accepted. Not every alleged change of policy or change of procedure is going to be successful in arbitration, even if it is grievable.

A majority of the Panel is persuaded by the reasoning of the Union that a forum for relatively swift and reliable resolution of grievances alleging unilateral change in working conditions is in the interests of the Union *and* the City. They should not necessarily be deferred to the relatively cumbersome procedures of an unfair labor practice charge. In addition, the Panel is persuaded that a healthy majority of the comparables permit the protections encompassed within maintenance of working condition language. Thus the Panel relies upon Act 312, Section 9(h)[the need for prompt resolution of grievances] and 9(d) [comparable communities].

ORDER

The Panel endorses the Union's last best offer on the subject of Maintenance of Conditions.

EMPLOYER ISSUE#1—Consolidation.

The Employer proposes to add a new Article to the next collective bargaining agreement as follows:

It is understood that the City and Bloomfield Township are currently in discussions with respect to the possible sharing of services and/or consolidation of operations. In the event any agreement between the City and Bloomfield Township is not within the City's reserved rights under the collective bargaining agreement and would impact bargaining unit member's existing wages, hours or working conditions as set forth in this collective bargaining agreement, the City reserves the right to implement such changes subject to the right of either the City or the Union to re-open the contract to negotiate a supplemental agreement with respect to the effects of such change on any member of the bargaining unit.

The Union proposes to maintain the status quo (to not add a new section).

DISCUSSION.

The City shows that the municipalities of City of Birmingham and Bloomfield Township have entered into preliminary talks about possible consolidation of fire and police services. A preliminary study, produced by Plante & Moran, in January 2008, recommended that the idea was feasible. A final report also dated in 2008, showed that potential savings from a consolidation of services, after an initial "adjustment" period, would be \$1.75 m. for police services and \$1.0 m. for fire services. The senior elected and appointed officials of both jurisdictions have continued to meet; however, no consolidation agreement, pursuant to either of the available State statutes under which consolidation of operations would be possible, has been attempted. "It is clear that part and

parcel of a consolidation agreement would be the terms and conditions applicable to employees from both jurisdictions,” writes the City’s counsel here. [Brief, p. 124] To that end, the City has proposed the above new contract language, the most important part of which is, “[T]he City reserves the right to implement such changes subject to the right of either the City or the Union to re-open the contract” regarding the effects of consolidation.

The City’s viewpoint is that it is best for everyone to put their cards on the table. If this consolidation is an active, current concern, the City should be willing to specify what it is willing to bargain with the firefighters, related to consolidation.

The Union is of the opinion that the quoted language would amount to a waiver of the Union’s contractual and PERA rights to participate in determining the nature of the consolidation. “Not only would the clause eliminate whatever rights under PERA that the Union may have to bargain over decisional aspects of any sharing /consolidation, the clause would also leave the Union bargaining over “effects” only after the City has implemented whatever it desires.” says Union counsel. (Brief, p. 76).

The Chairperson does not see the language quoted from the City’s proposal as a waiver of statutory rights, but my interpretation of the statute (PERA) is not what is bargained for or required in this Act 312 proceeding. I have decided to leave this issue for the parties to work over further, at such time and in such manner as the groundswell for consolidation may warrant. Accordingly, in reliance on Section 9(h) traditional factors, including limitations on the authority of the Panel and lack of any current required issue

for decision, the Panel decides to “default” to the Union’s proposal of no action on the City’s proposal.

ORDER

The Panel adopts the last best offer of the Union on the subject of Consolidation.

EMPLOYER ISSUE # 2—Health Insurance Premium

The Employer proposes to add a provision to the Health Insurance Benefits article (Supplement C) to indicate that, “Ten percent of the increases in the per capita cost of health care plan after 7/1/09 shall be paid by the employee in the form of contributions to the cost of the plan. Such contributions will be deducted from an employee’s bi-weekly pay.”

The Union proposes to maintain the status quo.

DISCUSSION.

The City proposal is responsive to dramatic increases in health care premiums paid by the City over the last five years: They have gone up 50% in the last 5 years. The City believes it has provided a health insurance program which is much richer than seen in the private sector. In the private sector, the City’s expert opined—where cost sharing has been instituted-- employees typically contribute 10-30% of monthly *premiums*. Even in another firefighters case involving the *City of Midland v. Midland Fire Fighters Ass’n., Local 1315* (MERC Case No. L02 E-3008, Kelman, 2005), Arbitrator Kelman awarded *15% of premiums* to be paid by the firefighters. Here, the City is seeking payment of *10% of the annual increase* in premiums.

The Union emphasizes the concessions it has already made in the health care arena. Even in the most recent negotiation, for the 2004-07 contract, the Union “agreed to higher deductibles, higher co-pays, and co-insurance.” (Brief, p. 78) In earlier negotiations it gave up a traditional BC-BS plan, allowing the City to self-insure and utilize a third-party administrator to pay claims. According to President McCulloch and Vice President David Greenwood, the experience under the self-insuring arrangement has not been positive.

In addition, the Union argues that the comparables do not generally line up with the concept of cost-sharing health insurance premiums. Eight of the 10 comparables require no cost sharing; two do. In those communities (Bloomfield Twp. and Mt. Clemens) the contributions are on a fixed dollar basis for the term of the contract (\$7.70 per pay period for Bloomfield Twp. Firefighters; \$15 per pay period for Mt. Clemens Firefighters). Argues the Union, this is a more restrictive and more predictable basis for cost sharing than the methodology proposed by the City, here.

On this subject, the leaders may be Bloomfield Township and Mt. Clemens. [Section 9(d)(i)]. The concept of cost-sharing, when examined not just in firefighter employment, but in the broader context of public sector and private sector employment is an idea whose time has come. [Section 9(d)(ii)]. It has come only gradually in the public sector, and in the firefighter contracts. Mr. Carroll, who works with benefits plans in Michigan and Northwest Ohio, testified that he has recent experience with automotive, newspapers firms, restaurants, advertising, boat manufacturers, as well public sector. These firms in the private sector are examples of the kinds of employers in which he has seen cost-sharing. [Tr. 1130, 1134].

Further, the amount of the cost-sharing proposed here is very modest, estimated by the Employer to be \$91 per annum. The Panel notices that the Employer's proposal does not show a methodology or mechanism to compute annual cost of premium. It is strongly recommended to both parties that they accept an amendment to the Employer's proposal showing that cost will be computed based on the COBRA methodology (minus administrative fees) for reporting annual premium costs.

In sum, the concept of cost-sharing health insurance premiums is not brand new; it has been around in the private sector for some time; it is not widely used currently in the public sector; but it is becoming increasingly prevalent. The precedent of Midland in 2005 makes clear that the concept is at least considered acceptable by one other Act 312 arbitrator. I believe, based on the testimony elicited by the City from Mr. Carroll that the precedent will become increasingly viable in the municipal market. The Employer's proposal is a beginning for controlling health care premiums, which must be accredited as supported by private-sector employers and that is appropriate for a public employer in these times of run-away health care costs.

ORDER

The Panel accepts the Employer's last best offer on cost-sharing of health insurance.

EMPLOYER ISSUE # 3—Health Insurance Opt-out.

The Employer proposes to substitute a provision in Supplement C, Group Insurance Benefits, 3rd paragraph, so that the new section reads as follows:

Effective July 1, 2009, in lieu of the foregoing, the employee will annually be offered the option to elect cash payment equivalent to ~~33-1/3 of the City's premium cost for providing health insurance (excluding dental and optical under Option 1~~ \$1,500 annual payment for waiving 2 person coverage and \$3000 per year for waiving family coverage (excluding dental and optical) provided: (1) the employee furnished the City with proof of other health care coverage; (2) the employee's election is irrevocable for one year [etc.]

The Union proposes to maintain the status quo.

DISCUSSION.

The Employer says that the current provision requires a payment to individuals of 33% of the premium cost (currently about \$4,300). The proposal would reduce the amount of the opt-out payment, and change the calculation of the opt-out amount to a fixed dollar amount.

The proposed amounts for opt-out payments are established in the AFSCME and Teamsters contracts currently in effect. Among the external comparables, Birmingham offers the highest amount for opt-out from health insurance of any of the comparables.

The Union says that the current provision, although generous in that it is at the top of the comparables, still allows the Employer to save 2/3 rd of the premium for health care for individuals who elect to take the opt-out provision. The Union points out that Birmingham's current opt-out provision encourages members who can opt out because of other family members' insurance, to take the opt-out. A lesser amount might

not afford as good a “return” because it might not attract as many members. Currently, there are 5 members who have elected opt-out.

The evidence shows the history of payments received by a member in Birmingham who has taken family opt-out, as follows:

| | |
|-----------|-------|
| For 2003: | 3,797 |
| For 2004: | 3,679 |
| For 2005: | 3,610 |
| For 2006: | 3,930 |
| For 2007: | 4,309 |

[City Exh. 242]

Of course, under the prevailing arrangements, the City saves twice these amounts (2/3rds of the total premium) because health insurance does not need to be provided to this individual. The net effect of the City's proposal would be to reduce the amount of the current opt-out payment to individual members by more than \$1,000; and to increase correspondingly the amount of savings to the City.

The comparables offer some guidance. Employer Exhibit 247 shows that the next highest amount of opt-out payment is \$3,000. The median of the 9 communities having such payments is \$2,000. In view of these comparables, the Panel is persuaded that the reduction of the Birmingham opt-out payment to \$3,000 is amply supported. This result is supported by both internal and external comparables, Section 9(d).

ORDER

The Panel accepts the Employer's last best offer on Health Insurance Opt-Out payments.

EMPLOYER ISSUE # 4—Attendance policy.

The Employer proposes to add a new provision as a supplement on the subject of attendance policy. The policy defines an unscheduled absence occurrence as a period of 1 or more consecutive scheduled workdays when an employee is absent from work without prior written scheduling and approval by the employee's supervisor.

The employee is allowed two freebies. On the 3rd unscheduled absence in any 180 day period, an employee will receive a written notice. On the next (first) unscheduled absence within 60 days of the notice, the employee will forfeit pay for the accrued leave and receive a written reprimand. On the next (second) unscheduled absence within 120 days of the notice, the employee will forfeit pay for accrued leave and receive a final warning. On the next (third) unscheduled absence following notice, the employee will forfeit accrued leave time and will be disciplined up to and including discharge.

The Union proposes to maintain the status quo.

DISCUSSION.

Note that Article 40 requires that "employees shall be regular in their attendance...." There has been some evidence of disregard of the mandate of Article 40, particularly with regard to Wednesday scheduled workdays. The Panel takes note of the fact that occurrence-based attendance policies are now extremely popular with employ-

ers; however, there is no reason to invoke them, and the accompanying inflexibility, when there is shown at most to be an isolated attendance problems.

The Union takes the view that the occurrence-based attendance program may conflict with the FMLA, to the extent that it may be so broad as to include employee time-off which is FMLA-qualifying. In addition, the Union argues that the AFSCME and Teamsters contracts are not good precedent for the firefighters' contract and that the length of a work day under those contracts is different and thus affects the severity of discipline for violation of the attendance policy. And the Union asserts that there is no support for an occurrence-based Attendance Policy among the comparables.

The evidence credits the Employer's view that there is more than isolated disregard for the mandate of Article 40. While it may not be widespread, it is not negligible. A second consideration is the desire of the City for a policy "which...sets forth a standard for the Command Officers when responding to excessive unscheduled absences." (Brief, p. 135). Promulgating work rules (not in conflict with collective bargaining agreements) is one of the rights of management, coming under the heading of the lawful authority of the Employer. While it may not be, in the end, a wise choice for the Employer to institute an occurrence-based attendance system, it is a policy choice that the Employer can make. None of the reasons advanced by the Union persuades me that the status quo is better; except, however, the policy should have a caveat that exempts unscheduled absences that are absences covered by the FMLA. Thus in reliance on Act 312, Section 9(a) [the lawful authority of the Employer] the Panel accepts this revision of policy related to attendance.

ORDER

The Panel adopts the Employer's last best offer on the subject of attendance.

EMPLOYER ISSUE #5—New Hires' Retirement Health Savings Plan.

The Employer proposes to add a provision to the retirement article, Article 60, Health Insurance Benefits to make paragraphs (e), (f), and (g) applicable to employees hired prior to July 1, 2009; and to make new provisions applicable to new hires:

Section 60, Sections (e), (f), and (g) and the health insurance benefits provided thereunder are applicable to and will be provided only to employees hired prior to July 1, 2009. Employees hired after July 1, 2009 shall be covered under the Birmingham Employees Retirement Health Savings Plan administered by the ICMA (or equivalent). The City shall contribute \$50.00 per bi-weekly pay. The employee shall contribute 2% of earnings. The Employee will become vested in employer contributions upon 7 years of services.

[additional provisions relating to the ICMA Vantage Care Retirement Health Savings (RHS) Plan adoption agreement]

The Union proposes to maintain the status quo.

DISCUSSION.

The purpose of the RHS Plan is to make available to participating employees and their dependents reimbursement for virtually any medical expense with the exception of long-term care. Here, the RHS proposed is for the benefit of retirees, and would be paid in part by contributions of new hire employees, amounting to 2% of payroll in addition to level City contributions of \$1300 per year per employee.

The City shows that the need for this type of plan is implicit in the high and rising cost of retiree health care, as shown in E'er. Exhibit 209 (a) and (b). The City shows that it has attempted to corral retiree health care costs under collective bargaining unit

provisions in which the AFSCME unit, the Teamsters unit, and the Police Command units would receive a 50% retirement health benefit. However, the Firefighters and the Police patrol units did not subscribe to that benefit, and the costs of retiree health insurance benefits for the City as a whole did not improve. In addition, the firefighters' unit, as well as other bargaining units (and the administrative group) reduced their pension contributions, and re-allocated 2% of their pension contributions to the retiree health plan. This, too, according to the City, did not work. Now, testified former City H.R. Director Schulte, it is time for a new approach.

The Union says that the Birmingham firefighters pay more than any of the comparables for retiree health benefits. The Union says that in none of the other comparables do the municipalities require any contribution by firefighting employees to retiree health care. In none of the other comparables, says the Union, has there been any pre-funding of retiree health. [Tr. 1255] Thus, Birmingham is in the enviable position of having pre-funded some of its retiree health obligation; it has continuing contributions by employees for that purpose; and Birmingham, as measured by taxable valuation per capita, is stronger and in better financial health than most of the other comparables.

Unfortunately, the posture of the comparable communities, in regard to their funding of retiree benefits does not materially assist us in resolving how Birmingham will fund its retiree benefits. The evidence is clear that at least two different approaches have been tried, and neither one has greatly affected the booming cost of retiree health benefits. In short, the City has made the case that the ability to pay affects this benefit. In addition, the City has shown that the approach to cost savings taken here is commensurate with the results it has reached in negotiations with at least two of the City's 5

employee groups: the AFSCME and Teamsters units. The police units have not weighed in with collective bargaining results yet. Thus, in reliance on Section 9(c) [ability of the unit of government to meet those costs] and (d) (internal comparable units) a majority of the Panel finds that the City's proposal on (new hires') funding of retiree health care has merit and should be adopted.

ORDER

A majority of the Panel accepts the Employer's Last Best Offer on the subject of New Hires' Retirement Savings Plan.

EMPLOYER ISSUE # 6---Defined Contribution pension plan for new hires.

The Employer offers to amend Article 60 (Retirement) by adding the following new section:

Employee hired after July 1, 2007 shall not be covered under the Birmingham Employees Retirement System current defined benefit retirement plan. Employees hired after July 1, 2007 shall be covered under the Birmingham 401(a) defined contribution plan as administered by the ICMA (or equivalent). The City and the employee shall make contributions as follows:

Employer: 10% of base salary, overtime, longevity and holiday pay.

Employee: 5% of base salary, overtime, longevity and holiday pay.

Employee vesting in employer contributions will be upon 7 years of service.

The Union offers to maintain the status quo.

DISCUSSION.

The City's proposal to go to a Defined Contribution pension plan for new hires is supported by internal comparables: both the AFSCME unit and the Teamsters unit have

agreed to such plans. For new hires to the AFSCME unit, members receive \$1 per hour from the City and contribute \$0.50 per hour. For new hires in the Teamsters unit, members receive a \$1.20 per hour contribution from the City and contribute \$0.60 per hour. The Administrative / management group also has a Defined Contribution plan.

Mr. Leon LaBrecque, a Charter Financial Analyst and Certified Financial Planner, hired by the Union to comment upon the City's proposal, opined that reasonable assumptions for analyzing the accumulation of a benefit under the City's plan include 25 year retiree; 6 ½ percent investment return; wages increases of 2% year annum. These assumptions would result in accumulation of \$639,000. That corpus would produce an income of \$4,000 per month. Using the assumption of a 30 year retiree, the same assumptions would provide an equivalent of 74% of final average compensation.

The City argues that the Defined Contribution plan is significantly less costly to the City than the current Defined Benefit plan. The City also argues that this plan has the benefit (to the City) of giving it control over cost.

A major concern of the Union relates to the provision—or lack of provision—for duty disability; for non-duty disability, duty death, and non-duty death. Under the current plan, as summarized by Union attorney Paton:

A member who suffers a duty disability will—no matter how few years of service he has—receive a pension benefit which will be 60% of his FAC [Final Average Compensation], and allow other disability income (such as workers' compensation) to add up to another 10% of FAC to his total benefit, and in any event regardless of other disability income, the duty disability benefit will be at least 20% FAC; this benefit is paid until voluntary retirement age... Then, when voluntary retirement age is reached, the member's pension is recomputed so as to give him service credit not only for his actual years of service, but also for the years that he received the duty disability pension. [U. Brief, p. 89-90]

Under the City's Defined Contribution plan, the duty-disability member would receive the defined contribution balance. There is a serious question whether such a return for a disabled member of the bargaining unit would always be adequate, says the Union.

Likewise, if the Long-term disability insurance benefits are taken into consideration, the benefits for duty-disabled employees are considerably less than such an employee would experience under the current plan, says the Union. For instance, the long-term disability benefit is payable to age 65; whereas the current disability pension benefit is payable for life. Further, the member's Long-term disability insurance benefit is payable for 2 years, unless he or she qualifies for a more restrictive definition of disability, i.e., unable to engage in any gainful occupation; the current pension benefit, as mentioned, it payable for life, and is not dependent on whether the member meets a restrictive definition of disability. In addition, a duty disabled member would not be able—if eventually returned to work—to credit time he or she was off work to future pension; but under the current defined benefit plan, service credit is granted for the entire time of the disability.

These concerns are at the heart of the Union's objection to the City's proposed Defined Contribution plan. In addition, the Union notes that the members of the Firefighters' unit do not contribute to or receive ordinary Social Security old-age benefits. For most workers—including workers in most of the comparable communities—Social Security would provide a minimum income of approximately \$1,700 per month (retiring at 25 years of service). This amount provides some stability to workers in the 4 other comparable jurisdictions that have it. Birmingham firefighters do not have that stability. Moreover, new hires, in addition to not having Social Security, would have a pension

which may not last them the term of their natural lives (longevity risk). The Union points out that the voluntary contribution option available under the City's Section 457 plan would not equal what is available under Social Security.

Turning to the comparable communities the evidence is convincing that 9 of the 10 comparable communities have operative defined benefit plans. One of those, Independence Twp., provides hybrid plan under which the employer pay the first 10% of salary and the employees pay any amount over 10%, as determined by actuarial valuation. In this way, the Employer has managed to cap its contribution and achieve control over costs. In all the other plans, the employer pays the actuarial valuation of the cost of the plan, but for 5.35% employee contribution (Ferndale), or 7.25 employee contribution (in the case of Harper Woods) or 2.0% employee contribution (in the case of Mt. Clemens and Royal Oak¹), and so forth. (U. Exh. 225).

In the sole exception to the rule of these comparables, Bloomfield Twp. pursuant to Act 312 arbitral award has recently established a defined contribution for new hires. In the already existing defined benefit plan, employees of Bloomfield pay 1%. For the defined contribution plan, the employer contributes 14%, while the new hire employees contribute 1-3.5%. The circumstances of the Bloomfield award indicate that there were voluntary settlements in the police units effectuating a defined contribution pension plan. In addition, the level of the employer contribution there was 28-30%, whereas in Bir-

¹ The Employer alleges that a recent Act 312 Award in Royal Oak supports its viewpoint. The date of that award is March 2009. The last day of hearing in the present case was February 4, 2009. In the present case, the parties stipulated, and I incorporated in my first Scheduling Order that "Settlements ...occurring in the comparable communities or Act 312 awards dated before our last day of hearing may be brought to the Panel's attention (but not settlements or Act 312 awards occurring later than the last day of hearing)." Thus the Panel cannot receive the proposed evidence of the Royal Oak Act 312 award.

irmingham the 2008-09 Employer contribution rate for firefighters was 7.23%; in 2009-10, the current year, the contribution rate is 13.0%. [E'er. Exh. 208, A-2]

Although expensive, the current Defined Benefit model has solid benefits for the employee as well as the Employer. It provides for duty-disability and non-duty disability occurrences in a way that cannot be matched by any Defined Contribution plan. That may possibly be regarded as a necessary part of providing pension benefits for this high-risk group. In terms of benefits to the City, there is no doubt that there is a positive morale factor associated with having a well-protected work force. [Section 9(c), the interests and welfare of the public]

The absence of Social Security in the lives of these firefighters is another factor [Section 9(h)] weighing in favor of the Union's last best offer. The stability, or anchor, afforded to total retirement earnings by the presence of Social Security benefits is something that virtually all American workers—except a few in the public sector—rely upon. In the absence of such protection and expectation, the firefighters here need the benefits of the current defined benefit plan.

And, without any doubt, the external comparables [Section 9(d)] support the Union's last best offer. Not only does the Union's position poll a solid majority in the field of comparable communities. But also, the sole exception—Bloomfield Twp.—has some distinguishing features that contrast with the City of Birmingham's situation.

For these reasons, a majority of the Panel is convinced that the Union's last best offer should be and is adopted.

ORDER

A majority of the Panel accepts the last best offer of the Union on the subject of Defined Contribution Pension Plan for New Hires.

EMPLOYER ISSUE #7—Current Employees' Retirement Health Insurance.

The Employer offers to amend Article 60 to add the following:

In the event the deductible or co-insurance or prescription co-pay in the health insurance provided to active bargaining unit employee is changed resulting in lower costs to the employer, such changes as are made from time to time shall be implemented in the retiree health insurance provided to eligible employees who retire after July 1, 2009

A retiree may elect to continue his / her prior deductible, co-insurance and prescription co-pay by payment in the difference in costs.

The Union offers to maintain the status quo.

DISCUSSION.

The City argues that retiree health care costs are spiraling out of control. A primary reason for this is the change in the cost of drugs. Currently, if an employee retires with a \$2 drug co-pay, he or she continues to have access to that drug for \$2 per prescription. The Employer, however, is stuck with the escalating cost of that drug, or new drugs that come on the market since the employee retired. The Employer says the overall impact of increased costs used to be mitigated by the time a retiree became Medicare-eligible (at age 65). In the recent 5-year period, however, the retiree costs have risen anywhere between 5% and 20% per year, and show no slackening at the time the retiree hits age 65.

The Union shows that the Employer has not presented any internal or external comparable data in support of its proposal. The Union argues that under the City's pro-

posal, retirees will be at the mercy of future collective bargaining, including the possibility that active employees will trade off increases in deductibles or co-insurances for a wage increase. Thus, only active employees will enjoy the trade-off, not retirees.

The fact that there are no internal or external comparables to support the City's proposal is problematic. The City's position boils down to an assertion that the increases in retiree health care costs warrant an adjustment to future health care costs along the lines of negotiated benefits. This is a variation on the theme of inability to pay. I find, in view of the lack of specifics among either the comparable communities or the City's other bargaining units, that there is inadequate support to grant this proposal. A majority of the Panel concludes on the basis of Section 9(d) that the Union's proposal is better supported by the relevant Act 312 factors.

ORDER

A majority of the Panel accepts the Union's last best offer on the subject of current employees' Retirement Health Insurance.

EMPLOYER ISSUE #8—Retirees' Contributions to Cost of Retiree Health Insurance.

The Employer offers to add a new item to Article 60 (Retirement), as follows:

Eligible employees who retire after July 1, 2009 and elect employer provided retiree health insurance shall contribute \$60 per month for each individual under age 65 for whom coverage is provided and \$30 per month for each individual over 65 for whom coverage is provided.

The Union proposes to maintain the status quo.

DISCUSSION.

Firefighters currently pay a contribution to the cost of retiree health when they retire of \$15 for those under 65 years of age; \$8 for those over 65 years of age. The City's proposal tracks the benefit provided in the AFSCME and Teamsters' contracts: retirees pay \$60 for those under age 65; \$30 for those over age 65. The evidence shows that in the Police Command unit, there is a tiered approach by which employees hired before January 1, 1995 when they retire contribute \$40 for those under 65; \$20 for those over 65. Under the provisions of the Police Command contract, in the second tier, employees hired after January 1, 1995, when they retire contribute 50% of the health care premium. There is a similar two-tier arrangement for Teamsters and the AFSCME units.

The Union emphasizes that, "Under the existing contract provisions, these [Birmingham] members are *already* contributing more towards retiree health insurance than *any* of the comparables, for the same retiree health benefit." (Brief, p. 103) The data show that only one of the 10 comparables has any required contribution by retirees to their own health insurance costs, and that is indirectly, in Hazel Park, through contributions to a Health Savings Account (effective for retirees hired after 2006).

The proposal with respect to retirees making a contribution to retiree health insurance costs is obviously an increase in cost to such retirees from the current \$15/ \$8 contributions. However, in this case, the increase appears to be justified by the schedule applicable to employees of other City bargaining units. [Section 9(d) (internal comparables)]. The proposal is a modest increase in view of the cost of health insurance generally, and in Birmingham, as shown by Mr. Carroll's and Mr. Schulte's testimony.

ORDER

A majority of the Panel accepts the last best offer of the Employer on Retirees' Contributions to cost of retiree Health Insurance.

EMPLOYER ISSUE #9—Overtime—FLSA work period; Elimination of Compensatory time.

The Employer offers to add to Article 39 (Overtime) and to change 39(a) as follows.

The department will continue to designate a work period in accordance with Section 207(k) of the Fair Labor Standards Act. For all hours worked above the statutory threshold, that are not already compensated at the overtime rate as provided for elsewhere in this section, an employee will be paid overtime pay as required by the statute.

39(a) Employees will be paid one and one-half (1-1/2) times their regular hourly rate ~~or allowed compensatory time at the rate provided in this section~~ in the following instances: [remaining paragraphs unchanged]

The Union's last best offer is to maintain the status quo.

DISCUSSION.

Currently a firefighting employee in the Birmingham Fire Department works a 28-day period, averaging 53 hours per week for a total of 212 hours in each cycle. If he or she works over that amount, he or she could be paid (under the Fair Labor Standards Act [FLSA]) overtime pay for those additional hours. However, what the general practice in Birmingham has been is to provide up to 4 days off with pay each year. Former H.R. Director Schulte testified that one purpose of this proposal is administrative efficiency: Just administering the overtime takes up an inordinate amount of Command time, according to Mr. Schulte.

Of the ten comparables communities, only Royal Oak, Hazel Park, and Mt. Clemens have a provision for compensatory time for FLSA overtime.

The Union has a number of reasons for wanting to maintain the status quo. First, as reflected in the testimony of President Jim McCulloch, the firefighters like the flexibility of scheduling time off in short increments. He cited to attending a daughter's baseball game as one example of the use of this time.

Secondly, the Union says that the addition of the above-quoted paragraph has the effect of doing away with the applicability of major sections of Article 39. Third, says the Union, the changes incorporated in this proposal would have the effect of limiting or eliminating contractual overtime.

Fourthly, the proposal gives the Employer the right to identify a work period in accordance with the FLSA. However, says the Union, the City has already established a work period: It is the 28-day cycle allowed under Section 207(K) of the FLSA. The exercise of this statutory right by the City, says the Union, would conflict with the City's duty under PERA to negotiate the work week.

I am convinced that the 18 year history whereby these parties have (1) established a work period, and (2) permitted compensatory time in lieu of FLSA overtime pay should remain in force. The key reason is the history of stability which the current interpretation of the language has engendered. [Section 9(h), the factor of stability in labor relations.] In addition, the current regimen for use of FLSA overtime is that it permits firefighters the flexibility to use short increments of time off which they otherwise could not find in their schedules.

ORDER

The Panel adopts Union's last best offer on Employer Proposal #9.

EMPLOYER ISSUE #10—Health Reimbursement Accounts.

The Employer offers to add a new item to Supplement C at page C-3 after the first full paragraph on Health Care Reimbursement Account.

Effective July 1, 2009. The City contributions to the Health Care Reimbursement Account (HRA) under these provisions shall be discontinued. Individual Account balances shall be available to the employee until exhausted.

In addition the Employer proposes to add the following sentences at the conclusion of Supplement C, Health Care Reimbursement Account.

Effective July 1, 2009, employees shall be included in the Birmingham defined contribution retirement health savings plan administered by the ICMA (or equivalent). The City shall contribute \$30 per bi-weekly pay to the account of the employee. There is no employee contribution. Such employees will be immediately fully vested. Employee contributions to the City's retirement health care fund as set forth under Article 60, Section 2(d) remain unchanged.

[Further provisions re: terms of the Employer VantageCare Retirement Health Savings (RHS) Plan showing that permissible uses of the benefits are medical plan premiums, deductibles, co-pays, all medical expenses under IRC 213 other than long-term care.]

The Union offers to maintain the status quo.

DISCUSSION.

The purpose of the Health Care Reimbursement Account (HRA) is to defray the employee cost of health care deductibles and co-pays. In offering to end the plan, the City says that any balances in the members' account would remain available; and, the City would provide a Retirement Health Saving Plan (RHS) to members of the firefighters' unit. To that plan would go annual Employer contributions of \$780 for use *in retire-*

ment to pay for health care premiums, deductibles, co-pays and other qualified medical expenses.

The Employer offers this proposal “to be consistent with the AFSCME and Teamsters units.” (Brief, p. 162). In those units, apparently, recent agreements do not provide eligibility for retiree health care insurance for new hires. (For more senior members of these units, there is retiree health care available.) Instead of retiree health care insurance, the Employer offered to make contributions to a HRA.

The Employer argues there is internal comparability, because the firefighters would, like the AFSCME and Teamsters units, have both retiree health insurance and the retirement Health Savings Plan.

Furthermore, the HRA is available under the expired Police Patrol contract and the Police Command Officers contract. Their negotiations with the City are on-going.

The Union explains that the original proposal for Health Reimbursement Accounts was negotiated with this Union in 2007 for the 2004-07 contract. The purpose was to allow members to defray health care out-of-pocket expenses, such as deductibles and co-insurance. Says the Union, the City’s last best offer to eliminate the HRA would result in members having to pay out-of-pocket expenses up to \$1000 without any set-off from the HRA. “Such a huge reduction in the employee health care benefit is woefully unsupported by the comparability evidence,” argues the Union.

The specifics, says the Union, are that the Birmingham deductible of \$600 is more than that of any of the comparables. All 10 have less, with 6 communities having no deductible. Similarly, argues the Union, 6 of the comparables have no co-pays.

no deductible. Similarly, argues the Union, 6 of the comparables have no co-pays. Four of the 10 comparables have out-of-pocket maximum expenses of \$1000 for families, but those four have significantly lower deductibles than the \$600 Birmingham deductible.

The Union concludes that the bargaining unit members are not interested in giving up their annual defrayment of \$750 against these types of medical expenses. The loss to the members will be experienced currently as a pay cut.

The evidence is that the benefit currently in place, pursuant to the 2002-04 negotiations, is for members to have \$750 annually contributed to their Health Reimbursement Account. There is the history of bargaining by which the Union established that in the 2002-04 negotiations, it was the City that proposed the HRA's as part of a package deal involving higher deductibles and co-pays. The circumstances regarding higher deductibles and co-pays have not changed. [Section 9(h), other factors, including bargaining history].

The situation of the comparable communities when one looks at the underlying structure of the health insurance programs is quite different than the City of Birmingham's firefighters' experience. [Section 9(d)] While it is true that none of the comparables have an HRA plan in place, the underlying facts in the comparable jurisdictions are that 6 out of 10 communities do not have co-insurance; 5 of 10 have no deductible, and the other communities have very low deductibles compared to Birmingham's (of \$600).

As regards the internal comparables, a Health Reimbursement Account plan is in place for Police Patrol unit and the Police Command unit, as well as the administrative group). [Section 9(d)].

In view of the bargaining history, the differing situation of comparable communities, the common situation of relevant internal comparables, and the utility of the HRA program to the employees, both to pay current out-of-pocket health expenses and as a savings mechanism for retirement health expenses, it seems prudent to keep the HRA going as a current program.

ORDER

A majority of the Panel accepts the Union's last best offer on the subject of Health Reimbursement Accounts.

ATTESTATION.

All three of the Arbitrators herein acknowledge and attest that a majority of the Panel supports each Order, just as though we had subscribed our names, as appropriate, to each Order that we support.

Benjamin A. Kerner

Benjamin A. Kerner, Neutral Chair

Dated: 8/11/09

Dan Schulte

Dan Schulte, Employer Delegate

Dated: 8/5/07

James McCulloch

James McCulloch, Union Delegate

Dated: 8/5/07

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Statutory Interest Arbitration between:

CITY OF BIRMINGHAM,

Employer,

-and-

BIRMINGHAM FIRE FIGHTERS ASS'N., IAFF LOCAL 911,

Union.

MERC Case No. D07 C-0591

INTERIM DECISION AND ORDER
ON THE ISSUE OF DURATION OF CONTRACT.

BACKGROUND.

The parties have enjoyed settled labor relations for many years, including under their last collective bargaining agreement, which was effective July 1, 2002, through June 30, 2007. On November 7, 2007, the Union filed a petition for Act 312 arbitration. On December 12, 2007, I was appointed by the Michigan Employment Relations Commission as the Neutral Arbitrator of the Act 312 Panel. On February 2, 2008, the parties participated with me in a pre-hearing conference at which many of the procedural issues in this case were settled. A preliminary hearing on the subject of comparable

communities was held on July 2, 2008; and hearings on the main issues began on October 9, 2008, and are scheduled to continue in December 2008. The parties have stipulated that the issue of Duration of Contract should be considered by the Panel, and an award issued on that subject, in order for the formation of Last Best Offers on all other subjects to proceed in an orderly way. Evidence was taken on the subject of Duration of Contract on October 23 and October 28, 2008; and the parties have had an opportunity to file briefs on the subject. I have had a chance to study the briefs of the parties.

LAST BEST OFFERS. [LBO's]

The Union proposes, as its Last Best Offer, a five-year agreement for a term of July 1, 2007, through June 30, 2012; dates in Article 72 to be modified accordingly.

The Employer's Last Best Offer is as follows:

Article 72(a) This Agreement shall be effective on July 1, 2007 and shall remain in force and effect up to and including June 30, 2010.

(b) Future negotiations. The parties agree that, commencing not earlier than March 1, 2010, they will undertake negotiations for re-opener or a new Agreement for a succeeding period, as the case may be.

(c) Extension. In the event that negotiations extend beyond the said expiration date of this Agreement, the terms and provisions of this Agreement shall remain in full force and effect pending agreement upon a new contract subject to termination by either party on ninety (90) days' written notice.

CONTENTIONS OF THE PARTIES.

The Union argues that the term of contract it proposes is supported by Section 9(c) of Act 312, in that a 5-year term of contract is in the interests and welfare of the public. Furthermore, a 5-year term is better designed, says the Union, to promote labor stability, a factor responsive to Section 9(c) and Section 9(h). Going further, to quote the historical purpose of Act 312, according to the Legislature in Section 1 of the statute, "It is requisite to the high morale of such employees and the efficient operation of such departments" to have binding arbitration; and that clause, according to the Union, indicates that it is important for fire fighters and police officers (and other covered employees) to have established collective bargaining agreements, "So that the employee morale will not suffer the harm that inevitably results when they are not working under a current labor agreement." [Brief, p. 3]

The Union estimates that the current proceedings will be finished by April 2009. Thus, says the Union by having as a result of these proceedings an effective labor agreement for a period of 3+ years after the estimated date of completion of these proceedings, the objective of the statute, as quoted above, is promoted. By contrast, says the Union, if the City's LBO is adopted, the period remaining in the new contract would be merely 1+ years before the new collective bargaining agreement expires, resulting in a need to begin negotiations less than a year after the completion date of these Act 312 proceedings.

The City also cites Section 9(c) in support of its LBO, saying that "the financial ability of the unit of government to meet those costs" indicates that the Panel should award a 3-year term of contract because in these uncertain economic times no one can

predict the financial posture of the City over the course of 2 or more years (from today's date). Specifically the impact of the current failure of the credit/ financial / banking system, argues the City, has an unknowable impact on the main source of revenue of the City, the taxable value of real estate in the City. [Testimony established that the City budget is based 72% in 2008-09 on property tax collections. Treasurer Ostin, Tr. 258]. Plus, argues the City, there is no way of knowing now how much the State of Michigan will be required to cut back on local government revenue sharing in fiscal years ending 2011 and 2012. The state of the economy in November 2008, says the Employer, would indicate that there will be significant cut-backs in the State's revenue sharing, but the extent of those cutbacks cannot now be known for the 5-year period ending June 30, 2012. Thus, says the City, not only the financial ability of the City but also the welfare and interests of the public demand a shorter, rather than a longer term of contract.

The Union argues that another Section 9(h) factor, the track record of recent contract settlements between the parties, supports its views. Regarding the 2002-07 contract, not only was it a 5-year contract; but also it was completely negotiated in April 2004, giving the parties 3+ years to live under the agreement, approximately the same time as would be allotted under the to-be-formed contract here.

The Union further argues, under Section 9(d) of the statute, that the comparable communities support its proposal. Six of the 10 comparables have a term of 5 years or more, while only three of the 10 comparables have a term of 3 years. In regard to internal comparables, the Union cites the fact that both the police officers unit and the police command unit have terms of five years or more. Only one City bargaining unit (the Teamsters unit) has a contract of three years. [City Exh. 95]

The City likewise relies on the internal comparables, as well as comparable communities. It says that the contract termination dates of the four internal comparables indicates that there would be only 1 settled contract in effect on June 30, 2011 (the AFSCME unit); and no settled contracts in effect on June 30, 2012.

With regard to external comparable communities, the City indicates that there will be 1 contract [Mount Clemens] in effect on June 30, 2011; and no contract now in effect will be in effect on June 30, 2012. Taking into consideration "on information and belief" of the City's attorney that Eastpointe and Roseville have recent settlements, a total of 3 communities would have settlements in effect as of June 30, 2011; and 2 communities would have contracts in effect as of June 30, 2012.

The Union cites as additional evidence under Section 9(h) that the City would financially benefit from having a longer-term contract because it would allow "the City to engage in better financial planning for the future by knowing what its financial obligations are" for the Firefighters over the 5-year term. In addition, the Union cites the transaction costs to the parties of possibly having to engage in another Act 312 proceeding in a year's time.

The City concludes its recitation of Section 9(h) factors by saying that no responsible employer would agree to a long-term contract faced with the financial uncertainty that prevails today. If the City would not voluntarily agree to such a contract, argues the Employer, it should not be forced to accept such a contract in Act 312 arbitration. Similarly, argues the Employer, no reasonably prudent public employer would agree to a long-term contract in a vacuum, without knowing the other conditions of work

that pertain. On this point, the Employer concludes that a shorter term of contract is a positive, "because it will allow both parties (and a future Act 312 arbitration panel, if necessary) to consider the relevant facts and circumstances in existence at that time..."

[Brief, p.11].

DISCUSSION.

Both parties invoke Section 9(c) and Section 9(h), alleging different interpretations of the public interest, and of the financial ability of the unit of government to meet collective bargaining costs. In addition, the parties have radically different interpretations of the way in which the evidence on Section 9(d) comparables, supports its position. The Union, on the one hand, looks to the fact that the duration of internal comparables supports its cause, whereas the City says the termination dates of relevant contracts support its cause, showing that only the ACSMCE contract continues into 2011. On external comparables, the Union shows that a 5-year contract is by no means uncommon, whereas the City shows, again relying on termination dates, that one or at most 3 comparables terminate in 2011 and only two comparables terminate in 2012.

I credit the Union's argument that the duration of a comparable community's fire contract is, in normal times, more persuasive than the actual date of termination. I also credit the Union's argument concerning the recent history of negotiations between the parties, including the fact that the recently expired contract was for 5 years, and the fact that the time required to negotiate it placed the parties in much the same circumstances as the parties are in now.

However, the fact is that these are not normal times. The most significant factor in resolving this issue is the overwhelming, daunting state of Michigan's economy. Not only does no one know with any accuracy what the future holds, which is a given condition for most Act 312 arbitrations; but even more to the point, the available information indicates that Michigan will continue to lose jobs; that Michigan communities across the board will continue to suffer real estate foreclosures, and reductions in real taxable value; that this factor will impinge strongly on local municipalities' tax collections; and furthermore, that the State itself will suffer retrenchments, with some likely retrenchments even in the current fiscal year (2008-09), and more, going forward, including reductions in State revenue sharing (the statutory portion). On a number of economic measures affecting the health of municipalities in Michigan—including Birmingham—the reports are negative, and in many cases negative to an uncertain degree. For example, on the key subject of real taxable value, "the decline in the property values, the general real estate, has caused the total taxable value to go down," according to witness Joe Heffernan, CPA with Plante Moran and partner in charge of its auditing for public sector clients. Mr. Heffernan went on to explain:

So, there's a year-and-a-half to a two-year lag between when the homes decline in value and when it affects the [tax] dollars. ...

And so there is that lag and it's expected to last another several years and very likely, depending on who you talk to—Oakland County is predicting 2012. That's really a glass ball, but certainly three or four more years of declines.

The second thing that's going to happen next year is I mentioned the taxable value comparison to assessed value is not done just once for the City of Birmingham. It's done for each individual property and the fact that last year we had many properties that were allowed to go up that inflation of 2.3 percent, but we had enough where it had hit that in total we had a 0.5 percent drop.

That will compound itself and next year as taxable value continues to go down, there will be a larger percentage of homes that will decline. And that is the phe-

nomenon that is causing Oakland County to say they're expecting County-wide a 4.5 percent decline for next year's taxes, 2009 taxes.
[Tr. 187-88].

Further, Mr. Heffernan gave chapter and verse for how the State of Michigan is experiencing income tax declines. The conclusion:

[T]his is the alarming part, he [Bob Klein, State treasurer] is quite confident that beginning with the year October 1, 2009, through September 30, 2010, the state will again have a very significant hole in their budget that they will be trying to alleviate somehow.
[Tr. 194]

One target for State budget planners is the municipal revenue sharing, statutory component. It seems possible if not probable that State budget balancing over the next two or more years will be accomplished in part through reduction of revenue sharing.

Given these economic realities—even though the full extent or limited extent of them is not now known for sure, and partly *because* they cannot now be known for certain—it seems prudent that a municipality, including City of Birmingham, would operate its organization based on short-term predictions for the cost of fire operations. I find that the City's argument, based on both the "Interest and welfare of the public" together with "Financial ability of the unit of government to meet those costs" [Section 9(c)] provides the more viable option of the two options presented to this Panel on the subject of duration of contract.

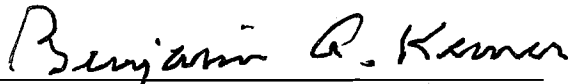
This determination is not to minimize the need, so apparent from the introductory section of Act 312, Section 1 as quoted by the Union, for the fire fighters to have an "in-place" collective bargaining agreement as they go forward into these uncertain econom-

ic times. An in-place collective bargaining agreement promotes the stability of labor relations and should be a goal for both parties. Moreover, the timing of events in this Act 312 proceeding leaves me hopeful that we will conclude all aspects of the proceeding by March 2009, leaving approximately 15 months of life under the new contract-to-be-formed. The parties would not need to contemplate further collective bargaining for 12 months, under the scheme of their Article 72.

This opinion should not be taken as a forecast of how the Panel might decide other substantive issues in the case, because I have not considered such evidence (to the extent it is already in the record) in arriving at my conclusions here.

AWARD

The Employer's Last Best Offer on the issue of Duration of Contract is adopted by the Panel.



Benjamin A. Kerner, Panel Chair

Dan Schulte, Employer Delegate

James McCulloch, Union Delegate

Dated: December 8, 2008

In the Matter of Statutory Interest Arbitration between:

**City of Birmingham
Employer,**

-and-

**Birmingham Fire Fighters Association, IAFF Local 911,
Union.**

MERC Case No. D07 C-0591

DECISION & ORDER ON COMPARABILITY

Before a Panel consisting of:

Benjamin A. Kerner, Neutral Chair
Dan Schulte, Employer Delegate
James McCulloch, Union Delegate

Appearances:

For the Employer: Dennis B. DuBay
Keller Thoma, P.C.

For the Union: Alison L. Paton
Alison L. Paton, P.C.

Dated: August 13, 2008

BACKGROUND.

This proceeding was initiated by a petition filed by the Union on November 7, 2007. Subsequently, in scheduling meetings, the parties agreed to present the issues respecting the selection of comparable communities to the Panel in a preliminary hearing. Such hearing was held on July 2, 2007, and the parties have briefed the issues raised by the evidence. The Panel met on August 8, 2008. The preliminary matter of comparable communities to be utilized by the parties in subsequent proceedings, and to be considered appropriate under Section 9(d)(i) is now ready for resolution. Sections 9(b), 9(d)(i), and 9(h) of Act 312, MCL 423.239, say that the Act 312 panel shall base its findings, opinion and order upon the following factors (among others):

(b) Stipulations of the parties.

(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.

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

The Union proposed a list of ten comparable communities:

Bloomfield Township
 Eastpointe
 Ferndale
 Harper Woods
 Hazel Park
 Madison Heights
 Mt. Clemens
 Roseville

Royal Oak
West Bloomfield Twp.

The Employer proposed the following list:

Auburn Hills
Commerce Township
Eastpointe
Ferndale
Harper Woods
Hazel Park
Independence Township
Madison Heights
Mt. Clemens.

It is evident that these lists overlap as to six proposed communities (Eastpointe, Ferndale, Harper Woods, Hazel Park, Madison Heights and Mt. Clemens). The Union would supplement this group with the four communities of Bloomfield Township, Roseville, Royal Oak, and W. Bloomfield Twp., which taken together with the 6 agreed comparables, the Union calls the historical comparables. And, the Employer would reject the four Union communities and would supplement the list of six instead with 3 other communities (Auburn Hills, Commerce Twp., and Independence Twp.).

EVIDENCE AND ANALYSIS.

The evidence shows that the parties first entered into Act 312 arbitration in 1981 for a contract which was effective July 1982 through June 1984 before Arbitrator Ken Frankland. In those proceedings the arbitration panel considered 26 communities. The Arbitrator indicated that he considered a number of criteria including geographic size, population, tax base (SEV), the number of full-time employees, the number of hazardous alarms, land use, and proximity to the City of Birmingham. Based on these factors, the Frankland Award identified the 10 communities that Union contends here are com-

parable communities. The Employer contends that the Frankland award focused on two factors as preeminently important: number of personnel and number of alarms. Regarding the inclusion of Bloomfield Township and West Bloomfield Twp., Arbitrator Frankland wrote:

Although both Bloomfield Township and West Bloomfield have larger populations than Birmingham and have much larger square mileage, their residential composition, their geographical proximity and perceived socio-economic situations as well as number of alarms responded to and size of personnel, would justify their inclusion as comparables.

[E'er. Exh. 25, p. 28]

It is evident that the Frankland Panel considered a number of factors, and not necessarily just, or even primarily, the factors of number of alarms and size of personnel.

The parties next utilized Act 312 in 1985/ 86 for a contract to be effective July 1984 through June 1987. In those proceedings, Arbitrator Mark Glazer considered the competing claims of the parties as to comparable communities. The Employer accepted eight of the Frankland comparables (Bloomfield Twp., Eastpointe, Ferndale, Harper Woods, Madison Heights, Mt. Clemens, and Roseville, and West Bloomfield Twp.) but also added a group of 7 downriver communities in its proposal to the panel. The Union accepted all of the Frankland comparables with the exception of Hazel Park, but also added a number of communities in Oakland and Macomb Counties which had full-time full- paid departments. Arbitrator Glazer found that the parties had recently been provided a list of comparables by Arbitrator Frankland and citing the factor of promoting stability of the bargaining relationship and citing further the failure of the parties to show any basically changed circumstances, he endorsed the list of communities found appropriate by the Frankland Panel, with one exception [Hazel Park, "because of its uncertain status as either a fire or a public safety department." E'er. Exh. 26, Interim Award].

Then, in 1994, one of the parties invoked Act 312 procedures, but the contract was settled without completing Act 312 hearings. The evidence shows that the parties each proposed overlapping lists of comparables, and that the overlap consisted of Eastpointe, Ferndale, Harper Woods, Hazel Park, Madison Heights. The Union would have added Bloomfield Twp., Roseville, Royal Oak, and W. Bloomfield Twp. The Employer also proposed Mt. Clemens. The Employer rejected the four communities it rejects here (Bloomfield Twp., Roseville, Royal Oak and W. Bloomfield Twp.). The Employer also proposed four townships (Commerce Twp., Harrison Twp., Independence Twp. and White Lake Twp.).

Finally, in 2004, a similar alignment of comparables (to 1994) was suggested by each party; and, no decision ever issued with respect to the matter, because the parties settled their contract.

From this history the Employer draws the conclusion that the parties never accepted the Frankland set of comparables. In subsequent proceedings, both parties made recommendations to change the Frankland comparables. Only the core group of Eastpointe, Ferndale, Harper Woods, Hazel Park, Madison Heights, and Mt. Clemens (albeit not accepted by the Union in 1994) should be considered historically agreed comparables, according to the Employer.

In addition, the Employer relies on the 2004 proceeding involving the police command officers of the City of Birmingham. In the 2004 police command proceedings, Arbitrator Tom Gravelle included, in addition to the 6 communities mentioned above, Bloomfield Twp., the *only* union-proposed comparable in that proceeding. The Employer additionally proposed White Lake Twp., which, on various grounds, Arbitrator Gravelle

rejected. In sum, the Gravelle award did not address the appropriateness of inclusion of Roseville, Royal Oak, or W. Bloomfield Twp. on the one hand, nor did he address the appropriateness of the inclusion of Auburn Hills, Commerce Twp. or Independence Twp. on the other. These communities simply did not figure in the presentations to that arbitration panel. Thus, no lesson can be drawn from those proceedings about the appropriateness of these disputed communities.

The parties do me the honor—both of them--of quoting my prior award, from *Royal Oak –and- POLC*, MERC Case No. D04 A-008 as follows:

At bottom, the picking of comparables is an exercise in affording some degree of predictability to the parties in their labor relations. In anticipating an Act 312 hearing—even before preparing for one—the parties’ representatives should be able to predict that an arbitration is likely to include certain communities, and is likely to exclude others, based on past presentations to their arbitrators, and barring dramatic shifts in population, taxable resources, or other significant socio-economic variables. Thus, one criteria which I will apply is the traditional factor, MCL 423.239(h), reflecting the historical inclusion or exclusion of various communities from these parties’ presentations to Act 312 arbitrators. In short, I will include those communities that the parties have demonstrated, over the years, have been acceptable to them in setting and comparing wages, hours, and conditions of employment.

Thus, where the parties demonstrate their tacit agreement in the selection of a comparable because both parties include it in their presentations to an Act 312 arbitrator, then such tacit agreement should be given effect. However, where there has been no such tacit agreement, the presentation of one party to an Act 312 arbitrator cannot have the force and effect of an agreement. Where the parties disagree with one another on whether a community should be included or excluded from a list of comparables, the only guide to acceptability of that community is an Act 312 Panel’s determination. The

determination of an arbitration panel and the parties' willingness to live with it is what then provides predictability to the parties in their labor relations.

The conclusion of the above history is unmistakable that the full set of 10 communities established in the Frankland award was recognized and endorsed in the Glazer award, and, despite perambulations of the parties in presenting lists of comparables to each other (and to arbitration panels), was never found by any panel to be inappropriate in any particular except in the instance of Hazel Park, because of its uncertain status in 1985 as between being a public safety community or a fire department community. In other words, the group of 10 established by the Frankland panel is a valid historical precedent for this proceeding.

One recognized arbitral grounds for departing from an historically established group of comparables is that there has been some significant changed circumstances. The Employer argues that there has been changed circumstances. The Employer cites a change in the number of personnel, by which three of the four disputed communities had increases in personnel, when the City of Birmingham had a decrease in personnel, as shown below; and by which three of the four disputed communities had increases in alarms, substantially greater than experienced by the City of Birmingham.

| | <u>1980 Personnel</u> | <u>2008 Personnel</u> |
|-----------------|-----------------------|-----------------------|
| Birmingham | 43 | 33 (-23%) |
| Bloomfield Twp. | 70 | 64 (-8.5%) |
| Roseville | 37 | 45 (+22%) |
| Royal Oak | 37 | 61 (+65%) |
| W. Bloomfield | 43 | 101 (+135%) |

[Source: E'er. Exh. 25, p. 26(a) and 45]

| | <u>1981 Alarms</u> | <u>2008 Alarms</u> |
|-----------------|--------------------|--------------------|
| Birmingham | 1120 | 1835 (+64%) |
| Bloomfield Twp. | 1641 | 3671 (+124%) |
| Roseville | 1897 | 1959 (+3%) |
| Royal Oak | 2855 | 5322 (+86%) |
| W. Bloomfield | 1321 | 6339 (+380%) |

[Source: E'er. Exh. 25, p. 26(a) and 62]

These are only two of the relevant factors. In addition, we might look at changes in population and in SEV. On the factor of population, the data indicate change from 1980 to 2006, as follows:

| | <u>1980 Pop.</u> | <u>2006 Est. Pop.</u> |
|--------------------|------------------|-----------------------|
| Birmingham | 21, 689 | 19,185 (-11.5%) |
| Bloomfield Twp. | 42,876 | 41,442 (-3.3%) |
| Roseville | 54,311 | 47,406 (-12.7%) |
| Royal Oak | 79,600 | 57,984 (-27.2%) |
| W. Bloomfield Twp. | 41,934 | 64,619 (+54%) |

[Source: U. Exh. 1]

On the factor of SEV, the parties' data indicate as follows:

| | <u>1981 SEV</u> (in millions) | <u>2007 SEV (Total)</u> (in millions) |
|--------------------|----------------------------------|--|
| Birmingham | \$400 | \$2,926 (+631%) |
| Bloomfield Twp. | \$963 | \$4,697 (+388%) |
| Roseville | \$435 | \$1,622 (+273%) |
| Royal Oak | \$680 | \$3,114 (+358%) |
| W. Bloomfield Twp. | \$746 | \$4,834 (+548%) |

[Source: U. Exh. 3]

In addition, I believe it would be useful to re-interpret the above data, using Birmingham as a base; and also to put these figures in context of other factors showing differences at the current time (or as near to the present as the figures allow).

| | <u>2006 Est. Pop.</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
|------------------------------------|-----------------------|--|
| Birmingham | 19,185 | |
| Bloomfield Twp. | 41,442 | 116% |
| Roseville | 47,406 | 147% |
| Royal Oak | 57,984 | 202% |
| W. Bloomfield | 64,619 | 237% |
| [Source: U. Exh. 1, E'er. Exh. 77] | | |

| | <u>2007 Real SEV. (in millions)</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
|-------------------------|---|--|
| Birmingham | 2,869 | |
| Bloomfield Twp. | 4,605 | 61% |
| Roseville | 1,503 | -48% |
| Royal Oak | 2,989 | 4% |
| W. Bloomfield Twp. | 4,761 | 66% |
| [Source; E'er. Exh. 51] | | |

| | <u>2007 Real Taxable Val. (in millions)</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
|-------------------------|---|--|
| Birmingham | 2,055 | |
| Bloomfield Twp. | 3,843 | 87% |
| Roseville | 1,259 | -39% |
| Royal Oak | 2,310 | 12% |
| W. Bloomfield Twp. | 4,104 | 100% |
| [Source: E'er. Exh. 58] | | |

| | <u>All Fire Personnel</u> | <u>Amt. Incr. or Decr. from B'ham.</u> |
|-------------------------|---------------------------|--|
| Birmingham | 33 | |
| Bloomfield Twp. | 64 | 94% |
| Roseville | 45 | 36% |
| Royal Oak | 61 | 85% |
| W. Bloomfield Twp. | 101 | 206% |
| [Source: E'er. Exh. 45] | | |

| | <u>Total Runs & (EMS runs)</u> | <u>Amt. Incr. or Decr. from B'ham.</u> |
|-------------------------|--|--|
| Birmingham | 1,835 (953) | |
| Bloomfield Twp. | 3,671 (2,179) | 100% (128%) |
| Roseville | 1959 (776) | 6% (-19%) |
| Royal Oak | 5,322 (3609) | 190% (279%) |
| W. Bloomfield Twp. | 6,339 (4104) | 245% (331%) |
| [Source: E'er. Exh. 62] | | |

| | <u># of Stations</u> |
|-------------------------|----------------------|
| Birmingham | 2 |
| Bloomfield Twp. | 4 |
| Roseville | 2 |
| Royal Oak | 3 |
| W. Bloomfield | 6 |
| [Source: E'er. Exh. 77] | |

It is clear that on relevant factors cited above—including size of the community in terms of population; size of the tax base in terms of SEV (real property) and Taxable Valuation (real property), as well as size of the fire fighting requirements (as measured by number of personnel; number of total runs, and number of EMS runs, as well as number of stationhouses) that there is an across-the-board significant difference between W. Bloomfield Twp. on the one hand, and the other three suggested comparables on the other hand. W. Bloomfield Twp. is simply larger in population; and has a larger taxable base; in addition, the fire fighting requirements are significantly larger. W. Bloomfield has more than 3 times the population of Birmingham and was the only one of

these disputed comparables that experienced a population increase, 1980 to 2006. In fact, its increase was of large size: 54 %, where Bloomfield Twp., Roseville, and Royal Oak showed population declines in the time period.

Likewise, W. Bloomfield Twp. showed a larger increase in SEV (548% increase) over 26 years than any of the other suggested comparables; and in comparison to Birmingham currently (looking at only real property SEV) is 66% greater. Looking at taxable valuation (real property only), W. Bloomfield Twp. is 100% greater than Birmingham, whereas Bloomfield Twp. is 87% greater and Royal Oak is 12% greater. These figures suggest that the size of the taxable resources available to W. Bloomfield Twp. are significantly larger than the resources available to Birmingham, currently, and are significantly greater than those of the other disputed comparables.

Looking at total fire department runs, W. Bloomfield Twp. has more than 3 times as many as Birmingham, while Royal Oak has almost 3 times as many runs, and Bloomfield Twp. has twice as many runs. In terms of the amount of fire fighting effort, the number of personnel in W. Bloomfield Twp., at 101, is far greater than the number in the other disputed comparables. In terms of the spread of those services, Birmingham has 2 station houses; W. Bloomfield Twp. has 6.

In short, there is sufficient evidence to conclude that there is "changed circumstances" in regard to W. Bloomfield Twp. Its characteristics, though shared by some of the disputed comparables, are that it is significantly larger in population, has greater taxable resources, and has more extensive firefighting requirements. This comparable, inherited from the Frankland award, has been shown to be sufficiently different from

Birmingham at the present time as to warrant dropping it from the list of comparables in the final analysis. The other three disputed comparables will remain.

Furthermore, the Employer offers to include the three non-historical communities of Auburn Hills, Commerce Twp., and Independence Twp. The data it uses are 2006 estimated population, 2000 households, Real SEV, Real taxable value, Square mile area, Personnel, Number of alarms, and Residential % of SEV. The Employer would show that utilizing these data, and utilizing the range of 50% of Birmingham to 150% of Birmingham, the subject communities are similar to the undisputed 6 communities from the Frankland award.

By contrast, the Union would show that there are significant differences, most particularly in the fact that Birmingham (and the undisputed comparables) have full-time full-paid personnel providing fire suppression services; however, Auburn Hills, Commerce Twp., and Independence Twp. all have large components of part-time, part-paid personnel in their fire suppression services. Auburn Hills has 16 full-time fire fighters and 38 part-time fire employees; Commerce Twp. has 16 full-time fire employees and 31 part-time employees; and Independence Twp. has 34 full-time fire employees and 20 part-time employees. [U. Exh. 11 and E'er. Exh. 77].

The Union argues that the nature of fire department operations, when geared to full plus part-time employees must be considered different than the nature of operations governed by the provision of services through only full-time employees. While this is a plausible argument, the record lacks specifics from which I could draw the conclusion

that there is a fundamental difference and one which affects the working conditions of the full-time employees.

Here, all the full-time employees of Birmingham, as well as all the full-time employees of Independence Twp., Commerce Twp., and Auburn Hills are represented in Act 312-eligible bargaining units. By contrast, none of the part-time (mostly on-call) employees of Independence Twp., Commerce Twp., or Auburn Hills are represented in bargaining units. Thus, their wages, hours, terms and conditions of employment do not enter into the picture, as comparables for any purpose. However, the terms and conditions of employment for the full time employees of Independence Twp., Commerce Twp., and Auburn Hills can and should be judged as possible comparables for the terms and conditions of employment of Birmingham fire fighters.

The characteristics of the 3 Employer-proposed non-historical communities are indicated below.

| | <u>2006 Est. Pop.</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
|-------------------------|-----------------------|--|
| Birmingham | 19,185 | |
| Auburn Hills | 20,986 | 9% |
| Commerce Twp. | 40,013 | 109% |
| Independence Twp. | 34,339 | 79% |
| [Source: E'er. Exh. 77] | | |
| | <u>2007 Real SEV.</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
| Birmingham | 2,869 | |
| Auburn Hills | 2,165 | -25% |
| Commerce Twp. | 2, 538 | -12% |
| Independence Twp. | 2,005 | -30% |
| [E'er. Exh. 50] | | |

| | <u>2007 Real Tax. Val. (in millions)</u> | <u>Amt. Incr. or Decr. From B'ham.</u> |
|--------------------------------------|--|--|
| Birmingham | 2,055 | |
| Auburn Hills | 1,892 | -8% |
| Commerce Twp. | 2,079 | 1% |
| Independence Twp. [E'er. Exh. 57] | 1,645 | -20% |

| | <u>Fire Personnel (full-time)</u> | <u>Arnt. Incr. or Decr. From B'ham.</u> |
|---|---------------------------------------|---|
| Birmingham | 33 | |
| Auburn Hills | 16 | -52% |
| Commerce | 16 | -52% |
| Independence Twp. [Source: E'er Exh. 34] | 34 | 3% |

| | <u>Total Runs & (EMS Runs)</u> | <u>Arnt. Incr. or Decr. From B'ham.</u> |
|--|--|---|
| Birmingham | 1835 (953) | |
| Auburn Hills | 3057 (1949) | 67% (105%) |
| Commerce Twp. | 2152 (1391) | 17% (46%) |
| Independence Twp. [Source: E'er. Exh. 61] | 2500 (1762) | 36% (85%) |

| | <u>Residential as % of SEV</u> |
|--|------------------------------------|
| Birmingham | 80% |
| Auburn Hills | 22% |
| Commerce Twp. | 85% |
| Independence Twp. [Source: E'er. Exh. 77] | 85% |

On population, both Commerce Twp. and Independence Twp. are significantly larger than Birmingham; however, they are not as high as the historical comparables of Bloomfield Twp., Roseville, and Royal Oak. On 2007 real SEV, the variation from -12% (Commerce Twp.) to -30% (Independence Twp.) from Birmingham is not as great as the variation among the historical comparables (61% for Bloomfield Twp.; -48% for Roseville). The same can be said for total number of runs: Auburn Hills has 67% more runs than Birmingham; whereas historical comparable Bloomfield Twp. has 100% more runs and Royal Oak has 190% more runs. Thus, in comparison to the historical comparables, on these factors none of the new proposed comparables appears to be "out of line."

However, it appears that the size of the regular full-time employee complement is significantly smaller in Auburn Hills and Commerce Twp. By contrast, Independence Twp. and Birmingham are evenly matched. In addition, Auburn Hills is not an acceptable comparable because of the very low percentage of residential property in comparison to any other suggested comparable. Thus, for the purpose of this proceeding, I endorse just the 1 of the 3 proffered non-historical comparables that is closest to Birmingham in number of full-time employees -- Independence Township.

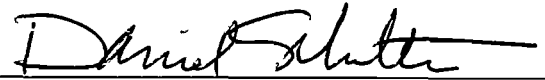
ORDER

Based on the above findings, and in reliance on Act 312, Section 9(b), Section 9(d)(i) and Section 9(h) the Panel finds that the employees of the below communities afford a proper basis for comparison with the employees of the City of Birmingham:

Bloomfield Twp., Eastpointe, Ferndale, Harper Woods, Hazel Park, Independence Twp., Madison Heights, Mt. Clemens, Roseville, and Royal Oak.



Benjamin A. Kerner
Panel Chair



Daniel Schulte
Employer Delegate



James McCulloch
Union Delegate

Dated: August 13 2008