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STATE OF MICHIGAN  
Department of Labor  
Employment Relations Commission

Arbitration Under Act 312  
(Public Act of 1969 as amended)

In the Matter of  
Police Officers Association of Michigan  
and  
City of Farmington Hills  
MERC Case No. D 87 H 2066

Award of Panel

LABOR AND INDUSTRIAL  
RELATIONS COLLECTION  
Michigan State University

Panel Members: John B. Kiefer, Chairman  
Dennis DuBay, City Delegate  
William Birdseye, Union Delegate

December 9, 1988

*Farmington Hills, City of*

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## STATEMENT OF PROCEEDINGS

The Police Officers Association of Michigan (Union) has filed a petition for arbitration pursuant to Act 312, Public Acts of 1969, as amended, with the Michigan Employment Relations Commission, requesting the initiation of binding arbitration proceedings regarding terms and conditions of employment to be included in a collective bargaining agreement. On December 9, 1987, John B. Kiefer was appointed to serve as Chairman of a panel of arbitrators. The other members of the arbitration panel selected by the respective parties were Dennis DuBay, Esquire, the Designant for the City, and William Birdseye, the Designant for the Union.

Between January 22, 1988 and June 16, 1988, the Arbitrator presided at approximately eight (8) pre-hearing and evidentiary hearing conferences, and on June 30, 1988, the parties submitted their last offers of settlement on each economic issue to the arbitration panel. On October 7, 1988, the parties submitted briefs in support of their respective positions on all of the issues, and this award results therefrom.

Section 8 of Act 312 provides:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to

which the parties may agree, shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the employment relations commission. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in Section 9. This section as amended shall be applicable only to arbitration proceedings initiated under Section 3 on or after January 1, 1983." (footnotes omitted)

Section 9 of Act 312 provides:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs.
- (d) Comparison of the wages, hours and conditions of 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.
  - (1) In public employment in comparable communities.

- (2) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and 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 confirmed to the foregoing, which are normally or transitionally 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.

Consistent with the Supreme Court's directive in Detroit v. DPOA, 408 Mich 410 (1980), the panel has, with respect to economic issues, adopted the last offer of settlement which more nearly complies with the applicable Section 9 factors.

There are 16 economic and non-economic issues in all and they shall be approached in the following order:

#### Economic Issues

##### Demand by Union.

1. Wages
2. Shift Differential
3. Compensatory Time

4. Leave Day Selection
5. Holiday Pay
6. Vacations
7. Pension - Multiplier
8. Pension - Final Average Compensation

Demand by Employer.

9. Training/Work Schedules
10. Paid Lunch
11. Sick Time Accumulation
12. Health Insurance Premiums
13. Pension - Employee Contribution
14. Roll Call

Non-Economic Issues

15. Rotating Shifts
16. Grievance Procedure

ECONOMIC ISSUES

Demand by Union

1. WAGES

The Union proposes that Article IV, Section A of the Collective Bargaining Agreement shall be amended as follows:

Wages. Annual base rates of pay applicable to members of the bargaining unit shall be as follows:

	<u>7-1-87</u> [4%]	<u>7-1-88</u> [4%]	<u>7-1-89</u> [3.5%]
0 - 12 months	\$22,693	\$23,601	\$24,427
12 - 24 months	28,643	29,788	30,831
24 - 36 months	30,505	31,725	32,836
Over 36 months	32,671	33,977	35,167

Newly hired employees may be placed at a level higher than the starting rate based on experience with other law enforcement agencies at the discretion of the Chief.

Wages to be retroactive to July 1, 1987

The City proposes that the same article be amended as follows:

Wages. Annual base rates of pay applicable to members of the Collective Bargaining Unit shall be as follows:

	<u>7-1-87</u> [4%]	<u>7-1-88</u> [4%]	<u>7-1-89</u> [4%]
0 - 12 months	\$22,693	\$23,601	\$24,545
12 - 24 months	28,643	29,789	30,981
24 - 36 months	30,505	31,725	32,994
Over 36 months	32,671	33,978	35,337

Newly hired employees may be hired at a level higher than the starting rate based on experience with other law enforcement agencies at the discretion of the Chief.

Effective Date: Wage adjustments to be effective as set forth above.

#### Section 9 Factors

- (a) Not applicable.
- (b) None.
- (c) The parties agree that an adequately compensated police force serves not only the interests of its members but of the general public. Surprisingly, the City proposal results in more adequate compensation than requested by the Union.
- (d) Not applicable insofar as the City proposal exceeds the Union's final offer of settlement.
- (e) Not applicable.



(f) The parties' disagreement only exists as to the proposed compensation for the third year of the Collective Bargaining Agreement.

(g) None.

(h) None.

#### OPINION AND AWARD

This panel concludes that the City's proposal as to wages shall be awarded. The City has proposed more adequate compensation than that contained in the Union's final offer of settlement. It would appear that the City's offer compares favorably with the wages of other employees in the community performing similar services.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

#### 2. SHIFT DIFFERENTIAL

The Union proposes that Article IV, Section E be amended as follows:

Section E: Shift Differential. Employees will be paid differential in accordance with the following:

1. For each hour worked during the afternoon shift, an additional 25 cents per hour.
2. For each hour worked during the midnight shift, an additional 35 cents per hour.
3. The exact hours constituting the day shift, afternoon shift and midnight shift shall be subject to establishment by the Chief of Police in accordance with the authority granted to him under Article V,

Section A. The day shift, however, shall not begin prior to 7:00 in the morning, nor end after 6:00 in the evening. The 8-hour shift following the end of the day shift shall be known as the afternoon shift, and the 8-hour shift preceding the day shift shall be known as the midnight shift.

ARTICLE V.  
HOURS OF EMPLOYMENT

Delete Section G.

Shift Differential to be effective to July 1, 1989

Article IV, Section E presently states:

Section E: Shift Differential. In the event that a police officer is required to work on the afternoon shift or midnight shift due to his seniority or the need to fulfill a seniority balance in accordance with Article V, Section B, no shift premium will be paid. If a police officer is required to work on the afternoon or midnight shift because of Department assignment, apart from the shift preference program, the following "shift differential" will be paid as follows:

1. For each hour worked during the afternoon shift, an additional 15 cents per hour.
2. For each hour worked during the midnight shift, an additional 20 cents per hour.
3. The exact hours constituting the day shift, afternoon shift and midnight shift shall be subject to establishment by the Chief of Police in accordance with the authority granted to him under Article V, Section A. The day shift, however, shall not begin prior to 7:00 in the morning, nor end after 6:00 p.m. in the evening. The 8-hour shift following the end of the day shift shall be known as the afternoon shift, and the 8-hour shift preceding the day shift shall be known as the midnight shift.

This Section shall not apply to an employee who is assigned to the afternoon or midnight shifts at his own request.

ARTICLE V  
HOURS OF EMPLOYMENT

Section G: Premium Pay Exclusion. There shall be no shift differential pay for midnights, afternoons, or support shifts for members who work such shifts as a result of the provisions of this article.

Section 9 Factors

(a) Not applicable.

(b) None.

(c) The Union contends that the afternoon and midnight shifts are more undesirable than the day shift due to the inconvenience to the officers and their families during those shifts. The City's last best offer of settlement contends that, in light of the overall compensation paid to the officers, its proposal provides adequate remuneration on this issue.

(d) This factor is heavily disputed by the parties. The Union contends that the proper comparable cities pay a higher shift differential than that contained in the Union's last best offer of settlement. The City, on the other hand, contends that many of the correct comparable communities pay no shift differential at all.

(e) Not applicable.

(f) Each side argues that its last best offer of settlement is more reasonable in light of their respective positions on the remaining issues.

(g) None.

(h) Not applicable.

OPINION AND AWARD

The panel is convinced that the City's proposal on shift differentials is justified, based on those comparable communities set forth by the City. Of the comparable cities, many do not pay any afternoon or midnight shift differentials. Of those comparable communities who do pay an afternoon and midnight shift differential, the average differential is equal to or less than the City's proposal. Accordingly, based on competent, material and substantial evidence on the whole record, the panel hereby awards the City's proposal on shift differentials.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

3. COMPENSATORY TIME

The Union proposes that Article IV be amended to provide for compensatory time as follows:

In lieu of pay for overtime, call-back time, or court time, the employee shall be entitled, if he so elects, to receive compensatory time off. Such compensatory time off shall be computed at one and one-half (1 1/2) hours for each hour worked as overtime, call-back time, or court time. Compensatory time off may be accumulated to a maximum of eighty (80) hours outstanding at any one time.

Compensatory Time to be effective date of award.

The City proposes that Article IV be amended as follows:

Section G: In lieu of pay for overtime, call-back or court time, the employee shall be entitled, if he so elects, to receive

compensatory time off. Such compensatory time off shall be computed at one and one-half (1 1/2) hours for each hour worked by the employee by way of overtime, call-back time, or court time. Election for compensatory time must be indicated on the day on which it is earned. Compensatory time off may be accumulated to a maximum of forty (40) hours outstanding at any one time. Compensatory time may be taken off subject to the prior approval by the Department. It is understood that the use of compensatory time shall not result in overtime costs to the Department.

Effective Date: Effective thirty (30) days after the date of the Arbitration Award.

The Collective Bargaining Agreement currently contains no provision for compensatory time.

#### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The parties concur that some form of compensatory time should be instituted, and their main difference is the maximum number of hours to be accumulated by the officer.

(d) The Union argues that since supervisory employees receive a maximum of eighty (80) hours, the officers' award should be comparable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) None.

#### OPINION AND AWARD

The City's proposal on compensatory time is awarded. The City convincingly argues that the Union proposal would result in

undue hardship to the City and the Department in terms of manpower requirements and additional costs for overtime. It is further noted that the Union states that "it supports either proposal" although it prefers its own.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

4. LEAVE DAY SELECTION

Article V, Section H of the Collective Bargaining Agreement presently states:

Selection of Leave Days. Eight (8) leave days will be selected in each twenty-eight (28) day work period.

The Union proposes the following amendment:

ARTICLE V  
HOURS OF EMPLOYMENT

Section H: Selection of Leave Days. Eight (8) leave days will be selected in each twenty-eight (28) day work period. Leave days will be selected according to seniority consistent with Administrative Directive 0-01-88.

Leave Day Selection to be effective date of award.

The City proposal requests that the status quo be maintained. The parties agree that the Union proposal would be consistent with the City's practice on leave day selection. The City expressed its concern that, if the Union's language is adopted, the City would have less control over curtailing abuses or potential abuses of the leave day selection process.

### Section 9 Factors

(a) Not applicable.

(b) None.

(c) Not applicable.

(d) It appears that comparable communities largely allow their officers to select leave days on the basis of seniority, as proposed by the Union.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) None.

### OPINION AND AWARD

The panel awards the Union's proposal on leave day selection. Although the City argued that the adoption of the Union proposal might lead to potential abuses of leave day selection, the panel was unconvinced by this argument. First, the Union's proposal appears to encompass long-standing practice in the Department. There was no evidence presented that abuses have occurred in the past and the City retains the opportunity to punish any abuses which might occur in the future. Accordingly, based on competent, material and substantial evidence on the whole record, the panel awards the Union's proposal on leave day selection.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

5. HOLIDAY PAY

The Union proposes the following holiday pay provision, to amend Article XII, Section B, of the Collective Bargaining Agreement:

Holiday Pay. Because the City of Farmington Hills Police Department must maintain its operation on every day of the year, the employees of this bargaining unit are required to work on their regular shift even though that shift may fall upon one of the above holidays. The employees shall, therefore, be entitled to twelve and one-half (12 1/2) days extra pay computed at straight time in lieu of the above holidays. Such sums shall be paid in one lump sum the third payday prior to Christmas. Employees who are required to work Christmas, Thanksgiving, and the Fourth of July shall, in addition to holiday pay provided for herein, be entitled to be paid double time for Christmas, Thanksgiving and the Fourth of July holiday actually worked. Only regularly scheduled patrol personnel shall receive the additional compensation for Thanksgiving, Christmas and the Fourth of July. Patrol personnel not assigned to work on Christmas, Thanksgiving or the Fourth of July shall have their time off carried the same as personnel of other Bureaus.

Holiday pay to be effective date of award.

The City proposes that the status quo be maintained. The present provision for holiday pay set forth in Article XII, Section B, states as follows:

Holiday Pay. Because the City of Farmington Hills Police Department must maintain its operation on every day of the year, the employees of this Bargaining Unit are required to work on their regular shift even though that shift may fall upon one of the above holidays. The employees shall, therefore, be entitled, effective July 1, 1985, twelve (12) days and effective July 1, 1986, twelve and one-half (12 1/2) days extra pay computed at straight time in lieu of the above holidays.



Such sums shall be paid in one lump sum the third payday prior to Christmas. Employees who are required to work Christmas, Thanksgiving and the Fourth of July shall, in addition to holiday pay provided for herein, be entitled to be paid double time for Christmas, Thanksgiving and the Fourth of July holiday actually worked. Only regularly scheduled patrol personnel shall receive the additional compensation for Thanksgiving, Christmas and the Fourth of July.

#### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The City contends that the Union proposal constitutes a request for three (3) additional holidays with pay for all patrol officers.

(d) The Union argues that because bureau officers receive this benefit, equity requires that patrol officers receive the comparable benefit. The City responds by stating that the operations of bureau and patrol officers are so different that such a comparison is misleading and inappropriate. The City further contends that no comparable communities provide the benefit which the Union is requesting.

(e) Not applicable.

(f) The officers presently receive 12 1/2 days of holiday pay annually.

(g) None.

(h) None.

## OPINION AND AWARD

The panel awards the City's proposal on holiday pay. The Union's contention that patrol and bureau assignments are comparable on this issue is not persuasive to the panel. Although the Union claims that this new benefit is necessary to equalize the procedures between the patrol operation and the bureaus, the two are totally different. Patrol members may pick their leave days and either pick the days off or elect to work the days and, in return, receive the extra double-time payment. Bureau members work Monday through Friday and cannot select their leave days nor may they elect to work on the three days and receive the extra double-time payment

In addition, not a single comparable community provides the benefit here sought by the Union.

Therefore, based on competent, material and substantial evidence on the whole record, the panel awards the City's proposal on this issue of holiday pay.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

## 6. VACATIONS

Article XIII, Section A of the Collective Bargaining Agreement presently contains the following provisions as to vacation benefits:

Vacation Eligibility. Employees will be entitled to annual vacations in accordance with the following schedule. Eligibility for vacations shall be determined as of April 1st of each year.

Vacation Schedule for employees hired prior to July 1, 1979:

SENIORITY AS OF APRIL 1ST	MAXIMUM VACATION
-----	-----
Six months, but not more than one (1) year	One day for each month of service over six, plus 3 days.
1 year	16 days
5 years	18 days
6 years	19 days
7 years	20 days
8 years	21 days
9 years	22 days
10 years	23 days

Effective July 1, 1979 - June 30, 1984 for those employees hired after July 1, 1979:

SENIORITY AS OF APRIL 1ST	MAXIMUM VACATION
-----	-----
Start of employment up to two (2) years	10 days
3 years	13 days
5 years	15 days

Employees with less than one (1) year of service on April 1 will be credited with five-sixths (5/6) day of vacation time for each completed calendar month of service by April 1.

Effective June 30, 1984 vacation schedule for employees hired after July 1, 1979:

SENIORITY AS OF APRIL 1ST	MAXIMUM VACATION
-----	-----
Start of employment up to two (2) years	10 days
3 years	13 days
5 years	15 days
6 years	19 days
7 years	20 days
8 years	21 days
9 years	22 days
10 years	23 days

The City's last best offer of settlement is as follows:

Vacation Eligibility. Employees will be entitled to annual vacations in accordance with the following schedule. Eligibility for vacations shall be determined as of April 1st of each year.

SENIORITY AS OF APRIL 1ST	MAXIMUM VACATION
-----	-----
Start of employment up to two (2) years	10 days
3 years	13 days
5 years	15 days
6 years	19 days
7 years	20 days
8 years	21 days
9 years	22 days
10 years	23 days
15 years	25 days

Employees with less than one (1) year of service on April 1 will be credited with five-sixths (5/6) day of vacation time for each completed calendar month of service by April 1.

Effective Date: July 1, 1988

The Union's proposal contains the following offer on this issue:

Vacation Eligibility. Employees will be entitled to annual vacations in accordance with the following schedule. Eligibility for vacations shall be determined as of April 1st of each year.

SENIORITY AS OF APRIL 1ST	MAXIMUM VACATION
-----	-----
Start of employment up to two (2) years	12 days
3 years	15 days
5 years	17 days
6 years	19 days
7 years	20 days
8 years	21 days
9 years	22 days
10 years	23 days
14 years	25 days

Vacations to be effective April 1, 1989.

The parties' positions, including their respective comparables, may be summarized as follows:

	Present	Union Last Union	Employer Last Offer	Average Union Comps	Average Employer Comps
1 year	10	12	10	16	11
2 years	10	12	10	17	12
3 years	13	15	13	18	13
4 years	13	15	13	19	14
5 years	15	17	15	19	16
6 years	19	19	19	19	17
7 years	20	20	20	20	17
8 years	21	21	21	20	18
9 years	22	22	22	21	18
10 years	23	23	23	22	21
11 years	23	23	23	22	22
12 years	23	23	23	23	22
13 years	23	23	23	23	22
14 years	23	25	23	24	22
15 years	23	25	25	25	24
16 years	23	25	25	25	25
17 years	23	25	25	25	25
18 years	23	25	25	25	25
19 years	23	25	25	25	25
20 years	23	25	25	26	25
21 years	23	25	25	26	25
22 years	23	25	25	26	25
23 years	23	25	25	26	25
24 years	23	25	25	26	25
25 years	23	25	25	26	25

### Section 9 Factors

(a) Not applicable.

(b) None.

(c) Neither party argues that this issue involves matters of severe economic concern to the City.

(d) Both the Union and the City agree that the more senior officers should receive increased vacation days. The Union, however, also argues that increased vacation days for recently hired officers is required because comparable communities correctly offer these benefits.

(e) Not applicable.

(f) Not applicable.

(g) Not applicable.

(h) Not applicable.

### OPINION AND AWARD

Based on competent, material and substantial evidence on the whole record, the panel awards the Union's proposal on vacations. The Union's presentation of comparable communities which were cited by both the City and the Union demonstrates that those comparables award greater vacation benefits than the City offers, and that the City's last best settlement offer is inadequate.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

7. PENSION - MULTIPLIER

The City's last best offer on the issue of the pension multiplier is to maintain the status quo, which presently provides in Article XIX, Section B:

Retirement Requirements. Effective June 30, 1984, normal retirement shall be at fifty (50) or more years of age with twenty-five (25) or more years of service. Pension benefit shall be two (2%) percent of average final compensation for the first twenty-five (25) years of service and one (1%) percent for each year of service thereafter with the total benefit not to exceed seventy (70%) percent of average final compensation.

The Union's last best offer is as follows:

Retirement Requirements. Normal unreduced retirement shall be permitted at fifty (50) or more years of age with twenty-five (25) or more years of service. Effective July 1, 1989, the pension multiplier shall be two and one-half percent (2.5%) of final average compensation for all years of service.

Pension - Multiplier to be effective July 1, 1989.

The Union contends that the increase in the pension multiplier is justified by the comparable communities' retirement benefits and by the fact that the present cost to the City for the current retirement system is disproportionately low in relationship to comparable communities.

The City contends that the present retirement system provides better benefits than other comparable communities and that the Union's proposal would create undue financial hardship to the City.



### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The City argues that the Union's proposal is not economically feasible in light of the excess financial burden which will be placed on the City.

(d) The City contends that neither police officers in comparable communities nor other City employees enjoy a pension benefit such as that contained within the Union proposal. The City argues that its presently offered benefit compares favorable with those comparable communities set forth by the Union.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) None.

### OPINION AND AWARD

In considering the competent, material and substantial evidence on the whole record, the panel is convinced that the City already provides one of the best retirement programs of any comparable community. The Union members appear to be far ahead of other city units and the cost of the Union's proposal, which would total at least 5.6% of payroll, would be, in the judgment of the panel, excessive and unjustified. In comparing the City's multiplier to other communities, the City must be compared to other communities which, like the City, provide Social Security. Those communities which do not pay Social Security generally provide a

higher multiplier (because that is the only retirement benefit). As set forth in the exhibits, not a single City comparable community which provides Social Security pays more than the 2.0% multiplier (presently paid by the City of Farmington Hills) and only one community on the Union's list of comparables pays more than 2.0% (Livonia, which pays 2.25%). All other city units presently have a 2.0% multiplier with the exception of the dispatchers, which have a 1.8% multiplier.

In light of the foregoing, the panel awards the City's proposal on the issue of pension multiplier and thus maintains the status quo.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

8. PENSION - FINAL AVERAGE COMPENSATION

In its last offer of settlement, the Union withdrew this issue from consideration by the panel. Accordingly, the status quo will remain in effect.

9. TRAINING/WORK SCHEDULES

The City proposes that Article V, Section F be amended by adding the following language:

Irrespective of any other provision of this contract, the Department may schedule Department-wide training and revise work schedules to accommodate the training program. The employee(s) may be assigned to any work hours to accommodate the training in one five (5) day block once each fiscal year (July 1-June 30) or two blocks of two days or three

days, not to exceed five (5) days in any fiscal year.

Effective Date: Date of Arbitration Award.

The Union's final offer of settlement proposes that the following addition be made to Article V, Section F:

The Employer shall be permitted to temporarily assign an employee to the day shift on such occasions that the employee participates in departmental training.

Training/Work Schedules to be effective date of award.

The parties' proposals differ in two respects: (1) The City insists that its right to assign for training should not be undercut by other contractual provisions; and (2) the Union proposes that training would take place only on the day shift.

#### Section 9 Factors

- (a) Not applicable.
- (b) None
- (c) Not applicable.
- (d) Not applicable.
- (e) Not applicable.
- (f) Not applicable.
- (g) None.
- (h) None.

#### OPTION AND AWARD

The Union's proposal on Training/Work Schedules is awarded. The City's arguments in favor of its position are not compelling. There is no evidence that training has occurred on any

shift other than the day shift or that other contractual provisions would be affected by the award of the Union's last best settlement offer.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

10. PAID LUNCH and 14. ROLL CALL

The City proposes that Article V, Section J be amended by adding the following:

Lunch Period. Employees shall be entitled to thirty (30) minutes off duty for lunch during an eight hour shift; the first fifteen (15) minutes shall be without pay and final fifteen (15) minutes of the lunch period will be with pay.

Effective Date: Effective thirty (30) days after the date of the Arbitration Award.

The Union's final offer of settlement makes the following proposal to replace Article V, Section J with the following:

Lunch Period. Employees shall be entitled to thirty (30) minutes off for lunch during an eight hour shift, without deductions in pay. Further, an officer is entitled to an extra ten (10) minutes for lunch if for good reason he is unable to complete his lunch in the thirty (30) minutes. The time of lunch shall be at the discretion of the individual employee, but shall not be taken at such time as to interfere with his regular police work.

Paid Lunch to be effective date of award.

The present Collective Bargaining Agreement provides for a twenty (20) minute paid lunch period.

The City's last offer of settlement submits the following revision of Article XXXV, Section E:

Section E. Roll Call. All employees may be required to report for roll call or orientation fifteen (15) minutes prior to the beginning of any regularly scheduled shift. This time shall not be considered overtime, nor will the employee be entitled to any extra compensation therefor.

Effective Date: Effective thirty (30) days after the date of the Arbitration Award.

The Union's proposed amended Article XXXV, Section E reads:

Section E. Roll Call. All employees may be required to report for roll call or orientation of up to twenty (20) minutes duration prior to the beginning of any regularly scheduled shift. Such time shall be compensated at the employees' straight time rate.

#### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The Union contends that the City proposal violates the public interest and the Fair Labor Standards Act by requiring officers to remain on duty during unpaid lunch breaks. The City responds by contending that its proposal will not result in increased unpaid lunch breaks, but will instead transfer five (5) minutes of the officer's paid lunch period to the roll call period at the beginning of the shift, which will be in the public interest.

(d) The Union seeks to have all roll call time be compensated at the rate of 1 1/2 and all of the lunch period be paid time. The City claims that only a small minority of

comparable cities provide compensation for roll calls and/or lunch periods.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) None.

#### OPINION AND AWARD

The Union devotes more than six (6) pages of its brief to its contention that the current workday violates the Fair Labor Standards Act and quotes in its entirety an opinion issued by an Ingham County Circuit Court in, what the Union claims, involved a case wherein the Court was confronted with the same set of circumstances as the Farmington Hills current shifts. The City responds that a ruling of the Federal Department of Labor supports the legal sufficiency of the City's workday procedures, and that the Ingham Judge's interpretation of state law is inapplicable because the state law does not apply to any employer who is subject to the minimum wage provisions of the Federal Fair Labor Standards Act which covers the City here. The panel is not inclined to follow an unpublished opinion of a Court whose opinions are not binding on other Courts or public bodies and which does not apply, as here, to an employer subject to the F.L.S.A. The panel also agrees with the City that the issue raised by the Union here was not negotiated in good faith, nor subjected to mediation before it was argued in the Union's brief.

The panel is, in addition, persuaded that the Union's proposal is not supported by the competent, material and

substantial evidence on the whole record and that virtually none of the comparable communities are in harmony with it. On the other hand, the panel agrees that the City's twin proposal does not require the City officers to perform any work without being paid, and that the purpose behind the proposal is a laudatory one to increase the officer's efficiency and to provide better police services to the citizens.

The panel awards the City's proposal on the paid lunch and roll call issues.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

#### 11. SICK TIME ACCUMULATION

The City's last offer of settlement on sick leave accumulation is to amend Article XIV, Section C as follows:

##### Unused Sick and Personal Days.

1. Unused "Sick Leave Days" not taken in any one fiscal year may be accumulated for use in the future, but such accumulation shall not exceed one hundred twenty (120) days, or the number of sick leave days accumulated by the employee as of June 30, 1987, whichever is higher.

An employee who retires from City service under its retirement plan or voluntarily resigns in good standing shall receive fifty (50%) percent of all unused accumulated leave under this Section at his then current rate of pay. Upon death of an employee, all unused sick leave will be paid at the rate of fifty (50%) percent to the employee's beneficiary as listed on his life insurance policy.

2. In addition to the sick leave accumulation set forth in Section C-1 above, employees may accumulate reserve sick leave as days are earned in excess of the applicable maximum under Section C-1 up to a combined total of two hundred (200) days. Reserve sick leave may be used on the same basis as other sick leave, provided that, in no event shall the City make payment for any unused accumulated reserve sick leave; it being understood payments will only be made for the days accumulated under Section C-1 above.

Effective Date: Date of Arbitration Award.

The Union contends that the status quo should be maintained, which provides for a maximum accumulation of one hundred seventy (170) days upon retirement, all of which are paid out at fifty (50%) percent upon retirement. The City's proposal would increase the amount of accumulation to 200 hours but reduce the amount of days for the payout to 120, or the number of days the employee has accumulated as of June 30, 1987, whichever is higher.

Section 9 Factors

- (a) Not applicable.
- (b) None.
- (c) Not applicable.
- (d) The City contends that both comparable communities and other City employees receive benefits in line with the City's proposal.
- (e) Not applicable.
- (f) Not applicable.
- (g) None.



(h) None.

OPINION AND AWARD

The panel is persuaded that the City's proposal of increasing the accumulation of sick days from 170 to 200 but reducing the payout days from 170 to 120, or the number of sick leave days accumulated as of June 30, 1987, whichever is higher, is reasonable. Although the Union has stated in its brief that this issue is very important to it, the panel is convinced that, based upon the identical new programs negotiated by the City with AFSCME and Teamster bargaining units and placed in effect for the general employees, as well as the fact that Farmington Hills officers reach their maximum amount of sick time considerably faster than in other communities, the City's proposal should be adopted. Since all existing (as of June 30, 1987) officers will be "grandfathered in," no benefits will be "taken away" from those officers who have already exceeded the current cap of 120 days.

Therefore, based on competent, material and substantial evidence, the panel awards the City's proposal on this issue.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

12. HEALTH INSURANCE PREMIUMS

The City proposes that each officer contribute ten (\$10.00) dollars per month out of payroll deduction towards the cost of their health insurance premium, by adding the following new section to Article XV:

Section \_\_\_\_\_. All employees contribute ten (\$10.00) dollars each month toward the costs of health insurance premiums. Employees shall sign a payroll authorization card authorizing such deductions as a condition of eligibility for insurance benefits.

Effective Date: Effective thirty (30) days after the date of the Arbitration Award.

The Union contends that the status quo be maintained, in which there is no provision for such employee contributions.

Section 9 Factors

- (a) Not applicable.
- (b) None.
- (c) The City's proposal is based on the acknowledged increasing costs for health care premiums.
- (d) The comparable communities do not require that employees pay for their health care premiums.
- (e) Not applicable.
- (f) Not applicable.
- (g) None.
- (h) None.

OPINION AND AWARD

The panel awards the Union's proposal on the issue of health insurance premiums. The City has not met its burden of proof to show that a change should be made in the status quo and only two comparables of the total offered by either party require officers to contribute towards basic health insurance.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

### 13. EMPLOYEE PENSION CONTRIBUTION

The City's final offer of settlement proposes that a new Subsection 3 be added to Article XIX - Retirement, Section A, to provide that, effective July 1, 1989, the employees' contribution to the retirement system be increased by one-half of one percent (.005%) to five percent of annual compensation.

In its final offer, the Union submitted a proposal that employees not make any pension contribution instead of the 4.50% provided in the current, expired contract.

The City contends that the increase of .005% in the employees' contribution to the retirement system is justified because of the current favorable position which the City claims is enjoyed by Union members in the existing retirement program, as well as the favorable position of the unit members regarding salary and overall compensation. It also claims that the Union has injected a new position in its final offer when the Union seeks to eliminate entirely the employees' contribution of .045%. The City claims that the Union's demand is a new one - one that was never bargained, negotiated, submitted to mediation, or submitted to Act 312 arbitration.

On the other hand, the Union claims that the Farmington Hills police already exceed the average of the comparable communities when they currently pay 4.5%/5.5% plus 7.51% for Social Security. The Union also claims that the pension fund realized an unexpected gain of \$530,000 in the last actuarily valued year and

that there has been no showing that the plan is presently inadequate or in jeopardy.

#### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The City claims that the .005% increase is necessary to help defray costs in other areas and that the Union proposal to remove all employee contributions would result in an imposition of a 12% increase in overall costs to the City and a new cost of at least 5.63% of payroll to make up for the Union withdrawal of contributions. The City claims such impositions to be an impossible financial burden on the City. The Union claims that the pension fund is exceedingly healthy and does not need to be replenished by employee contributions; whether .005% or .045%.

(d) Each party here contends that the data of employee contributions in comparable communities supports its proposal that the employee contribution be either increased (as claimed by the City) or eliminated (as claimed by the Union).

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) None.

#### OPINION AND AWARD

The panel is unconvinced that either party has sustained its burden of proof necessary to change the provisions of the current, expired contract. If it were within the panel's authority

under the provisions of Section 8 of Act 312 to reject the last offers of settlement submitted by both sides, it would do so because of the failure of both City and Union to submit clear and convincing proof to the panel that its position, to raise or eliminate the employee contribution, was justified. However, a close reading of Section 8 convinces the panel that, as to each economic issue (which this issue is by designation of the parties and by any common sense analysis), the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9.

The Union claims that the average employee contributions in either group of comparable communities does not justify the .005% increase proposed by the City but, on the other hand, the Union failed to present any credible evidence at the hearings to justify the complete elimination of the present employee contributions. Although the City's actuary testified that the current employee contributions are necessary to maintain the integrity of the pension fund, the Union failed to rebut the City's claim that if the employees fail to make their contributions of at least .045%, the City itself must "pick up the slack." No probative evidence justified a wage raise of 4% and a further indirect wage raise of .045% resulting from an elimination of the employees' contribution, making a total of .085% improvement in real earnings.

Although, as stated above, the panel is unconvinced that the City has established the merit of its proposal of an increase in the employees' contribution of .005%, its proposal more nearly complies with the Section 9 criteria (especially when considered with the City's proposal of a 4% increase in wages in the third year versus the Union's proposal for absolute elimination of the existing 4.5% of employee contribution.

Thus, the panel reluctantly awards the City proposal as to employee contributions based on the competent, material and substantial evidence.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

#### NON-ECONOMIC ISSUES

##### 15. ROTATING SHIFTS

The City proposes that Article V, Sections E and F of the Collective Bargaining Agreement be revised as follows:

Section E: Shift Rotation. Members of the Patrol Division shall rotate among the day, afternoon, and midnight shifts for four-month periods under the following procedures:

1. Effective sixty (60) days before the start of the four (4) month period (commencing January or May or September) commencing after the date of the Arbitration Award.
2. Shift rotation periods will be as follows:

Period 1: January, February, March, April  
Period 2: May, June, July, August  
Period 3: September, October, November, December

3. For the purposes of selection, the day support shift shall be considered as part of the day shift, and the afternoon support shift shall be considered part of the afternoon shift. Positions on a support shift shall be filled by seniority preference among those assigned to the day shift for the day support shift or afternoons for the afternoon support shift. In the event that all positions on support shifts are not filled by volunteers, the lowest seniority officers from the respective shift shall be assigned.
4. There shall be no payment of shift differential as a result of the shift rotation schedule.
5. The City will designate the number of positions to be filled on each shift, and shall post the schedule.
6. The Department will post a seniority list of all confirmed members of the Department.
7. Employees may select the shift to be worked during the first period based upon the number of positions designated for each shift and the employees' Department seniority. Selection shall be accomplished by posting a blank shift manning chart forty-five (45) days prior to the first period. Selections for the period shall be completed by members of the bargaining unit within seven days after posting. Employees will rotate to the other two shifts during the next two periods as set forth above; except as provided in part 8 of this Section.
8. In the event that a shift rotation progression for all officers on a shift is precluded because of a lower number of designated positions on the subsequent shift, the filling of the vacancies on the subsequent shall be by seniority preference.
9. Members of the bargaining unit whom may be on vacation, sick leave, or other approved leave at the time of the posting and shift selection process shall assume responsibility for their shift selection, in writing, through a union representative.

Section F: Bumping. "Bumping", i.e. preempting another officer's position after selection for the first period, based on superior seniority shall not be permitted.

Effective Date: Effective sixty (60) days before the start of the four (4) month period (commencing January or May or September) commencing after the date of the Arbitration Award.

The Union proposes that the status quo be maintained. The current system provides that permanent shifts are selected by seniority.

#### Section 9 Factors

(a) Not applicable.

(b) None.

(c) The City contends that because supervisory personnel are on a true rotation of their shifts, they are unable to properly evaluate those officers for whom they have supervisory responsibility and whom they evaluate. The City further contends that the public interest in properly trained and experienced police officers is not served by the lack of rotation, since certain shifts provide officers with less exposure to certain duties than other shifts.

(d) The City concedes that the comparable communities do not provide support for its proposal; instead, it contends that the youthful nature of the Department mandates this proposal. .

(e) Not applicable.

(f) Not applicable.

(g) None.



(h) None.

OPINION AND AWARD

Based primarily on the evidence set forth by the City, which shows that less experienced officers work the afternoon and midnight shifts when experienced officers are most needed, this panel believes that the City's proposal should be discussed more fully by the parties. The panel also believes that the rotation of shifts as proposed by the City might very well result in the creation of an unsettling effect on the police officers, and perhaps destructive of morale. In view of the Union's position, it is ordered that the City's proposal be denied and the status quo maintained. Nevertheless, the panel also denies the Union's proposal of continuing the status quo in order to give the parties an opportunity to meet and agree on a suitable shift or inaugurate an experimental program as hereafter set forth. Therefore, the parties are directed to meet and reach agreement within ninety (90) days of the date of this award to determine a mutually satisfactory program or shift schedule which will not be too disruptive to the police officers' circadian rhythms and yet provide the City with its desire to place more experienced officers on the afternoon and midnight shifts. The panel retains jurisdiction if the parties are unable to reach agreement.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

## 16. GRIEVANCE PROCEDURES

The City proposes that Article XXI, Section C be amended by adding a new step in the grievance procedure at the Deputy Chief level as follows:

Step III. Deputy Chief of Police. If the grievance is not resolved in Step II, the union may, within ten (10) working days after the receipt of the answer in Step II, appeal the grievance to the Deputy Chief of Police. The appeal shall be in writing and it shall include the written grievance and the Bureau Commander's answer and shall specify the basis of the appeal. The Deputy Chief of Police, or his designated representative, shall give the union an answer in writing no later than ten (10) working days after receipt of the written appeal. Additional time may be allowed by mutual written agreement of the City and the Union.

Effective Date: Date of Arbitration Award

The Union contends that the status quo should be maintained. The present procedure provides for a new interim step between Step II, at the Bureau Commander level, and Step III, at the level of the Chief of Police.

### Section 9 Factors

- (a) Not applicable.
- (b) None.
- (c) Not applicable.
- (d) Not applicable.
- (e) Not applicable.
- (f) None.
- (g) None.
- (h) None.

### OPINION AND AWARD

The City's proposal is awarded by this panel. The Deputy Chief is a new position in the Department and it is reasonable to establish a new grievance step to coincide with the new position. The additional step would not diminish the Union's ability to grieve and arbitrate subjects of dispute without submitting the grievance to arbitration, which may reduce cost and time for the parties.

Vote -- For: \_\_\_\_\_

Against: \_\_\_\_\_

### SUMMARY

The panel commends both parties and their learned and experienced advocates in the presentation of their proofs and arguments. Without their excellent briefs, no informed award would be possible in light of the passage of time from the Pretrial to the Closing of Proofs and submission of Last Offers. Throughout, the parties and their representatives maintained a high degree of professionalism, in spite of the emotionally charged nature of some of the issues. The panel sincerely hopes that a new climate will prevail in future bargaining.

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John B. Kiefer, Chairman