23

Det. PR

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

CITY OF ANN ARBOR

-and-

Act 312 Case
No. D83 E-1514

ANN ARBOR FIRE FIGHTERS
ASSOCIATION, IAFF LOCAL 1733

ARBITRATION PANEL

Chairman: Paul E. Glendon
City Delegate: Mary J. Rinne
Union Delegate: Wesley Prater

ISSUES

Economic: Wages for Three Years
Compensatory Time as Overtime Compensation
Reductions in Sick Leave
Sergeant Upgrade & Classification Elimination
Education Incentive

Noneconomic: Expanded Management Rights Clause
Deletion of Rules & Regulations from Contract
Addition of Waiver & Entire Agreement Clauses

CHRONOLOGY

Act 312 Petition filed: August 10, 1984
Chairman appointed: September 12, 1984
Pre-hearing conference: October 4, 1984
Evidentiary hearings: January 21 & 22, 1985
February 4, 5 & 8, 1985
March 7, 1985
May 2, 1985
June 5, 14 & 25, 1985
Last offers exchanged: August 1, 1985
Briefs received: September 26, 1985
Panel's findings issued: October 18, 1985

APPEARANCES

For the City: Richard Parker, Labor Relations
For the Union: Ronald R. Helveston, Attorney
Alison L. Paton, Attorney

BACKGROUND

The parties' last agreement took effect July 1, 1981 and expired July 30, 1983. They were unable to reach agreement on a successor contract, despite extensive negotiations and three sessions with a mediator. Immediately after the last mediation session, on August 10, 1984, the Union petitioned for compulsory arbitration pursuant to Act 312, Public Acts of 1969, as amended (MCLA 423.231). The Michigan Employment Relations Commission (MERC) appointed Paul E. Glendon as impartial chairman of the Act 312 arbitration panel. The parties chose as their panel delegates Mary J. Rinne, assistant city attorney, and Union president Wesley Prater.

The parties waived all statutory time limits in these proceedings, although it may be noted that the panel's findings have been issued within thirty days after the chairman's receipt of post-hearing briefs. The parties stipulated that the agreement subject to this arbitration is to have a term of three years, commencing July 1, 1983 and expiring June 30, 1986. Eight unresolved issues were placed before the panel for decision, five of which the panel determined to be economic.

The parties also have stipulated to changes in certain other sections of the contract. The agreed language changes are attached hereto and are adopted by the panel, pursuant to the parties' stipulation, as part of its findings and orders. As to all matters not covered by this panel's orders or the attached stipulated contract changes, the provisions of the parties' 1981 agreement shall continue unchanged in the 1983-86 agreement.

The parties presented extensive background evidence regarding the City of Ann Arbor in general and its salient characteristics; the City's Fire Department, its equipment, manpower, mission, and performance; and the nature of fire fighting in general. Such evidence was of great assistance to the chairman. But it need not be repeated, or even summarized, here. To do so would extend this report unduly, without serving any useful purpose.

These proceedings in general and the panel's deliberations in particular are governed by Act 312, and the panel has acted accordingly. Specifically, the panel's findings, opinions and orders have been guided by and are based on the criteria set forth in Section 9 of Act 312. The eight statutory factors will not be reprinted here, because they are discussed individually as part of the panel's findings and opinion on each issue. One of those factors also is discussed at length in the preliminary discussion of comparable cities which follows.

COMPARABLE CITIES

In deciding questions regarding "wage rates or other conditions of employment," one of the eight statutory factors the panel is to consider is a comparison of wages, hours and conditions of employment between these employees and others "performing similar services... in public employment in comparable cities." (Section 9(d)) Sometimes the disputants in Act 312 proceedings agree on what cities are comparable, sometimes not. If they do not, the panel must decide that question prior to applying the statutory factors to the other issues before it. In this case, the parties agree on only two comparable cities: Livonia and Southfield.

The Union suggests eleven others: Dearborn, Dearborn Heights, Lincoln Park, Pontiac, Roseville, Royal Oak, St. Clair Shores, Sterling Heights, Taylor, Warren and Westland. All eleven are in the Metropolitan Detroit area. They also are included in Area #1 in the Michigan Municipal League's Annual Municipal Wage Survey, as is Ann Arbor. With Ann Arbor, Southfield and Livonia, they are the largest municipalities in Area #1 which have full-time, professional fire departments. Except for Lincoln Park and Taylor, they also were identified as comparable cities in two previous Act 312 arbitration proceedings between these parties.

The introduction to the 1983 Survey states that such "wage areas have been established to reflect the variation in metropolitan influence throughout the State of Michigan." The Union maintains that Ann Arbor is indeed under the metropolitan Detroit area's economic influence, as further recognized by its inclusion in the U. S. Census Bureau's "Ann Arbor-Detroit" Standard Metropolitan Statistical Area. It contends that outstate cities do not experience the same economic conditions and are not comparable to Ann Arbor for that reason.

The City disputes this point. It notes that the 1983 Survey introduction suggested "a broader view... which crosses geographic areas" for cities "at the edge of an area." Michigan Municipal League official Joseph Fremont testified on the City's behalf that the Survey's area groupings never were intended to indicate that the municipalities within each area are "comparable." He said new language was included in the 1985 Survey introduction to counter the "misuse" of such groupings in that regard. The new introduction states that the "data is (sic) sorted by geographic areas of the State for convenience in presentation," and the "areas are not intended to indicate labor market areas or any other basis for comparing municipalities."

The City contends proximity to Detroit is not an important consideration. In its view, a more systematic analysis of attributes which contribute to Ann Arbor's unique municipal character is necessary to identify other cities which are comparable. It devised a list of ten criteria which it believes best measure comparability to

Ann Arbor: presence of major college; "core city" rather than "suburb;" population; median household income; educational level of residents over 25 years old; population per full-time fire fighter; percentage of population below poverty line; population change between 1970 and 1980; change in per capita state equalized valuation between 1970 and 1980; and "relative tax burden."

The City analyzed all lower peninsula cities of 50,000 to 1,000,000 population according to these ten criteria, arbitrarily adopting certain ranges of comparison for those criteria susceptible to numerical measurement. It came up with only three comparable cities besides Livonia and Southfield: Grand Rapids, Lansing and East Lansing. Grand Rapids was found to share four of the ten characteristics; Lansing and East Lansing six each.

Act 312 does not define "comparable," nor does it provide any interpretive guidance. Other arbitrators have wrestled with this concept, some in the broadest terms, some with more narrow, complex analyses. The chairman favors an approach which concentrates on general but objective criteria demonstrably related to the purpose of the comparison. In this case, the best that can be achieved is a broad picture of cities' size and composition as related to their fire fighting and emergency response functions. The factors to be considered are population, geographic area and location, assessed valuation of real property, and the division of such property among residential, commercial and industrial uses. The last factor should reveal cities' basic character, not in subjective and intangible terms, but as an objective reflection of the kinds of buildings, functions and activities being protected by the fire department.

As measured by the 1980 census, Ann Arbor's population was 107,996. In geographic terms, it comprises 24.6 square miles, located approximately the same distance from Lansing and the northeastern suburbs of Detroit. The total state equalized valuation (SEV) of taxable property within the city in 1983 was approximately $1.32 billion (this figure and all other SEV figures cited hereafter have been rounded to the nearest 100,000). Twenty-nine percent of such property valuation was commercial (somewhat more, probably, if nontaxable University of Michigan property were taken into account), 5% industrial, and 57% residential. The two cities upon which the parties agree compare as follows.

Livonia's 1980 population was 104,814. It covered 34.8 square miles, located approximately twenty miles east of Ann Arbor. Total SEV in 1983 was $1.54 billion. Ten percent of that valuation was in commercial property, 17% industrial and 61% residential.

Southfield's 1980 population was 75,568. It covered 25.3 miles, located approximately forty miles northeast of Ann Arbor. Total SEV in 1983 was $1.36 billion, of which 42% was commercial, 1% industrial and 44% residential.

In these two agreed "comparables," substantial divergence from the Ann Arbor norm is apparent in several respects. Southfield's population was approximately 32,000 less than Ann Arbor's. The commercial component of its SEV was 13% greater than Ann Arbor's; the residential component 13% smaller. Livona's industrial component was more than three times greater than Ann Arbor's; its commercial component 19% smaller.

Rather than setting arbitrary ranges of divergence for assessing the similarity of other cities, the chairman adopts these agreed deviations as the limits of comparability for other cities. Accordingly, the comparable population range is plus or minus 33,000. The upper limit for the commercial property value component is 42%, the lower limit 10%. The upper limit for the industrial component is 17%. The range of variation for the residential component is 13%, up or down.

Both Livonia and Southfield had SEV totals only slightly higher than Ann Arbor, so no limit can be derived from those cities for application to other alleged comparables. Furthermore, the chairman takes arbitral notice that SEV is as much a function of local real estate market conditions as it is of intrinsic value, and therefore is perhaps the least objective of these factors.

For geographic comparison, the chairman takes his cue from the suggestion in the introduction to the 1983 Municipal League survey: since Ann Arbor is at the westernmost edge of Area #1, a properly broad geographic view would extend approximately as far into Area #2 as to the furthest (northeast) boundary of Area #1. In terms of geographic area, Livonia is almost 50% bigger than Ann Arbor; fifty percent is adopted as the range of variation, smaller or larger.

When these standards of comparison are applied to the fourteen municipalities about which the parties have disagreed, the following emerge as additional comparable cities (in the chart below, C = commercial, I = industrial, and R = residential):

City	Pop.	Sq. Mi.	SEV	C / I / R
Sterling Hts.	108,899	36.6	1.32	13 10 65
Taylor	77,568	23.3	.58	22 11 59
Westland	84,603	19.8	.61	23 3 69

In addition, the chairman finds Lansing to be comparable. The City proposed Lansing as a comparable city, but furnished only such information as could be slotted into the City's own ten criteria, which the chairman has found to be of little assistance in making objective comparisons. The evidence is that Lansing's 1980 population was 130,414. The chairman takes arbitral notice that it lies within the proper geographical range, in both area and location, and is

influenced by metropolitan Detroit economic conditions by virtue of its proximity to the Detroit metroplitan area and the substantial presence of the automobile industry in Lansing. Neither party furnished SEV data for Lansing. However, records of the State Tax Commission, which was the source of such data presented by the Union for the cities it proposed as comparables, show that total 1983 SEV for Lansing was $1.14 billion, of which 22% was residential, 6% industrial and 56% residential. These figures are well within the range of comparability as defined above.

The other cities put forth by both parties are found not to be comparable, for the following reasons. In Dearborn, the residential component (40%) is too small, the industrial component (21%, plus 23% personal) too large. Dearborn Heights is too small, in both area (12.1 sq. mi.) and population (67,706), and too heavily (85%) residential. East Lansing is too small in population (51,396). Grand Rapids is too populous (161,134) and too far away. Lincoln Park is too small, in both area (5.8 sq. mi.) and population (45,105), and is 77% residential. Pontiac is only 30% residential, nearly 31% industrial. Roseville is too small (9.5 sq. miles, 54,311 population). Royal Oak comprises only 11.8 square miles, 73% residential, with a population of only 70,892. St. Clair Shores is 84% residential, and covers only 11.6 square miles. Warren also is too populous (161,134) and too heavily (19%) industrial.

Finding: The chairman finds that the comparable cities to be used in the application of statutory factor (d) are Lansing, Livonia, Southfield, Taylor, Sterling Heights and Westland.

WAGES

At the outset of this arbitration, the parties submitted proposals for three annual wage adjustments during the contract period, taking effect July 1, 1983, 1984 and 1985. Last offers of settlement were structured the same way. The disputed wage increases for each of the three years constitute three separate economic issues, upon which the panel will make separate findings. The City's last offer on wages is for across the board increases of four, three and three percent in the three years of the contract. The Union's last offer of settlement asks for increases of six, four and four percent. As prescribed by statute, the panel's findings are based upon the factors enumerated in Section 9 of Act 312, and will be discussed accordingly.

Factor (a), "the lawful authority of the employer," is not applicable. It is undisputed that the City has the legal authority to pay the increases proposed by both parties.

Factor (b), "stipulations of the parties," is applicable only to the extent of the parties' agreement for a three-year contract. Otherwise, they made no stipulations affecting the wage issue.

Factor (c) covers "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." It is not applicable insofar as it relates to the City's ability to pay the wage increases in question. The City concedes it has the fiscal resources to meet the Union's demands. However, it raises a broader question concerning the interests and welfare of the public, arguing it has other public responsibilities which the City Council has determined to be of higher priority than large wage increases for fire fighters. In particular, it cites the Council's desire to provide additional funds for street repairs and "human services." The City also argues that even though it has a substantial unreserved fund balance, its financial future is precarious.

The Union points out that the City has an existing special millage for street repairs and improvements, and can raise additional funds in the same manner if necessary. As to the City's other priorities, the Union argues that a general, political interest in providing more funds for human services cannot be more important to the public interest and welfare than paying fair wages to the fire fighters who protect the lives and property of Ann Arbor citizens. In its view, ability to pay — which the City admits it has — is the only significant criterion.

The chairman finds that the City's desire to allocate available resources to other priorities is of secondary importance to its admitted ability to pay the wage increases sought by the Union. Other factors, which will be discussed below, are of far greater relevance and importance. Compared to those factors, the City's budgetary priorities are at most a make-weight argument.

Factor (d) requires the panel to compare Ann Arbor fire fighters' "wages, hours and conditions of employment" with those of "other employees performing similar services and with other employees generally" in public and private employment "in comparable communities." In applying this factor, the panel also must be mindful of factor (f), which requires consideration of the employees' "overall compensation... 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."

Neither party submitted any evidence relating to wages in private employment, except for general references to median household income in Ann Arbor and other cities and wages of medical technicians employed by the local ambulance service. Therefore factor (d)(ii) is not applicable.

Factor (d)(i) clearly is, and both parties introduced extensive evidence regarding the wages and other compensation received by fire fighters in the cities they considered comparable. Extracting

from that plenitude of statistics only the data pertinent to the comparable cities, as determined by the panel, a clear picture emerges for the 1983-84 contract year.

City	Base Salary	Total Cash Comp.	Plus Insurance
Lansing	$24,221	$25,531	$28,085
Livonia	26,125	28,595	32,127
Southfield	29,030	32,256	36,094
Sterling Hts.	27,754	31,165	33,445
Taylor	24,155	28,582	33,934
Average	$26,257	$29,226	$32,737

The base salary figures on this chart are for top rated fire fighters, after contractual step increases but without longevity increases, in each case. Total cash compensation includes those salaries, holiday pay, longevity pay (for twelve years, that being the median longevity level for Ann Arbor fire fighters), cost of living allowance, annual sick leave payout, and food and uniform allowances, although not all those items apply for each city. (Only Taylor has a cost of living allowance, for example; only Sterling Heights and Taylor have annual sick leave payouts.) The last column adds to the Total Cash Compensation those amounts contributed by the employers for health, dental, life and optical insurance benefits received by the fire fighters. All figures are for contracts expiring June 30, 1984.

Even though it is a comparable city, Westland was not included in this analysis, because the compensation paid to Westland fire fighters in 1983-84 was carried over, without increase, from their last contract, which expired June 30, 1982. It will be changed, eventually, by retroactive application of a contract adopted to cover the period beginning July 1, 1982.

By comparison, these are the figures for Ann Arbor for the same period, applying the six and four percent increases proposed by the parties:

	Base Salary	Total Cash Comp.	Plus Insurance
With 6% Incr	$28,366	$33,607	$36,249
With 4% Incr	27,830	32,990	35,632
% Above Avg:			
With 6% Incr	8.0	15.0	10.7
With 4% Incr	6.0	12.9	8.9

Ann Arbor is significantly above the five-city average by all three measurements with either a four or six percent increase. In fact, it would be above the averages even without any increase for 1983-84. Placing Ann Arbor with the other five cities and ranking them in descending order, Ann Arbor ranks first in total cash compensation with either a four or six percent increase, second in

base salary either way, first in total cash compensation plus employer's insurance costs with a six percent increase, and second (by less than $500) in total cash compensation plus insurance costs with a four percent increase.

The City also urges the panel to take employer pension contributions into account, and furnished additional statistics for that purpose. Those figures show an even greater advantage for Ann Arbor fire fighters. However, the City's contribution statistics are not reliable evidence, because they assume contribution levels as actuarially recommended in every case. The City did not know whether other cities actually make contributions at those levels, but conceded it does not do so. Ann Arbor contributes as much to the pension fund as it receives from a special 1.5 mill property tax levy, a figure substantially below the level actuarially recommended. Thus the chairman gives no weight whatsoever to the City's evidence concerning pension costs.

However, the pensions themselves must be considered by the panel pursuant to statutory factor (f). The evidence of pension benefit levels is straightforward, clear and reliable. It shows that Ann Arbor fire fighters receive annual benefits according to the following formula: 2.75% of final average compensation (FAC) times the number of years of service up to 25, plus 1.5% of FAC for each year beyond 25. By comparison, benefits in five of the comparable cities are 2.5% of FAC for the first 25 years (Livonia's is 2.25% for the first 30); all six cities provide 1% for additional years. In addition, Ann Arbor has the only pension plan providing for post-retirement benefit increases, and it includes payment for unused compensatory time and sick leave in FAC. None of the comparable cities includes compensatory time; only Livonia, Taylor and Westland include sick leave. Including this pension advantage, when considering the employees' "overall compensation," the evidence clearly demonstrates that Ann Arbor fire fighters occupy a strongly favorable position, even without a wage increase, relative to the comparable cities.

For these reasons, it is found that the City's proposal for a four percent across the board increase in 1983-84 more nearly complies with factor (d)(ii).

Additional base salary figures are available for only three comparable cities -- Lansing, Livonia and Sterling Heights -- for 1984-85, and only for Lansing and Livonia for 1985-86. They are as follows:

City	1984-85/Increase		1985-86/Increase	
Lansing	25,916	7.0%	27,730	7.0%
Livonia	27,300	4.5%	28,939	6.0%
Sterling Hts.	29,142	5.0%		

Average	27,452	28,335

With a three percent increase in 1984-85, the base salary for Ann Arbor will be $28,665, still substantially higher than Lansing and Livonia, slightly below Sterling Heights, and 4.4% above the average for all three cities. Unless the other compensation elements in those cities change significantly, Ann Arbor's total cash compensation and total cash compensation plus insurance will exceed Lansing and Livonia's by even greater margins, and still exceed Sterling Heights's, even though that city has a slightly higher base salary. Add to this the continuing pension advantage enjoyed by Ann Arbor fire fighters, and it must be concluded that the City's three percent offer more nearly complies with factor (d)(ii) for 1984-85.

Additional support for this conclusion is found in a comparison with the wages of other employees of the City of Ann Arbor, which is an appropriate consideration pursuant to statutory factor (h), which directs the panel to consider "(s)uch other factors... which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment." All settled contracts with other bargaining units (AFSCME, Ann Arbor Police Officers Association (AAPOA), Police Communications Operators and supervisory employees represented by the Teamsters) have three percent wage increases for 1984-85. The AAPOA contract was arrived at through Act 312 arbitration, in which the panel also adopted the City's offer of a four percent increase in 1983-84.

The Union points out that fire fighters are paid less than police officers in Ann Arbor, even though they work more hours: base salary differentials were $1,218 in 1981-82 and $1,315 in 1982-83. That has been the case for at least ten years, to varying degrees. The Union accepted such differentials during the last contract, and has offered no persuasive evidence that they should be eliminated in this one. To the contrary, the historical existence of such differentials may be considered a factor in the City's favor. Adopting its last offers, which match the new police contract exactly, will maintain the differential exactly as it existed at the end of the 1981-83 agreements.

Other bargaining units received eight percent increases in 1983-84, either as a single increase or in two increases of four percent each on July 1, 1983 and April 1, 1984 (which compounds to 8.16% for the full year), but those were either final or intermediate year increases in contracts which had been negotiated one or two years previously. As the City and the panel chairman in the AAPOA Act 312 case both observed, those contracts were made under the economic expectations which prevailed at their inception. The fire fighters' previous contract was a two-year agreement which took effect July 1, 1981; it provided for eight percent increases both years, which is another reflection of what those expectations were at that time. The findings in this case must be governed by circumstances which actually

existed at the conclusion of the last agreement. At that time, no other support existed for an eight percent increase, so the fact that other City bargaining units received such increases that year is of little significance.

The same analysis applies to the third year of the contract. With a three percent increase, Ann Arbor fire fighters' base salary ($29,525) still will be substantially higher than Lansing and Livonia, the only comparable cities for which the figures are known for 1985-86. Whether the other four cities will adopt greater or smaller increases is unknown, but if the collective bargaining process -- including its statutory extension into compulsory arbitration -- works as designed, significantly larger increases should be unlikely. Larger increases for those cities at the lower end of the scale of comparability would be expected, so they could approach the average. The same expectation would not apply to cities at the higher end. Furthermore, the only two Ann Arbor bargaining units with settled contracts for 1985-86 (AFSCME and AAPOA) receive three percent increases. Finally, Ann Arbor's significant pension advantage over all comparable cities will continue. For these reasons, the City's offer of a three percent increase for 1985-86 also more nearly complies with factor (d)(ii).

Factor (e) requires consideration of the "average consumer prices for goods and services, commonly known as the cost of living." This factor also supports the City's position. The Union contends the panel should take a long, historic view of the Consumer Price Index (CPI), going back ten years. It argues such an analysis will show that despite moderate increases in the cost of living in recent years, fire fighters' earnings still lag behind inflation, because of unusually large CPI increases from 1979 through 1981. However, the last contract year in which such high inflation existed was 1980-81. Typically, adjustments for increased cost of living are retrospective, whether they occur automatically through scheduled cost of living allowances or through bargaining for higher wages to make up for purchasing power which has been lost because of past inflation. The Union had the opportunity to make such adjustments in the parties' 1981-83 contract, and apparently succeeded, having settled on eight percent increases during both years of that contract. Having done so, it cannot take another retroactive bite of the same inflationary apple in this arbitration.

The proper focus of the panel's attention under factor (e) must be CPI changes from July to July in 1982-83, 1983-84 and 1984-85. The net change in the CPI for Urban Wage Earners and Clerical Workers in the first of those twelve-month periods was an increase of five percent, exactly halfway between the parties last offers for 1983-84. Thus neither party's offer more nearly complied with factor (e) for that year. In 1983-84, the same CPI decreased 1.8%, so the City's three percent offer for 1984-85 more nearly complied with factor (e) for that year. In 1984-85, the same CPI increased again, by 3.4%,

making a net increase of 6.6% for the three-year period. Whether considered alone or cumulatively (in the latter respect, compared to a net compounded wage increase of 10.3% over the three-year term of the contract under the City's offer), this is strong evidence that the City's offer for 1985-86 also more nearly complies with factor (e).

Factor (f) already has been covered in the extended discussion of factor (d). As part of that comparative analysis, it clearly favored the City's position for all three years of the contract. The City also argues that the stability of employment in the Ann Arbor Fire Department is a significant consideration. However, there is no evidence that employment in other municipal fire departments is any less stable. Layoffs have occurred in other City departments, but that alone is not convincing evidence that the City's wage offer should be adopted.

Factor (g) requires the panel to consider "(c)hanges in any of the foregoing circumstances during the pendency of the arbitration proceedings." Changes in the CPI have been discussed as part of the analysis of factor (e), and need not be repeated here. Adoption of new contracts by comparable cities also has been discussed, with factor (d). Suffice it to say that the latter changes were neutral, favoring neither party's position, but the former strongly supported the City.

Factor (h) also has been discussed above as part of the comparison of other Ann Arbor city employees' compensation. In that context, it supports the City's position on wages. Nothing more need be said about it here.

Finding and Order: The panel finds that the City's last offers on wages more nearly comply with the statutory factors. It adopts those offers for all three years of the contract, and orders payment of across the board increases of four percent during the 1983-84 contract year, three percent for 1984-85, and three percent for 1985-86.

COMPENSATORY TIME OFF

Paragraph 29 of the parties' 1981-83 agreement governs overtime, for which employees could receive compensation either in cash or compensatory time off. Section a. of that paragraph reads as follows:

> Any time worked in excess of the regularly scheduled work week as defined by paragraph 28, shall be considered overtime. All employees except the Chief of the Department, shall be compensated for authorized overtime work in cash or compensatory time as indicated by the Employee. If the employee elects to receive compensation for

> overtime work in cash, it shall be paid at a rate of time and one-half of his regular hourly rate. If the employee elects to receive compensation for overtime work in compensatory time off, it shall be granted at a rate of double time. When compensatory time is desired, the employee will determine, subject to the approval of the Chief, when it shall be taken.

Section d. provides that compensatory time "cannot be transferred" between employees. Section e. requires the Department to maintain "(a)n up-to-date record of compensatory time accumulated by each employee."

The 1981 contract placed no limit on the accumulation of compensatory time, nor did its predecessors. According to the unrefuted testimony of Union president Wesley Prater, the double time system was adopted by mutual agreement of the parties in bargaining for the 1974 contract, and has continued unchanged since that time. He also testified that no cap on compensatory time accumulation had existed for "15 to 18 years at least."

At retirement, employees are paid a lump sum for their accumulated compensatory time off, at then current hourly rates, and that sum is "rolled in" to final average compensation for pension benefit purposes. The evidence shows that current employees have accumulated compensatory time as high as 1,825 hours, which obviously will increase their final average compensation significantly. Prater also testified that the fire fighters consider this right to accumulate and ultimately cash out compensatory time at double time a highly valuable benefit.

The City proposes to limit these rights severely. Its last offer has several aspects. At the threshold, it contends the entire system of compensatory time accumulation is unlawful under the Federal Fair Labor Standards Act (FLSA), which now applies to municipal fire departments pursuant to the recent decision of the U.S. Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority, 105 S.Ct. 1005 (1985); more on that below. The City's last offer then builds on this contention, proposing that "all overtime be compensated in accordance with the (FLSA)." If compensatory time is permissible under the FLSA, the City proposes that it be granted at time and one-half, the same as overtime cash wages, not double time. It further proposes that if accumulation of compensatory time beyond the current work period is permissible, such accumulation be limited to 168 hours for platoon employees and 120 hours for forty-hour employees, with existing compensatory time banks being frozen as of April 14, 1985. Under the City's proposal, no employee could be granted compensatory time unless and until his accumulated hours are below those limits.

The Union's last offer is to maintain the status quo from the 1981-83 contract. It also raises a threshold argument relating to the City's lawful authority. That argument is grounded in Paragraph 61 of the 1981 agreement, which imposed a ten-year "moratorium" on changes in minimum manning or "provision(s) or practice(s) related to pension benefits currently in effect." In the Union's view, that moratorium applies to any change in the compensatory time system, because the inclusion in final average compensation of payouts of accumulated compensatory time, accrued at double time without limitation, is a practice which significantly affects employees' pension benefits; more on that below as well.

The parties' other arguments regarding compensatory time -- advanced without prejudice to their primary positions regarding the City's lawful authority to continue the existing system -- may be summarized briefly as follows. The City argues continuation of that system is unjustified, because it far exceeds anything afforded to fire fighters in comparable cities or to other employees of the City of Ann Arbor. The Union notes that compensatory time is afforded to fire fighters in some other cities, in a variety of forms. But in its view, the controlling consideration is that the existing system is of long standing and was freely negotiated by the parties. It argues the panel should not change the system without compelling justification, which the City has failed to provide.

Lawful authority: Application of FLSA. What the City now advances as an argument relating to factor (a) -- that it is without lawful authority to continue the existing compensatory time system under the FLSA -- was extensively argued and decided during the pendency of these proceedings, as it purportedly related to the panel's own authority or "jurisdiction" to rule on the compensatory time issue. The chairman's decision on that issue was set forth in a letter dated May 31, 1985, a copy of which is appended to this report. The crux of that decision was this:

> The current contractual system meets the basic requirement of the FLSA: it guarantees fire fighters payment at time and one-half, payable within the 28-day work cycle, for all overtime hours. It then offers them an option to take such compensation in the form of compensatory time off at double time, rather than time and one-half, and allows them to defer actual receipt of such compensatory time beyond the immediate work cycle -- until retirement if they so desire. If a fire fighter chooses this option, he neither waives nor releases a statutorily guaranteed right. He simply chooses to receive it in a form and at a time which he considers more valuable.

* * *

> . . . the City's interest in having (this system) declared illegal and/or nonarbitrable is not to protect fire fighters against its own undue influence, but to avoid continuation of a financially burdensome benefit which it wishes it had not agreed to it in the past.

The City's position now is exactly as it was then, buttressed only by a publication of the U.S. Department of Labor (WH Publication 1459, May 1985) relating to the application of the FLSA to "State and Local Government Employees" and one additional case citation, which it says was recommended by the Solicitor of the Labor Department: Barrentine v. Arkansas-Best Freight System, Inc., 450 US 728 (1981). The City also submitted with its brief a copy of a bill introduced in Congress by Representative Ford of Tennessee, proposing to amend the FLSA "to permit employes engaged in law enforcement and fire protection activities to take compensatory time off in lieu of receiving overtime compensation."

The pertinent section of Publication 1459 appears on page 17, as follows:

> Compensatory time. The granting of compensatory time-off in lieu of paying proper overtime pay for overtime hours worked will not satisfy the requirements of FLSA. An employer may not credit an employee with compensatory time off (even at a time and one-half rate) for overtime earned which is to be taken at some mutually agreed upon date subsequent to the end of the pay period in which the overtime was earned. This is a long-established principle which has been in effect since the inception of FLSA and which has been upheld by courts.

Barrentine was another case involving alleged "waiver" of FLSA overtime rights. It did not involve compensatory time, but denial of overtime pay in a grievance arbitration. The court repeated earlier holdings "that FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate," and that "FLSA rights take precedence over conflicting provisions in a collectively bargained compensation arrangement."

The question remains: Is the existing compensatory time system, which was collectively bargained more than ten years ago by these parties, in conflict with Ann Arbor Fire Department employees' FLSA rights? The chairman concludes that it is not, for exactly the reasons set forth in his letter ruling of May 31, 1985 and quoted

above. Like the cases cited by the City earlier, neither the Labor Department publication nor Barrentine deals with the question before this panel, which involves neither waiver nor release of FLSA rights. Nor does Rep. Ford's proposed legislation constitute a legal declaration that the Ann Arbor system is unlawful under the FLSA without such amendment. It merely attempts to clarify the situation legislatively, in much broader terms.

The existing system does not deprive Fire Department employees of their FLSA right to overtime compensation in cash. It merely affords them — not the employer — an option to receive such compensation in another form and at a higher rate. It also allows them — not the employer — to defer receipt of such compensation if they consider it advantageous to do so, which many of them obviously do. None of these options is inimical to the purposes of the FLSA, nor do they thwart the legislative policies behind the act. Therefore the chairman concludes that the City has the lawful authority to continue the existing compensatory time system for overtime compensation.

The chairman is mindful, of course, that the courts ultimately could decide otherwise. But at this point the question is one of first impression, upon which the panel has the statutory duty to exercise its own best judgment and reach its own conclusion. To the chairman, that conclusion is clear.

The City also advises the panel that the city administrator has promulgated a policy memorandum outlining changes to be made (effective October 15, 1985) in City Rules and Regulations regarding overtime and compensatory time. It advises that all employees who are not exempt from FLSA coverage "shall be compensated in cash at a time and one-half rate for overtime worked in excess of the FLSA maximum.... The FLSA prohibits the granting of compensatory time off to covered employees instead of cash for overtime worked even if otherwise provided in a collective bargaining agreement." It is unclear whether it is the City's intention to discontinue the current compensatory time overtime system in the Fire Department irrespective of this panel's order on the subject. But that, like possible future litigation, is something beyond the panel's control, and it cannot sway the panel from its statutory duty to consider the City's lawful authority to continue the system.

Finding. The City has the lawful authority to continue the existing overtime system set forth in Paragraph 29 of the 1981 agreement, including the employees' option to receive compensatory time off, at double time, rather than cash compensation at time and one-half.

Lawful authority: Pension Moratorium. Paragraph 61 of the 1981 agreement is entitled "MINIMUM MANNING/PENSION MORATORIUM." In subparagraph (a) thereof, the parties agreed that "for a period of ten

(10) years, commencing July 1, 1981," they would not "alter, attempt to alter, add to or attempt to add to, through negotiation, arbitration or court or administrative action, any provision or practice related to manning levels currently in effect." In subparagraph (b) they agreed to the same moratorium regarding pensions, as follows:

> The parties futher agree that, except as provided in paragraph c, neither shall alter, attempt to alter, add to or attempt to add to, through negotiation, arbitration or court or administrative action, any provision or practice related to pension benefits currently in effect. This prohibition shall be for a period of ten (10) years, commencing July 1, 1981. The parties further agree that this prohibition does not preclude procedural changes adopted by the City's Pension Board based on recommendations from the Board's actuary as related to actuarial assumptions which do not affect retirees' benefit levels.

Subparagraph (c) provided that such issues could be raised during collective bargaining "if mutually agreed to," but without such agreement "the issue or issues cannot be submitted to arbitration unless the parties mutually agree to their submission."

This moratorium was adopted as a result of settlement negotiations undertaken by the parties after an Act 312 arbitration had begun. Several unresolved issues related to the subject matter of the moratorium were still on the table at that time. The Union had proposed an increase in minimum manning on each engine and aerial company, from two men to three. The City had proposed to delete minimum manning provisions from the contract. It also had proposed cutbacks in the areas of sick leave accumulation and compensatory time for overtime, much as it has in these proceedings.

As evidenced by a City summary of its contract proposals dated May 6, 1981, it had specifically proposed that employees could receive overtime in compensatory time only with Employer approval, at time and one-half rather than double time, and that compensatory time could not "be accumulated in excess of 96-hours."

With respect to sick leave, the City had proposed that forty-hour personnel receive one day of sick leave with pay for each completed month of service, but platoon personnel would receive only one-half day per month. (Under the previous agreement, as now, platoon personnel received one day per month as well.) Although sick leave could "be accumulated in an unlimited amount FOR PURPOSES OF USE ONLY," the City had proposed limiting accumulation for payout at death or retirement to 120 days for forty-hour personnel and sixty days for

platoon personnel, and limiting roll-in to final average compensation for pension purposes to only sixty and thirty days respectively. It had proposed even lower limits for new hires, limiting payout at death or retirement for employees hired after June 30, 1981 to sixty and thirty days for forty-hour and platoon personnel, respectively, and eliminating roll-in altogether for such employees.

Union president Prater testified that in the 1981 negotiations the City had expressed serious concerns about rising pension costs, and had proposed to cut those costs by reducing pension benefits through limits on roll-ins of sick leave and compensatory time payouts to final average compensation. The Union introduced two documents which were City exhibits in the 1981 arbitration, showing how such reductions could be accomplished. The last two columns of those exhibits showed what employees' final average compensation would be "without payouts," and what percentage changes in final average compensation would result from the elimination of such payouts. Prater testified that the Union had been "adamant about not allowing those reductions to occur."

Attorney Melvin J. Muskovitz, who was the City's chief spokesman during the 1981 negotiations, agreed that was the Union's position. He testified that "(t)he Union was so opposed to any change at all that there wasn't very much that we could talk about." Muskovitz said things changed after arbitration began, when he and the Union's attorney had a discussion "something to the effect that the Union might be receptive to the City's position limiting the change in the roll-in language only to new people if the City were agreeable to take the issue off the table for a certain period of time."

Paragraph 61 emerged from those discussions, its language having been drafted originally by the Union and revised somewhat at Muskovitz's suggestion. Specifically, they agreed to add the language on "procedural changes." In addition to the moratorium, the parties adopted Paragraph 57 of the 1981 agreement, entitled "PENSIONS," which provided that:

> The Employer agrees to maintain the Pension Plan and its contributions thereto in the same manner and to the same extent as it did immediately prior to the effective date of this agreement. For employees not on the Fire Department payroll as of July 1, 1982, compensatory payout, vacation payout, and sick leave payout at retirement will not be included in final average compensation.

It is unclear exactly what the negotiators said to each other upon reaching agreement for Paragraphs 57 and 61. Prater testified the Union's concerns about continuing the existing compensatory time and sick leave systems were well known to the City, and were specifically discussed in connection with the moratorium agreement.

However, Muskovitz and Prater both acknowledged neither party explicitly stated that reductions in the compensatory time rate and caps on accumulation of compensatory time and sick leave could not be proposed again during the moratorium. In Prater's view, however, that was understood by both parties, and that was what he told the Union membership at the ratification meeting.

Chief Fred J. Schmid testified, for the City, that he attended a brief meeting at which the parties discussed the final settlement agreement for the 1981 contract. He said one of the items being discussed "was a moratorium, which I believe involved the fire fighters demand for additional personnel and the city's demand to remove some items from the pension. Sick time I think was the item. ...those would be placed in a moratorium for a period of, at that time I believe it was ten years, that it could only be brought up only if both sides agree to it." The chief acknowledged he had not been present at earlier meetings when the moratorium was discussed. He said the final written agreement was concluded during the brief meeting he did attend, at which the general meaning and intended application of the moratorium were not discussed.

Whatever the parties may have said when they reached agreement on the manning and pension moratorium, what they did is perfectly clear. The City dropped its proposals to delete manning requirements from the contract; to reduce compensatory time from double time to time and one-half and limit its accumulation, payout and roll-in; to cut sick leave to a half-day per month for platoon employees; and to limit accumulated sick leave payouts and roll-in. The Union dropped its demand to increase minimum manning levels, and agreed to eliminate roll-in of accumulated compensatory time and sick leave payouts for new hires after July 1, 1982.

The Union contends each of those pension-related matters was a "provision or practice related to pension benefits currently in effect," then and now, and the moratorium prohibits any of them from alteration or addition prior to July 1, 1991. It argues that is the clear and unambiguous meaning of Paragraph 61 of the 1981 agreement, which deprived the City of lawful authority to make, propose or arbitrate the changes it now has proposed in the compensatory time and sick leave systems.

The City argues — as it did when asking the chairman to find that the panel had no authority to entertain the Union's arguments concerning the moratorium — that the Union's claim is really a grievance, because it alleges a violation of the 1981 contract. As such, the City contends, the matter is outside the panel's jurisdiction, because Act 312 does not apply to grievance arbitration. Beyond that, the City maintains that the language of Paragraph 61 is ambiguous, and must be construed against the Union, which drafted it. It says the record does not support the Union's broad interpretation, which would have to apply to everything affecting pension benefits,

including wages; taken to that extreme, the City claims, the moratorium could be construed to prohibit wage increases for ten years. Its brief also asserts that such an interpretation would cause a "forfeiture of the City's collective bargaining rights during an open contract period," and must be rejected for that reason as well.

The chairman already has ruled that the Union's reliance on the pension moratorium is not a grievance. Its position relates to the lawful authority of the Employer, which is one of the statutory factors the panel must consider in making its findings and orders. The moratorium agreement also could be considered a "stipulation of the parties;" to stipulate, after all, is to make an agreement. As such, it also comes within the panel's purview under factor (b) of Section 9 of Act 312. The existence of a settled agreement between the parties on certain conditions of employment during the term of the contract in dispute also would be another factor "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." Thus the moratorium also must be considered by the panel under factor (h). Accordingly, the chairman repeats his earlier ruling: the Union had the right to raise the moratorium argument in these proceedings, and the panel has not only the authority but the statutory duty to consider it.

As for the City's forfeiture argument, it misses the central point of the moratorium. For any condition of employment covered by the moratorium, the contract is not "open" until July 1, 1991. The 1981 contract expired, according to its terms, on June 30, 1983; but the moratorium agreement which was part of that contract has a life of its own. By its terms, the moratorium does not expire until 1991.

The chairman also is unpersuaded by the City's argument that the Union's interpretation of the moratorium agreement is overly broad. Clearly the parties did not intend that it apply to wages. In the very nature of things, the wage levels applicable to retiring fire fighters' final average compensation calculations cannot be determined until they retire. But the number of years subject to averaging, and the items to be included in the final year's compensation for averaging, are settled matters which determine employees' "pension benefits currently in effect." If more explicit proof of that proposition was required, the 1981 agreement itself furnished the evidence, because it provided for an eight percent wage increase on July 1, 1982.

"Any provision or practice related to pension benefits currently in effect" may indeed be ambiguous language. But it is clarified readily by analysis of the bargaining history behind it. In 1981 as now, the City proposed sharp cuts in compensatory time and sick leave accumulation, payout and roll-in for pension benefit computation. The existing compensatory time and sick leave systems

certainly "related to pension benefits" then in effect. The City's stated objective was to reduce pension benefit levels, and thereby reduce rising pension costs. Prater so testified, without contradiction, and the City's own exhibits in the 1981 Act 312 proceedings made it plain. The Union opposed those proposals, in large part because of their impact on pension benefits. Its opposition was so adamant, according to the City's chief negotiator, that "there wasn't very much that we could talk about."

The impasse was broken when the Union agreed to eliminate compensatory time and sick leave roll-ins for new hires after July 1, 1982, and to suspend its minimum manning demands for ten years, in return for the City's agreement for a similar moratorium on changes in pension benefits and withdrawal of its proposals to change the existing compensatory time and sick leave systems for current employees. The language of that moratorium is broad. It prohibits either party to "alter, attempt to alter, add to or attempt to add to, through negotiation, arbitration or court or administrative action, any provision or practice related to pension benefits currently in effect." Having specifically proposed reductions in the rate at which compensatory time and sick leave would be credited, the extent to which compensatory time could be accumulated, and the extent to which accumulated compensatory time and sick leave could be paid off at retirement and rolled into final average compensation, all for the purpose of reducing pension benefits and the cost of providing such benefits, and having withdrawn those proposals when the moratorium was adopted, the City now can hardly deny that the existing compensatory time and sick leave systems were -- and still are -- "provision(s) or practice(s) related to pension benefits currently in effect." Therefore it must be concluded that the moratorium prohibits any alterations in those systems at this time.

Finding and Order. Under the ten-year moratorium in Paragraph 61 of the 1981 agreement, the City does not have the lawful authority to eliminate employees' option to receive compensation for overtime in compensatory time off, to reduce the rate at which such compensatory time is credited from double time to time and one-half, to limit the accumulation of unused compensatory time, or to limit the accumulated compensatory time payout which is rolled in to employees' final year compensation at retirement for computation of final average compensation for pension purposes. As noted above, this same finding could be made under factor (b) and/or (h). Under any or all of the three, the finding is controlling. Thus the other five statutory factors are not applicable. Accordingly, the panel finds that the Union's last offer regarding compensatory time off as compensation for overtime more nearly complies with the applicable factors of Section 9 of Act 312. The panel orders that the status quo shall be maintained, and the provisions of Paragraph 29 in the 1981 agreement shall continue unchanged in the 1983-86 agreement.

SICK LEAVE

The City proposes to reduce sick leave credits for platoon employees from twenty-four to twelve hours per month; and from "one (1) 10-hour work day" to eight hours per month for forty-hour personnel, whether they work eight- or ten-hour days. It also proposes to grant new platoon employees 144 hours of sick leave credit for their first year of employment, on their date of hire. It proposes no change in the total hours of accumulated unused sick leave for which employees may be paid at death or retirement, those limits being 1,440 hours for platoon employees and 1,200 hours for forty-hour personnel, plus the current year's accumulated unused sick leave in each case. Its last offer on sick leave was formulated accordingly.

The Union's last offer is to maintain the status quo. It contends the pension moratorium is equally applicable to the sick leave issue, because the existing sick leave system also is related to employees' pension benefits. The Union points out that even though the total hours of accumulated sick leave for which payout could be rolled in to final average compensation would remain the same under the City's proposal, it will take fire fighters twice as long to reach that limit. It emphasizes that the City's proposal would reduce pension benefits, as compared to the existing system, for any employee whose accumulated unused sick leave is below the hour limit at retirement.

Although the City's sick leave proposal probably would have substantially less impact on pension benefits than its proposal to eliminate or reduce compensatory time, cutting the accrual of sick leave credits in half for most employees certainly would reduce such benefits for some if not all of those employees. As in 1981, that clearly is at least part of the City's purpose. Accordingly, for the same reasons discussed at length in connection with the compensatory time issue, it must be found that the pension moratorium controls the sick leave issue as well, and that statutory factors (c), (d), (e), (f) and (g) are not applicable.

Finding and Order. The panel finds that the Union's last offer on Sick Leave more nearly complies with the applicable factors prescribed in Section 9 of Act 312. The panel orders that the status quo shall be maintained and the provisions of Paragraphs 44 and 45 in the 1981 agreement shall continue unchanged in the 1983-86 agreement.

PROPOSED SERGEANT UPGRADE

The organizational structure of the Department's largest division, Fire Suppression, includes the following classifications: fire fighter, driver/operator, sergeant, lieutenant, captain and battalion chief. This structure is reflected, in ascending order, in the salary schedules appended to the 1981-83 agreement and in

Paragraph 22 of that contract, which deals with promotions. Under those promotional procedures, a member must have satisfactorily completed five years of service with the Department to be eligible for promotion to sergeant. To be eligible for promotion to lieutenant, a member "must hold the rank of sergeant."

Four men now hold the rank of sergeant. The Union proposes the elimination of that classification, with all four sergeants becoming lieutenants. Specifically, the Union's last offer proposes that the sergeants "be upgraded to the rank and salary of Lieutenant, and the Sergeant classification shall be eliminated from the Fire Department structure," with appropriate language modifications throughout the contract, rules and regulations to reflect the change in rank structure. It proposes that such reclassification take effect upon issuance of the panel's award, not retroactively.

In support of this proposal, the Union presented evidence that the sergeants already work as lieutenants with some frequency under the temporary assignment provisions of the 1981 contract. During such temporary assignments, Paragraph 36 requires that employees "receive the rate of pay of the higher classification for all hours worked in half-day increments." Union president Prater testified that a sergeant is temporarily assigned to work as a lieutenant, commanding one of the Department's outlying stations, virtually every day. The Union argues that the contract should be changed to reflect this practice, in the interest of greater consistency in command structure, flexibility and teamwork, all of which will aid the public welfare.

Historically, a sergeant was assigned to each company of fire fighters and driver/operators at stations housing more than one company. At least one lieutenant is assigned to each station. In the outlying stations where only one company is assigned, a lieutenant commands the station and the company as well; no sergeant is assigned to those stations. The four men currently holding the rank of sergeant are permanently assigned to companies operating from headquarters, now the only multi-company station.

In temporary absences, Paragraph 36 provides that "the senior qualified man from the Certified List eligible for promotion" to the classification in which the vacancy occurs has the first right to that temporary assignment. When lieutenants are absent at the outlying stations, therefore, sergeants have first opportunity to fill those positions. The evidence shows that in the aggregate the four sergeants worked approximately forty percent of the time as lieutenants during calendar 1984. One of them had such temporary assignments approximately two-thirds of the time, another approximately twelve percent, the other two in between those extremes.

Prater testified regarding the importance of teamwork in fire fighting, with each member of the team knowing the working patterns of his teammates. The Union suggests that teamwork is undermined by the

frequent assignment of different sergeants as acting lieutenants at the outlying stations. It contends such teamwork will be enhanced if the employees relieving in command are themselves lieutenants. It also points out that the City has the financial ability to make this change, because relatively little money is involved and the City has not claimed inability to pay as a defense in any event.

Both parties refer to fire department command structures in other cities, although they recognize that such comparisons are of relatively little significance on this issue. They acknowledge that organizational structures and practices vary widely. They also recognize that the panel does not have evidence of the actual operation of other departments, and therefore cannot determine whether sergeant classifications in other cities are truly comparable to the duties and responsibilities of that rank in Ann Arbor.

Nonetheless, the Union points out that only eight of the sixteen cities put forward as comparables by the two parties have the rank of sergeant. It therefore asserts that statutory factors (c) and (d) support its proposal, and claims the City has produced no persuasive evidence that the proposal should not be granted.

According to the City, the Union's own evidence does not support the proposed change. The City emphasizes that although it may be accurate to say one of the sergeants was assigned as an acting lieutenant virtually every day, the record shows that altogether the four sergeants worked sixty percent of the time in their own classification. As for the Union's claim that upgrading the sergeants would lead to more flexibility and smoother operations, the City says there would be no practical difference. It notes that the acting commanders of the outlying stations — whether temporarily assigned from sergeant to lieutenant or merely transferred from one station to another within the lieutenant classification — still would be there on a temporary basis and would have to travel to get there. The City stresses that no economic need for upgrading the four sergeants exists, because they are paid as lieutenants when so assigned under existing practice. Furthermore, it maintains that organizational efficiency and assignment of personnel are inherently managerial concerns and prerogatives, and asserts that deciding whether and how to staff the sergeant and lieutenant classifications should be left to management.

Statutory factors (a), (b), (e), (f) and (g) are not applicable to this issue. The Union contends that factor (c) supports its proposal, because upgrading the sergeants and eliminating the sergeant classification from the agreement will aid the public welfare through more flexible, efficient and consistent fire department operations. That contention is unsupported in the record.

In practical terms, granting the Union's proposal would not change the day to day operations of the Department. If a lieutenant

were absent from one of the outlying stations, he still would be replaced temporarily by another acting commander, who might be one of the four newly upgraded lieutenants from headquarters or, if they were not available, another employee of lower rank. The teamwork among the employees permanently assigned to that station would be affected no less merely because the acting commander was permanently rather than temporarily classified as a lieutenant. Whatever disruption in company routine might eventuate from the temporary assignment of an acting commander from another station would still exist. In addition, the man temporarily assigned still would have to travel to that station from his own if the assignment was made during the shift.

For such temporary assignments, there would be no economic difference, either, because sergeants temporarily assigned as lieutenants are paid in the higher rank anyway. The economic difference would exist during the sixty percent of the time the current sergeants are not temporarily assigned to lieutenant's duties. During that time, they still would receive lieutenant's pay under the Union's proposal, but the evidence does not demonstrate that the regular duties they have had as sergeants would be changed in any way.

As both parties recognize, comparison to the organizational structures of other fire departments is of limited utility on this issue, because the panel does not have adequate evidence of their operating practices to make informed comparisons. Even if such comparisons were possible, factor (d) would not support either party's position more than the other, because half the comparable cities have sergeants (Southfield, Sterling Heights and Taylor) and the other half (Lansing, Livonia and Westland) do not.

As the City contends, decisions on departmental organization, staffing and personnel assignment are typically management concerns and prerogatives, subject of course to contractual requirements and restrictions on transfers, promotions and temporary assignments. That is another factor "normally or traditionally taken into consideration" in collective bargaining and arbitration, and therefore is applicable to the panel's consideration of this issue under factor (h). The record does not establish that Ann Arbor is atypical in this regard, so it must be found that factor (h) supports the City's last offer to maintain the status quo with respect to the sergeant and lieutenant classifications.

Finding and Order. The panel finds that the City's last offer on the Sergeant Upgrade issue more nearly complies with the applicable factors prescribed in Section 9 of Act 312. That offer is adopted, and the panel orders that the status quo be maintained in the 1983-83 agreement with respect to the sergeant and lieutenant classifications.

EDUCATION INCENTIVE

Previous contracts have provided no additional payment for employees' attainment of educational degrees or certification, although employees have been reimbursed for educational expenses and released from duty to attend classes. For the 1983-86 agreement, the Union proposes a broadly inclusive educational incentive. Its last offer asks for an annual bonus of three percent of base salary, effective July 1, 1983, for "employees holding an Associate's Degree in fire science, or a Bachelor's Degree, or to employees certified as an Emergency Medical Technician, Emergency Medical Technician Instructor-Coordinator, Emergency Medical Technician Specialist, or Advanced Emergency Medical Technician." Although it initially opposed any education incentive program, the City's last offer is for "Emergency Medical Technicians to be compensated in the amount of $500 a year for obtaining and continuing their certification." Under the City's offer, such additional compensation would not take effect until January 1, 1986.

The Union points out that the Department made 2,854 rescue runs in the 1983-84 fiscal year, which constituted sixty percent of all alarms, as compared to 535 fire runs during the same period. It emphasizes that the Department responds to all medical alarms in the city, and in surrounding townships as well. Generally the Department's rescue personnel are the first to arrive at the scene of medical emergencies, where they stabilize the patient and make preparations for transport to a hospital if necessary. Control of the scene is turned over to ambulance personnel when they arrive. Ambulances, not Department vehicles, transport the patients, although sometimes Department personnel accompany the patient to the hospital and assist with life support measures.

These medical runs are made by fire fighters certified as Emergency Medical Technicians (EMTs). They also respond to fire calls as part of the company to which they are assigned, and occasionally treat other fire fighters injured at fires. To obtain EMT certification, fire fighters must take courses equivalent to eighteen college credit hours and pass a state test. Recertification is required every three years. Fire fighter Donald Fisher, who possesses such certification and an Associate's Degree in Fire Science, testified that payment of additional compensation for such educational achievements would provide greater incentive for him and other fire fighters to obtain and retain such certification and degrees.

The Union contends that the public welfare will be better served if its last offer is adopted, because more fire fighters will undertake such educational efforts, making them better trained and more highly skilled, and therefore better able to render emergency medical and fire protection services. The Union also finds support for its position in the existence of educational incentives in fire departments in other cities, payment of a three percent bonus to Ann

Arbor Police Officers and Police Command Officers holding bachelor's degrees, and 2.5% bonuses for certain degrees or certificates for employees in the City's AFSCME bargaining unit.

The City sees no support for the Union's proposal in other cities. It points out that five of the cities the Union alleged to be comparable have no education incentive payment, and in those cities which do, most are flat rate payments for specified degrees or certificates, only one of which (Southfield, with a top payment of $2,600 for paramedics) is as high as the Union proposes. The City contends that its proposal is entirely in line with other cities' programs, and properly reflects the central importance of EMT training to the Department's medical emergency responsibilities.

As for other degrees or certificates, the City argues the evidence demonstrates no need for such incentives, nor any benefit to the Department or the citizenry therefrom. It emphasizes that the Department has its own continuous, in-service training program, drawing on the resources of its own personnel and the National Fire Protection Association. The City also differentiates fire fighters from police officers and other city employees in this regard, pointing out that the very nature of fire fighting employment affords ample time for regular in-service training activities, whereas law enforcement and other jobs do not.

Statutory factors (a), (b), (e) and (g) are not applicable to this issue. Factor (c) clearly is, especially as it relates to EMT training and certification, given the Department's first-response role with respect to medical emergencies. The connection to public welfare is not so clear with regard to other educational attainments; the evidence consists entirely of opinions that the public would benefit generally from better training for fire fighters, and that fire fighters would be more motivated to get such training if they were paid more for getting it. Contrasted with such opinions, however, are equally strong opinions by Union and City witnesses alike that the Department already is highly professional and well trained, as well as the objective evidence of the Department's own continuous in-service training activities. On balance, it must be concluded that the Union has failed to prove that the public welfare would be better served by an across the board three percent bonus for all the educational achievements covered by its proposal. The public's identifiable interest in EMT training for as many fire fighters as possible will be adequately served by the City's offer of $500 additional annual compensation for EMTs.

Factor (d) also is applicable. It too supports the City's position more than the Union's. Fire fighters receive no education incentive pay in Lansing, Sterling Heights or Westland. In Livonia, EMTs receive an additional $500 annually, exactly what the City proposes. In Southfield, only paramedics receive such incentive pay: $860 a year to start; $1,895 annually after six months; $2,600

annually after one year. The Southfield contract provides no other education incentive payments. In Taylor, EMTs receive an extra $200 a year, as do holders of associate degrees; bachelor's degree holders get an extra $400 annually, master's degree holders $800. The City's offer compares favorably to all these comparable cities; except for paramedics in Southfield, the Union's proposal exceeds all the comparable cities.

Factor (g) is applicable, to the extent that Ann Arbor fire fighters' overall compensation -- including all the components identified in Section 9(f) of Act 312 -- also compares very favorably with the overall compensation of fire fighters in other cities and other Ann Arbor municipal employees. In that regard, this factor also supports the City's last offer.

Factor (h) is applicable with regard to comparisons between the fire fighters and other Ann Arbor municipal employees. It is noteworthy that police officers and command officers receive a three percent pay supplement for obtaining a bachelor's degree, and employees in the AFSCME unit receive 2.5% supplements for certain certificates and degrees. But it is equally noteworthy that fire fighters have unique in-service training opportunities and responsibilities, as compared with other city employees. Weighing these competing considerations in the balance, it must be found that factor (h) favors neither party's last offer more than the other.

It is unclear why the $500 additional annual compensation for EMTs under the City's offer is not to take effect until January 1, 1986, thus being available only during the last six months of a three-year agreement. One might have expected that offer, like the City's basic wage offer, to be retroactive over the entire term of the contract. There is a certain logic to it being only prospective, however, because an "incentive" hardly can have retroactive motivational effect. Be that as it may, the panel can only choose between the two last offers in their respective entirety, and under the applicable statutory factors that choice is clear.

Finding and Order. The panel finds that the City's last offer on the Education Incentive issue more nearly complies with the applicable factors in Section 9 of Act 312. The City's offer is adopted, and the panel orders that employees holding or obtaining EMT certification on and after January 1, 1986, shall be compensated in the amount of $500 annually for obtaining and continuing such certification.

MANAGEMENT RIGHTS CLAUSE

The management rights clause in the parties' 1981 agreement is Paragraph 9, which reads as follows: "The Employer reserves and retains, solely and exclusively, all rights to manage and direct its work forces, except as expressly abridged by the provisions of this

agreement." The City proposes a longer, more detailed management rights clause for the 1983 agreement. Its last offer is for a clause which would read as follows:

> A. The Union recognizes that the Employer reserves and retains, solely and exclusively, all rights to manage, direct, and supervise the operations of the Fire Department and the work force therein, except as expressly abridged by the provisions of this agreement. Such management rights shall not be subject to the negotiated grievance procedure or arbitration. The union recognizes that the following rights, which are in no way wholly inclusive, belong to the Employer.
>
> > The right to decide the services to be provided and the manner of providing them; to decide the work to be performed; to decide the number and location of divisions and facilities; to decide the type of equipment and the scheduling of services to maintain order and efficiency in its divisions including the scheduling of work; to hire, lay off, assign, transfer and promote employees; to determine the qualifications of employees; to determine and redetermine job content; to determine the starting time and quitting time; to make such rules and regulations as it may from time to time deem best for the purposes of maintaining order, safety and/or effective operations of its service; and to discipline and discharge employees for cause.
>
> B. The Employer shall have all other rights and prerogatives, including those exercised unilaterally in the past, subject only to clear and express restrictions on such rights, if any, as are provided in this agreement.

The Union opposes the City's proposal, asking that the status quo be maintained. In support of its proposal, the City offered two kinds of evidence.

First, City Administrator Godfrey Collins testified that although he personally had thought the existing general statement of management rights "was the best statement to have," his reading of management books and experience with other bargaining units had brought him to the belief that the Fire Department contract shoud have a detailed clause enumerating specific management rights. Collins readily acknowledged that the City has had a good relationship with this Union, and never has had any problem with the existing management

rights clause. Still, he thought it "may not be adequate" now, "because of actions in other communities, actions in other unions we've had in the city." He did not specify what any of those "actions" were. In its brief, the City followed up on Collins's testimony with quotations from How Arbitration Works, Third Edition, (Elkouri and Elkouri, BNA), to the effect that many management spokesmen now favor detailed statements of management rights for protection against union inroads into traditional managerial prerogatives.

Second, the City presented evidence that all five of the cities it considers comparable to Ann Arbor have detailed management rights clauses. It also points out that only four of the thirteen cities the Union deems comparable have a short, general statement of their management rights. The City contends this is strong, clear support for its position that a detailed management rights clause is needed in Ann Arbor too.

The Union also relies on Collins's testimony, claiming it demonstrates conclusively that the City does not need a longer, more detailed statement of its management rights, because the existing clause never has been a problem in its good relationship with the Union. As for other cities' contracts, the Union finds support for the status quo in the existence of similarly general clauses in several cities. It points out that most of the cities (including all five "City comparables") which have a more detailed management rights clause also have a "maintenance of conditions" clause, or something similar, which protects the unions against unilateral management changes in existing wages, hours and working conditions. It further notes that a number of the detailed clauses found in other cities also contain within them specific restrictions on unilateral management action, and/or considerably less detail than the City proposes.

The Union also contends that the clause offered by the City would conflict with other provisions of the parties' agreement which neither party has proposed to change, including clauses relating to promotion, transfer, layoff, work schedules, work assignment, manning, job classification, and determination of employee qualifications. Finally, the Union maintains that the City's proposal purports to give management exclusive control over a number of matters which are mandatory subjects of bargaining under the Public Employment Relations Act (PERA) (MCLA 423.201), as construed by MERC, and therefore might be considered an involuntary waiver of the Union's right to bargain on such issues.

Factors (b), (c), (e), (f) and (g) are not applicable to this issue. Factor (a) is, insofar as the City proposes to assert unilateral authority over matters which are mandatory subjects of bargaining under PERA or which are subject to contractual restrictions embodied in the parties' agreement. The proposed language twice refers to exceptions expressly provided in the agreement. However, in

the detailed litany of rights which "belong to the Employer," set out in the indented subparagraph under Section A. of the City's proposal, no such language appears. A number of the areas listed therein are subject to other provisions of the contract, which will not be changed by this arbitration. Therefore the Union's position on this point has merit. So does its position on the alleged conflict with PERA, because the clause proposed by the City might well be construed, in its broadest interpretation, as constituting a waiver of the Union's right to bargain over such subjects as rules and regulations, work schedules, starting and quitting times, promotional procedures, and transfers. Accordingly, factor (a) favors the Union's position.

Factor (d) is applicable, but it favors neither party. Of the six comparable cities, only one (Sterling Heights) has the kind of brief, general statement of management rights that Ann Arbor does. The other five have detailed clauses, but the amount of detail varies from one city to the next; and four of the five (all but Westland) also have other clauses which may offset management's unilateral authority with respect to existing working conditions. The Ann Arbor agreement has no maintenance of conditions clause.

Factor (h) is applicable in two respects: with regard to the question of need, as evidenced by the parties' experience under the existing clause; and in relation to the City's claim that a detailed clause is more in keeping with current thinking among management spokesmen and analysts. On the question of practical need, the evidence clearly favors the Union. The city administrator testified candidly and unequivocally that the City had never experienced a problem with the existing clause, and has always had a good relationship with the Union, with few grievances, hardly any arbitration, and no attempted incursions by the Union into management's prerogatives. He also stated that he personally had favored the kind of broad, general management rights clause found in the 1981 agreement, but had come to doubt his own preference only because of reading unspecified "management books," hearing of unspecified problems in other communities, and having unspecified problems with other unions. As for the City's theoretical interest in having a more detailed clause, it is unpersuasive. More than one school of thought exists on this subject. More important, such theory cannot offset the lack of any evidence of practical need nor the serious questions about the City's lawful authority to adopt a clause such as it has proposed. Therefore it must be concluded that factor (h) also favors the Union's position on this issue.

This issue is noneconomic, so the panel is not statutorily bound to adopt either party's last offer intact. Thus the City suggests the panel can overcome any problems with the precise language of its proposal by revising the wording. That suggestion is rejected. The parties have gotten along well with the existing management rights clause. The evidence demonstrates no persuasive reason to change it.

Finding and Order. Based on the applicable factors of Section 9 of Act 312, the panel finds that the status quo should be maintained with respect to the management rights clause, and orders that the language of Paragraph 9 in the 1981 agreement be continued in the 1983-86 contract.

RULES AND REGULATIONS

Paragraph 59 of the parties' 1981 agreement provides that:

> The Department Rules and Regulations shall be part of this contract. In any conflict between these rules and the contract, the contract shall take precedence.

The rules themselves are attached to the agreement, bound into the contract booklet after the salary schedules. Preceding the body of the rules is this introduction:

> Chapter 4, Section 1:58 of the Ordinance Code of the City of Ann Arbor, Michigan, reads as follows:
>
> Department Rules. The Fire Chief shall adopt rules and regulations for the government of the department subject to the approval of the City Administrator, which shall be entered in a book of Fire Department Rules. Such Rules may be changed and repealed by the Fire Chief upon notice to and approval by the City Administrator in accordance with State Collective Bargaining Laws.

The net effect of this is that even though the rules are "part of th(e) contract," the Chief has the power to make, change and repeal them, subject to approval by the City Administrator, as long his actions are "in accordance with State Collective Bargaining Laws." Although neither the rules nor the main body of the contract explicitly so provides, another effect of incorporation into the contract is that disputes concerning the rules and their application may be taken up in the grievance procedure. Under Paragraph 10 of the 1981 agreement, "grievances... shall consist of all disputes about interpretations and applications of particular clauses of this agreement and about alleged violations of this agreement."

The City proposes to change this by deleting Paragraph 59 and removing the rules from the contract. Its rationale for this proposal was stated in the testimony of City Administrator Collins: "We feel

that rules and regulations really are again part of management rights and that they should not be part of the contract as such." Collins then quoted from How Arbitration Works, which the City also cites in its brief, that "it is well established in arbitration that management has the right unilaterally to establish reasonable plant rules, not inconsistent with the law or the collective agreement." In addition, the City contends that incorporating the rules into the agreement is "not in tune with prevailing practice," as shown by contracts in other cities and other City of Ann Arbor bargaining units.

The Union proposes that the status quo be maintained, with the rules continuing to be part of the contract. It disputes the City's view of "prevailing practice," pointing out that the fire department contracts in several of the cities it considers comparable also incorporate the rules into the agreement. It also notes that in most of those which do not, the employer lacks unilateral authority to adopt, amend and repeal work rules in its own unfettered discretion, either because rule making is explicitly subject to the grievance procedure or because the contract contains a maintenance of conditions clause. As for other Ann Arbor bargaining units, the Union points out that in the AAPOA unit, which it considers most comparable to the fire fighters, the contract does incorporate work rules into the agreement.

The Union also disputes the City's primary rationale for the proposed change, as enunciated by the city administrator. It points out that Collins candidly acknowledged "we have no real problem that I'm aware of" under the existing system of rules and regulations. It further emphasizes that Collins also said he would be satisfied with the existing system, as is, if only the reference to "State Collective Bargaining Laws" were deleted from the rules, because "with that phrase in there it's questionable as to what it means." As for the latter concern, the Union argues — and Collins acknowledged — that the parties are subject to state laws regarding collective bargaining in public employment whether or not the rules or the contract explicitly say so. In the Union's view, the proposal to delete the rules from the contract is really an attempt by the City to avoid its legal obligations, under PERA, to bargain over rules affecting conditions of employment.

Factors (b), (c), (e), (f) and (g) are not applicable to this issue. Factor (a) is, since the rules which the City proposes to delete from the contract explicitly refer to "State Collective Bargaining Laws." That reference is found in a quotation from the City's own Ordinance Code. The City's concern about the alleged ambiguity of that reference is of no moment in these proceedings. It acknowledges that it must comply with PERA and Act 312, which govern different aspects of collective bargaining in public employment. Removing the rules from the contract would not change that, so it would accomplish nothing. As for the city's own ordinances, they are beyond this panel's influence. Removing the rules from the contract would neither repeal the ordinance nor free the City from its legal

obligations to comply with its own ordinances and "State Collective Bargaining Laws." Thus the City has failed to demonstrate either a need or a purpose for its proposal, with respect to its "lawful authority" to make and enforce rules and regulations. Accordingly, it must be found that factor (a) favors the Union's position on this issue.

Factor (d) does not support the City's proposal, either. There is no clear "prevailing practice" among the six comparable cities.

In Lansing, the contract states that "(t)he Rules and Regulations of the Lansing Fire Department shall be incorporated herein by reference."

In Livonia, the contract recognizes the "exclusive right of the City to establish reasonable work rules." But the union's agreement is required for any rule changes "which specifically pertain to working conditions," and the city must "confer" with the union regarding rule changes "which specifically cover operating requirements." In addition, the Livonia contract preserves "historically-recognized duties and assignments of Firefighters."

In Southfield, the management rights clause recognizes the city's "right to establish and maintain rules and regulations governing the operation of the Fire Department and the employees therein, providing such rules and regulations are not in direct conflict with this Agreement." But the Southfield contract also contains a maintenance of conditions clause.

In Sterling Heights, the rules are not part of the contract. But that contract also has a maintenance of conditions clause, as well as provisions prohibiting the City to make "unilateral changes in wages, hours, and conditions of employment during the terms (sic) of this Agreement, either contrary to the provisions of this Agreement or established departmental rules and regulations, practice and custom and/or administration policy," and requiring advance notice and opportunity to consult for the Union on "any proposed change in working conditions."

In Taylor, the contract recognizes the city's right "to make reasonable rules and regulations, not in conflict with this agreement," but reserves to the Union "the right to question the reasonableness of the Municipality's rules or regulations through the grievance procedure."

In Westland, the contract neither incorporates nor refers to work rules nor contains a clause regarding maintenance of working conditions.

A majority of the comparable cities do not incorporate the

work rules into the contract. But a majority do afford the union a substantial voice in the rule making and enforcement process, either through the grievance procedure or more specific consultative or bargaining arrangements. Arguably, those cities -- including Southfield, with its maintenance of conditions clause -- may operate under even greater constraints than Ann Arbor does with its existing system. In Ann Arbor, even though the rules are in the contract, there is no explicit contractual requirement that management negotiate or consult with the Union on rules and regulations, or changes therein, although there may be an implicit obligation to bargain, depending on the nature of the rule, "in accordance with State Collective Bargaining Laws." Subject to that requirement, the Fire Chief retains the right to adopt, change and repeal rules and regulations. On balance, therefore, factor (d) must be found to favor the Union's position.

Factor (h) has two-fold application, as in the case of the City's management rights proposal: to the City's desire to remove the rules from the contract in keeping with its view of labor relations theory; and to the lack of any evidence of practical need for such a change. Without repeating the discussion from the preceding section, perhaps it is enough to quote the popular axiom: "If it ain't broke, don't fix it." City Administrator Collins readily and candidly conceded that the City has a good, harmonious relationship with this Union, and never has had any trouble regarding the adoption or implementation of rules and regulations. The Union speculates that changing the system as the City proposes would adversely affect the fire fighters' morale. That may well be true. Speculation aside, however, it is absolutely clear that the existing system has served both parties well, and the City has produced no persuasive evidence whatsoever of any need to change it. Therefore factor (h) also favors the Union's position.

Finding and Order. Based on the applicable factors of Section 9 of Act 312, the panel finds that the status quo should be maintained with respect to Department Rules and Regulations. The panel orders that the language of Paragraph 59 of the 1981 agreement be continued in the 1983-86 contract, and that the Department Rules and Regulations be part of that contract.

WAIVER AND ENTIRE AGREEMENT CLAUSES

The City proposes that the panel order the inclusion of two new clauses in the 1983-86 agreement: a "waiver" clause, providing that each of the parties "voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge or contemplation of each or both of the parties at the time they negotiated and signed this agreement;" and an "entire agreement" clause, providing that the

"contract constitutes the sole, only and entire agreement between the parties hereto and cancels and supersedes any other agreement, understanding, practices and arrangements heretofore existing." No such clauses have existed in the parties' prior contracts. The Union proposes that the status quo be maintained.

City Administrator Collins identified two basic purposes behind this proposal: to bring the fire fighters' contract in line with the other six City bargaining units, of which four have both clauses, one has a waiver clause, and the other has an entire agreement clause; and to establish unilateral management control over anything not explicitly covered in the contract during the life of the agreement. As on other issues, however, Collins acknowledged the City never had experienced any problems with this Union regarding practices not written into the contracts, nor had the Union ever demanded to reopen negotiations on any matters during the term of such contracts.

Collins also stated the City had no present intention to cancel any practices which might exist in the fire department. The Union placed in evidence a list of 23 alleged practices currently in existence in the fire department. Although it would not characterize them as "practices," the City stipulated that those were "the way things are done" in the fire department, and Collins testified that he had no current plan to change them, nor was he aware that the chief had any such plans. In connection with the list of alleged practices, in its brief the City belittles the Union's opposition to adding waiver and entire agreement clauses as being "alarm... (over) free toilet paper." The City's serious and legitimate concern, it says, is with "the prospect of never ending negotiations."

The Union contends that such concern is totally without foundation, given Collins's acknowledgment that no such problems have existed in the past and the City has no current plans to exercise the unilateral authority it seeks in order to cancel or change existing practices. On the other hand, the Union points out that the City has no obligation to bargain during the life of the contract over matters covered by the contract. As to matters which are not covered by the agreement and neither party knew about or contemplated, the Union says it has no intention of voluntarily waiving its right to bargain under PERA, and the City has shown no legitimate need for the panel to order such a waiver. Here again, the Union speculates that adding such clauses to the agreement could undermine fire department morale, which could adversely affect the public welfare.

The Union discounts the significance of comparisons with other City bargaining units. In its view, the only appropriate comparisons are with other fire departments, because only they have comparable working conditions. It points out that only four (Lansing, Roseville, Royal Oak and Sterling Heights) of the sixteen cities either party considered comparable have waiver clauses, and three of those are of limited scope, with the fourth (Sterling Heights) being offset by a

maintenance of conditions clause. It says only two of the sixteen cities (East Lansing and Lansing) have entire agreement clauses, both of which are limited in scope.

Factors (b), (c), (e), (f) and (g) are not applicable to this issue. Factor (a) is applicable only to the extent that the City already has the lawful authority not to bargain during the term of an agreement over items covered by that agreement. In that respect, the City has failed to demonstrate a need for a waiver or entire agreement clause, and factor (a) must be found to favor the Union's position.

Factor (d) clearly favors the Union's position. Of the six comparable cities, only Sterling Heights has a waiver clause. But as the Union points out, it also has a clause prohibiting the city to make any "unilateral change in wages, hours, and conditions of employment during the terms (sic) of this Agreement, either contrary to the provisions of this Agreement or established departmental rules and regulations, practice and custom and/or administration policy." None of the six cities has an entire agreement clause. The Lansing contract includes a statement that the parties "subscribe to the principal (sic) that this contract should be the complete agreement between the parties." But that statement is part of a clause entitled "Past Practice," which recognizes "that it is most difficult to enumerate in an agreement practices inherent in a relationship of many years duration," requires the parties to "discuss the problem and negotiate" about "any claimed understanding, agreement or past practice... not covered by this Agreement," and makes such disputes arbitrable.

Factor (h) also favors the Union. The City expresses concern about the "prospect of never ending negotiations" unless it gets these clauses. But it has failed to demonstrate any factual basis for such a concern. To the contrary, the evidence again shows that the parties have had a good relationship, without disputes or arbitrations over alleged practices, that the Union has not sought to reopen negotiations during the term of past contracts, and that the City has no present intention of exercising the unilateral authority it seeks to cancel any understandings or practices which now may exist.

The fact that contracts with other City bargaining units have such clauses is of little significance, given the clear evidence that the City has no legal or practical need for such clauses in this relationship and that fire departments in comparable cities do not have them. As the Union suggests, the unions representing those other employees may have voluntarily waived their rights to bargain on all matters during the term of their contracts, and may have had good reasons to do so. But this Union does not wish to waive such rights, voluntarily or otherwise, and the evidence gives the panel no convincing reason to order such a waiver.

<u>Finding and Order.</u> Based on the applicable factors of Section

9 of Act 312, the panel finds that the status quo should be maintained with respect to the City's proposal to add "Waiver" and "Entire Agreement" clauses to the parties' contract, and orders that the 1983-86 shall contain no such clauses.

SUMMARY OF PANEL'S ACTIONS AND RULINGS

The foregoing constitute the panel's opinions, findings and orders on the issues before it. On each issue, the opinions, findings and orders set forth herein constitute the actions and rulings of a majority of the panel. However, each of the parties' delegates dissents on certain issues, as follows:

Wages	Union Delegate Prater
Compensatory Time	City Delegate Rinne
Sick Leave	City Delegate Rinne
Sergeant Upgrade	Union Delegate Prater
Education Incentive	Union Delegate Prater
Management Rights	City Delegate Rinne
Rules & Regulations	City Delegate Rinne
Waiver/Entire Agreement	City Delegate Rinne.

EXECUTED at Ann Arbor, Michigan on October 18, 1985.

Paul E. Glendon, Chairman

Mary J. Rinne, City Delegate

Wesley Prater, Union Delegate

Paul E. Glendon
Attorney/Arbitrator
320 North Main Street — Suite 400
Ann Arbor, MI 48104
313/663-4126

May 31, 1985

Richard N. Parker
Labor Relations
City of Ann Arbor
P.O. Box 8647
Ann Arbor, MI 48107

Ronald R. Helveston, Esq.
Sachs, Nunn, Kates, Kadushin, O'Hare,
Helveston & Waldman, P.C.
1000 Farmer Street
Detroit, MI 48226

Re: City of Ann Arbor -and- Ann Arbor Fire Fighters Assn.
MERC Act 312 Case No. D83 E-1514

Gentlemen:

I have studied your memoranda, and cases cited therein, regarding this Act 312 arbitration panel's authority to make a ruling concerning continuation of the fire fighters' existing contractual option for compensatory overtime accrual, which the City contends is in violation of the Federal Fair Labor Standards Act (FLSA).

The City argues the panel has no such authority, because overtime compensation cannot be paid after the 28-day work cycle under the FLSA, and deferral of such compensation in the form of compensatory time off beyond that cycle is an impermissible — not a mandatory — subject of bargaining. It cites a number of cases standing generally for the proposition that employees cannot waive or release the statutory guarantees afforded them under the FLSA.

The Union argues that the current system does not involve waiver or release of statutory guarantees, but simply offers fire fighters a valuable option which exceeds those guarantees. It contends such a system would violate Federal law only if it contravened the statutory purposes of the FLSA, which this option does not.

The Union is right. The current contractual system meets the basic requirement of the FLSA: it guarantees fire fighters payment at time and one-half, payable within the 28-day work cycle, for all overtime hours. It then offers them an option to take such compensation in the form of compensatory time off at double time, rather than time and one-half, and allows them to defer actual receipt of such compensatory time beyond the immediate work cycle — until retirement if they so

desire. If a fire fighter chooses this option, he neither waives nor releases a statutorily guaranteed right. He simply chooses to receive it in a form and at a time which he considers more valuable.

None of the cases cited by the City holds such a system to be contrary to the FLSA. The only one which even deals with the question of compensatory time is Brennan v. New Jersey 364 F. Supp. 156 (1973), in which it appears the system was mandatory, not optional. The common thread through the other cases is the prohibition against employees waiving or releasing their statutory rights. The rationale for that prohibition was summarized succinctly in U.S. v. Johnson 52 F. Supp. 382 (1943), which noted that to allow such waiver could thwart and subvert the purpose of the FLSA, because the "relations of Employer and employee are such that the latter could easily be misled through fear or influence to the total loss of his rights under the Act." (383)

This system hardly poses that danger. Clearly the City's interest in having it declared illegal and/or nonarbitrable is not to protect fire fighters against its own undue influence, but to avoid continuation of a financially burdensome benefit which it wishes it had not agreed to in the past. At bottom, the subject matter of the compensatory overtime issue is wages, which is a mandatory subject of bargaining. Equally clearly, the panel would overreach itself to uphold the City's position on the arbitrability of this issue. Accordingly, arbitration will proceed on this and all other issues already identified in the record.

As for the City's proposed bifurcation of two of those issues — compensatory time off and sick leave — no ruling is necessary at this time. The potential problems identified by the City may indeed deserve the panel's attention, as they affect the final offer procedure. But they have no bearing on the presentation of evidence, which is our consuming current interest. Case presentation will proceed as originally agreed. The panel will finally determine the exact issues upon which final offers are to be submitted, and the procedure for such submission, when all the evidence has been presented.

Cordially,

Paul E. Glendon

pg/ac
Copy: James Amar
Mary J. Rinne
Wesley Prater

M E M O R A N D U M

RECEIVED

OCT 2 1985

ANN ARBOR FIRE DEPT.

September 24, 1984

TO: Wes Prater, President
Local 1733, I.A.F.F.

FROM: Richard Parker, Labor Relations
City of Ann Arbor

SUBJECT: FIREFIGHTERS NEGOTIATIONS - LISTING OF RESOLVED ISSUES

The following listing is submitted to identify those articles and sections of the agreement which are to remain unchanged in the next agreement and those which we have tentatively agreed to change.

Purpose and Intent - No change.

ARTICLE 1 - Recognition - No change except for middle sentence to read: "All fire department personnel less the Chief, the Chief's secretary and other office clerical employees."

ARTICLE 2 - Discrimination - No change.

ARTICLE 3 - Aid to Other Unions - No change.

Article 4 - Union Security - No change.

ARTICLE 5 - Union dues, etc. - No change except that Section a. 1. to be modified by deleting the phrase "including any dues which have occurred during a leave of absence, if employee should return to work."

ARTICLE 6 - Union Representation - No change.

ARTICLE 7 - Stewards, etc. - No change except for the addition of "Fire Station #6 - (1) steward"

ARTICLE 8 - Special Conferences - No change.

ARTICLE 10 - Grievance Procedure - No change except that section g. shall be changed in the following manner: "...if the time limitations are not fulfilled by the Chief in Step 2, or by the City Administrator, or authorized representatives in his capacity, at Step 3, and then the City Administrator is personally notified in writing that the time limits have not been met, and he does not comply with the requirements in Step 3 within two

calendar days, then the matter shall be settled in the Union's favor.

ARTICLE 11 - Discipline or Discharge - No change.

ARTICLE 12 - Probationary and Temporary Employees - No change.

ARTICLE 13 - Seniority - Changed as follows:

e. Any employee who transfers ~~or is transferred~~ from another City Department into the Fire Department shall ~~retain seniority with regard to pay,~~ enter the Fire Department at the lowest rate in the Firefighter salary schedule which is at least 2.3% above his/her rate in the other city department. Provided, however, this shall not be held to entitle an employee to a rate higher than the top rate of a firefighter. Otherwise such employee shall retain full credit for their prior city service with respect to pension, number of vacation days, hospitalization, and other benefits due the employee. This time shall not impinge upon departmental seniority as established in Article 13 (a).

ARTICLE 14 - Loss of Seniority - No change.

ARTICLE 15 - Seniority of Stewards - No change.

ARTICLE 16 - Seniority of Union Officers - No change.

ARTICLE 17 - Supplemental Agreements - No change.

ARTICLE 18 - Layoffs - No change except for the following in the first sentence: "...when ~~he deems it~~ it is deemed necessary..."
ARTICLE 19 - Recall Procedure - No change.

ARTICLE 20 - Transfers - No change.

ARTICLE 21 - Promotions - No change.

ARTICLE 22 - Procedures for Promotions - No change.

ARTICLE 23 - Payment of Back Pay Claims - No change.

ARTICLE 24 - Computation of Back Wages - No change.

ARTICLE 25 - Veterans - No change.

ARTICLE 26 - Leave of Absence for Veterans - No Change.

ARTICLE 27 - Rest Periods and Coffee Breaks - No Change.

ARTICLE 28 - Work Schedule - No Change.

ARTICLE 29 - Overtime - In Dispute.

ARTICLE 30 - Equalization of Overtime - No Change.

ARTICLE 31 - League of Absence - No Change.

ARTICLE 32 - Leave for Union Business - Change to read as follows:

"Officers and stewards of the Union shall be afforded reasonable time during regularly scheduled owrking hours without loss of pay to fulfill their Employer/Union responsibilities including processing grievances, administration and enforcement of this agreement."

ARTICLE 33 - Funeral Leave - No Change.

ARTICLE 34 - Pay Advance - No Change.

ARTICLE 35 - Bulletin Boards - No Change.

ARTICLE 36 - Temporary Assignments - No Change.

ARTICLE 37 - Training Assignments - No Change.

ARTICLE 38 - Jury Duty - No Change.

ARTICLE 39 - Maintenance - No Change.

ARTICLE 40 - Minimum Manning - No Change.

ARTICLE 41 - Personal Articles Damage - The City will repair-or replace-any-item-broken,-damaged,-or-lost-in-the-line-of-duty (watches,-glases,-etc.)-not-through-the-negligence-of-the employee-up-to-a-maximum-of-$250.00-on-any-one-item.--In-the

~~event-that-an-employee-receives-compensation-from-his-insurance company-or-from-any-other-third-party-for-any-item-that-is broken,-damaged,-or-lost,-the-amount-the-City-will-be-required-to-pay-will-be-the-difference-between-the-cost-of-the-item-and-the-amount-the-employee-received-to-a-maximum-of-$250.00~~

The City agrees to reimburse employees for the reasonable value of necessary personal articles such as eye glasses, wrist watches, etc. which are damaged in the line of duty not through the negligence of the employee. One hundred fifty dollars ($150) shall be the maximum reasonable value for eyeglasses, seventy-five dollars ($75) for a wrist watch and two hundred fifty dollars ($250) shall be the overall maximum reasonable value for any other item. The damaged article shall become the property of the ity following the reimbursement. In the event that an employee receives compensation from his insurance company or from any third party for any damaged item, this section shall not apply.

ARTICLE 43 - Lights and Gloves - No change.

ARTICLE 44 - Sick Leave - Forty Hour Personnel - In dispute.

ARTICLE 45 - Sick Leave - Platoon Personnel - In dispute.

ARTICLE 46 - Compensation for Absence on Holidays - Language to stay the same except that the holidays are to be as follows instead of those which are presently listed:

Present Holidays	Revised Holidays
New Year's Day	New Year's Day
Lincoln's Or Wash.'s Birthday	Lincoln's or Washington's Birthday
Memorial Day	Good Friday (1/2 day)
July 4th	Memorial Day
Labor Day	July 4th
Veteran's Day	Labor Day
Thanksgiving Day	Veteran's Day
Christmas Eve	Thanksgiving Day
Christmas Day	Day After Thanksgiving Day
New Year's Eve	Christmas Eve (1/2 day)
Good Friday (1/2 Day)	Christmas Day
	New Year's Eve (1/2 day)
	Employee's Birthday

ARTICLE 47 - Food Allowance - No change.

ARTICLE 48 ~~Workmen's Compensation - Change as follows:~~

WR

Each employee will be covered by the applicable Workmen's Compensation Laws and the Employer further agrees that an employee being eligible for Workmen's Compensation may elect to use his accumulated sick time. If the employee uses his accumulated sick time, he shall receive his full salary and he may return his Workmen's Compensation check to the City. The City, upon receipt of the Workmen's Compensation check shall convert that amount into hours and days and shall deduct those hours and days from the employee's sick leave charge. An employee who elects not to utilize his accumulated sick time or who has no accumulated sick time, shall receive the Workmen's Compensation benefits as specified by law.) An employee injured on the job and eligible for Workmen's Compensation shall, in addition to Workmen's Compensation benefits, receive the difference between the Workmen's Compensation and his City net after tax (gross minus state and federal taxes) salary and all fringe benefits (except prorated food and clothing allowance) as of the date of injury (excluding overtime) commencing the first actual day on which he is able to work following the day of injury and continuing thereafter until the 365th day following such injury. Thereafter, an employee injured on the job and eligible for Workmen's Compensation shall, in addition to Workmen's Compensation benefits, receive 70% of the difference between the Workmen's Compensation benefits and his City net salary and all fringe benefits (except prorated food and clothing allowance) as of the 365th day following said injury (excluding overtime) until such time as the employee either receives a duty disability pension or is able to return to his original classification or another open classification. During this period of time, said employee's salary and all fringe benefits (except prorated food and clothing allowance) shall be in accordance with the pay schedules set forth in existing contract with regard to seniority and all scheduled pay raises, except that the employee will not receive longevity or merit increases until he returns to work. Following the 365th day, an employee's health and ability to perform work for the City shall be reviewed. If the employee is able to return to his original classification, he shall do so.

If the employee is not able to return to his classification, but is able to perform work in another open classification, he shall be offered a position in that classification and his pay shall either be commensurate with the salary or wage grade for that position, or 70% of the net salary or wage grade of his original classification or position whichever is higher.

ARTICLE 49 - Vacation Leave - No change.

ARTICLE 50 - Personal Leave Days - No change.

ARTICLE 51 - Clothing Allowance - No Change.

ARTICLE 52 - Hospitalization - Change as follows:

A. Hospitalization:

(1) After six (6) months of employment, an employee shall be provided the High Benefit Comprehensive Blue Cross-Blue Shield MVF-1 Plan providing up to 365 days of hospitalization which includes the comprehensive Blue Shield Surgical Plan, prescription drug rider, Master Medical Plan, PPNV, Voluntary Sterilization, and ML riders or the satisfactory equipvalent of such plan.

(2) A permanent employee of the City of Ann Arbor may elect to take this hospitalization insurance at the time he becomes a permanent employee. A permanent City employee may also elect to take this hospitalization plan at the yearly opening period of June 15 to July 1. A newly appointed permanent employee will be required, if he elects to take this insurance upon the commencement of his permanent employment, to pay the insurance premium for the first six (6) months of his employment. At the end of this time, the City of Ann Arbor will assume the full cost for his hospitalization premium including that premium portion that is for his spouse and children under nineteen (19) years of age; but shall also exclude special dependent coverage such as, for example: a parent, mother-in-law, or child over nineteen (10) years of age.

B. Dental Coverage:

After six (6) months of employment, an employee shall be provided a "50% Delta Dental Plan" or its satisfactory equivalent with a maximum benefit of $1000 per year per person.

B. Optical Coverage:

After six (6) months of employment an employee shall be provided the "Full Service Benefit" Plan "A' of Mutual Eye claims Audits, Inc. or its satisfactory equivalent.

~~ARTICLE 53. Hospitalizaiton, Medical, Surgical Insurance~~ for Retirees - Change as follows:

The Employer shall pay the entire cost of a like Blue Cross-Blue Shield Plan minus the PPNV-1 Rider for employees retiring after 7/1/83 provided that the level of coverage in effect at the time of their retirement shall constitute the total coverage to be provided such employee. Provided that employees taking a deferred retirement do not receive this beneit. Any change in coverage levels subsequently provided to current employees will not attach to the coverage level provided retired employees. Further, it is understood that should an employee retire from the City and assume employment with another employer who provides hospitalization coverage, then the employee shall take said coverage, and the City's obligation to provide hospitalization to said employee shall be reduced to that of complimentary coverage. When an employee who remains under coverage by the City reaches age 65 and thereby becomes eligible for the Federal Medicare Program, the City's obligation to provide hospitalization to said employee, current or retired, shall be reduced to that of a complimentary partner with the Federal Medicare Program. (Medicare Complimentary Coverage option 2/1)

ARTICLE 54. Life Insurance Coverage - Change as follows:

a. The Employer agrees to pay the entire premium cost of $10,000 of life insurance on all permanent employees who have completed their probationary period. The Employer further agrees to pay the entire cost of $10,000 of life insurance for retiring employees, employees who have completed fifteen (15) or more years with the City and are retiring on a City pension. Provided, however, that employees taking a deferred retirement do not receive this benefit.

b. Eligible employees will be permitted to take additional insurance up to twice their annual salary, with the City paying one-half (1/2) of the true cost of the insurance and the employee paying (1/2) of the true cost.

c. Persons who take additional life insurance according to section (b) are entitled to subscribe to group life insurance for their family as follows:

Coverage		Amount
Spouse		$6,000
Children:	Birth to age 6 months	400
	Age 6 months to age 19	4,000

The premium for the additional life insurance to Section (b) shall be paid entirely by the employee.

~~ARTICLE 55. Parking Facilities - Article to be deleted and~~ replaced by following letter in back of contract:

To: Wesley Prater, President
Local 1733, I.A.F.F.

From: Godfrey W. Collins, City Administrator
City of Ann Arbor

Subject: PARKING FACILITIES

This will confirm the existing agreement between the City and Local 1733 that the City shall provide parking for Fire Department employees stationed at the central station in the basement parking area. Four parking spaces will continue to be assigned to City department heads but will not be r - In Dispute
Reassigned when Dept heads transfer out of Parking

MP
W.

ARTICLE 56 - Wage Controls - To be deleted from Contract.

ARTICLE 57 - Pensions - No Change

ARTICLE 58 - Retroactivity - Subject to Arbitration

ARTICLE 59 - Departmental Rules and Regulations - In Dispute.

ARTICLE 60 - Light Duty Assignment - No Change.

ARTICLE 61 - Minimum Manning/Pension Moratorium - No Change.

ARTICLE 62 and 63 - Salary Schedules - In Dispute.

ARTICLE 64 - Dispatch Salary - No Change.

ARTICLE 65 - Duration - 3 Year Agreement.

NEW ARTICLE - Savings - To read as follows:

If during the life of this agreement, any of the provisions contained herein are held to be invalid by operation of law or by any tribunal of competent jurisdiction or, if compliance with or enforcement of any provision should be restrained by such tribunal pending a final determination as to its validity, the remainder of this agreement shall not be affected thereby. In the event any provisions herein contained are so rendered invalid, upon written request by either party hereto, the employer and the union shall enter into collective bargaining for the purpose

of negotiating a mutually satisfactory replacement for such provisions.

NEW ARTICLE - Indemnification Policy - To read as follows:

(a) It is the policy of the City of Ann Arbor to indemnify and defend all Fire Department employees with regard to all claims for civil liability for such employees' lawful acts arising out of their employment and carried out pursuant to the policies of the department while on duty.

(b) To invoke this policy, an employee must request indemnification and defense through the City Attorney when the employee is served with process. Following such request, the employee will be notified prior to the filing of the first responsive pleading, whether indemnification, defense, or both will be provided by the City. Defense may be provided through the City Attorney's office or in the discretion of the City through such other attorneys as the City may choose.

(c) Indemnification of the employee shall be conditioned upon the employee's full cooperation and assistance in the defense of the civil action. If in the course of the civil action it clearly appears that the employee has not been truthful in reporting the event in question, the City may alter its determination regarding indemnification.

WD. mgp

ARTICLE 55. Parking Facilities - Article to be deleted and replaced by following letter in back of contract:

TO: Wesley Prater, President
Local 1733, I.A.F.F.

October 16, 1985

FROM: Godfrey W. Collins, City Administrator
City of Ann Arbor

SUBJECT: **PARKING FACILITIES**

This will confirm the existing agreement between the City and Local 1733 that the City shall provide parking for Fire Department employees stationed at the central station in the basement parking area. Four parking spaces will continue to be assigned to City department heads but will not be reassigned to others upon their resignation or retirement.

RP/m

OK WTP 11/15/85

OK QTP 10/15/85

Firefighters

Article 53 - Hospitalization, Medical, Surgical, Insurance for Retirees - Change as follows:

The Employer shall pay the entire cost of a like Blue-Cross Blue-Shield Plan minus the PPNV-1 rider for retirees. Provided that employees taking a deferred retirement do not receive this benefit. Further, it is understood that should an employee retire from the City and assume employment with another employer who provides hospitalization coverage, the employee shall take said coverage, and the City's obligation to provide hospitalization to said employee shall be reduced to that of complimentary coverage as long as the employee remains so employed. When an employee who remains under coverage by the City reaches age 65 and thereby becomes eligible for the Federal Medicare program, the City's obligation to provide hospitalization to said employee, current or retired, shall be reduced to that of complimentary partner with the Federal Medicare program. (Medicare Complimentary Coverage option 2/1).