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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

DEPARTMENT OF LABOR

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IN THE MATTER OF THE ARBITRATION BETWEEN

CITY OF FERNDALE (FIRE DEPARTMENT)

-and-

FERNDALE FIREFIGHTERS ASSOCIATION,
LOCAL 812, I.A.FF., AFL-CIO

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COMPULSORY INTEREST ARBITRATION

UNDER 1969 PA 312

Arbitration Panel: JULIAN ABELE COOK, JR.,
Chairman

RONALD DEMAAGD, Panel Member
Selected by City of Ferndale

MYRON MOREY, Panel Member
Selected by Union

This proceedings is a Compulsory Interest Arbitration pursuant to Public Act 312, 1969, as amended by Public Act 127, 1972, MCLA 423.231ff, MSA 17.455 (31)-(47), providing for binding arbitration to determine unresolved contractual issues in municipal police and fire departments. This Arbitrator, Julian Abele Cook, Jr., was designated by the Director of the Michigan Employment Relations Commission by letter (dated July 15, 1977) to serve as Chairman of the Panel of Arbitrators in this matter. Ronald DeMaagd, the then-City Manager of the City of Ferndale, herein referred to as the City or Employer, was designated as the member of the Panel representing the City; and Myron Morey, the President of the Local Union, was designated as the member of the Panel representing the Union. The City was represented in this proceeding by Attorney Jack R. Clary, and the Union was represented by Attorney Ronald R. Helveston.

A Pre-Hearing Conference in this matter was originally scheduled for August 5, 1977, but was adjourned without date by agreement of the parties because they were still engaged in collective bargaining and were hopeful of resolving their differences without the necessity of arbitration. When the negotiations did not result in a new Collective Bargaining Agreement, the Chairman issued a Notice of a Pre-Hearing Conference for March 24, 1978 and scheduled the first days of Hearing on April 26 and 27, 1978. The Pre-Hearing Conference, which was rescheduled several times thereafter, was finally conducted on May 11, 1978, at which time the Arbitration Panel designated approximately twenty-four (24) economic issues and five (5) non-economic issues, all of which are the subject of

this Opinion.

Formal recorded Hearings were thereafter held for six (6) days on June 1, June 2, July 10, July 11, July 17 and July 27, 1978. During these Hearings, each of the parties presented witnesses on behalf of their respective positions on the issues in dispute and were permitted to freely examine and cross-examine said witnesses. The Union introduced approximately seventy-four (74) exhibits in support of its positions on the issues, and the Employer introduced approximately forty-six (46) exhibits in its presentation.

On August 4, 1978, the Union counsel forwarded a proposed exhibit relating to the selection of grievance arbitrators by either the American Arbitration Association or the Federal Mediation and Conciliation Service, or independently. By letter dated August 9, 1978, the City's counsel objected to the re-opening of the record in this matter to receive the Union's proposed exhibit. In view of the Employer's objection to the proposed exhibit, the Panel will not consider it part of the record herein.

BACKGROUND INFORMATION

The Panel has carefully adhered to the statutory provisions that govern this instant proceeding, and it is not necessary to discuss or set forth these provisions in any detail. Suffice it to say, the Arbitration Panel has identified the economic issues and adhered to the adoption of the last offer of either party as to such issues as required by Section 8 of the Statute.

All of the findings and orders as to the various issues have been based upon the factors set forth in Section 9 of the Statute and the evidence introduced by the parties on the record at the Hearings herein. While these Section 9 factors, such as comparability, financial ability of the Employer, overall compensation received by the employees, are not repeated in regard to the determination of particular issues, the Arbitration Panel has nevertheless fully considered each of these factors in reaching its decision on the issues presented to it. Rather than list the each individual issue presented to the Panel at this point, the following Opinion will designate each issue, and submit its Award thereon.

This Opinion was drafted by the Arbitration Panel Chairman in accordance with the customary practice. Further, the fact that a particular Panel Member does not specifically dissent to any of the finds or awards below does not necessarily indicate his assent with the observations and/or the language used in regard to the particular issue.

In view of time constraints, and in view of the comprehensive and very able briefing of the issues in the last offers and briefs of the parties, the Panel Chairman has determined that it is in the best interests of the parties to issue a Summary Opinion, setting forth only the findings and orders with regard to each individual issue. In such instances, where a particular issue may require setting forth the entire

verbatim last offer of a party, then it may be included as an appendix to this Opinion. The respective positions of the parties on each issue were set forth with thoroughness in (a) the record, (b) their last offers, (c) their briefs and (d) the numerous exhibits which have been placed into evidence. All of these documents have been carefully considered by the Panel Chairman during the preparation of this Opinion. Thus, the fact that a particular argument or position may not be repeated in this Opinion does not mean that it was not considered before an Award was rendered. However, in the interest of a manageable Opinion, and as noted above, a timely one, in general only ultimate findings of fact are set forth below. Even so, as noted above, all of the Section 9 factors have been carefully considered in reaching such ultimate findings of fact, including, for example, the impact on other employees of the City and on other bargaining units as strenuously argued by the Employer herein.

EMPLOYER INVOLVED

The City of Ferndale is located in the Detroit Metropolitan Area on the Southern boundary of Oakland County. The City has common boundaries with Detroit, Hazel Park, Madison Heights, Royal Oak, Oak Park and Pleasant Ridge. The City is approximately four (4) square miles in size, and has a population of approximately 27,000. The State Equalized Valuation for the City is approximately $130,000,000.00, and its general fund budget is approximately $6,000,000.00

The Union involved herein is the exclusive bargaining representative of all employees of the Ferndale Fire Department, herein referred to as the Department, except for the ranks of Chief and Assistant Chief. There are a total of forty-five (45) employees in the Union's bargaining unit, with the classification of Fire Fighter, Fire Engineer, Fire Sergeant, Inspector, Fire Lieutenant, and Fire Captain. The Union's bargaining unit is, therefore, composed of forty-five (45) employees, and the total Department with two (2) omitted positions is composed of forty-seven (47) employees. The City, in addition, has six (6) other bargaining units in addition to the one represented by the Union herein.

The Ferndale Fire Department provides full fire protection service and an around-the-clock emergency medical or ambulance service for the residents of Ferndale, as well as for the approximately 3,000 residents of the City of Pleasant Ridge, who are served on a contractual basis. The City is also a member of mutual aid pact, known as the "Oakway Pact" with the Cities of Pontiac, Royal Oak, Madison Heights, Birmingham, and Hazel Park. The City has a total of approximately two hundred (200) employees.

The record establishes that the employees in the Union's bargaining unit are highly skilled professional fire fighting employees, and due to the size of the Department, they must collectively maintain a wide range of skills in all areas of fire fighting, and, most recently, in the emergency medical

service area. The employees have engaged in a continuing education type program in order to maintain their high degree of skills. Approximately a dozen employees have voluntarily become certified Emergency Medical Technicians pursuant to the recent Michigan legislation dealing with municipal emergency medical services. The record also indicates that there has been a significant increase in the number of ambulance runs during the past few years, as well as a steady increase in the number of fire alarms.

The City has not pleaded inability to pay in this case, but while its financial condition is sound, this Panel is aware of the tight budget considerations that are necessary to maintain the City's fiscal integrity. The Panel is also aware that, while there is no actual parity between police and fire employees in the City, there is, nevertheless, a correlation between the benefits granted to both bargaining groups. While there was a great deal of argument between the parties with regard to what comparables in the way of other Cities would be advanced by each of the parties and considered by the Panel, the comparables, in the final analysis, that were offered by the two parties are substantially the same with a few significant differences (such as Livonia and Warren) which were advanced by the Union but rejected by the Employer on the grounds that they were not comparable in size to Ferndale. The Panel considers it unnecessary to discuss in detail the contentions of the parties in regard

to comparables, and in making the Awards below, all comparables and arguments of the parties have been duly considered and accepted or rejected, depending upon the circumstances surrounding the particular issue.

The most recent Collective Bargaining Agreement between the City and the Union commenced October 1, 1976 through , and including, September 30, 1977. This Agreement was an extension of a prior Agreement that was effective through September 30, 1976. The parties stipulated during the Hearing that the duration of the new Agreement being litigated in this proceeding would be a three-year Agreement from October 1, 1977 through September 30, 1980. Accordingly, the Panel accepts this stipulation of the parties, and the following findings and orders take that stipulation into consideration.

AWARD ON ISSUES

I. WAGES:

Each of the parties have set forth in their last offers a comprehensive wage schedule for each year of the three-year contract, beginning October 1, 1977, for the six (6) classifications involved, including the Inspector classification which the Union has asked be equated with a Fire Captain wage rate. The lowest classification is that of Fire Fighter, and its wage steps, after the starting rate, are four (4) in number, with increases taking place at six (6) months, one (1) year, two (2) years, and

three (3) years. The remaining classifications all reach their journeyman, or highest wage rate, in lesser steps. The offers for wages and other benefits discussed in this Opinion will be designated by the year that they begin, namely, October 1, 1977 being designated as 1977, and the remaining two (2) years as 1978 and 1979.

Using (as we do the parties in their arguments) the classification of Fire Fighter at a third year level, the current wage rate as of September 30, 1977 was $17,000.00. The City's last offer on wages for that classification and step is $18,100.00 for 1977, $19,100.00 for 1978, and $20,100.00 for 1979. The Union's last offer, on the same classification and step, is $18,400.00 for 1977, $19,600.00 for 1978, and $20,700.00 for 1979. The rates for the other classifications and steps are proportional to the rates indicated above for Fire Fighter, and need not be repeated herein.

The issue of wages is one of the most fundamental matters that this Panel must consider in view of all of the other fringe benefits, premiums, and other economic items that are affected by the basic wage rate. Thus, while the last offers of the parties may not appear significantly apart on the surface, the total impact of the Union's last offer in relation to the City's last offer is significant when total compensation and costs is considered. After studying all of the Section 9 factors (including the

comparative data and the impact on the City and other bargaining units therein) and considering the cost of living provision in the Union's contract, the majority of the Arbitration Panel finds that the last offer of the Union is a fairer one.

ORDER

The Panel awards the last offer of the Union on wage rates for the three (3) years of the Contract, beginning October 1, 1977, and again on October 1, 1978, and on October 1, 1979, through September 30, 1980.

II. FIRE INSPECTOR SALARY

There is only one Fire Inspector position in the City. After a two year period, this position is the second highest paid classification in the bargaining unit below that of Fire Captain; however, the starting wage is below that of Fire Lieutenant, but higher than that of Fire Sergeant. The Union's last offer would escalate the rate for Fire Inspector and make it equal to that of the rank of Captain. By contrast, the City's last offer would keep the Inspector classification separate as in the expired Contract, with increases proportional to those given to other classifications and steps. Thus, the current two year rate under the expired contract of $20,663.00

would rise to $21,963.00 in 1977, $22,963.00 in 1978 and $23,963.00 in 1979. Under the Union's offer, the Inspector would be paid the same as a Captain (whose current rate under the expired contract is $22,628.00). In addition, he would be paid (a) $23,728.00 in 1977, (b) $24,728.00 in 1978, and (c) $25,728.00 in 1979.

The Arbitration Panel finds that the Union offer in regard to the Fire Inspector salary escalation to that of Fire Captain is not justified on the record herein. While certain large fire departments have fire marshals with a staff of fire inspectors, the Chief of the Ferndale Department acts as Fire Marshal for the City. The Panel finds that the increased offered by the City for the Fire Inspector classification are fair when considering all of the various factors applicable to this case.

ORDER

The Arbitration Panel herewith adopts the last best offer of the City in regard to Fire Inspector salary rates.

III. PENSION-COST OF LIVING ESCALATOR

The employees in the Union's bargaining unit are members of the same pension plan as the City's police officers whose plan has been in existence since July 1, 1947. There are two issues presented in this case with regard to the pension plan. The Union has asked for (1) a cost

of living escalator or post-retirement adjustment for future retirees beginning October 1, 1979, and (2) an increase in the pension annuity factor along with an increase in the number of years accredited to service from twenty-five (25) to thirty (30).

The post-retirement adjustment will be considered first. In its last offer, the Union has requested a pension escalator of .25% for each 1% increase in the consumer price index for all urban consumers in the Detroit area, beginning on the first date of issuance of pension checks immediately following February 1, 1980. The City's last offer is to maintain the current program under the pension plan affecting the Fire Fighters which contains no escalator clause.

The Union argues that its cost of living adjustment for future retirees is necessary to provide a buffer against the current inflationary trend, and that its proposal is well planned and will not be too great an economic burden upon the Employer. The City, on the other hand, cites the serious financial implications involved with the Union's request, and further argues that the Panel should maintain the uniformity that exists between police and fire pension benefits rather than fragmentizing the pension plan by granting the Union's last best offer. After carefully considering the evidence and arguments of both parties on this issue, the Panel has decided that the

offer of the Union should be rejected, and the present pension system maintained.

ORDER

The Arbitration Panel adopts the last best offer of the City to maintain the current pension system, and rejects the Union's request for a cost of living escalator in the pension program.

IV. PENSION ANNUITY FACTOR

The current pension plan provides for a 2% pension annuity factor for a maximum of twenty-five (25) years credited service. The current plan also provides that there must be fifteen (15) years of service before the pension plan vests fully. Also, the current plan provides that there shall be a cap on the maximum pension of 70% of the annual base pay of a Fire Fighter or Police Officer. This cap can have a serious affect on the pension of officers of the Fire Department.

The Union, in its last offer, asked that the pension annuity factor be increased from 2% to 2.25% of the final average compensation, multiplied by the number of years of service not to exceed thirty (30) years, effective October 1, 1979, and that the 70% cap be removed.

The City's last offer is to maintain uniform pension benefits between Police Officers and Fire Fighters which

would be as follows: Effective October 1, 1978, the vesting requirement would be reduced from fifteen (15) years to ten (10) years service; effective January, 1975, a rule of a "Rule of 75" retirement formula would be implemented which would mean that any combination of age and years of service which equals 75, with a minimum of twenty-five years of service. Further, the Employer would modify the annuity formula itself as follows: The years of credited service would be gradually increased to thirty (30) years beginning October 1, 1979 when the maximum credited service would be increased to twenty-six (26) years or 52%. Each October 1st thereafter through October 1, 1983, the maximum credited service would be increased one (1) year until it reaches thirty (30) years, or 60% of the final average compensation.

While it is difficult to equate the offers of the Union and the City in the Pension area because of the different formulas advanced, and due to different actuarial suppositions, a majority of the Arbitration Panel is convinced that the current pension proposal of the City, which is similar to the pension cost of living escalator, is a fair one, and should be accepted in order to maintain the program as it has existed in parity with the Police Officers.

In making this conclusion, this Arbitration Panel is aware that Police Command Officers have certain benefits which are accorded to the lower ranks. Nevertheless, the

change requested by the Union is considered to be too drastic and costly under the circumstances herein.

ORDER

The Arbitration Panel accepts the last best offer of the City in regard to pension annuity factor.

V. VACATIONS.

Under the current practice, the employees are allowed two (2) furlough periods each year of four (4) duty days each, for a total of eight (8) days. The City's last offer is as follows: effective October 1, 1978, employees with one (1) year, but less than fifteen (15) years of service, shall receive two (2) furlough periods each year of four (4) consecutive duty days. Employees with fifteen (15) years of service will receive two (2) furlough periods of five (5) duty days. The City's best offer also provides that vacations may be scheduled with the "Kelly Day" being at the beginning or at the end of the vacation, but not both at the beginning and at the end of the vacation periods. Also, the employee may not add his birthday leave to either the beginning or end of his vacation periods. The Union's last offer is that the first seven (7) years of service an employee would receive eight (8) duty days vacation; from eight (8) to fifteen (15) years of service, ten duty days vacation; and after sixteen (16) years of of service or more, twelve (12) duty days of vacation.

The Union's proposal also includes the proviso that the additional days, those beyond the present eight (8), can be split into twenty-four (24) hour increments, and the present informal practice of allowing the addition of birthday leave to an employees vacation would be continued. The Union's offer also would continue the practice as proposed by the City that the basic eight (8) duty day vacation is taken in halves, winter and summer.

The City objects to the Union's last offer because of its direct impact economically on the City, caused by the additional vacation days; and, secondly, because of the alleged particular scheduling requirements in the City required by the City Charter, which requires that the City operate a two-platoon with a seventy-two hour period of off duty mandated. The Union disputes the City's arguments on the ground that, under current practice no Fire Fighters are called in from off duty to replace personnel on vacation; consequently, there is no direct cost for additional vacation days. The Union also points out that its Contract does not contain a minimum manpower clause, and that its proposal is comparable to other cities.

In light of the comparables and other evidence presented in regard to this matter, and including the overall compensation involved herein, the Panel has decided to grant the Union's last offer in regard to vacation.

ORDER

The request of the Union in regard to vacation set forth in its last best offer is hereby accepted by the Panel, and will be included in the new Collective Bargaining Agreement.

VI. EMT TRAINING

The current Collective Bargaining Agreement between the parties contains no provision for any compensation for Fire Fighters who attend emergency medical technician training classes when off duty. The Employer's last offer would give employees who are required by the City to attend EMT schooling outside their regular duty days their regular straight time hourly rate for all hours spent in such schooling. Such time however, shall not be included in determining hours actually worked for purposes of overtime premium pay. The Union request that, effective October 1, 1978, all Fire Fighting employees who attend classes or training sessions for the purpose of obtaining an Emergency Medical Technician license during off duty hours be paid one and one-half times their regularly hourly rate for all hours spent in attendance at such classes or training sessions.

The City argues that it is not obligated to pay its Fire Fighters who volunteer to learn skills beyond those required for their job; that its proposal is more favorable to the Fire Fighters than those in a majority of the comparison

cities with units of EMT's; and that its proposal to provide straight time pay for EMT schooling during off duty hours results in a substantial benefit to the employees. The Union argues that the employees are giving up their private time to improve their skills for the community in which they serve, and that its proposal of premium pay for such schooling is inherently fairer than that which has been proposed by the City. The Panel has concluded that the offer of the City is a substantial benefit and will be accepted in this case.

ORDER

The Arbitration Panel accepts the offer of the City as to EMT schooling pay, and the provision shall be included in the new Collective Bargaining Agreement providing for straight time pay for EMT schooling during off duty time.

VII. EMT TRAINING REPLACEMENT

The Union requests that, effective October 1, 1978, the City shall call back employees to replace an employee who is attending Emergency Medical Technician Training during on-duty hours whenever the absence of the employee would otherwise result in a total shift strength of less than twelve (12) employees. The Employer would maintain the current practice whereby manpower is up to the City's

discretion so it offers no contractual provision in this issue. The Panel agrees with the contention of the Employer that the matter of manpower should be left to its discretion as a management prerogative. Accordingly, the requested contractual provision requested by the Union is denied.

ORDER

The Panel rejects the Union's offer in regard to replacement of employees taking EMT training.

VIII. EMT PREMIUM PAY

Under the current Contract and the City's last best offer, there is no provision for a pay differential for those employees performing the services of an Emergency Medical Technician. The Union requests that, effective October 1, 1978, all Fire Fighting employees who are assigned to ambulance duty, either as driver or resuscitator, shall receive a bonus of fifty (50) cents per hour for each twenty-four (24) hour shift during which the employee is assigned to the ambulance; and that, effective October 1, 1979, this bonus shall be increased to sixty (60) cents per hour. The Union argues that there should be some incentive for an employee to take an EMT assignment, whereas the City counters that EMT duties are no more dangerous or valuable to the City than fire fighting

and that employees should not expect a bonus for performing such duties, merely because they entail some additional training which was voluntarily undertaken by the employees. The Arbitration Panel agrees with the contentions of the City in this regard, and will adopt its last best offer.

ORDER

The Union's request for premium pay for EMT assignments is denied.

IX. EMT ASSIGNMENT

The Union requests a contractual provision that the City assign two (2) licensed Emergency Medical Technicians (EMT's) to ambulance duty whenever two (2) EMT's are regularly assigned to the same shift. The City does not offer any contractual provision in regard to EMT manning, and notes that only one (1) licensed EMT plus one attendant must be present in an ambulance for it to be operated under State law. See MCLA 257.1230 (2). The City argues that the Union's request would decrease scheduling flexibility and unacceptably interfere with the City's managerial right to allocate manpower. The Union counters that it is attempting to compel such an assignment only when two (2) employees with EMT training are working on the same shift. The Union argues that the EMT training of the

employees should be offered to the public in the most efficient manner possible. The Panel concludes that the City has not shown any serious reason why the assignment of two (2) EMT's would interfere with its operations and the Fire Fighting functions of the Department. Accordingly, The Panel will grant the requested contractual provision of the Union.

ORDER

The new Collective Bargaining Agreement between the City and the Union shall contain a contractual provision as proposed by the Union in regard to the assignment of two (2) licensed Emergency Medical Technicians to ambulance duty whenever two (2) EMT's are regularly assigned to the same shift, and present on the same shift.

X. RETIREES LIFE INSURANCE

Under the recently expired Contract between the parties, retirees receive $2,000.00 of life insurance paid by the City. The Employer makes no offer to increase such life insurance in the new Contract, but would maintain the old contractual provision. The Union has requested a two (2) step increas in the life insurance for retirees in two (2) separate last offers: Effective October 1, 1978, the Union requests that the City increase the amount of life insurance provided upon retirement to $5,000.00 with the premiums fully paid by the City for such coverage;

and effective October 1, 1979, the Union requests that the City increase the amount of such life insurance to $7,500.00.

The City argues that its offer is comparable to other similar Departments. The Union, on the other hand, argues that the $2,000.00 coverage currently in effect is somewhat below the average of its comparables, and it cites the fact that City has given an increase to its Police Patrol employees similar to its requested proposal. The Panel has decided that the Union's last best offer to increase the amount of retirees life insurance to $5,000.00 effective October 1, 1978 should be granted, but that its request for an additional increase effective October 1, 1979 should be denied.

ORDER

The Panel awards to the Union its requested modification of Article XIII, Section 2 (a) in regard to retirees life insurance increasing to $5,000.00 effective October 1, 1978; but denies the Union's requested further increase effective October 1, 1979.

XI. SICK LEAVE - DUTY RELATED INJURY

Under the present contract, when a Fire Fighter employee suffers an injury while on duty, the City pays him his full salary for a period of ten (10) duty days. These days are paid for without any deduction of the time that

that has accumulated in the employees sick leave bank. However, following the expiration of the ten (10) duty day period, the employees full salary is paid and is pro-rated between the sick leave bank and the Workmen's Compensation payments due the employee.

The Union has proposed that this ten (10) day period be extended to sixty (60) duty days whereas the City has proposed an extension of the benefit to fifty (50) duty days. Both parties propose that the new benefit be effective October 1, 1978.

The City argues that its proposed benefit is equal to that granted to the Police Patrol Unit, and that the Arbitration Panel should give consideration to the policy of maintaining equality between the two (2) units whenever possible. The City also cites the fact that the two (2) proposals are very close. The Union argues that the duty-connected injury rate for Fire Fighters is higher than that of police, and that the depletion of a Fire Fighter's sick bank due to a duty-related injury might result in a Fire Fighter without adequate economic protection in case of time loss due to a non-duty related injury.

The Panel has decided to accept the last best offer of the City to increase the Workmen's Compensation supplement from the current ten (10) days to fifty (50) days effective October 1, 1978.

ORDER

The Arbitration Panel accepts the last best offer of the City in regard to the modification of Article XVII, Section 1, in regard to duty disability.

XII. SICK LEAVE ACCUMULATION

The City proposes to retain the present contractual provision that permits a maximum accumulation of sick leave by employees of 720 hours. The employees receive six (6) duty days of sick leave per year, and three (3) are paid out to the employees who have reached the maximum accumulation, and three (3) are available to employees for adding to the accumulation if not used. The Union's last best offer is that, effective October 1, 1978, sick leave may be accumulated by each employee into a sick leave bank on an unlimited basis. The City argues that its sick leave policy is a generous one, and in line with comparable cities. The City also complains about the difficulty of costing the Union's proposed benefit.

The Union argues that the accumulation of sick leave allowed by the City is below average, and that under the present sick leave control program in the Contract, an employee may add, at the most, only three (3) duty days to his sick leave bank so that after even a hypothetical career of thirty-five (35) years, it would be possible to only accumulate 120 duty days.

The Arbitration Panel agrees with the proposal advanced by the Union in regard to this benefit, which would allow the employees to accumulate an unlimited sick leave bank, after considering the remaining contractual provisions involved in this case and the other evidence and data submitted by the parties.

ORDER

The proposal of the Union to modify Article XIV, Section 1 (b) (2), effective October 1, 1978, to permit an unlimited sick leave bank is granted by the Arbitration Panel.

XIII. SICK LEAVE PAY OUT

The City would maintain the current Contractual provision in regard to the maximum pay out of accumulated sick leave pay whereby an employee, upon retirement or resignation, is given fifty(50) percent of his or her accumulation up to 360 hours or one-half of the maximum accumulation of 720 hours. The Union proposes that, effective October 1, 1979, upon retirement or resignation in good faith and standing, an employee will be paid one-half of the amount that he or she has credited in his or her sick leave bank. It is clear that the Union's proposal on this issue must be contigent on the Panel having granted its request with regard to an unlimited sick leave bank, treated in the prior proposal. The Employer argues that its sick leave

policy is a generous one and that the Union's proposal in regard to pay out results in additional separation or retirement pay resulting in sick leave being treated more as a system for enlarging an employee's compensation and less as an insurance program. The Employer also argues that the Union's proposal would have a substantial financial impact, in that it would require additional budgetary allocations to fund the pay out for future retirees at unknown rates of pay and for an unknown number of hours because the exact cost of the benefit would be impossible to calculate. The Union counters that, if the sick leave accumulation remains capped at thirty (30) duty days, then the pay out would be limited to the present rate of fifteen (15) duty days, and that its proposal to remove the cap is not out of line with benefits that are common in other cities. Further, the Union submits that in view of the hypothetical thirty-five (35) year employee with no use of sick pay, the ceiling limitation proposal of 120 days is the maximum that would be accumulated for a sick leave pay out upon retirement. The Union also argues that the purpose of sick leave pay out is to keep employee absenteeism to a minimum, and to provide an incentive for employees who would otherwise use accumulated sick time for minor illnesses. The Union argues that its proposal will prevent the employees from using up sick time toward the end of their career, and thus have an impact on the Department's efficiency and morale. Finally, the Union argues that its

proposal is competitive with that offered in other communities.

The Arbitration Panel concludes that the present benefit is not adequate, and that the sick leave pay out proposal of the Union should be granted. Increasing the pay out as requested by the Union should be an incentive for employees to avoid frivilous use of sick time and, in addition, provide them with a benefit at a time when they may need it the most upon their severance from employment.

ORDER

The Panel orders that the sick leave pay out provision of the Union be included in the new Contract by modifying Article XIV, Section 3 (a), by adding that, effective October 1, 1979, upon retirement or resignation in good faith and standing, an employee will be paid one-half of the amount he or she has credited in their sick leave bank.

XIV. COST OF LIVING ALLOWANCE

The Union's last best offer with regard to the cost of living allowance presently contained in the Collective Bargaining Agreement is to maintain the same formula that has been utilized in the past with new effective dates and adjustment dates as are necessary. The City concedes that its offer is substantially the same as that proposed by the Union, but contends that its proposal uses an up-dated index from the Bureau of Labor Statistics.

The Arbitration Panel agrees with the contention of the Union that the record does not justify any change in the language of the cost of living Article, and that barring substantiation that such change is necessary, the language proposed by the Union should be accepted. Accordingly, the Arbitration Panel will deny the proposed language by the Employer for the cost of living Article, and accept that advanced by the Union.

ORDER

The Arbitration Panel accepts the last best offer of the Union in regard to cost of living allowance, and its language proposed for Article XI, Section 3, of the proposed Collective Bargaining Agreement is accepted by the Panel.

XV. DENTAL INSURANCE

Under the expired Contract, the City pays a maximum of $300.00 per year per employee for dental insurance premiums. The Union has proposed that Article XIII, Section 4, of the Collective Bargaining Agreement be amended to provide that the City shall pay all premiums for such insurance. The City's last best offer is as follows: (1) maintain the current contractual provision for the 1977 Contract year; (2) effective October 1, 1978, the City will pay up to $225.00 per month per employee for full family hospitalization premiums, including the prescription and master medical, and for dental insurance premiums;

and (3) effective October 1, 1979, increase the maximum City premium contribution to $250.00 per month for such insurance coverages.

The City argues that its offer under current experience will cover the entire cost of all insurance premiums, but that it should be protected from unforeseeable health insurance increases, and that its offer will allow it to more adequately budget for the cost of such premiums. The City also argues that, in addition to being protected against unforeseeable premium increases, its offer compares favorably with other cities for which such insurance data is available. Further, the City notes that such benefits are not granted to members of its Police Department. The Union argues that its comparables prove that the majority of cities provide dental insurance programs without charge to the employee, and that the employees should not be called upon to subsidize an insurance program that both the City and the Union agree should be furnished to the employees. The Union argues for a fully paid benefit no matter what fluctuations in the cost of medical insurance may result.

Mindful of the other concessions to the Employer in this matter, and in view of the other evidence and data presented by the parties in this case, the Panel has decided to award the last best offer proposed by the Union herein.

ORDER

The Arbitration Panel orders that the Union's last offer in regard to Article XIII, Section 4, of the Collective Bargaining Agreement be accepted in regard to the City paying all premiums for dental insurance.

XVI. FOOD ALLOWANCE

Currently, the City appropriates $7,000.00 in its budget for the exclusive use of acquiring food for Fire Fighters to offset the expenditure by employees for use of food in preparing meals eaten while on duty at the two (2) fire stations of the City. The City has offered to maintain the current contractual provision for the 1977 Contract year, and the Union agrees with this part of the issue. Further, the City has offered (1) effective October 1, 1978, to increase the food appropriation to $10,000.00; and (2) effective October 1, 1979, to increase the food appropriation to $11,000.00. The Union's last best offers are: (1) effective October 1, 1978, an increase in the food allowance to $15,400.00; and (2) effectice October 1, 1979, an increase from $15,400.00 to $17,600.00.

The Union argues that there is a need for an appreciable raise in the food allowance due to the high cost of living with rising food prices, and it argues that, despite spiraling food prices, it has proposed only a modest increase in the allowance. The Union notes that its proposed increases would amount to only $350.00 per employee

in 1978, and $400.00 per employee in 1979, whereas the City's last offers for the same years would amount to only $227.00 per employee and $250.00 per employee.

The City, on the other hand, argues that it is offering a forty-two (42) percent increase in the food allowance for 1978, and a further increase in 1979, which grants the employees a substantial benefit increase. The City argues that a requirement that it should more than double this element of overall compensation is unjustified, and would present a great financial burden not balanced by any substantial benefit to the employees.

The Arbitration Panel agrees with the contention of the City in regard to food allowance and finds that it has offered a substantial increase in the benefit. Since employees would, in any event, have to pay a certain amount of their income for food whether on or off duty, the Panel sees no justification in the fully paid food allowance benefit for employees who are on duty. Since the City has offered a substantial increase in the food allowance, which the Panel finds to be a fair offer, the City's last best offer will be accepted herein.

ORDER

The Arbitration Panel accepts the last best offer of the City in regard to food allowances for employees for the Contract years 1978 and 1979.

XVII HOLIDAY PAY

The recently expired Collective Bargaining Agreement between the parties contains a provision for holiday pay for Fire Fighters of a lump sum of $450.00 paid annually to compensate the Fire Fighters for holidays worked throughout the year. The Employer offers (1) an increase (effective October 1, 1977) of $500.00 per employee; (2) effective October 1, 1978, an increase of $575.00 per employee; and (3) effective October 1, 1979, an increase of $625.00 per employee. The Union requests $750.00 per employee, $850.00 per employee; and $1,000.00 per employee for the same effective dates.

The Employer argues that, while its holiday pay provision is somewhat lower than the average, when overall compensation is considered, the Ferndale Fire Fighters rank favorably with comparative communities, and that its offer is reasonable. The Union argues that an increase in the City's holiday pay is clearly justified under the comparable communities which it has cited, and that the average holiday pay, even if the Union's offer were accepted, would still be below the average.

The Panel has decided to grant the last best offer of the City under the circumstances of this case. This will make the Ferndale Fire Fighters comparable to Police Officers of the City who receive the benefit as offered by the Employer. The Panel notes that the Fire Fighting employees have a far different schedule than normal employees, in

that part of their schedule requires working holiday periods on the one hand, with reasonably long periods of time off.

Accordingly, the Panel considers the holiday pay proposal of the City to be the fair one.

ORDER

Article XVI, Section 1, of the Collective Bargaining Agreement between the parties will be modified in regard to the payment of holiday pay for employees as proposed by the Employer; namely, effective October 1, 1977, $500.00 per employee; effective October 1, 1978, $575.00 per employee; and effective October 1, 1979, $625.00 per employee.

XVIII. UNION BUSINESS - NEGOTIATIONS

The Union has proposed two (2) new Contract provisions regarding release time or paid time off for Union officials for the conduct of Union business.

The recently expired Collective Bargaining Agreement between the parties contained no express language with regard to such release time. The first proposal of the Union relates to time off for negotiations, which the parties agree, clarifies the status quo or the practice that presently exists between the parties. The Union proposes that, effective October 1, 1978, members of the Union's Executive Board, consisting of President, Vice President, and Secretary, shall be afforded reasonable time during regular

working hours, without loss of pay, to fulfill their Union responsibilities of negotiations with the City and preparation for such negotiations.

The Union argues that (1) the benefit, as suggested by the aforesaid language, is routinely given to Fire Fighters at the present time, and (2) there has never been any problem cause by the present practice. The Union further submits that the suggested Contract language is flexible in that (1) only "reasonable" time is guaranteed to the Union officials, and (2) such language is preferable to ad hoc decisions by management which may be subject to individual whims and caprices or the change in management officials.

The City would maintain the present practice without any Contract language and argues that the Union has not met its statutory burden of proving that a change in the status quo is necessary.

The Panel is convinced that it is preferable that the current practice of the City be memorialized in the Contract and, therefore, the last offer of the Union should be accepted. The Union's arguments for including the language in the Contract are persuasive, and no substantial reason for denying the inclusion of such langage was advanced by the Employer.

ORDER

The Union's last best offer in regard to release time for Union business in regard to negotiations, and preparation for negotiations, is granted and the Union's proposed language will be included in the new Collective Bargaining Agreement between the parties.

XIX. UNION BUSINESS - CONVENTIONS

The second Union proposal with regard to new language relating to relase time for Union business requests paid time off for the same Union officials for the attendance at Union conventions. Specifically, the Union requests that, effectice October 1, 1978, Union Executive Board members consisting of the President, Vice President, and Secretary, shall be afforded two (2) duty days per Contract year without loss of pay for attendance at International Association of Fire Fighters' conventions, Michigan State Fire Fighters Union conventions, and I.A.F.F. Sixth District Meetings.

For the same reasons as noted in Paragraph XVIII above, the City would apparently not agree with the two (2) paid days off per year for Union conventions. The practice, regarding this benefit among comparable cities, differs considerably according to the record, with some cities limiting such Union business by Contract, and others having unwritten policies which vary widely.

The Union contends that the two (2) duty days per year, which were sought in its proposal, are minimal. The

Union also argues that the City has put forth no evidence that it will be inconvenienced by the provision.

The Panel is convinced that the Union's offer with regard to Union business for conventions should be granted, especially in view of the Panel's other rulings in this Opinion relating to minimum manning by the City. Since the City has been accorded wide discretion with regard to manning, as a part of its management prerogative, the Panel sees no good reason why the Union's requested language as to paid time off for Union business and conventions should not be granted.

ORDER

The Arbitration Panel awards to the Union its last best offer in regard to adding language to the Collective Bargaining Agreement as proposed in its last offer for paid time off for Union Business - conventions, and such language will be added to the Collective Bargaining Agreement similar to the foregoing proposal in regard to Union business - negotiations, and as set forth above.

XX. MINIMUM MANPOWER

The Union has proposed a new Contractual provision regarding minimum manpower, and requests that "effective October 1, 1978, total shift strength shall be maintained at no less than eleven, twenty-four hour-personnel on duty each day." The Union notes that currently an employee may add birthday leave to his vacation time only

if the day off requested has twelve men assigned to duty; however, this results in the Department having an eleven man crew for that day. It was this practice that formed the basis for the Union's selection of eleven men as its minimum manpower proposal. The City made no offer regarding minimum manpower, and argues strenuously that any such requirement should be rejected by the Panel.

The Union argues that its proposal is justified in the interest and welfare of the public in receiving the best fire service possible. Additionally, the Union argues that seldom will there be any change in the current manning practices since the Department usually has twelve men on duty. However, should only ten or fewer men be assigned on a particular day, then the City would be required to call in employees to raise the Department strength. The Union contends this will serve to assure the safety of citizens as against managerial decisions to save money.

Employer contends that at issue in this proposal is the basic management right of scheduling employees and determining the size of the work force - that the Union's proposal undercuts the management rights clause of the Contract, and amounts to feather bedding. The City argues that whether employment is granted, and in what form and numbers, must be left to the elected officials of the City who, in turn, must answer to the public if the service

rendered is not adequate. The City also notes that if it is forced to call in an employee when manpower is reduced below the number of eleven, then it would be required to compensate that employee at time and one-half under the provisions of the Contract. The City also argues that various other provisions of the Collective Bargaining Agreement, such as vacation time, would require replacements at premium rate.

As noted previously in this Opinion, the Panel is not well disposed toward any type of minimum manpower or manning requirements. The level of fire and ambulance service to be provided for the citizens of Ferndale is ultimately the responsibility of the officials of the City, and not the employees. The level of such service not being adequate, then it is the City that must answer to the citizens - not the employees. Accordingly, the Panel rejects the proposed minimum manpower provision requested by the Union.

ORDER

The proposed language of the Union in regard to minimum manpower in this Contract is denied by the Arbitration Panel.

XXI. MISCELLANEOUS ITEMS - RETROACTIVITY AND HOSPITALIZATION ISSUES

There are several items that are touched upon on the briefs or last offers of the parties which have been resolved by determinations of the Panel made above or which are not legitimately in issue between the parties in the judgment of this Panel. (e.g., "the Union request of Contract provisions to the effect that, 'all modifications and increases in wages, benefits, and conditions of employment shall be retroactive to October 1, 1977 unless otherwise designated in the parties last offer of settlement.'")

The Union also requests the status quo in Article XIII of the recently expired Agreement in regard to the economic issue of hospitalization premium increases whereby the City pays all premium costs for hospitalization insurance, and for hospitalization riders.

As to this issue, the City refers to its proposal regarding dental insurance whereby it proposed a cap on all hospitalization premiums.

Regarding the issue of retroactivity, the Employer's position is not completely clear to the Panel. Apparently, it wants credit for any cost of living payments made since October 1, 1977. However, the Panel does not deem it necessary to award any additional Contract language, as it is convinced that its Orders relating to economic benefits awarded above are clear and do not require any

additional Contract language. Similarly, the question of hospitalization premium increases has been previously resolved by this Panel relative to dental insurance premiums. Additionally, it is understood by the Panel that the other paragraphs of the Contract regarding hospitalization premiums and riders will be maintained in the new Contract. Accordingly, no additional Contract language is necessary with regard to these issues.

ORDER

The Union's proposed Contract language as to retroactivity is denied, since such language is not necessary with regard to any of the economic benefits awarded in this case; the recently expired Contract language as to hospitalization premiums is maintained in the new Contract, as modified, however, by the ruling above in regard to dental insurance premiums.

NON - ECONOMIC ISSUES

XXII. MAINTENANCE OF CONDITIONS

The first non-economic issue is a maintenance of conditions clause proposed by the Union, in which it would add the following two (2) Sections to the Contract:

> "Section 1. Maintenance of Conditions. Wages, hours and conditions of employment in effect at the execution of this agreement shall, except as improved herein, be maintained during the term of this agreement."
>
> "Section 2. Unilateral Changes Prohibited. The City will make no unilateral changes in wages, hours and conditions of employment during the term of this agreement, either contrary to the provisions of this agreement or otherwise."

The Union argues that many conditions of employment are not committed to writing, either in the Contract or in rules and regulations, and that its proposal will assist in preventing departures from these working conditions in the absence of negotiations with the Union. The Union notes that the contractual remedy in the event the City departed from the proposed contract language is preferable to its remedy under the Public Employment Relations Act which requires the filing of refusal to bargain charges with the Michigan Employment Relations Commission, and that such unfair labor practice proceedings are costly, time consuming, and contrary to State and Federal policy of resolving disputes through Contract grievance procedures. The Union also argues that the vast majority of comparable cities have a Maintenance of Conditions Clause, and that the possibility of new managerial representatives in the City makes the need for such a clause more eminent. The Union also notes that, inasmuch as not all aspects of work that now exist can be reduced to writing in a Contract, rules, regulations or anywhere else, a Maintenance of Conditions Clause is necessary. The Union cites the evidentiary testimony by the Union with regard to various items or customs that now prevail and which, although many appear to be trivial, the employees consider important. The Employer argues that a past practice clause should not be added to the Agreement on the ground that it is exactly

opposite to the Waiver Clause of the Contract which has been agreed to by the Union and allegedly would make the Management Rights Clause of Article VII of the Contract null and void. The City contends that the Clause, as requested by the Union, would freeze all working conditions and prohibit the City from making any changes in the operations of the Fire Department without first sitting down and bargaining with the Union. The Employer contends that the past practice clause destroys the sanctity of the Contract on the ground that the purpose of the Contract is to spell out the total relationship of the parties and the clause proposed by the Union is an umbrella under which the Union runs whenever the Contract is silent and the City exercises its management rights.

The Panel does not attach such a drastic effect to the Maintenance of Conditions Article requested by the Union as argued by the City. Collective Bargaining law is clear that where employees are represented by a bargaining agent, An Employer cannot change hours, wages and working conditions without first giving notice to, and an opportunity to, the Union to bargain about any such proposed changes before they are put into effect. Thus, in substantial part, the clause requested by the Union is merely a restatement of law which the Employer must operate under in Michigan pursuant to the Public Employment Relations Act

We do not agree with the contention of the City that the Maintenance of Conditions Article would necessarily nullify the Management Rights and Waiver Articles of the Collective Bargaining Agreement, or that the City would necessarily be "prohibited from increasing the number of supervisors, introducing new equipment or even building a new facility." We do not see a Maintenance of Conditions Clause as interfering with management rights in any of the foregoing areas.

Accordingly, the Panel has decided that it will grant the Maintenance of Conditions language requested by the Union, which may be made a part of a new Article or added to Article III, depending upon the wishes of the parties. In order to alleviate the Employer's fears that it cannot make any changes in the operation of its Department, since this is a non-economic issue, the Panel will add language to Section II of the Union's proposal which eliminates any question that the Employer can never make any changes without "agreement" beforehand by the Union. Thus, where the Employer has in good faith notified the Union of a proposed change and bargained on such proposal without success, it is clear that the Employer may implement such change after reaching impassee with the Union.

ORDER

The language proposed by the Union and cited above regarding a Maintenance of Conditions Clause or Article in the Collective Bargaining

Agreement between the parties is granted with the addition of the following language at the end of Section 2: ,"without first giving notice to the Union and giving it an opportunity to bargain thereon."

XXIII. AGENCY SHOP

The Union has proposed to include as part of Article IV of the expired Collective Bargaining Agreement an agency shop provision whereby all employees in the bargaining unit would be required to pay their fair share of the cost of bargaining and administering the Contract. The proposed language of the Union would add Sections 2 through 5 to the present Article of the Contract covering check-off of Union dues. Section 2 is the usual agency shop language; Section 3 is the language pertaining to employees who fail to maintain their membership or pay the requisite agency fee; Section 4 is save harmless clause for the benefit of the City; and Section 5 is a clause providing for a pro-rata refund of any part of Union funds used for purposes other than collective bargaining to employees who object to the use of those portions of funds for political or idealogical purposes. The City makes no offer in regard to agency shop.

The Union argues that agency shop is a nearly universal benefit according to organized employees, and that the benefit has been granted by the City to the Police Lieutenants and Sergeants Association. The Union notes that all employees in the bargaining unit at the present time

time pay Union dues, but this does not assure that all will remain members in the future. The Union notes that it has a duty under both State and Federal Labor Law to represent all employees in the unit equally and fairly, and under such circumstances, all employees in the unit should contribute to the support of the Union. The City contends that the Union has not supported by competent material and substantial evidence the proposed change in regard to agency shop and that the City's proposal to maintain the status quo should be implemented.

The Panel is convinced that the agency shop provision proposed by the Union is a fair one, and is in line with the comparable communities and bargaining units proposed in the record. The City has raised no serious objection to the language of the clause as proposed by the Union, and the Panel sees no reason to deny this benefit to the Union under the circumstances of this case.

ORDER

The agency shop language proposed by the Union to be added to Article IV of the Collective Bargaining Agreement is adopted by the Panel and will be added to the new Collective Bargaining Agreement.

XXIV. ARBITRATION DEMAND BY CITY

The City has advanced a proposal that it should be deleted as a moving party in arbitration. Thus, the City would

delete in Article VIII "grievance procedure", Section 1, Step 5, the language, "by either party" and insert the language "by the Union". The City contends in its brief that the Contract language it wishes to have deleted presently precludes it from going to Court and seeking injunctive relief should the Union violate the no strike provision or any other provision of the Agreement. The City contends that where the Agreement provides for the initiation of grievances and arbitration by an Employer, Federal Courts have refused to grant preliminary injunctions against strikes in violation of the Agreement until the Employer has exhausted its administrative remedies.

The Union seeks to maintain the present language without change, which would allow either party to seek arbitration of unresolved grievances. The Union contends that (1) the City did not present any exhibits or testimony during the Hearing on this issue and (2) it is not aware of any reason why the City would not wish to have the option of taking a grievance to arbitration. The Union contends that there is no evidence of any possible harm to the City stemming from the current Contract language.

The Arbitration Panel agrees with the contentions of the Union with regard to this issue, and can see no substantial reason for removing the City's right to seek arbitration from the Collective Bargaining Agreement. The Panel is not convinced that the Employer's arguments in its brief

are legally sound in regard to its inability to obtain injunctive relief, since injunctive relief is only interim in nature and may be utilized in aid of the arbitration process and strike situations. Also, the Panel questions whether in any case the Federal Law cited by the Employer, in its brief, would be applicable to a governmental employer.

ORDER

The Arbitration Panel rejects the demand by the City to delete "by either party" from Article VIII, Section 1, Step 5, of the Collective Bargaining Agreement.

XXV. SELECTION OF ARBITRATOR.

The recently expired Collective Bargaining Agreement and Article VIII, Section 1, Step 5, relating to the grievance procedure provides for the selection of an arbitrator through the American Arbitration Association. The City proposes that instead of the American Arbitration Association the selection of an arbitrator take place through a list submitted by the Federal Mediation and Conciliation Service. The reason for this requested change by the City is that the American Arbitration Association requires that a $100.00 fee be paid before a list is submitted, whereas the Federal Mediation and Conciliation Service supplies a list of arbitrators free of charge. The City contends that the arbitrators on both lists are essentially the

same and that the parties should utilize the cheaper arbitration service.

The Union contends that the City has offered very little evidence on this issue except the alleged $100.00 administrative fee, and it contests the contention of the Employer that the same persons are generally involved on both lists. The Union contends that potential Federal Mediation and Conciliation Service arbitrators live in many other areas than Michigan, whereas American Arbitration Association arbitrators are all local, and most are assigned from within the Southeast Michigan vicinity.

Therefore, the Union contends that a Federal Mediation arbitrator will inevitably result in greater travel, food and lodging expenses, than one appointed through the American Arbitration Association. The Union contends that these arguments of the City are not enough to compel the Panel to change the status quo.

Since this is a non-economic issue, the Panel has decided to alter the last best offers of both parties in an attempt to resolve this issue in a way that may be satisfactory to both parties. The Panel can see no good reason why the parties should not have available to them the services of both arbitration agencies if they should desire to use one or the other. Accordingly, the Arbitration Panel will order that the Grievance Article will be amended to include both

the Federal Mediation and Conciliation Service and the American Arbitration Association as the source of mediators and the appropriate agency can be chosen at the option of the party requesting arbitration of the grievance.

ORDER

> The Arbitration Panel orders that the Grievance Procedure of the Collective Bargaining Agreement, Article VIII, Section 1, Step 5, be amended so that the second and third sentence will read as follows: "The party seeking arbitration shall contact the American Arbitration Association or the Federal Mediation and Conciliation Service for the selection of the arbitrator, and the conduct of the proceedings shall be in accord with the voluntary rules of the American Arbitration Association."

XXVI. ELECTION OF REMEDIES

The Employer has proposed a new Section be added to the Collective Bargaining Agreement, presumably to Article VIII, Grievance Procedure, regarding the selection of remedies. The new Section would read as follows:

> "Selection of Remedies. An employee may have recourse to the grievance procedure or the procedures established under the City's Civil Service System, that he (or she) may not have recourse to both. An employee who signs a grievance form shall, by that act, signify that he (or she) waives all rights that he (or she) may have under Civil Service. The grievance form shall contain this statement."

While not indicated in the Employer's last best offer, it would appear that the language requested by the Employer regarding selection of remedies, would also require

a modification in Section 5 of the Grievance Procedure regarding the reinstatement of an employee after discharge or disciplinary layoff by the deletion from that Section of the language, "or as may be determined by the Civil Service Board."

The Employer argues that any matters of discipline or disputes involving conditions of employment may also be appealed to the City Civil Service System as well as to the Grievance and Arbitration Procedure under Article VIII of the Collective Bargaining Agreement. The City contends that this duplicity of remedies results in exasperation of litigation, since the same issue may now be litigated in two forums. The City is concerned with the possibility that an arbitrator and the Civil Service Board might reach different conclusions on the same issue, thereby creating a dilema as to which decision should be followed. The City contends that the selection of remedies eliminates the possibility of duplicate litigation while preserving an employee's right to due process.

The Union contends that there is very little evidence justifying the modification in the Contract requested by the City nor is there any reasonable basis for the City's proposal. The Union contends that there is no evidence in the record that great costs or inconveniences associated with the present practice, and, in fact, the Union argues that there is no evidence that both procedures were ever

utilized by a Grievant in the past.

The Panel agrees with the contention of the City that the possibility of duplicate litigation involving the same grievance is sufficient justification for the acceptance of the language proposed by the Employer. Historically. Civil Service procedures were established before public employees were highly organized or even had the ability to organize for purposes of Collective Bargaining. While many of these Civil Service laws have been retained, the original purpose of such litigation has, in large part, been supplemented by the collective bargaining process mandated under the Public Employment Relations Act in Michigan. Thus, where there is a comprehensive grievance procedure under a collective bargaining agreement, the similar procedures existing under Civil Service regulations are merely a duplicate, in large part, of the collective bargaining procedures.

Accordingly, the Panel sees no justification for not requiring an employee to select his or her remedy, thereby avoiding the possibility of an employee exasperating litigation and shopping for an alternative forum.

ORDER

The Panel accepts the aforesaid language proposed by the Employer in regard to the selection of remedies, and such language shall be placed in the new Collective Bargaining Agreement.

CONCLUSION

This Opinion has been prepared by the Arbitration Panel Chairman on the basis of his analysis of the record and exhibits, and his study of the last best offers and briefs of both parties. Since the last offers and briefs of each party do not necessarily coincide on each issue, the presentation of the issues in this Opinion may vary in placement and sequence from that presentend by the parties. However, the Panel has attempted to rule on every issue presented to it during the six days of Hearing in this case, and it is assumed that the expired Collective Bargaining Agreement language will remain the same except where modified by the Orders in this Opinion. It is also assumed that where the Panel has ruled on an issue adverse to a party, the Panelist representing that party dissents from the ruling of the Panel.

The Panel Chairman has considered carefully the question of the Employer's ability to pay for the economic benefits granted herein, and realizes that in public employment such an allegation is difficult to maintain in view of the nature of governmental financing. The Chairman has also been mindful of the gains made by the Union herein, and the comparable bargaining units when making a decision on each of the issues. In closing, the Arbitration Chairman would reiterate, for the benefit of both parties, that the most desirable procedure

for reaching a Collective Bargaining Agreement is over the negotiation table, and not through compulsory arbitration procedures.

JULIAN ABELE COOK, JR., Chairman

MYRON MOREY, Union Panelist

RONALD DEMAAGD, City Panelist

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

DEPARTMENT OF LABOR

****

IN THE MATTER OF THE ARBITRATION BETWEEN

CITY OF FERNDALE (FIRE DEPARTMENT)

-and-

FERNDALE FIREFIGHTERS ASSOCIATION,
LOCAL 812, I.A.FF., AFL-CIO

****

COMPULSORY INTEREST ARBITRATION

UNDER 1969 PA 312

Ferndale, City of

Arbitration Panel: JULIAN ABELE COOK, JR.,
Chairman

RONALD U. DEMAAGD
Panel Member
Selected by City of Ferndale

MYRON MOREY,
Panel Member
Selected by Union

Dissent by: Ronald U. DeMaagd
City Panel Member

On September 27, 1978, the Arbitration Panel for the case of City of Ferndale (Fire Department) and Ferndale Firefighters Association, Local 812, I. A. FF., AFL-CIO (a case in compulsory interest arbitration under Act 312, PA of 1969, State of Michigan) was assembled by the Chairman of the Panel, the Honorable Julian Abele Cook, Jr.

The expressed purpose for convening the panel was as explained by the Chairman, to allow the other panelists the opportunity to review the written opinion that had been prepared by the Arbitration Panel Chairman.

The Chairman of the Panel explained both verbally and in writing that it was his considered opinion that either of the individual panelists had a right to dissent from the rulings of the chair, but that in such dissent on any issue, the opposing party would undoubtedly agree with the chair, making the decision a majority view of two. Specifically, the Chairman has stated, in the "Conclusion" to be found on page 51, paragraph 1, sentence 4, the following:

> "It is also assumed that where the Panel has ruled on an issue adverse to a party, the Panelist representing that party dissents from the ruling of the Panel."

That type of assumption, while it may be warranted in certain types of legal proceedings, is not, in at least this Panelist-Writer's point of view, a valid assumption. The delicate balance that must

be maintained between an employer and its employees and employee organizations precludes such latitude.

The Chairman has provided each party's Panelist the opportunity to write a dissenting opinion. That written opinion is to be delivered to the Michigan Employment Relations Commission and the opposing party by five o'clock in the afternoon on Monday, October 2, 1978.

This Panelist does in fact dissent from several of the findings and orders of the chair. In words and figures dealing directly with the findings pertaining to item "I. WAGES," item "II. FIRE INSPECTOR SALARY," item "V. VACATIONS," item "XIV. COST OF LIVING ALLOWANCE," and item "XIX. MAINTENANCE OF CONDITIONS," this Panelist does definitely dissent. In addition thereto, this Panelist registers some displeasure with the orders pertaining to item "XXIII. AGENCY SHOP," item "XXIV. ARBITRATION DEMAND BY CITY," and item "XXV. SELECTION OF ARBITRATION."

It is believed by this Panelist-Writer that the Union representative, Mr. Myron Morey, may share some of these views, given the opportunity to review these written statements and after further considering the conclusions reached by the Panel Chairman.

The first dissent involves two economic items: Wage Increases (Item No. I.) and the relationship to Cost of Living Allowances (Item No. XIV.). In each case, the award was to the Union. As a result the wage increase, specifically stated as based upon the earnings of the

firefighter (entry level) position creates an absolute improvement to base salary. It is presumed from the Arbitration Panel Chairman's order that all past earned Cost of Living Allowances from the prior year's collective bargaining contract with the Firefighters Union (a contract which expired on September 30, 1977) would be folded into the base. If this is correct, then the first year increase for firefighters (entry level--three years experience) amounts to $818 for the first year. This is an improvement to the base wage of approximately 4.7 percent for the contract year October 1, 1977--September 30, 1978. A Cost of Living Allowance (COLA) with a $.20 per hour maximum was also granted for this same year. That $.20 per hour maximum is equal to $582 per annum. Combining the base wage to the maximum COLA will cause the entry position of firefighter to receive potentially $18,982 at the conclusion of the contract year (September 30, 1978); a sum which is $1,400 above the 1976-77 earnings level or an increase of nearly eight (8) percent in these two categories alone, despite improvements in several other areas of earnings; i.e., food allowance, holiday pay and the like.

Starting with the second year of the arbited agreement the matter becomes more significant. It is the view of this writer that future Cost of Living Allowances during the second and third year of the agreement will be a source of controversy to the parties. The Union's proposal was accepted by the Panel Chairman. It is believed that he is relying upon the Union's written position (see page 16 of

the Union's last best offer) that, and I quote, "(a) The Cost of Living Allowance shall be added to each employee's straight time hourly rate and will be adjusted up or down each three (3) months..." (emphasis supplied). This would lead this Panelist to conclude from the words "shall be added" that the quarterly adjustment, if warranted, is either added to or subtracted fromthe base on a quarterly basis. If this interpretation is correct, then the maximum annual base of a three (3) year or more firefighter position by the award for the contract year 1978-79 is $19,600 plus the potential to collect another $582 in COLA or reaching a maximum of $20,182 for the year. This interpretation would result in an increase of 6.5 percent (base $18,400 to base $19,600) or 6.3 percent ($18,982 base + COLA to $20,182 base + COLA). The Union interpretation, as expressed in the September 27 meeting by their Panelist, Myron Morey, would suggest a different interpretation. He perceives the COLA provision to be accumulative over the life of the arbited contract. Under that interpretation, the maximum potential for 1978-79 for the firefighter position would be $20,764 as of September 30, 1979 or a potential increase of $1,782 (9.4 percent for the year). The third year, October 1, 1979--September 30, 1980, is similarly complicated and compounded by these interpretations. If the understanding as first expressed is correct, then the firefighter maximum for 1979-80 is a base of $20,900 plus $582 in COLA for a total of $21,282 in that arbited contract year. Over the first interpretation this would be

a potential increase of $1,100 or 5.4 percent for the year. If on the other hand, the Union interpretation is correct, the potential annual compensation for firefighter is $22,446 or approximately $1,164 higher than the first interpretation. The higher figure would make the arbited third year contract settlement an increase of $1,682 or 8.1 percent for the year.

In summary on this dissenting comment, the issue is as follows:

Under one interpretation the employees in the firefighter class would receive potential adjustments which could bring their total compensation in the three (3) year period from $17,582 to $21,282 including maximum COLA which is $3,700 over the thirty-six (36) month period. The $3,700 is an increase of 21.0 percent or an average of 7.0 percent per year plus the other benefits that have been gained by the Union through the compulsory arbitration process.

On the other hand, if the latter position of cumulative COLA was the intent of the Panel Chairman and as interpreted by the Union Panelist is correct, the Wage-COLA adjustment will potentially reach $4,864 for the firefighter maximum position, and this is an increase of 27.7 percent over the $17,582 starting figure. That number is staggering at an average of 9.2 percent plus each year in addition to other benefits gained.

The decision of the Panel, if the latter interpretation is used, is treating the employer unfairly as well as being highly inflationary, if not inflamatory to the future of collective bargaining with other organized units of the City of Ferndale.

The Arbitration Panel's order should be clarified. The lack of clarification is, needless to say, one principal reason for my dissent on the issues of Wages and COLA.

The second dissent is in the award by the Panel to the City for the position of Fire Inspector. Traditionally the position of Fire Inspector has received compensation slightly above the position (rank) of Lieutenant. By granting the City's arguments, the position of Fire Inspector, salary wise, will be significantly reduced. While the entry level position of Firefighter with three (3) years of experience will be receiving either $3,700 or $4,864 over the life of the agreement, and the ranking positions of Sergeant, Lieutenant and Captain even more, the maximum that the Fire Inspector can expect to receive under the award is either $3,320 by one interpretation or $4,152 from the other. The increases to this position then are approximately less than those provided to a three (3) year firefighter.

Because the Panel Chairman chose to accept the City posture which was, by the way, detailed in the City's last offer (see page 9 of City brief) the Inspector, instead of receiving

$292 more in base pay than a Lieutenant will receive at a minimum $1,084 less in base pay than a Lieutenant, leaving the Fire Inspector position's compensation for base pay midway between Sergeant and Lieutenant.

I do not accept the Panel Chairman's view, although I personally believe this to be an oversight on his part. It would appear to me that the Union's Panelist would join me in this dissent and that the Panel order ought to be clarified prior to implementation.

A third area of dissent involves the Maintenance of Conditions clause granted to the Union as modified by the Panel Chairman. The proposed order lacks clarity and resolves nothing in the opinion of the writer. As modified, the Maintenance of Conditions clause requires that all past practices be subject to future collective bargaining unless memorialized in contract. The issues as expressed in testimony before the panel will be numerous if either party chooses to literally interpret this arbited clause. I pray that the Panel Chairman render a clarifying opinion as to the intent of this order on Maintenance of Conditions. Without such a clarification, I seriously dissent and disclaim any responsibility.

The fourth dissent encompasses the Agency Shop award. In principle, I recognize the granting of agency shop as a part of collective bargaining agreements, however, in the case of firefighting personnel the Michigan Statute (Public Employment Relation Act)

adopted by the Michigan Legislature in 1965 defined the bargaining unit for firefighting personnel. That act destroys a long standing labor law differentiation between the supervisor and the supervised. The Agency Shop clause in contract adds to the fact that there are no true supervisory positions in a fire department except for the position of Chief. I will continue to dissent on those grounds.

The fifth area of dissent involves two of the Contract Arbitration clause issues. These are cited as "Arbitration Demand by City" and "Selection of Arbitration" respectively. My dissent is that neither decision, that is to say, "not to excuse the city-employer as a moving party in a grievance procedure leading to arbitration" (Union position accepted) or naming one of two arbitration choices either the American Arbitration Association or the Federal Mediation and Conciliation Service (a compromise order) does anything to resolve the potential conflicts which are present. It is the opinion of this panelist that the decisions are regressive in view of sound labor contract administration and therefore I respectfully dissent.

The sixth dissent is on the "Vacation" award. The Union's position was accepted. This panelist dissents on the basis that what appears to be a rather harmless granting of additional leave time results in horrendous scheduling problems for the administrator of the Fire Department. As the City explained in brief (see page 47), the additional two days at the end of eight (8) years and two more additional days at the end of sixteen (16) years would permit 40 and 50 consecutive days, respectively, release from duty in any calendar

contract year because of the uniqueness of the scheduling, duty hours and provisions of the City's Charter.

A forty hour, five day a week employee, in order to achieve fifty (50) consecutive days off, would have to receive thirty-five (35) paid days off during that period, each paid day being a Monday through Friday (both days inclusive) situation.

I have yet to see a labor contract in industry and/or government providing 35 days of paid vacation at the end of sixteen years of service. I must respectfully dissent.

Finally, the Panel Chairman had indicated that each Panelist could choose to comment on other matters which were not officially dissents. My concern in one area is the granting of Union officers paid time off for Union education. This granting is paramount to the private sector employer granting the employee paid time off to start a competing business. I question that the scarce resources of City tax dollars should be used for Union education activities.

While I personally agree with the view expressed by the Panel Chairman in his drafted conclusions that "...for the benefit of both parties, ... the most desirable procedure for reaching a Collective Bargaining Agreement is over the negotiation table, and not through compulsory arbitration procedures." (pages 51-52), I cannot agree that the conclusions reached and orders entered in this instant case support that conclusion.

I would hope that my dissenting comments are interpreted in the manner in which they were drafted, that is to say that they are constructive criticism of the Act 312, PA 1969, compulsory arbitration process which result in encouraging, rather than discouraging, compulsory arbitration as a means of accomplishing improvements in wages, hours and conditions of employment for organized employees in the public safety divisions of public employment.

Ronald U. DeMaagd
City Panelist

October 2, 1978