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Arb. 3/4/96

IN THE MATTER OF THE
ARBITRATION BETWEEN:

CITY OF INKSTER

and

MERC Case No. D 92 D-0851

INKSTER POLICE OFFICERS
UAW LOCAL 985

_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION & AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Margie C. Rose
City Delegate

James MacBride
Union Delegate

Inkster, City of

Date: March 4, 1996

INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, City Delegate Margie C. Rose, and Union Delegate James MacBride.

A prehearing was held on March 6, 1995 and hearings were held on May 2, May 3, June 6, August 29 and September 29, 1995 at the City of Inkster Recreational Complex. The City of Inkster was represented by Attorney Milton Spokojny. The Union was represented by Attorney Laura J. Campbell. The record consists of 919 pages of record testimony in five volumes and a total of 71 exhibits. A last offer of settlement was submitted by the Union on October 18, 1995 and by the City on October 11, 1995. A post-hearing memorandum of law on the issue of comparability was submitted by the Union on November 28, 1995 and by the City on December 20, 1995. The panel conducted post-hearing panel meetings on October 25 and November 3, 1995 and January 23, 1996.

By written stipulation, which is contained in the case file, the parties waived all time limits applicable to these proceedings, both statutory and administrative. Also contained in the case file titled "Contract Negotiations Agreements & Open Issues Between the City of Inkster & UAW Local 985 Inkster Police Officers Union Dated January 27, 1995" is the arbitration petition filed by the parties stipulating settlement of all issues that were not presented for arbitration in this proceeding. Included among those issues agreed to and stipulated to by the parties is the duration of this contract for a period of three (3) years beginning July 1, 1992 through June 30, 1995.

During the course of the pre-hearing conference, the hearing and the post-hearing panel meetings, the parties were able to resolve or withdraw from the scope of this arbitration proceeding all but 10 economic and four non-economic issues. One of the 10 economic issues was also agreed to by the parties at the post-hearing

meetings, but is included in the context of this Opinion & Award to assist in clarifying the language agreed to.

When considering both the economic and non-economic issues in this proceeding, the panel was guided by Section 8 of Act 312. This section provides that resolution and action on all issues shall be based upon the applicable factors described in Section 9 and each economic issue must be decided by the panel selecting the last best offer which more nearly complies with the applicable factors in Section 9.

The applicable factors to be considered as set forth in Section 9 are as follows:

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

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

BACKGROUND

The City of Inkster is a community located in the west central portion of Wayne County, Michigan, 17 miles west of the City of Detroit and 3 miles north of Detroit Metropolitan Airport. It is bordered by the cities of Garden City, Westland, and Dearborn Heights. The cities of Romulus, Wayne, Taylor and Dearborn are in close proximity. The City is 6.3 square miles and has a population of approximately 30,000.

Its residents statistically have a high family poverty rate, high unemployment rate and the community has one of the lowest rates of State Equalized Valuation (SEV) and lowest SEV per capita of any municipality in the state (see Exhibit C-21, C-22, C-23). For additional background information, there is an excellent description of the City's economic and social condition found in Exhibit U-35, a project impact grant application submitted by the City to the United States Department of Justice in October 1993, pages 1–5. Also, Exhibit U-34, pages 3 and 7 provide further background.

COMPARABLE COMMUNITIES

As noted earlier, Section 9(d) of Act 312 directs the panel to consider and compare the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of the employees performing similar services in public and private employment and with other employees generally in comparable communities.

In this proceeding, the City took the position that there were no communities comparable to the City of Inkster given the City's low SEV, high unemployment and general budget situation. The City further argued that the communities offered by the Union as being comparable to the City of Inkster were not comparable and that the only measure of comparability in this matter should be based on a comparison

of this police unit with other employees performing similar services and other employees generally within the City.

The Union argues that Section 9(d) requires that the panel take into consideration the wages, hours and conditions of employment of other employees performing similar services in "comparable communities." The Union requested the opportunity to submit a written brief on the issue of whether comparability is or is not required, and the City requested the opportunity to submit a reply brief. These briefs were submitted by the parties and the independent arbitrator has reviewed those briefs. The independent arbitrator concludes that Act 312 mandates the panel to consider those factors deemed relevant by the Legislature and codified in Section 9. Those factors include the comparison of wages, hours and conditions of employees in public and private employment in comparable communities. The panel, therefore, must consider and either accept or reject each party's advancement of comparable communities. If the panel considers communities advanced by one or both of the parties as comparable, than it must make those comparisons.

The City's own brief on this issue cites an opinion by Justice Williams in *City of Detroit v DPOA*, 408 Mich 410 (1980). Quotes from that opinion found on page 3 of the City's brief supports the panels finding that:

> "Section 9 factors provide a compulsory checklist to make sure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9."
>
> "It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all applicable factors must be considered."

Therefore, in this proceeding, even though the City chose not to advance any comparable communities, the fact that the Union advanced proposed comparable communities requires the panel to consider the acceptability of those communities

as being comparable or not, and if considered comparable, to take into consideration that comparability.

In this proceeding, the City submitted arguments for comparable public employment with the City of Inkster employees only. The Union argued that the communities of Allen Park, Garden City, Lincoln Park, Southgate, Wayne, Westland and Wyandotte should be used as comparables in this proceeding (Exhibit U-3). The panel accepts all of the comparables offered by the Union except for the City of Westland. With the exception of Westland, there is reasonable comparison of the cities advanced with Inkster when comparing geographic size, SEV and population. Westland, on the other hand, has a population more than double any of the proposed comparable cities and nearly three times that of Inkster. Westland's SEV is also more than twice that of any other comparable city, and more than five times that of the City of Inkster.

On the other hand, the remaining comparables proposed by the Union do provide an adequate basis for wage and benefit comparison. As the Union points out in its brief, five of the seven comparable cities advanced by the Union, all of those with the exception of Allen Park and Westland, were advanced by the City as comparables and approved by Arbitrator Keidan in a February 27, 1992 Act 312 arbitration proceeding (Exhibit U-34).

The City did not advance arguments for substantially changed circumstances since February 27, 1992 which would justify not including these cities as comparables. Even though there was testimony that the City of Westland, along with the cities of Garden City and Wayne have joined with the City of Inkster as members of a Metropolitan Street Enforcement Team through a cooperative agreement, the panel feels that Westland's different size, population and wealth distinguishes it from the other communities sufficiently to exclude it from comparison in this proceeding.

Therefore, the panel chooses the following communities as comparable to the City of Inkster: Allen Park, Garden City, Lincoln Park, Southgate, Wayne and Wyandotte.

ECONOMIC ISSUES

The parties have agreed on all outstanding economic issues for the period July 1, 1992 through June 30, 1995 except the following which were the subject of these proceedings. Each of these economic issues is presented by the panel in the order that they appear in the previous agreement between the City and the Union (Exhibit J-1).

ISSUE 1

Income Protection Disability

[Article XVI, p. 19—Contract]

The parties have agreed to language resolving this issue. The parties have agreed to accept the language offered by the Union in its last offer of settlement. That language will modify the current contract language in Article XVI (b) to read as follows:

> **Within 30 days of the implementation of the Act 312 award for the 1992–1995 contract, monthly benefits begin after 90 consecutive days of disability and will be sixty percent (60%) of salary up to $1,200 benefit per month, exclusive of overtime or other pay additives.**

City: Agree Margie C. Rose Disagree_____

Union: Agree James MacBride Disagree_____

ISSUE 2

Lump Sum Payment of Sick Leave at Retirement or Death

[Article XXI (h), p. 24—Contract]

The Union's last offer of settlement on this issue urges that the contract language be amended to increase the cash payment upon ordinary retirement or upon death of an employee. The Union proposes that the maximum payment which is currently calculated as the daily rate of pay, excluding premium rates, for 50% of the employee's accumulated sick time, not to exceed 100 days, be increased to permit 75% of the employee's accumulated sick time not to exceed 150 days. The City takes the position that this article should remain unchanged.

To support its argument, the Union offered Exhibits U-14 and U-15 which provided external and internal comparables. These exhibits reveal that the current contract provisions are not substantially different from several of the other similar employee groups in external comparable cities. Several of the cities provide for 50% of the accumulated sick time and have limitations for payment for less than 100 days. Similarly, the internal comparables which are identified on Exhibits U-15 and C-18 show that employee groups within the City have provisions similar to or less than the provisions in the current contract.

Therefore, the panel agrees with the City's position on this issue and finds that the language provisions in this article should remain unchanged.

City: Agree Margie C. Rose Disagree_____

Union: Agree James MacBride Disagree_____

ISSUE 3

Vacation Leave

[Article XXII (a), p. 25—contract]

The Union urges that this article, which addresses the number of vacation days that may accrue to an employee annually based on seniority be amended. The Union urges that one day of vacation be added after five years of seniority from the current 17 days to 18 days; and from 21 to 22 days after 10 years of seniority and that

the eligibility for 24 days of vacation be lowered from 20 years of seniority to 15 years of seniority. The City urges that no change occur for vacation leave.

The external comparables offered by the Union (Exhibit U-19) show that employees performing similar work in all other comparable communities have vacation benefits equal to or above that which the Union is seeking. The internal comparables (Exhibit U-20) demonstrate that Inkster firefighters have consistently less vacation days based on seniority than the Union is seeking. The command officers, however, have less vacation days at five years, the same number of vacation days that is sought by the Union at ten years, and have 25 days of vacation after 15 years of seniority. In reviewing the internal comparables, less weight is given to the firefighters' provisions in considering this issue given that they have substantially different duties and work hours.

The panel accepts the Union's last offer of settlement on this issue. The provision of this article will be modified as follows:

> **Effective July 1, 1995, during the first five (5) years of employment, all seniority and probationary employees shall receive vacation time at a rate of thirteen (13) regular scheduled work days. New probationary employees, however, may not be permitted vacation leave until they have completed six (6) months of their probationary period. After five (5) years of seniority, employees shall receive eighteen (18) work days of vacation. After ten (10) years of seniority, employees shall receive twenty-two (22) work days of vacation. After fifteen (15) years of seniority, employees shall receive twenty-four (24) work days of vacation.**

City: Agree_____ Disagree Margie C. Ross

Union: Agree James MacBride Disagree_____

ISSUE 4

Hospitalization Insurance

[Article XXIII, p. 27—contract]

The City proposes that this article be amended to require the employee to contribute 20% of the monetary hospitalization premium costs for hospitalization insurance provided by the City for employees and their families. The current contract does not require the employee to contribute any amount toward the hospitalization premium costs paid by the City. The Union argues that the employees already pay health insurance premiums for short and long term disability, optical and dental care (Exhibit U-1). Exhibit C-16 shows the total costs to the City of all health care insurance paid for its employees per year, but does not specifically identify that amount attributable to the employees who are subject to this arbitration. Using data extracted from Exhibit U-2, however, it appears the City would save between $38,000–$50,000 annually and each employee in the bargaining unit would have to pay approximately $985 annually if this provision were to take effect. That amount is close to 3% of the annual wage for each employee.

The Union, through Exhibit U-24, demonstrates that the only external comparable employees that are required to pay for health care coverage are in the City of Wayne, and they are required to pay 20% of the health premium for Blue Cross/Blue Shield only. Exhibit U-25 demonstrates that there are no other comparable employees within the city that are required to pay a portion of the premium for hospitalization insurance.

While the panel recognizes that hospital insurance is a growing cost for nearly all employers and co-pay is a means to try to encourage cost savings, the proposal advanced by the City in this proceeding, which would require co-pay for each one of the types of health insurances offered by the City which does not focus in on the more expensive health care coverage, is unacceptable. Additionally, the extent of the cost to the employee would seem extremely burdensome at this time given the decision of the panel on wages within this proceeding. Therefore, the panel finds that the provision of this article shall remain unchanged.

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

ISSUE 5

Job Classification & Pay Plan—Wages

[Article XXVII, p. 29—contract]

Each of the parties have submitted proposals for wage payment plans for the period of this contract. The City's last offer of settlement proposes wages for the period July 1, 1992 through June 30, 1993 not increase, the Union proposes a 3% increase for this period. The City proposes for the period July 1, 1993 through June 30, 1994 the wages be increased by 2%, the Union proposes an increase of 3% for this period. The City proposes for the period beginning July 1, 1994 through June 30, 1995 an increase of 2% and the Union proposes an increase of 3% for this period.

The panel has taken a number of factors into consideration on this issue. Joint Exhibits 2-A, 2-B and 2-C address the financial factors. Exhibit J-2B reveals that for the period July 1, 1992 through June 30, 1993 the City's public safety account ended with a balance of approximately $52,000. Exhibit J-2C demonstrates a surplus in the public safety account on June 30, 1994 of approximately $138,000. On the other hand, these exhibits along with Exhibit J-2-A reveal that the overall general fund budget for the City in the fiscal year ended June 30, 1992 contained nearly a $300,000 deficit, a $100,000 deficit for the fiscal year budget ending June 30, 1993 and a general fund surplus of approximately $346,000 for the fiscal year ending June 30, 1994. Exhibit J-6 on page 31 reveals that the firefighters agreed to a freeze in wages for the period July 1, 1992 through June 30, 1993. Exhibit C-8-A reveals that the Inkster's firefighters wage reopener agreement resulted in an agreement of a 2% increase for the 93–94 period, a 2% increase for the 94–95 period, and a 3% increase for the 95–96

period plus some equipment allowance increases and an employees' contribution to the pension fund decrease from 7% to 6%. Exhibits C-8 and C-10 reveal internal comparables and show that other internal comparable units did receive some increases over this time period and that the police patrol increases were the second lowest percentage increase for comparative earlier periods. Exhibit C-9 shows the police patrol with a slightly lower percentage increase over the comparative period than the firefighter categories, but a higher percentage increase than other internal police comparable categories.

Union Exhibits U-4, U-5 and U-6 demonstrate that the wages for employees performing similar duties in comparable communities were consistently higher than the wages for Inkster police officers and detectives. Union Exhibit U-9 reveals the Consumer Price Index (CPI) for urban areas from the period approximately July 1, 1991 through June 30, 1994 increased approximately 2.7% for each of those three years. It is therefore reasonable for the panel to estimate that the increase in cost of consumer prices for goods and services, commonly known as the cost of living, would equal approximately 7.8% over the three-year period which encompasses the time period of this agreement.

In addition to these economic considerations, the panel has considered the police officers testimony in this case and the information presented in Exhibits U-32 and the narrative contained in Exhibit U-35 which describes in great detail the condition of the city, neighborhoods and demands on the city police force. It is clear that the police officers of the City of Inkster are confronted with equally difficult, if not more difficult, working conditions than the comparable communities.

Having taken all of these factors into consideration, the panel will accept the following last offer of settlement on the issue of wages as follows:

Accept the City's last offer of settlement for the period July 1, 1992 through June 30, 1993 = 0%;

City: Agree Margie C. Rose Disagree _____

Union: Agree _____ Disagree James MacBride

Accept the Union's last offer of settlement for the period July 1, 1993 through June 30, 1994 = 3%;

City: Agree _____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree _____

Accept the Union's last offer of settlement for the period July 1, 1994 through June 30, 1995 = 3%.

City: Agree _____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree _____

ISSUE 6

Stand-By Pay

[Article XXVII (a), p. 30—contract]

The Union seeks a change in the provisions in this section. Currently, detectives are provided an annual stipend of $400 as stand-by pay payable on the first day of September each year. The Union seeks to increase the amount of this stand-by pay to $450 and to add the patrol officers assigned to narcotics as eligible to receive this stand-by pay. The City takes the position that this provision should not be changed. City Exhibit C-17 reveals that city crew chiefs receive $450 for stand-by pay. Union Exhibit U-21 describes external comparables and reveals that three out of six employee groups performing similar duties in comparable cities have the same provision as currently provided in the contract, but no flat fee and no evidence of any pay to narcotics officers.

The panel concludes that there is not sufficient evidence to demonstrate a need to change any provisions of this article at this time. Therefore, the panel

accepts the last offer of settlement submitted by the City on this issue and concludes that no change should be made to this article.

City: Agree Margie C. Rose Disagree_____

Union: Agree James MacBride Disagree_____

ISSUE 7

Performance Allowance

[Article XXIX, p. 34—contract]

This article currently provides a performance allowance of $550 to each sworn police officer following the first regular pay day after September 1. The Union urges that a new subsection (c) be added to provide an additional $300 as a gun allowance upon the first regular pay day following each September 1 to a sworn police officer who has completed his/her probationary period. The City urges that all provisions of this article remain as is, except that the article be retitled to "equipment allowance" and all references in the article to "performance allowance" be amended to read "equipment allowance." The City and Union estimate the cost of implementing this provision to be between $12,000–$13,000 annually.

Witnesses testifying on this issue (TR-2: pages 134, 136, 152–154, 158–163) reveal that proficiency and use of the handgun is an important aspect of the police officer's job and definitely can affect their safety. Union Exhibits U-13 and U-10 reveal that police officers in other comparable jurisdictions receive overall equipment allowances, presumably in most cases including the gun allowance. Those allowances range from $950–$1,415. City Exhibit C-8-A reveals that in the Inkster firefighters wage reopener, the equipment allowance was increased to $1,000 annually.

The panel concludes that an additional $300 for a gun allowance added to the existing $550 provided for the equipment allowance per officer is reasonable. Therefore, the panel accepts the Union's last offer of settlement on this issue and orders that subsection (c) be added to this section of the contract which shall provide the following:

> **Upon the first regular pay following September 1, 1995 and each year thereafter, each sworn police officer who has completed his or her probationary period shall be paid and provided a gun allowance of three hundred dollars ($300.00).**
>
> **In addition, the panel accepts the City's proposed revision to the existing article and orders that all references to "performance allowance" be amended to read "equipment allowance."**

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

ISSUE 8

Shift Allowance

[Article XXXIX, p. 38—contract]

This article provides for a shift differential in pay of 15 cents per hour for each employee employed on the second or afternoon shift and 20 cents per hour for each employee employed on the third or midnight shift. The Union urges that the amount of pay for each of these two shifts be increased by five cents per hour so that those employed on the second or afternoon shift would receive 20 cents per hour and those employed on the third or midnight shift would receive 25 cents per hour pay differential. The City urges that all provisions of this article remain status quo.

City Exhibits U-10 and U-16 reveal that all but two of the comparable cities pay their police officers an amount equal to or higher than the amount the Union is seeking in at least one of the two shifts, and all but two of the comparable cities pay a higher shift differential than currently paid to the Inkster police officers in this

bargaining unit. The fact that this provision is already in the contract evidences the recognition that there is merit in providing for pay shift differentials. The testimony and evidence provides sufficient support for revising the language in this provision to increase the amount of pay for each of these shift differentials by five cents per hour as urged by the Union. Therefore, the panel accepts the Union's last offer of settlement on this issue and orders that the language in this article be amended to read:

> **Effective July 1, 1995, the shift differential of twenty cents (20¢) per hour shall be included for each employee while employed on a second or afternoon shift; and a shift differential of twenty-five cents (25¢) per hour shall be paid to each employee who shall be employed on a third or midnight shift.**

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

ISSUE 9

Pension Changes

[Article XXXXVIII, p. 41—contract]

This article addresses the pension benefits for employees. Currently, the article has four subparagraphs. During the course of the negotiations and hearing, the City and the Union agreed to minor changes in language, but no change in policy contained in subparagraphs 2, 3 and 4 (see City's last offer of settlement); and agreed to new language to be inserted in subparagraph 5. The disagreement related to subparagraph 1 which addresses the amount of the pension multiplier and a proposed new subparagraph 6 which addresses the method of calculating the employee's final monthly compensation.

The Union proposes that the pension multiplier in subparagraph 1 be raised from the existing .02 to .025. The Union further urges that the final monthly compensation be computed based on the employee's total compensation for the best

36 consecutive months during the employee's last 120 consecutive months. The City urges that the pension multiplier remain as currently provided in the contract and that the final monthly compensation be computed on the average monthly pay for the past 60 consecutive months.

Testimony revealed that this will result in an increasing cost to the City. City Exhibit C-14 provides an estimated annual cost of approximately $28,000. Testimony also revealed that the City's retirement fund is currently in an overfunded position and it would be able to spread these costs over an extended period.

Union Exhibit U-11 provides external comparables. That exhibit reveals that police officers in comparable communities have provisions very similar to those which are being requested by the Union in this case. Union Exhibit U-12 and Exhibit C-8-A compare Inkster employees' benefits on this issue. Those exhibits reveal that the Inkster firefighters have exactly what is sought by the Union in this matter, and the command officers association has the same, except that the current multiplier is .0225. Testimony revealed, however, that the command officers are also currently in arbitration.

The panel concludes that it is reasonable to accept the Union's last offer of settlement on this issue. Therefore, subparagraph 1 will be modified, and subparagraphs 5 and 6 will be added to the provisions of this article as follows:

1. **PENSION MULTIPLIER. Effective upon issuance of the Act 312 award for the 1992–1995 contract, the City of Inkster Policemen and Firemen Retirement System (hereinafter the Retirement System) shall be amended to provide that any UNION member eligible for retirement under Section 18.3 of the Retirement System shall, upon his own application, be retired and shall receive a pension equal to his final average compensation multiplied by two and one-half percent (.025) multiplied by his number of years and fraction of a year of service, by quarters, to age 55, plus his final average compensation multiplied by one percent (.01), multiplied by his number of years and a fraction of a year of service, by quarters, after age 55 to his date of retirement. This improvement shall cover all current employees and all future retirees.**

5. **NORMAL RETIREMENT AGE. Effective upon issuance of the Act 312 award for the 1992–1995 contract, the City of Inkster Police and Firemen Retirement System shall be amended to provide for eligibility for regular pension benefits at age 50, with twenty-five (25) years of service.**

6. **FINAL MONTHLY COMPENSATION. Effective upon issuance of the Act 312 award for the 1992–1995 contract, the City of Inkster Police and Firemen Retirement System shall be amended to provide that final average compensation will be computed based upon the employee's total compensation for the best thirty-six (36) consecutive months during the employee's last one hundred and twenty (120) consecutive months.**

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

ISSUE 10

New Article

Family and Medical Leave Act

[Article XXXXIX, p. ???—contract]

Both the City and the Union propose a new article be added to the contract to describe the policy involving application of the Family and Medical Leave Act of 1993 (FMLA). Both the Union and the City developed proposed language for this article.

The City takes the position that the policy should require that an employee taking unpaid leave under the provisions of the FMLA must first use 100% of his/her accrued vacation leave and 100% of his/her accrued sick leave before using up to 10 weeks of unpaid leave under FMLA. The Union's proposed policy would require that the employee must first use 50% of his/her accrued vacation leave and no accrued sick leave before using up to 12 weeks of unpaid leave under FMLA.

There is little that the panel can turn to for comparison with other contracts on this issue. This issue has not yet been addressed by other bargaining units within the contracts of the City of Inkster employees and the only other external

comparable contract touching on this issue is the collective bargaining agreement from Lincoln Park for the period July 1, 1992–June 30, 1995 which merely adopts the FMLA by reference. Union Exhibits U-22 and U-23 give little guidance.

The independent arbitrator recognizes, therefore, that this is somewhat of a judgment call for the panel. After reviewing the act and considering other provisions embodied within the total collective bargaining agreement, the panel concludes that the Union's last offer of settlement on this issue is the more acceptable position. The purpose of the FMLA is to facilitate care of family members. Provisions were imposed on both the employer and the employee by this federal law independent of any currently bargained for position related to the authorized number of accumulated vacation and sick days paid by the employer. The current provisions in the contract between this employee group and the City limits the number of vacation days that can be accumulated and paid upon termination to 48 with maximum seniority and limits the number of sick days that can be accumulated and paid upon retirement or death, not termination, to 50% of accumulated sick leave, not to exceed 100 days. These provisions were negotiated prior to passage of FMLA and adoption of the City's position would have a greater impact on these provisions than adoption of the Union's position. The Union's position is more in keeping with the intent of FMLA. If, after application of this provision, it appears this provision is placing an additional management or economic burden on the City, the City can raise this issue in future negotiations and seek to adjust this provision or provisions relating to the paid accumulated vacation and sick leave.

Therefore, the panel accepts the Union's proposed language in its last offer of settlement on this issue and finds that this language should be embodied as a new article in the contract. The language is as follows:

XLIX—Family & Medical Leave

Effective upon issuance of the Act 312 award for the 1992–1995 contract and in accordance with the Family & Medical Leave Act of 1993 (FMLA), the City will grant eligible employees up to twelve (12) weeks of unpaid leave during any 12-month period for any of the following reasons:

- **to care for an employee's child after birth or placement for adoption or foster care;**
- **to care for a child, spouse or parent with a serious health condition (as defined by FMLA and regulations); or**
- **because an employee's own serious health condition (as defined by FMLA and regulations) makes the employee unable to perform his or her job.**

As required by the Act, the City shall continue a bargaining unit member's group health insurance coverage during the period of the FMLA leave, and shall return him or her to the same or an equivalent position following the leave.

The FMLA leave policy will be administered in accordance with FMLA and the regulations promulgated by the Department of Labor to implement the Act, except as set forth in this article. Any violation of the FMLA shall be subject to the grievance and arbitration provisions of this agreement.

The City shall not require a bargaining unit member to substitute more than fifty percent (50%) of his or her accrued vacation leave for unpaid leave taken under the FMLA for reasons other than the employee's own illness. The City shall not require a bargaining unit member to substitute accrued paid sick leave for any FMLA leave taken other than for the employee's own illness. [Up to one hundred percent (100%) of a bargaining unit member's accrued paid leave may be substituted for unpaid FMLA leave at the employee's discretion.]

The City shall not count leave taken due to duty disability toward a bargaining member's FMLA total.

A bargaining unit member who takes FMLA leave shall continue to accrue seniority for all purposes during the period of FMLA leave, and shall continue to receive all fringe benefits provided for in this agreement.

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

NON-ECOMONIC ISSUES

The parties agreed that there were four non-economic issues upon which the parties could not reach agreement. These will be listed below in the order that they appear in the contract.

ISSUE 1

Discipline & Discharge

[Article XIII (i), p. 17—contract]

This issue involves the question of the time following issuance of a written reprimand within which the written reprimand must be destroyed unless the employee receives further disciplinary action for misconduct of a similar nature and the time following the close of the disciplinary investigation within which the disciplinary action must be taken. The provisions in subsection (i) of this article currently provide that all written reprimands shall be destroyed within two years of the date of issuance unless the employee receives further disciplinary action for misconduct of a similar nature and that the City shall not use a reprimand two years from the date of issuance. The Union seeks to reduce the time at which all written reprimands will be destroyed from 24 months to 18 months and seeks to add a provision requiring that disciplinary action must be taken within 30 days following the close of the disciplinary investigation. The City takes the position that no change should occur.

Union Exhibit U-26 identifies contract provisions applicable to employees with similiar responsibilities in comparable communities on this issue. Review of U-26 reveals that two out of three cities used as comparables in this proceeding have two years or longer before written reprimands will be destroyed and two address

longer time requirements for disciplinary action after the close of an investigation. Internal comparables offered by the Union in Exhibit U-27 show the Inkster command officers have an 18-month period, but contract language in Article XV (g) of Exhibit J-7 does not require destruction of a written reprimand and does not address the time requirement for disciplinary action after the close of an investigation. The exhibits and testimony presented by the Union on this issue were not strongly convincing that a change needs to be made in reducing the length of time from 24 to 18 months within which written reprimands must be destroyed.

Even though the impartial arbitrator does see some merit in addressing the issue of a time limit within which the disciplinary action must be taken following the close of an investigation, he believes any language attempting to address this issue should be more carefully fashioned to relate to language in Article XIII (h).

For the above stated reasons, the panel accepts the City's last offer of settlement on this issue and finds that no change should be made to this article.

City: Agree Margie C. Rose Disagree_____

Union: Agree James MacBride Disagree_____

ISSUE 2

Job Classification & Pay Plan—Dental Changes

[Article XXVII (f), p. 31—contract]

This issue deals with the payment of dental insurance costs and the determination of who the dental insurer will be. Both parties agree that the language in the current article should be modified to reflect that the City will pay $125 per year on behalf of employees who in writing elect to participate in a group dental plan. The City proposes language to clarify that the employee must participate in a City-sponsored group dental program and that the selection of the dental carrier shall be the sole responsibility of the City. The Union has offered language which

provides that no changes in the carrier or coverages will be made unless such change is initiated by the Union.

The impartial arbitrator believes the Union's language would result in an inappropriate intrusion on management's ability to manage. On the other hand, the City's proposed language providing for unilateral decision making seems inconsistent with language in the existing contract dealing with the determination of a hospitalization insurer. That language is contained in Article XXIII (e).

The impartial arbitrator has modified the language proposed by both the Union and the City and has developed language on this issue consistent with language in Article XXIII (e). That language would require that the City meet and confer with representatives of the Union in accordance with the provisions of Article XXV of the agreement prior to the replacement of the City-sponsored group dental program.

Therefore, the panel adopts the following language and finds that it should replace the existing language in Article XXVII (f):

> **Effective upon the issuance of the Act 312 award for the 1992–1995 contract, the City agrees to pay a maximum of $125.00 per year on behalf of each employee who elects in writing to participate in a City-sponsored group dental program. It is understood that the employee shall pay the difference between $125.00 per year and the cost of the group dental program. The City agrees to meet and confer with representatives of the Union in accordance with provisions of Article XXV of this agreement prior to the replacement of the City-sponsored group dental program.**

City: Agree Margie C. Ross Disagree_____

Union: Agree James MacBride Disagree_____

ISSUE 3

Pay Changes—Acting Assignment

[Article XXVIII (d)(4), p. 33—contract]

This issue involves current language in the contract which provides that the employer may assign an employee to a higher position class for more than 30 days on an acting assignment basis. The language relating to the duration of the acting assignment indicates that it shall be determined by the needs of the service with the understanding that an acting assignment shall not be used to circumvent the timely permanent appointment of candidates to vacant budgeted positions. The Union proposes additional language to further clarify that an acting assignment will not normally exceed 90 calendar days and in the event the City contends that there is reasonable cause to extend an acting assignment beyond 90 calendar days, the City would be required to meet with the Union and provide the Union information pertaining to the situation and the basis for extending the acting assignment beyond 90 days. If the City and the Union fail to reach a mutual agreement regarding the situation and the duration of the acting assignment, then the Union would reserve the right to pursue the issue through the grievance procedure. The City's position is that no additional language is necessary.

Exhibit U-28 identifies other comparable cities that have limits of six months on acting assignments. Exhibit J-6 provides some information on this issue pertaining to employees within the City of Inkster. Articles in these exhibits do not address limitations but do speak to the intent not to shift employees to avoid higher pay.

During the course of the proceeding, evidence was presented to demonstrate that the City is constantly constrained by budget limitations. Given the City's current budget constraints, it may be inclined to use the existing acting assignment language to circumvent the timely permanent appointment of candidates to vacant budgeted positions. The existing contract language merely says that the acting assignment shall be determined by the needs of the service with the understanding that it shall not be used to circumvent timely permanent appointment of candidates to vacant

budgeted positions. If employees were assigned to these positions on an acting assignment basis for an extended period of time with no communication to the Union, it would be likely to result in an acrimonious relationship between the employer and the employees.

The impartial arbitrator believes that the language proposed by the Union is a reasonably constructive way to attempt to provide for needed communication in situations like this; does not appear to be overly burdensome on the City, and further clarifies the process for addressing disagreements. Therefore, the panel accepts the language presented by the Union in its last offer of settlement on this issue and finds that in addition to the existing language in the article, language specified below,should be added to Article XXVIII (d)(4) of the contract:

> **However, effective upon issuance of the Act 312 award for the 1992–1995 contract, an acting assignment will not normally exceed ninety (90) calendar days and no acting assignments will be made if an employee is laid off from the classification. In the event the City contends there is reasonable cause to extend an acting assignment beyond ninety (90) calendar days in situations of short-term high case load, disability leave, or other absences of limited duration, the City and the Union will meet in special conference at least ten (10) working days prior to the expiration of the ninety (90) day period. At that conference, the City will provide all pertinent information to the Union regarding the situation and, in the case of absences, data concerning the likelihood of an absent employee's return to work date whose absence has generated the acting assignment. If the City and the Union fail to reach a mutual agreement regarding the conditions of "reasonable cause," and the duration of the acting assignment, then the Union reserves the right to pursue the issue through the grievance procedure.**

City: Agree_____ Disagree Margie C. Rose

Union: Agree James MacBride Disagree_____

ISSUE 4

Memorandum of Understanding on Subcontracting

The Union urges that a separate memorandum of understanding be added to and attached to the contract that addresses the issue of the City's intent to not subcontract. The Union proposes the memorandum state:

> **"The parties acknowledge the Union's concern over the issue of subcontracting. There has not been any past practice, and the City is not contemplating, subcontracting work performed by this bargaining unit."**

The City's position is that no memorandum of understanding is needed on this issue.

The Union did not advance substantial evidence or sufficient testimony, in the opinion of the panel, to give rise to the need for this language. On the other hand, the chief of police testified under oath that the City was not contemplating subcontracting work performed by this bargaining unit. Therefore, the panel finds that the memorandum of understanding does not substantially add anything to the contract agreement, and therefore, does not accept the Union's position on this issue.

City: Agree Margie C. Rose Disagree_____

Union: Agree James MacBride Disagree_____

SUMMARY

This concludes the award of the panel. The signature of the delegates herein indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing. All agreements reached in negotiations as well as all mandatory subjects of bargaining contained in the prior contract will be carried forward into the collective bargaining agreement reached by the panel.

Re: City of Inkster
Inkster Police Officers Association
MERC Case No.: D 92 D-0851

Date: March 4, 1991

William E. Long
Arbitrator/Chair

Margie C. Rose
City Delegate

James MacBride
Union Delegate