**STATE OF MICHIGAN**
**DEPARTMENT OF LABOR**
**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

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In the Matter of the Arbitration Between:

**JACKSON FIRE FIGHTERS ASSOCIATION, LOCAL 1306, I.A.F.F., AFL-CIO,**

**Labor Organization,**

**-and-** **Case No. L85 D-430**

**CITY OF JACKSON,**

**Employer.**

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ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
Michael F. Ward, City Delegate and its Attorney
Ronald R. Helveston, Union Delegate and its Attorney

CHRONOLOGY:

The last collective bargaining agreement between the parties was for the period July 13, 1983, through June 30, 1985; a bargaining session was held on June 17, 1985, and mediation sessions were held on August 27, and 29, 1985; the Act 312 Petition giving rise to this case was filed by the Union on September 9, 1985; the City filed its Answer on September 16, 1985; the Chairman was appointed by the Commission on October 8, 1985; a pre-hearing conference was held in Jackson on November 22, 1985; the parties filed briefs on December 26, 1985, on the issue of Shift Manning - whether it is a mandatory or a permissive subject of bargaining; on January 6, 1986, the parties filed briefs on the issue of Comparable Communities; an Interim Ruling on Shift Manning was issued January 8, 1986; a Decision on Comparable Communities was issued on February 1, 1986; hearings were held in Jackson on February 25, 26, March 4, 5, May 20, 21, 22 and 29, 1986; Last Final Offers were submitted on June 18, 1986; briefs were filed by the parties on September 22, 1986; the Panel held a meeting in Lansing on December 18, 1986; this Opinion and Award issued January 8, 1987.

## OPINION AND AWARD

### INTRODUCTION

At the pre-hearing conference, the parties narrowed the substantive issues to be submitted to arbitration in this Act 312 proceeding. They are:

| FOR THE UNION | FOR THE CITY |
|---|---|
| Wages | Wages |
| Uniform Allowance | Uniforms |
| Captain's Pay Grade | Union Activity on City Time |
| Stand-by Pay | Rate of Pay - for Overtime, Call-Back, and for Acting Rank |
| Dental/Optical Coverage | The 40-Hour Work Week |
| Prescription Rider for Retirees | Vacations |
| Pension Improvements | Residency |
| a. Service Years | Selection for Acting Rank |
| b. Duty Disability | Exclusive Agreement |
| c. Non-Duty Disability | Shift Manning |
| d. Escalator | |
| Heart and Lung Presumption | |

There was mutual agreement on the term of the new collective bargaining contract; it will be for three years starting July 1, 1985, and ending July 1, 1988. It was further agreed that the provisions of the 1982 - 1985 Agreement not touched upon in this proceeding will become a part of the 1985 - 1988 Agreement, with appropriate changes in dates.

There was also mutual agreement on five communities from among those that each party nominated as being comparable to Jackson, but there was disagreement on a number of others. Accordingly, exhibits on this issue were presented and the matter was briefed. Prior to the opening of the hearing, the Chairman

issued a Decision on Comparable Communities. That Decision is attached and made a part of this Opinion and Award by reference.

In its Answer to the Petition, the City stated that it wanted to eliminate the minimum manning provision from the contract. This precipitated another dispute as the matter was not raised during bargaining or mediation. The City contends that minimum manning is a permissive subject of bargaining, and as such, it may be removed from the contract at any time. The Union asserts that the provision is a safety matter - a mandatory subject of bargaining - that must be negotiated. If an impasse is reached, the manning issue may than be submitted to Act 312 Arbitration. Absent agreement or impasse, the Union contends that the safety manning provision may not be removed from the contract.

Arrangements were made at the conference to resolve this issue in advance of the hearing on the basis of briefs. After considering the arguments made in those briefs and studying the case law, the Chairman decided that this matter could not be disposed of in summary fashion. Accordingly, he held that the issue of manning would be "litigated" during the hearing. An Interim Ruling to that effect was issued and it is attached hereto and made a part of this Opinion and Award by reference. The matter of manning is discussed below.

## Background

The City of Jackson lies about 75 miles due west of Detroit. It is centrally located in the lower peninsula astride an axis formed by I94, a major east-west expressway, and U.S. 27, a major north-south highway. The City has a population of about 40,000, living in a 10.7 square mile area. It is the county seat of Jackson County with a population in excess of 150.000. Like many other urban communities, the City has suffered a population decline and an erosion of its industrial base, but it still serves as an important regional center and commercial hub.

The Jackson Fire Department provides fire protection and emergency medical services to the community through the use of full time personnel operating from three stations. The bargaining unit represented by the Union is comprised of all employees of the Department, including Assistant Chiefs, Captains, Drivers and Fire Fighters, but excluding the Chief and civilian employees. There are 60 employees in the aforesaid unit. About fifty-six employees are in fire suppression. They are divided into platoons and work on a 56 hour per week schedule. The remaining employees are in fire inspection and administration. They work an eight hour day, 40 hours per week.

## CRITERIA FOR DECISION

The Statute (Section 9) requires the Panel to "base its findings, opinions and order upon the following factors, as

applicable:

> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet 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 process.
> (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."

Ability to Pay

The ability of Jackson to meet the costs of any proposal [subparagraph (c)] is an issue in this case. The City contends that it had a deficit of $4,969.00 for fiscal year 1985-86, and would spend some $494,000.00 more than it took in. For succeeding years, it also projects sizeable deficits; $506,745.00 for 1986-87, $616,745.00 for 1987-88, and $566,745.00 for 1988-89. For these reasons, the City characterizes its financial condition as "beyond poor" to the point of being "tragic!"

The Union appears to acknowledge that, for several years prior to 1985, the City suffered from a "malaise of a recession and corresponding municipal crisis." It claims, however, that those earlier years cannot form the basis for all future projections. And it naturally views Jackson with great optimism; with a proverbial pot of gold at the end of the rainbow.

The reality of the situation is probably somewhere in between these extremes; Jackson's future will neither be as bleak as the City's prediction nor as rosy as the Union's forecast.[1] The Panel has considered the projections based on proposed budgets and recognizes that those figures are projections and proposals that may fluctuate greatly, depending on actual circumstances. The Panel also recognizes that employees cannot bear the full burden of a municipality's financial plight. The ability to pay criteria has been considered as one of the factors in reaching a decision on the substantive issues set forth below.

Comparable Communities

Pursuant to the Decision On Comparable Communities, the cities of Adrian, Allen Park, Battle Creek, Bay City, East Lansing, Garden City, Lincoln Park, Muskegon, Port Huron, Saginaw, Southgate, Trenton, and Wyoming are comparable to Jackson.

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[1] In this respect, the Panel accepts the wisdom of Casey Stengel who said, "It's not smart to make predictions-especially about the future."

Other Jackson Employees

The criteria of section 9(d) also requires a comparison of the wages, hours, and conditions of work of the subject employees with those of other employees of the municipality. This comparison is important for two reasons: First, for non-police and fire units, it demonstrates the results of voluntary collective bargaining and places the Act 312 procedure in perspective; Second, for employees who utilize the Act 312 process (in this case Police Command and Police units), Fire Fighters and Police Officers are frequently considered pari passu.

Consumer Prices

The "cost of living" is another Section 9 standard that may be used by the Panel in reaching its decision. The cost of living is commonly based on the Consumer Price Index that is published monthly by the Bureau of Labor Statistics and is intended to show changes in the cost to an average family of purchasing a so called "market basket" of selected goods.

Overall Compensation and Other Factors

The statute requires the Panel to consider the overall compensation of unit employees and the continuity and stability of their employment; and permits it to use other factors "normally or traditionally" taken into account in determining the wages, rates of pay, hours, and conditions of employment at

issue.

In reaching its decision, the Panel has carefully considered the criteria referred to in subparagraphs (a) through (h) of the Statute. Obviously, each factor is not involved in every issue; sometimes one factor or a combination of several factors may be decisive on a particular issue. Applying the statutory criteria to the issues in this case, the Panel makes the following award.

## 1. WAGES (Economic)

One of the Section 9 standards for use in Act 312 proceedings is "The interests and welfare of the public and the financial ability of the unit of government to meet those costs." The City has made a strong showing of its weak financial condition for fiscal years 1985 and 1986. The Union points out that ability to pay is only one of the standards to be considered and it is not entitled to controlling weight. The City apparently accepts that proposition inasmuch as it offers to increase wages by about three percent for each of the three years under consideration (3%, 3%, and 3.5%). The Union, on the other hand, proposes that increases total seven percent for each year.

Both parties use the available data to find support for their respective positions. For example, the Union cites the actual dollars earned by fire fighters in the comparable communities to show that its members earn substantially less money. The City counters by culling from the figures the so

called, "total economic cost" of putting a fire fighter on the street to show that its cost is greater than that of the comparable communities. The massive amounts of data contribute to this maze.

The comparable communities standard, is very important in the equation. In an earlier Act 312 Award, Chairman St. Antoine wrote:

> The ideal arbitration award setting new contract terms should not reflect the arbitrator's views or values primarily, but should ordinarily approximate as closely as possible the agreement the parties themselves would have reached had their negotiations borne fruit. The best measure of that hypothetical settlement is almost surely the actual contracts that have been concluded in comparable communities. (Emphasis supplied).[2]

The dilemma centers around the data for the comparable communities that will be used for examination and analysis.

When the target city is in the lower half of the range, the union will use dollars as the basis for comparison. When it is in the upper range, the city will use dollars. When the positions are reversed a different formula will be constructed. The Panel believes that using a percentage rather than dollars is fair to both sides, regardless of the position of the target city. An example will suffice. For the year 1985-86, fire fighters at the benchmark rate (four years) had annual salaries of from $23,966 to $28,902. If the City's Offer is accepted a

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[2] City of Southfield -and- Southfield Fire Fighters Association, Local 1029, IAFF, AFL-CIO, MERC Act 312 Case No. D79 E-1199.

fire fighter will receive $24,578 and will rank next to last among the thirteen comparable communities. If the Union's Offer wins, a fire fighter will receive $25,515. and move up two places.

When dollars are used, what standard is to be employed in making comparisons? Are employees whose wages are in issue to be moved to the average? To the median? Or to some other place on the scale? Comparability is better served by using percentages. An examination of the eleven cities[3] that had settled contracts for 1985-86 shows increases over the previous year ranging from 2.5% to 5%. The average increase in this group is 4.09% and the median is 4.0. Thus, the City's Offer of 3% rather than the Union's of 7% is closer to the model. When ability to pay is factored in, the City's lower offer should be accepted, and it is.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

[3] The two comparable communities without contracts are Bay City and Garden City.

It is somewhat difficult to use the same formulation for 1986-87 because of the number of comparable communities that have yet to settle contracts for the year. Of the seven cities with contracts, the average is 3.8% and the median 3.8%. Adrian appears to have settled for an unusually low figure - 1%. If it is excluded from the computation, the average is 4.3% and the median is 4.5%. It seems likely that with the CPI remaining almost flat, second year increases in the still to be heard from communities will parallel those for 1985-86. If that is the case, the City's Offer, again somewhat low, is more acceptable on an individual as well as a cumulative basis. Again taking into consideration the finances of the City, a conservative approach is warranted. The City's Offer for 1986-87 is accepted.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

Of the comparable communities only one, Trenton has settled with its fire fighters for the 1987-88 year. The increase there is 3.5% For the three years involved in this proceeding, the Trenton wage settlement is 2.5%, 5.5%, and 3.5% for a cumulative

total of 11.5%.[4] Although it is dangerous to predict the future, these figures and those of the other comparable communities suggest a pattern. And that pattern is one of increases averaging between 4% and 4.5% per year. Absent unusual circumstances, that amount seems fair to both the employees and to the City.

For the last year of the contract, the City has proposed 3.5% and the Union 7%. On a cumulative basis, the Union's Offer, albeit high, is closer to the three year estimate of between 12% and 13% for the comparable communities. By that time, the steps taken by the City to improve its financial condition, hopefully, will have borne fruit. These increases will enable the fire fighters to maintain their relative position among their counterparts in the comparable communities. Accordingly, the Union's Offer for 1987-88 is accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

[4] Trenton settled its wage rate for 1988-89 at 4%.

## 2. CAPTAIN'S PAY GRADE (Economic)

Prior to the reorganization of the Department in August 1983, the three Assistant Chiefs worked the same 56 hour schedule as the men on the two platoons. They were in charge of operations and responded to first alarms. Even at that time, the first captain arriving at the scene of a fire acted as Fire Ground Commander (FGC). Generally, the Assistant Chief would assume that function upon reaching the site. The reorganization plan was negotiated between the Administration and the Union.

Under the reorganization, the Assistant Chiefs were removed from the platoon and have become 40 hour per week employees. They now each head up a division; operations, training and safety, and fire prevention. The Assistant Chiefs no longer respond to first alarms unless specifically summoned to do so. The first Captain arriving on the scene still acts as FGC unless he chooses to pass the command to another Captain. The only change in operations is that on first alarms, the Captains serve as FGC throughout the operation, a quantitative rather than a qualitative, change in duty and responsibility.

One other major change involves the method of overseeing the myriad tasks required of Department employees. A system using Captains as Project Managers was instituted. Project Managers volunteered to perform various tasks; initially they picked the project by seniority. Prior to this change, an Assistant Chief was responsible for directly overseeing particular tasks. The

role of coordinating the tasks among all captains became that of the Project Managers. For example, an Assistant Chief was responsible for Apparatus and Ladder testing. The actual testing was done under the supervision of Captains. Now a Project Manager is responsible for coordinating this activity.

The duties of Fire Captain are set out in a job description issued prior to the reorganization. It has not been changed.

> Under the direction of the Assistant Fire Chief, during an assigned 24-hour shift, to have full charge of and be responsible for a fire station and for the fire fighting operations and conditions of engines, apparatus, tools, equipment, and company quarters; to respond to all fires to which the company responds during the shift and assume command at the fires until the arrival of a superior officer; to personally receive telephone alarms; to keep proper records of alarms, supplies and inspections, and other matters pertaining to the company.
>
> To train and instruct the men in the rules and regulations of the Fire Department and to enforce such rules, regulations and orders; to maintain discipline; to make daily reports of all company activities to the superior officer; to be familiar with the geography, hazards and fire fighting facilities in the district; to make fire inspection of buildings in company's district; and to perform related work as required.

Some of the oversight and coordination previously the responsibilities of three Assistant Chiefs have been divided among eight or nine Captains. While the coordination is new, the work itself is not.

According to the Chief, Project Managers are "not disciplined if they don't do a top notch job or anything like this. If they have problems, the assistant chief is there to help them because it is still his responsibility. So nothing is

affected by the assignment." Moreover, work as a project manager is not considered when it comes to promotions. It is also significant that no grievance was ever filed by Captains alleging that they were performing work in a higher rated classification.

For the reasons set forth above, the Panel concludes that the expanded duties of Captains since the reorganization are not such as to warrant an increase in grade and rank. Therefore, the Offer of the City is accepted.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

3. STAND-BY PAY (Economic)

The three Assistant Chiefs and the Fire Inspector are on an on-call schedule. In a reorganization of the Department in 1983, the work week of Chiefs/Inspector was changed from a fifty-six hour cycle to a forty hour schedule; from 8:00 A.M. to 4:00 P.M., Monday through Friday with a one hour paid lunch period.[5] The

[5] The Union characterizes the current schedule as a forty hour work week while the City contends that these employees work only thirty-five hours per week. The City proposes to change the arrangement of the paid lunch period. See City Issue 11 below.

on-call period is from 4:00 P.M. on Tuesday to 8:00 A.M. the following Tuesday, excluding, of course, the regular work shift. The Contract contains the following provision:

> The Assistant Chiefs shall rotate availability for call during off-duty hours and shall respond to calls via car radio or a pager, which shall be carried at all times when on call. The types of calls which require a response by the on-call Assistant Chief shall be controlled by department policy.

The Chiefs rotate so that each is on-call every third week, or about seventeen times per year. One of the Chiefs is also the Fire Marshall. When he is on-call, he performs any needed fire inspection services thus reducing the time that the Inspector must be on-call. This means that the Inspector is on-call two out of every three weeks, or about thirty five times per year.

The Chief exercises his discretion in appointing Assistant Chiefs who are part of the supervisory hierarchy of the Department. Each Assistant heads up a Division: Operations, Training and Investigation. The on-call Chief is contacted for any matter requiring a command officer's decision. This might range from answering a simple question to being called to command the fire ground in the case of a multi alarm fire.[6]

When on-call, the Assistant Chief must abstain from drinking alcoholic beverages, remain in the County, within range of the communications system, and be in a position to respond within

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[6] If the Assistant Chief or Inspector reports for duty, he is paid at time and one-half for all hours worked with a minimum of four hours.

fifteen minutes of being called. He is permitted to have a Department automobile that may be used for personal business during the on-call period.[7] The on-call officer, to some extent, may have to alter his life style to accommodate these requirements. For this reason, the Union contends that the Assistant Chiefs/Inspector should receive stand-by pay for the time they are on-call.

The City argues that stand-by pay is not warranted because each of the Assistant Chiefs accepted appointment to the position knowing that it entails this on-call duty. Further, it says that the Assistant Chiefs' counterparts in the Police Department have the identical on-call responsibilities and do not receive stand-by pay. In response to the first argument, the Union says that "it was impossible to place a dollar value on this function when it was introduced because there was no experience with the situation to provide a scale." To the second argument, the Union claims that the practice in the comparable communities supports its position.

Eleven of the comparable communities do not have on-call duty. In one, Port Huron, the Assistant Chief and Captain carry pagers, but they are for convenience inasmuch as a response is not required. Only two communities, Lincoln Park and Muskegon,

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[7] The Inspector is called if a matter arises within the jurisdiction of Investigation; for example in the case of known arson, extensive structural damage, suspicious fires, death or injury. For the purposes of this case, the parties treated the Assistant Chiefs and Inspector as a unit.

have required on-call duty. That is certainly not a representative showing. Even if it was, the provisions in the two contracts are such that meaningful comparison to Jackson cannot be made.

The contract in Lincoln Park is more limited than the one in Jackson and covers "stand-by for a possible call to duty." The contract in Muskegon covers a 24 hour period and is optional on the part of the fire fighter (except the lowest seniority person must accept the assignment. These contracts cover all unit employees; neither is limited to Assistant Chiefs. The Lincoln Park and Muskegon contracts do not support the Union's claim for stand-by pay.

There is no reason to disrupt the parallel patterning of on-call arrangements between the Police and Fire Department. The Union and the Assistant Chiefs accepted the on-call procedure when the reorganization took place in 1983. No evidence was presented to show any subsequent changes calling for the introduction of stand-by pay. The two factors cited by the City - internal comparables and equity - require that its Offer be accepted, and it is.

One other item requires further comment. The City vigorously argues that the on-call practice should not be changed because the Chiefs specifically agreed to the arrangement at the time each was appointed to the position. At the same time, those employees were assigned the eight hour schedule with one hour for

lunch. The City now proposes (Issue 11 below) that the one hour paid lunch period be eliminated. It cannot conveniently use the pre-agreement argument to defeat stand-by pay and disregard it for the paid lunch period. "What is good for the goose..."

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

4. UNIFORMS AND UNIFORM ALLOWANCE (Economic)

Being a paramilitary organization, Department employees are required to wear uniforms. Under the current arrangement, an account is maintained for each employee who is credited with $160.00 annually. Through the use of purchase orders, employees obtain articles that make up the uniform. These items are distinguished from protective clothing or "turn out gear" worn by fire fighters in fire suppression work.

The Union contends that the $160.00 allowance has been unchanged since 1976 and is no longer adequate to provide a fire fighter with a uniform. It proposes to increase the allowance to $250.00, an amount that it claims is still below the cost of maintaining a uniform and less than the equivalent increase in

the CPI. The City proposes to eliminate the allowance altogether; instead it offers to supply each fire fighter with the required uniform. The uniform is described in Department Special Order 2-86, as amended at the hearing by the Chief.

The Union contends that the City's proposal, "while reasonable on the surface...would constitute a severe detriment to the members of the bargaining unit. It has a vast potential for abuse on the part of its Administrators." The detriment apparently refers to the fact that employees can now use the allowance to obtain "optional items" if their uniforms are otherwise complete. The Union's figures, however, dealt with the basic, required uniform - not optional items. An increase in the rate to obtain optional items cannot be justified.

No evidence was presented, other than conjecture, on the allegation of possible abuse by the Administration. On the contrary, the Chief strikes me as being a reasonable man who will try to accommodate the legitimate needs of the force. For example, he stated that sweat suits would be an item issued to fire fighters for use in conjunction with the Department's physical fitness program. An alleged abuse of the program is always subject to arbitral review under the contractual grievance procedure.

Confronted with these opposing last offers - to increase the annual allowance by over 50% or to provide complete uniforms- the Panel concludes that the City's Offer is the most acceptable

one. In the comparable communities there is a split; eight have uniform allowances and five provide uniforms. A significant factor is the collective bargaining contracts between the City and the Fraternal Order of Police and the United Steel Workers of America. Those contracts have provisions similar to the one being proposed by the City; uniforms are supplied to police officers and to maintenance and other designated employees. Rather than becoming embroiled in a dispute over escalating costs for clothing, it seems natural to permit the City to supply the items that make up the uniforms for fire personnel.

Based upon the foregoing, the City's Offer will be accepted.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

5. DENTAL/OPTICAL COVERAGE (Economic)

The contract currently provides reimbursement - of up to $500.00 per year - for dental expenses incurred by employees, their spouses and dependant children. The Union seeks to increase this flat rate to $750.00, permit its use for optical expenses too, and allow the amount to be carried over from year

to year, with a maximum accumulation of $2000.00. The City proposes that the existing program be continued.

The Union relies on the programs in the comparable communities to support its proposal. In the thirteen comparable communities, twelve have insurance coverage for dental benefits and one is self insured. The Union asserts that the annual maximum coverage per family member in the comparable communities is $788.00 while in Jackson there is only $500.00 of coverage for an entire family! The Union notes that if it had requested (and was awarded) Delta Dental Insurance, the annual cost of premiums to the City would have been about $35,000.00, or double what it paid in 1984-85.

The City claims that the $500.00 per family reimbursement is adequate to cover the needs of its fire fighters. In this regard it points to payments for 1984-85 when employees had the $500.00 benefit and a carry over allowance (just for that year). Only 17 of 69 employees reached or exceeded the $500.00 limitation. It also claims that its benefit compares favorably with those in the comparable communities because it pays the full cost whereas the other communities require co-payments.

There is no question but that dental insurance provides broader coverage for fire fighters and their dependents than the program in Jackson. And insurance is correspondingly more expensive. But higher costs for this insurance, and greater coverage does not mean that the Union's proposal must be

accepted. The Union links optical and dental benefits together. Under its proposal, there is no limitation on optical benefits. An employee is entitled to reimbursement for all optical expenses, limited only by the maximums.

Only four of the thirteen comparable communities have optical benefits. And each of those plans has restrictive coverage. For example, in Allen Park, it is limited to a refraction and glasses once every two years; in Lincoln Park, it is limited to $150.00 per contract period (three years in this case) and; in Southgate, the city is limited to contributing $21.00 per employee, per year. Neither the comparable communities nor any of the other Section 9 standards warrant the introduction of an optical benefit, yet alone an open ended one of the type proposed here.

If the dental coverage is woefully inadequate, as asserted by the Union, it is difficult to determine exactly how it is improved by increasing the amount of coverage, but adding another undetermined expense to be paid from the same pie. For these reasons, the City's Offer will be accepted.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

## 6. PRESCRIPTION RIDER FOR RETIREES (Economic)

The Union proposes that effective January 1, 1987, the City pay for a prescription drug rider (with a $3.00 co-pay feature) to the medical/hospitalization insurance it furnishes to employees who retire after July 1, 1985. The City opposes this additional benefit.

To support this benefit, the Union relies on the comparable communities and on the equities of the situation. The City opposes the benefit because of its financial condition and the long term cost of this item that it projects as being in excess or $350,000.00.

Most of the comparable communities have some form of prescription drug rider for retirees. The Union's equitable argument is a powerful one; retirees on a fixed income are battered by inflation, at a time they can least cope with rising costs. The Panel is sympathetic to this dilemma.

While the overall CPI has had a moderate rise in the past two years medical and related costs have outdistanced all others. For example, in the City Exhibit filed September 22, 1986 shows a 1.6 percent increase for all items in the twelve months ending July 1986. For that same period, medical care cost led all other

increases and jumped 7.6 percent. Retirees have no protection against this unfortunate situation.

The City's costing of this item is totally misleading. It does not consider the cost for the term of the contract - which is exceedingly modest. Instead, it tracks all current employees from retirement to date of anticipated death and adds the highest cost on a cumulative basis. The same gerrymandering can be done for any benefit, but it is not the accepted method of determining cost.

The above factors lead the Panel to accept the Union's Offer.

Donald F. Sugerman

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

## 7. PENSION BENEFITS (Economic)

There are two pension programs that cover fire fighters. One plan is variously referred to as the "Charter," "Old," or "Closed" Plan. It covers fire fighters and police who were on

staff before 1973. In addition to retirees, there are twenty active fire fighters in this Plan. Contributions to finance the Plan come from the City's general revenues.

For many years, the Old Plan was not adequately funded; the full actuarial contributions was not being made. By Council action, the amortization period was extended and the City has in recent years been contributing the amounts required of it by the actuaries. According to its actuary, the Plan is "in poor condition" in that neither retired life liabilities nor active member liabilities are fully funded.

The other plan is called the "Act 345," or "New" Plan. It covers police and fire fighters in a number of municipalities across the state. Jackson Fire Fighters hired on or after July 1, 1973, are in this Plan. The New Plan is funded through a special millage and not from the general revenues of the City.

Active employees covered by the Old Plan can elect to transfer to the New Plan at various specified times. Retirement benefits are better under the New Plan, but disability benefits are better under the Old Plan. As a result, fire fighters covered by the Old Plan continue thereunder until the last possible moment and than transfer to the New Plan. This, according to the Union, requires the City to continue an artificially high level of funding.

The Union has made four proposals to improve New Plan

benefits: Reduce the service time required to retire from twenty-five years to twenty years; increase the duty and non-duty disability benefits and; increase benefits on the fifth, tenth and fifteenth anniversary dates of retirement by 10%, 10%, and 5%, respectively. The Union's theory is that these improvements will entice the twenty active Old Plan participants to transfer. This in turn will reduce the City's unfunded liability under the Old Plan and thus permit it to make the increased contributions that will be required if its proposals are granted.

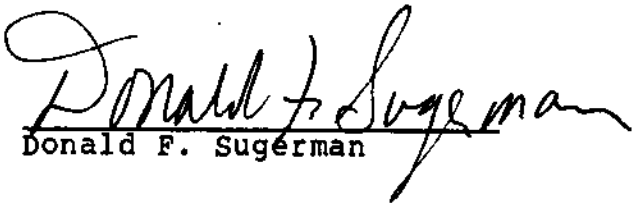
The City proposes that pension benefits continue unchanged.

The application of the Section 9 factors is not easily explained. Not all of the factors apply to each issue. Those that do apply may not do so equally. One factor or another, or even a combination of several may be of greater importance in one issue because of the particular fact situation presented than in another issue in the same case. The weight to be given the various factors, is, to some extent, based on subjective considerations, experience, and common sense. But the comparable communities test seems to be the great equalizer; it is used to resolve questions of doubt.

In the immediate case, there may be some long term savings to the City if fire fighters accelerate their movement out of the Old Plan. The savings cannot be determined with precision; it can be estimated based on past performance and assumptions, but actual experience may dramatically change these estimates. Most,

if not all, of the anticipated savings would be used to finance the new benefits. With the differing results reached by the experts, a conservative approach is mandated.

An examination of the comparable communities convinces the Panel majority that the full package of benefits should not be implemented at this time. No comparable community has the twenty year retirement provision and only one community has the automatic escalator provision of the type proposed here; three others have a clause tied to the CPI that may go up or down. The Union's argument that these benefits will persuade the twenty Old Plan participants to transfer is to put the cart before the horse; especially when the estimated cost of the two items is considered. The City's Offers on the Service Years Requirement and on the Post-Retirement Escalator are accepted.



Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

The duty and non-duty disability proposals present an altogether different situation. The Union's proposal is designed to harmonize the two plans. The Union has represented that the smaller disability benefit under the Act 345 Plan is the primary

reason why Old Plan participants continue in that Plan and switch at the last possible moment. Its assertion will not be tested. The comparable community test supports the non-duty disability proposal. Three communities also have the higher Act 345 duty disability benefit. The actuary considered the two item jointly in estimating the cost, which is nominal.

The interest and welfare of the public will also be served if this benefit moves the twenty active Old Plan participants to promptly transfer to the New Plan. Both actuaries predict substantial savings to the City if the transfer is accomplished; they differ only on the amount. If this savings occurs, it may form the basis for subsequent negotiated improvements in the New Plan. In view of the equity of providing a benefit for employees who cannot work because of illness or injury; the equity of bringing the benefit under the two plans into parity; the minimal cost of the benefit coupled with the potential savings to the City and; the comparable communities test (non-duty disability)- The Union's Offers on Duty and Non-Duty Disability Pensions are accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

## 8. HEART AND LUNG PRESUMPTION (Non-economic)

An employee who becomes ill as a result of respiratory or heart disease has the burden of establishing that it was work related in order to be eligible for duty disability benefits. Because of the hazards of fire fighting and several instances in Jackson where fire fighters who allegedly sustained such duty related illnesses were initially denied benefits, the Union proposes to shift the burden of proof by adopting a presumption that the illness is duty related. The City opposes this change.

A five member Pension Board (Mayor, City Manager, Police Representative, Fire Fighter Representative, and a disinterested person appointed by those four[8]) decide whether the disease or illness is duty or non-duty related. "Four concurring votes shall be required on any decision or action by the Board." The decision of the Board is not necessarily the final word on the subject of disability; it may be contested.

The Board undoubtedly relies on opinions from medical experts. As we all know these "experts" frequently give conflicting opinions. The Union argues that if its proposal is accepted, a disabled employee will receive benefits while the

[8] The Union incorrectly notes that the 5th member is appointed by the Mayor.

matter is being contested. That might very well be the result because it is likely that Board members elected by the police and fire fighters will vote together to defeat a contrary motion. The Union objects to the present voting arrangement on the grounds that, "The political undercurrents and proclivities are obvious in this situation." They are just as obvious if it is reversed.

The current system, while not perfect, is basically neutral because it makes no presumption about the cause of the disability. This may work a temporary hardship on an employee whose condition is initially held to be non-disability related and is subsequently found to have a duty related disease or illness. But it is one common to all of the comparable communities, other City units, and for most workers throughout the State. Accordingly, the City's Offer is accepted.

Donald F. Sugerman

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

9. UNION ACTIVITY ON CITY TIME (Non-economic)

The current Agreement contains the following provision:

> Section 1 General. Employees and their Union representatives have the right to join the Union, to engage in lawful activities for the purposes of collective negotiations or bargaining or other mutual aid and protection, to express or communicate any view, grievance, or complaint in accordance with the procedures set forth in this Agreement, related to the conditions or compensation of their employment, all free from any and all restraint, coercion, discrimination or reprisal.

Because of an incident in which a Captain left his duty post to attend a Union Executive Board meeting being held at another station and because employees allegedly believe they can engage in such activity, the City proposes to add the following sentence to Section 1:

> However, it is understood and agreed that employees shall not engage in any of the aforecited (sic) activities or any Union business during their working hours or on City property, unless specifically allowed by the terms of this Agreement.

The Union claims that neither the incident giving rise to the City's proposal (that it points out resulted in the employee being disciplined) nor the contracts in the comparable communities justify such a sweeping restriction.

Language that clearly and succinctly describes conduct that the parties agree is prohibited can serve a worthwhile purpose. Because of its breadth, this proviso would likely produce more problems than it solves. For example, it would appear to prohibit employees from discussing union business during their working hours or on City property. With employees who are required to spend twenty-four consecutive hours on the job, this provision may very well constitute unlawful interference with

employees' Section 9 (Act 336) rights. That is perhaps why, none of the comparable communities have contract clauses with such sweeping restrictions.

The proviso also goes well beyond correcting the situation for which it was ostensibly designed - to inform employees that routine Union Executive Board meetings may not be held on Fire Department property. As worded, the proposal will be rejected. That does not end the matter. Since the Union appears to agree that conduct not authorized by the contract is prohibited[9] it will have a salutary effect on future relations between the parties to spell out the limitation.[10] Section 4 of Article V. will be changed to read as follows:

> Section 4: Union Meetings. As a general rule, the Union may not hold its meetings (General, Special, or Executive Board) on Fire Department property. However, the Union may hold such a meeting on Fire Department property if it obtains prior approval of the Chief of the Fire Department, and further provided that if permission is granted, it does not disrupt the duties of the employees or the efficient operations of the Department.

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[9] In this regard, the Union said, "If the contract doesn't allow an activity which subsequently takes place, the City is free to pursue corrective measures through remedies already in place." (Brief, p.91).

[10] During the pre-hearing conference, the parties stipulated that this issue of union activity was an economic one. In a confirming letter to counsel on November 23, 1985, the Chairman said, "I am uncertain that City Issue 1 is economic, notwithstanding the stipulation of the parties." An economic matter is one that directly affects rates of pay, wages, benefits, or hours of work. The provision being considered does not! The Chairman concludes that the proposed restriction on union activity is a non-economic matter. That being the case, last final offers need not be accepted, and the Panel can modify or change them.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

10. RATE OF PAY; OVERTIME, CALL-BACK, ACTING RANK (Economic)

When fire suppression employees work overtime, are called-back to work, or work in an acting capacity in a higher classification, their rates of pay are calculated by dividing their annual salaries by 2080 hours. This is the method called for by the Agreement; for overtime and call-back, it has been in existence for the past twenty years, and possibly longer. Forty hour personnel are treated as working 2080 hours annually, but fire suppression employees work on a fifty-six hour schedule or 2912 hours per year. There lies the rub.

The City proposes that these premium pay items be determined by dividing the employee's annual salary by 2912 hours rather than 2080 arguing that the "actual" number of hours worked should be used. The rationale for this change is that it will save the City money and is supported by the practice in the comparable communities. Translating this into real dollars, the average Jackson fire fighter earned $1641.00 in premium pay at $18.07 per

hour (City Ex. 11A). Applying the City's proposal to these figures, the fire fighter's rate would drop to $12.92 per hour and his earnings to $1173.37. This is a reduction of about 30%, not including the savings in "roll up costs."

The Union claims that this change is not justified, has previously been proposed and rejected in another Act 312 proceeding and in negotiations, and would produce great inequities. On this latter score, the Union notes that if a Captain and Inspector who both earn the same annual salary are called-back to work under the City's proposal, the Inspector will be paid at a rate forty percent higher than the Captain. The Union sees this as paradoxical; the employee who works longer hours, in a more hazardous job, receives a lower rate of pay.

We do not know the "legislative history" of the overtime and call-back provisions involved in this issue. All that is known, of course, is that the method of computation has been in place for two decades, or longer. Obviously, the parties were completely aware when the agreement was first made that the hours used for the denominator in the equation bore no relationship whatsoever to the hours worked by fire suppression personnel. And yet they adopted that system as their standard for determining overtime rates.

It is quite true that accepting the City's proposal would save it money. But the same thing can be said for reducing any existing rate or benefit. More substantial reasons are required

before a Panel can authorize a change of this nature. No persuasive reason has been advanced to alter the long standing method of computing overtime rates. The mere fact that only two comparable communities peg overtime to 2080 hours while the rest compute the rate on the basis of actual hours worked by fire suppression staff does not carry the day. There is no evidence of how the latter group of contracts evolved; and certainly no evidence that suggests that they were changed from the lower number to the higher.

The premium pay for Acting Rank falls into a slightly different category. This provision too, is tied to 2080 hours for determining an employee's rate of pay when he performs in a higher classification. It came about as a result of an Act 312 case almost ten years ago. The Panel Award in that case did not explain the reason for using 2080 hours to determine the employee's hourly rate. Presumably the 2080 was used so that the concept of "premium" pay was uniformly applied throughout the Agreement.

The comparable communities also do not use 2080 to determine the rate of pay for fifty-six hour employees who work in an Acting Rank capacity. In most of those communities, however, there is a lower threshold than the thirteen hours used in Jackson for triggering such payments. For example, in several of the cities, employees are paid <u>whenever</u> they act in a higher rank; in others the range is from 2 hours to 12 hours. This, to

some extent, offsets the higher rate caused by using an artificial denominator.

A change in formulation, especially where it has historical roots, should be made only where a need for change has been demonstrated. That need is not present here. Accordingly, the Union's Offer is accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

11. WORK WEEK FOR 40 HOUR PERSONNEL (Economic)

The Assistant Chiefs, Chief Fire Inspector, and Fire Inspector work from 8:00 A.M. to 4:00 P.M. Monday through Friday with a one hour paid lunch period. The City views this schedule as being a thirty-five hour work week. It proposes to extend the work day to 5:00 P.M. making it a forty hour work week.

The rationale for this change is threefold: First, the Chief works until 5:00 P.M. and as a result, he frequently has to answer telephone inquiries during this one hour overlap that would otherwise be handled by one of the Assistant Chiefs;

second, employees who are supervised by the Assistant Chiefs continue at work beyond 4:00 P.M.; and third, the corresponding ranks in the Police Department work an eight hour day with a one hour unpaid lunch period.

Only one other City has its Assistant Chiefs on a forty hour work schedule. That City does not pay for the lunch period, but one city is not a representative showing for applying the comparable communities factor. Ten cities have Fire Inspectors on a forty hour work week, but again the comparable communities test is inconclusive because they are equally divided on payment versus non-payment for the lunch period.

The Chief's pique at answering the phone cannot form the basis for such a significant change. Unless the call is an emergency - in which case anyone available would be expected to answer it - the Chief should consider having the caller leave a message. After all, that is undoubtedly what is done when the Assistants are away from the station on regular business. The argument that subordinates remain on the job, does not carry much water either; they are fifty six hour employees and will be on the job without the Assistant Chiefs' presence regardless of the one hour extension.

When the Jackson Fire Department was reorganized, Assistant Chiefs were put on their current work schedule. During lunch, the Assistants carry pagers so they are basically on-call during the period. As noted above, to prevail on the Union's issue of

stand-by pay for these same employees, the City argued that Assistant Chiefs knew that rotating on-call duty was required when they accepted the positions. They also knew the work week schedule, as did the Chief who was the architect of the reorganization. No persuasive reasons having been advanced to support this drastic change in schedule, the Union's Offer will be accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

12. VACATIONS (Economic)

The thrust of the City's proposal is to achieve cost savings by reducing the vacation times for fifty-six hour personnel while leaving intact the vacation times for forty hour employees.[11] It would do this by "convert[ing] the present system of weeks earned to a system of hours earned and taken each year." The City

[11] The City's Offer would also change the method of accumulating and using days off, eliminate the parity provision with police employees, and remove the holiday falling on a vacation day enlargement. In view of the disposition of the City's principal contention, it is unnecessary for the Panel to consider these subsidiary proposals.

asserts that:

> The present system causes a Fire Department employee with 20+ years working as an Assistant Chief or other 40-hour job to receive less total days of vacation away from work than another employee in the same department with the same seniority working the 56-hour schedule.
>
> The 40-hour employee receives 33 calendar days away from the job and the 56-hour employee receives 42 calendar day away from the job.

The City finds support for its position in the comparable communities and in other City departments.

The City characterizes its proposal as being "relatively simple." The problem is that the subject trying to be simplified is extremely complex. The vacation entitlement of forty and fifty-six hour employees are not readily convertible. The forty hour employees work 5 calendar days in a 7 day period. The fifty-six hour employees work 3 twenty four hour duty days in a nine day period covering parts of 6 calendar days (16 hours one day and 8 the following day). The former employees work on a 2080 hour per year schedule while the latter work 2912 hours. Efforts to compare the two groups is like the proverbial attempt to compare apples and oranges.

The City says that the vacation program is unfair; a forty hour employees receives less total days of vacation away from work than a fifty-six hour employee. The Union counters that this is not unfair given the disparity in the work and in the work schedules of the two groups. There are 54 employees in the former group and 5 in the latter, including 3 Assistant Chiefs.

No evidence was presented that the forty hour employees whose cause the City is championing have registered any complaints.

Another justification for the change is the situation among comparable communities and other City units. The number of duty days of vacation earned by employees in the comparable communities does not appear to favor the City's contention. The number of duty days earned by fire suppression employees in Jackson is about average (at every level - 1 year, 5 years, etc.). The City proposal would reduce the vacation entitlement by roughly one third across the board and would move Jackson to the lowest point on the scale of comparable communities. Nothing in this record justifies such a reduction.

The fact of the matter is that fire fighters who work on twenty-four hour schedules are sui generis. Their schedules cannot be compared to employees in other City departments who also work a forty hour week any more than they can be compared to forty hour Fire Department employees. For the above reasons, the Union's Offer will be accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

## 13. SELECTION FOR ACTING RANK

The only positions that are filled on an acting basis are Driver Engineer and Captain. Under the current practice, seniority is used in moving the senior employee on duty to the position or Driver Engineer or Captain. The contract is silent on this topic. The City wants to change the practice by first selecting from among those employees on a certified promotion list and secondly from among employees who have not dropped below 70% on their last two performance evaluations.

The City argues that basing the selection on seniority means that persons who may not have qualified for promotion, and those who did not even take the promotional examination for whatever reason, must none-the-less be appointed to fill the temporary vacancy. Further, it says that in blindly following seniority the employee selected may have scored poorly on his last performance evaluations. Since employees on the promotional list will ordinarily fill a permanent vacancy, the City sees this as a training device to give the individuals exposure to the job and to "reward the person that performs well or keeps his skills up."

The Union has a seemingly unlimited number of reasons why the City's proposal should not be accepted. Among them are: Lack of evidence to support the proposal; the promotion list and performance evaluations are subject to belated revision;

seniority means experience and experience is a more important factor in selecting a person to serve in an acting capacity; evaluations do not examine the fire fighter's ability to perform in higher rank, but only in their present positions, and; absence of support among the comparables.

Although most of the comparable communities have a provision for compensating employees who act in a higher classification, there does not appear to be similar language governing the selection process. The method of selection is one left to practice and cannot, for the most part, be determined by the contracts. One exception is Battle Creek. The contract contains extensive language regulating the selection process and uses eligibility lists for selection.

Most of the reasons listed by the Union in opposition to the City's proposal are without merit. For example, arguing that performance ratings are not indicative of ability to perform the higher rated job is, at best, disingenuous. If an employee is not performing his regular job at a journeyman level, it is difficult to understand how the Union can urge that he be given a job with more duties and more responsibility. Similarly, the assertion that eligibility lists and evaluations are suspect is not well taken. Presumably issues relating to those items are subject to the grievance procedure and, if an error is made, can be corrected through the use of that mechanism.

All that the City's proposal has going for it is logic.

That is one of the components that make up arbitration procedures. The City should be able to select for acting positions those fire fighters who have demonstrated an interest and ability to function in the position. If it is the seniority person, so much the better. Seniority has an important place in the implementation of contracts. But to apply seniority in utter disregard of the facts is unreasonable. For that reason, the City's Offer will be accepted.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

## 14. RESIDENCY (Non-economic)

The City proposes a residency requirement for new hires. Fire Fighters hired after July 1, 1986, must live in the City or become residents within twelve months as a condition of employment. The City Council believes that resident fire fighters "will be more responsive to the needs of the community, be a more visible, positive influence upon the community and be more readily available to serve the needs of the Fire Department." The City relies on these assertions plus the fact

that one other union with which it contracts (USWA) has a similar provision as do eight of the comparable communities.

The internal and external comparables are inconclusive. The City police units do not have a residency clause and neither do five of the comparable communities. In several of those with residency, there are various escape provisions.

There is no evidence to establish that the beliefs of the Council are anything more than that - beliefs. No claim has been made that incumbents (who are not subject to a residency requirement) are unresponsive to the needs of the community or the Department. On the contrary, the Chief has opined:

> The City of Jackson can be proud of its Fire Department for a number of reasons. The entire staff are (sic) hard working, dedicated and committed to reducing the devastating and heart rendering effects of unwanted fires and other life-threatening emergencies.
>
> * * * * *
>
> ...Most of the schools and seminars attended by personnel from all levels within the department were attended on the individual's own time. Some of these schools were on weekends and some were for a two-week duration [away] from family. The community can rightfully be proud of that kind of commitment and dedication.

Commitment and dedication to the fire service is obviously not dependent of the residency of the providers. It is reasonable to anticipate that fire fighters hired after July 1, 1986, will be just as sincere, dedicated and committed to the public as the men currently on the job.

A two tier approach to residency seems likely to foster

discontent among new employees who will be treated differently than their colleagues on a matter of personal consideration. This is the type of situation that causes disunity on a job that requires total cooperation. Absent compelling evidence, not present here, the change will not be granted and the Union's Offer is accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

15. EXCLUSIVE AGREEMENT CLAUSE (Non-economic)

The City proposes that the following provision be added to this contract:

> It is understood and agreed that this Agreement constitutes the sole, only and entire agreement between the parties hereto and specifically cancels and supersedes any other agreements, civil service ordinances, personnel policy, past practice or understanding existing prior to the Agreement.

The purpose for this clause being advanced it to "prohibit employees from processing grievances through the contractual procedures and then reprocessing them through civil service ordinances, i.e. two bites at the same apple."

While acknowledging that only three comparable communities have such a clause, the City finds support for its proposal from an Act 312 Panel having awarded the same language in a 1979 case with the Police Department. Both police units have provisions that include the subject language.

The proposed language goes far beyond the restriction for which it is intended; "forum shopping in...grievance litigation." It attempts to foreclose the Union and employees from asserting bona fide "past practices" as the basis for a grievance. That is the plain message of the language, "This Agreement...specifically cancels and supersedes...past practice or understanding existing prior to the Agreement."

There are many practices and understandings between the City and the Union that are not a part of the agreement. Some of them were touched on in the testimony of Captain Hendges and another is the one referred to in the section on Selection For Acting Rank, above. Forty years ago, one arbitrator commented on the importance of the relationship between the Agreement and past practice. His comments are as appropriate in this case as they were then.

> A union-management contract is far more than words on paper. It is also all the oral understandings, interpretations and mutually acceptable habits of action which have grown up around it over the course of time. Stable and peaceful relations between the parties depend upon the development of a mutually satisfactory superstructure of understanding which gives operating significance and practicality to the purely legal wording of the written contract. Peaceful relations depend, further, upon both parties faithfully

> living up to their mutual commitments as embodied not only in the actual contract itself but also in the modes of action which have become an integral part of it.[12]

The underpinnings of a long standing relationship should not be casually and carelessly removed. To accept the proposal as worded has the potential for doing substantial harm.

The wrap-up clause is, of course, a mandatory subject of bargaining.[13] As such, it is better left to direct negotiations where the parties can identify the past practices, decide which ones are to be continued, and provide for them by incorporating them into the agreement, or in some other way.

The City noted two instances where the procedures of the Civil Service Commission were used to resolve disputes that allegedly were also contractual. There is no evidence that the Union, or the individual involved, exhausted one procedure and, failing to obtain the desired result, tried the other. The evidence indicates only two incidents in over ten years where an overlap ocurred in that both procedures may have been used.

This issue is more of a housekeeping detail than an actual problem. The Union does not seriously disagree with limited restriction articulated by the City. The City's proposal will be

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[12] Coca Cola Bottling Company, 9 LA 197 (Jacobs 1947).

[13] NLRB v. Tomco Communications, Inc. __F.2d__, 97 LRRM 2660, 2664 (9th Cir. 1978).

modified[14] to provide for an election of remedies. "If an employee or the Union processes a complaint or grievance that arguably constitutes an alleged violation of both the Agreement and the Civil Service Ordinance, the first forum chosen will be the exclusive method used for the resolution of that dispute."

Donald F. Sugerman

Ronald R. Helveston

Michael F. Ward

16. MINIMUM MANNING (Economic)

When the City filed its Answer to the Act 312 Petition it identified one of its issues as "Minimum manning elimination." This prompted the Union to write to the Director of MERC requesting that the issue be stricken from among those being submitted to arbitration because it was not raised during negotiations or mediation. The City replied that the issue had been previously raised and that the issue was encompassed within

[14] The Union asserts that this issue is economic. The Chairman disagrees. To be considered economic, a proposal must directly involve a matter of economics. A wrap-up clause is only indirectly or tangentially economic in nature. Therefore, the Panel may modify the final offer.

the Union's open issue called "Total Complement Provision."

The Director notified the parties that the pleadings provided an insufficient basis for determining whether any particular issue was appropriately bargained or mediated. He stated that the question "should be placed before the Act 312 panel, who (sic) may then take appropriate action." The matter, of course, was raised during the pre-hearing conference.

A mandatory/permissive issue is akin to a dispute in the private sector over whether a substantive issue is arbitrable under a collective bargaining agreement. In one of the Trilogy decisions[15] the Supreme Court said, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to so submit." Recently, the Court held, "It was for the court, not the arbitrator, to decide in the first instance whether the dispute was to be resolved through arbitration."[16]

The Panel's function is to set the terms of the new contract. MERC and the Courts must decide whether a matter is properly before a panel when a question of law rather than one of procedure is raised. The Supreme Court decisions referred to above have been cited with approval by the Michigan Courts in

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15 United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

16 A T & T Technologies v. Communication Workers of America, 89 L Ed. 2nd 648 (1986).

public employment matters.[17]

For the above reasons, the Chairman informed the parties that his decision on manning would be advisory. They acquiesced and this issue was briefed prior to the hearing. Although an advance ruling on the merits was contemplated, it was not made because the Chairman concluded that an evidentiary hearing was required, as more fully explained in the attached Interim Advisory Ruling. During the course of the hearing, manning was treated as a separate issue; witnesses were called, evidence was submitted, and the matter once again briefed. The issue was considered a mandatory subject of bargaining for procedural reasons - to permit a final disposition of this case, regardless of how the underlying question is ultimately decided.

The controversy in this case centers around Article VIII, Section 1 of the Agreement:

> The City shall at all times maintain a minimum complement of fifteen (15) 24-hour fire fighters on duty each shift.

The City contends that manning is a management prerogative; that the provision interferes with its right to determine the number of fire fighters that it uses to deliver fire services; that safety is not related to the number of men on a shift; and that the real objective of the clause is job security.

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[17] K-N-D School District v. K-N-D School Teachers Association, 393 Mich 583 (1975); St. Clair County Prosecutor v. AFSCME, 425 Mich 204 (1986).

The Union refers to the provision as a Safety Manning clause; it claims there is a direct correlation between fire fighters' safety and the number of men on a shift; less men, it says, threatens the safety of those engaged in suppression of a working fire.

MERC has held that a shift manning provision, like the one here, is a mandatory subject of bargaining. In City of Trenton v. Trenton Fire Fighters Union, 1985 MERC Lab Op 414, (appeal pending, Mich Ct of App No. 84908), it said,

> We agree with the Charging Party that the testimony in this case establishes that the number of firemen on duty affects significantly the safety of these men....[W]e find minimum manpower per shift to be a mandatory subject of bargaining because it constitutes a safety practice.

In Trenton, MERC apparently found record testimony to support the connection between shift manning and fire fighters' safety, but it did not articulate the specific reasons for its finding.

Recently, in City of Sault Ste. Marie v. Fraternal Order of Police, Labor Council, State Lodge of Michigan, Cases Nos. C84 D-21 and 103 (March 24, 1986), MERC said,

> In the instant case, the Union did not put detailed evidence on the record to establish the link between safety and the minimum manning clause. It simply asserted that the minimum number of patrol officers assigned to each shift and the number of officers assigned to each patrol car has a prima facie impact on safety. We agree with the Union that it is not necessary to support with detailed testimony the proposition that the minimum number of police patrol officers assigned to a shift has an impact on safety. (emphasis supplied).

This statement, and other similar statements in the case and in

Trenton,[18] lead me to conclude that MERC has determined that shift manning for fire fighters and police officers is per se, a mandatory subject of bargaining.[19]

Section 14 of Act 312 provides, in part, that "This act shall be deemed supplementary to Act No. 336 of the Public Acts of 1947, as amended..." MERC is the agency established by the legislature to interpret and apply the provisions of Act 336, referred to as the Public Employment Relations Act, subject to review by the courts. The obligation to bargain over mandatory subjects finds its genesis in Act 336. I thus feel obliged to follow the decisions of MERC and the courts on this subject. I am satisfied that MERC would conclude on the basis of its prior decisions and the record in this case, that minimum manning is a mandatory subject of bargaining. Therefore, I am constrained to find that Article VIII, Section 1 is a mandatory subject of

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[18] For example, "The proposal must, at least on its face, raise a safety issue. As noted above, however, we find minimum manning per shift proposals for firefighters and police patrol men to raise such safety issues." (Sault Ste Marie at page 7). "While the number of fire fighters actually needed per shift to ensure adequate safety is an appropriate topic for negotiations between the parties, to require the union to establish this by objective evidence as a prerequisite to demanding bargaining would be to place the cart before the horse." (Trenton at page421).

[19] The only Court decision directly on point is Alpena v. Alpena Fire Fighters Association, 56 Mich App 568 (1974). In a abbreviated decision, the Court found that shift manning was a mandatory subject of bargaining.

bargaining between the City and the Union.[20]

This leaves for determination the question of the proposal to be adopted on manning. The Union's proposal will be accepted. Seven of the comparable communities have written or oral

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[20] My constraint lies in the fact that I respectfully disagree with the conclusion reached in Trenton, Sault Ste. Marie, and Alpena. The reasons for this disagreement will be briefly noted. While not entirely free from doubt, I am unable to accept the basic premise that more men on a shift translates into safety for each fire fighter at a working fire. First, the manning provision is not limited to fire situations; it mandates a minimum number of men at all times. Second, the provision "on its face" does not raise a safety issue; it is directed exclusively at the minimum number of men on a shift. In this regard, the City's uncontradicted assertion is that it must employ all suppression employees to satisfy the manning requirements - virtually the entire force. Third, an analysis of the evidence establishes a safety connection in fighting fires between the number of men on individual pieces of equipment (pumpers and ladders) and on job tasks (running hose, entering a burning building, ventilation), but it requires an act of mental gymnastics to conclude that their safety is tied to numbers on the shift. Even the Union's expert witness tied safety to job duties and tasks. Fourth, a structure fire in one location is essentially the same as in another. Yet in Detroit, the initial response is with 20 men, in Jackson it is with 11 men, and in some of the smaller comparable communities it must be with even less men. If safety in fighting a fire was involved, presumably each city would have the same numbers initially responding. If more men are needed the City may call-back fire fighters and utilize mutual aid pacts with neighboring communities. Fifth, the City would be required to employ the minimum number of men even if it closed a station or took a piece of equipment out of service. Sixth, the minimum of 18 per shift was reduced through negotiations between the parties. And, interestingly, the number of injuries in fire fighting has since declined. Finally, a number of other state labor relations agencies have held that shift manning is not a mandatory subject of bargaining. International Association of Fire Fighters, Local 400 v. City of Fond Du Lac, Wis Emp Rel Bd Dec. No. 22373, (1985); Town of Reading v. Local 1640, Reading Firefighters, International Association of Fire Fighters, Mass Lab Rel Comm Case No. MUP-4541 (1983); Portland Firefighters Association, Local 740 v. City of Portland, Me Lab Rel Bd Case No 83-01, affirmed 117 LRRM 3142 (1984).

agreement on manning and the remaining six cover the subject by policy or past practice. Minimum manning in the comparable cities is on a total compliment, shift, or platoon basis. (The manning in Battle Creek is also tied to equipment). The City argues that those departments that have manning requirements as a matter of policy may change it unilaterally. That is not necessarily so, e.g., see City of Trenton v. Trenton Fire Fighters Union, supra. With the preponderance of the communities having a manning provision, the status quo will be continued. This requirement will not unduly disturb the City inasmuch as Chief Braunreiter testified that 15 men per shift was the most efficient and proper way to run the department and a method he would like to continue (Vol. 3, p.157).

Donald F. Sugerman

Note: This Document may be signed in counterpart.

Dated: January 8, 1987

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS DIVISION

JACKSON FIRE FIGHTERS ASSOCIATION,
LOCAL 1306, I.A.F.F., AFL-CIO,

Union,

-and- Case No. L85 D-430

CITY OF JACKSON,

Employer.

DECISION ON COMPARABLE COMMUNITIES

I

The City of Jackson (Employer or Jackson) and the Jackson Fire Fighters Association (Union) were unable to resolve the issue of "comparable communities"[1] in advance of the scheduled pre-hearing conference. However, at the conference held on November 22, 1985, the dispute was narrowed when the names of the following five cities were among those contained on the list prepared by each of the parties:

Battle Creek, Bay City, East Lansing, Muskegon, Port Huron.

Pursuant to arrangements made at the conference, the parties were

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[1] The importance of identifying these communities finds its genesis in certain provisions of Act 312. Section 8 requires the arbitration panel to predicate its decisions on the applicable factors delineated in section 9. One of those factors requires a comparison of the wages, hours and conditions of employment of the subject employees with those of employees performing similar services in public and in private employment in "comparable communities."

given an opportunity to amend their designation of comparable communities, exchange exhibits, and submit supporting briefs on this issue. They have now done each of those things.

The Employer proposed five other cities (and recently asked to delete one of those as discussed below) while the Union has selected eight separate cities as being comparable communities. In an attempt to expedite the hearing phase of this case (which begins on February 24, 1986), it was agreed that I would decide (without panel participation) which disputed cities were to be considered comparable communities.

It is appropriate to begin with the five consensual communities. No explanation was given by either party as to how it chose these five cities. While I may not have selected all five, it is proper to give great weight to the parties choices when they are reached by mutual agreement. Mutuality, of course, is the foundation of collective bargaining and theoretically this proceeding is an extension of that concept. Accordingly, the cities of Battle Creek, Bay City, East Lansing, Muskegon, and Port Huron will comprise the "model" for determining which of the disputed communities will be selected. I have considered the exhibits and the arguments of the parties and will discuss them below.

II

To select comparable communities, the Employer used a complicated process. First, it started with four general

categories (geography, taxpayer data, fire department data and physical characteristics of the city) from which it developed twenty eight subcategories. The twenty eight are:

1. Square Miles; 2. Population; 3. Density; 4. Percent of Population Below Poverty by Family; 5. Population by Fire Fighter; 6. Median Dollar Value Owner/Occupied Housing; 7. 1985 State Equalized Valuation (SEV); 8. Income Raised Operating Millage; 9. Income Raised Total City Milage; 10. Gen. Fund Budget Fiscal 84-85; 11. Fire Dept. Budget 84-85; 12. Fire Dept. Budget as Percent of Gen. Budget; 13. Per Capita Cost Fire Service; 14. Fire Alarms per Fire Personnel 1984; 15. Fire Alarms per 1000 Pop. 1984; 16. Property Loss 1984; 17. Dept. Size; 18. Number of Dwelling Units; 19. Number of Persons per Dwelling Unit; 20. Overcrowding of Dwellings; 21. Percent Change SEV Per Capita 1970 to 1980; 22. Relative Tax Burden 1984; 23. Percent SEV Commercial, 24. Industrial, 25. Residential, 26. Personal Property; 27. Total Income Operating Millage and City Income Tax; 28. Median Family Income.

Second, it selected for comparison cities that fell within a population range and geographical area that it chose; between ten and fifty four thousand persons in a land area bounded on the north by a line drawn across the state just above Mount Pleasant, Midland and Bay City and on the south, east and west by the state line. From the candidates produced by this method, the Employer excluded cities around Detroit because it says that:

> "the entire social and economic environment within the Detroit metropolitan area differs from that in what is known as outstate Michigan."

Third, with these components in place, the Employer then applied each of its twenty eight factors to the model (and Jackson) to produce what it calls "the range of comparability" which is the high and low figure for each factor. An example might make this clearer. Factor No. 1 is Square Miles. The

range of the six cities is from 7.9 miles (Port Huron) to 43 miles (Battle Creek). Fourth, a city is then awarded one credit for each factor falling within the range of comparability. Lastly, a city that falls within the range of comparability on at least fifty percent of the factors (fourteen credits) is deemed a comparable community.[2] Based on this "standard" the Employer proposed Adrian, Holland, Midland, Portage, and Wyoming as comparable communities.[3]

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[2] There are several errors in the Employer's Summary of Factors. It shows that East Lansing has 96.43 and Port Huron 92.86 percent of the twenty eight factors. However, under the method utilized by the Employer each city in the model together with Jackson must score 100 percent. On inspection, these deviations are the result of clerical errors and missing information. On Exhibit 3 the range is shown to be from 1,300 (Battle Creek) to 3,851 (Bay City). The upper range should, in fact, be 5,710 for East Lansing. This correction would result in East Lansing, Muskegon, and Port Huron each receiving one more credit. With respect to Factor No. 16, it appears that a report of property loss for Port Huron was not made and it should be excluded from this category.

[3] Just as I was about to issue this Decision, the Employer notified me of an error in factor No. 9 - Income Raised from Total City Millage. The high range figure of $13,574,644 attributed to Jackson was incorrect; the actual figure for Jackson should be $3,922,644. This affects the range of comparability changing Jackson from the high to the low range designee and making Bay City the high designee (6,773,621). The effect of this change removes a credit from Midland and Monroe dropping them below the fifty percent watermark established by the Employer for selection as a comparable community. Accordingly, the Employer says that Midland should no longer be considered as a comparable. For some unexplained reason (perhaps oversight), Monroe was not selected as a comparable even though it previously met the criteria set forth by the Employer and is not in the Detroit Metropolitan Area. With the correction of the error this oversight becomes academic.

III

The Union describes certain "traditional factors" and suggests that the following be used in this case: population, land area, population density, fire department data, fire class rating, SEV total, per capita, and distribution. It then examines the range for the cities it proposes against the range for the cities proposed by the Employer (both of which include the model and Jackson). Again an example will be used. The range of square miles for the Union designated cities is 5.5 to 43, while that of the Employer is 6.4 to 43. The Union concludes that based on these factors, the eight cities it proposes favorably compare with those of the Employer.

Of the now 17 communities proposed by the parties, only Holland and Portage deliver fire service with a combination full time and volunteer staff; 25/30 and 28/36 respectively. The Union contends that this mixed staffing distorts much of the data relied on by the Employer. As with the Employer's objection to the use of Detroit area cities, the Union protests the use of Holland and Portage as comparable communities.

In its brief, the Union accepted Adrian, Midland, and Wyoming as comparable communities.[4] Because of the importance

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[4] With the Employer's change of position on Midland (see footnote 3), procedural fairness required that the Union be given the option of concurring in the Employer's request or having Midland treated as one of the cities in dispute. The Union notified me of its consent to Midland being withdrawn from consideration.

placed on mutual agreement, I will include Adrian and Wyoming among the comparable cities discussed in the following Section.

IV

Both parties agree that the statute does not define the term "comparable communities" or provide guidance on the factors to be used in deciding this issue. They also agree that no two communities exactly resemble one another. They disagree on the method for making the comparisons.

The Employer would meet this "impossible task" by examining "all relevant data" and says that the Union's examination is superficial because it reviews "only a few relevant elements." The Union sets forth "traditional" factors and derides the Employer's analysis claiming:

> "it has created an arbitrary list of ... factors ... some of which are totally irrelevant, and selected those cities ... according to a range also invented by the City."

One cannot deny being somewhat flummoxed in this area. Is this whole review a proverbial comparison of apples and oranges, or is it one which can, in fact, meet the goals of the statute? In my opinion it is the latter, although not very precise and not without dispute.

The first step in this process is to determine which factors are relevant and which are not. The second step is to determine

how the relevant factors should be applied. No method used in this area will be exact. Instead, the procedure is somewhat like that which is used for determining first downs in a football game. There, an official places the ball at the "approximate" point it was downed and a measuring device is then used to see whether it was moved an exact distance.

The parties agree that certain data is essential for making comparisons. They each include the following factors in their respective presentations: (A). Fire Department Data about the number of persons involved in fire fighting operations (Union 1 and Employer 17); (B). Comparison of Population and Land Area Including Population Per Square Mile (Union 3, Employer 1, 2, and 3); (C). The Total SEV (Union 4, Employer 7); and (D). The SEV Distribution by Classification (Union 5, Employer 23, 24, 25, and 26). Arbitration Panels have universally considered these factors in determining comparable communities and they have been used in this case as well.[5]

The Employer has spent considerable time and has made a determined effort to devise a series of factors showing a profile for each community by which comparisons may be made. In addition

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[5] I have also used the Fire Class Rating (Union Exhibit 2) as a factor in deciding this matter. It is a system developed by the Insurance Service Office (hence "ISO"), which is a private concern that assists in establishing fire insurance rates for the insurance industry. Its grading schedule involves an examination of water supply, fire department, fire service communications, fire safety control, and climatic conditions. The rating is a composite evaluation of the communities ability to provide fire services and is a tool to be used here.

to those noted in the paragraph above, I believe that factors Nos. 5, 9, 10, 11, 12, 13, 14, 15, and 16 also provide relevant financial and fire department information to help in comparing communities. So to, although to a lesser degree do Nos. 3, 6, 18, 19, 20,[6] and 28 which give body to the character of the community. Conversely, I do not believe the remaining factors to be of much assistance. A general explanation with some examples will suffice.

The amount a city raises through millage is a factor on which a comparison with other cities can be made. However, I do not see much point in two separate measurements represented by Employer Factors Nos. 8 and 9 especially where the latter includes the information from the former. This type of information creates an overlap. Even more suspect is Factor No. 27. This item is entitled "Total of Income from Operating Millage and City Income Tax". Like Factor No. 9, it includes the information found on Factor No. 8. However, on closer inspection, it appears that only four of the twenty two cities listed on No. 27 even have an income tax. Therefore, combining the categories is misleading and under the formula devised by the Employer results in overvaluing Factor No. 8 by, in effect,

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[6] The Union contends that these last three Factors are redundant because they are all functions of density. Density, as that term is used by the parties, is simply the result of dividing the population by the number of square miles for each city. This averages the population per square mile. This factors give different information and show the fabric and texture of a community.

crediting it twice.

We turn now to the question of how to apply the information produced by the parties to determine which disputed communities should be selected. While answering this, it is helpful to remember the statement of the Court in Spaulding v. University of Washington, 740 F.2d 686 (9th Cir.), cert. denied, 105 S.Ct. 511 (1984):

> We are still sobered by the warnings that statistical evidence has an 'inherently slippery nature' Wilkins v. University of Houston, 654 F.2d 388, 395 (5th Cir. 1981) and can be exaggerated, oversimplified, or distorted to create support for a position that is not otherwise supported by the evidence.

I have borrowed from each of parties in selecting the procedure for determining comparable communities. The Factors (for the most part) advanced by the Employer provide more substance for constructing a profile than the limited ones submitted by the Union. On the other hand, the Employer apparently had to labor mightily to select some of the categories (Percent Change in SEV Per Capita 1970-1980, and 1984 Relative Tax Burden). Once having selected the categories, it somewhat arbitrarily assigned an equal value to each factor and decided a community was comparable if it then received credits on one half of them. Instead, in this area I have followed the Union's general approach by examining whether the data for each disputed city harmonizes with the data from the "range of comparability."

I have established a baseline by using the data for the model cities, plus Jackson and factoring in the information for Adrian and Wyoming because they were mutually acceptable cities. I have compared the information for each city against the information developed by the baseline. And when there was a "favorable" comparison[7] an "X" has been placed in the appropriate square on the attached Appendix.

I have not assigned values to these individual factors or determined a minimum number of credits that a community must receive to be considered comparable. Instead, I have looked at emerging patterns on the three major categories (I - III) and the minor category (IV). This overview seems preferable to me because this question cannot be answered by the use of a precise mathematical formula. Like the "first down" analogy, the answer requires using relevant data, but not slavishly. Instead, it must be used with some flexibility and with some common sense. When viewed in this fashion, I find that the following are comparable to Jackson: Allen Park, Garden City, Lincoln Park, Saginaw, Southgate, and Trenton.[8]

Although Holland and Portage have many of the

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[7] This does not mean that the number for the City actually fell within the range, but that it was compatible with the numbers produced by the baseline system.

[8] I am unable to accept the argument that Detroit Metropolitan Area communities cannot be used as being comparable to Jackson. There is no probative evidence to establish the "outstate distinction" and I do not see substantial differences in the information submitted.

characteristics of a comparable community using the factors and information submitted by the Employer, they present a separate problem; a fire staff of full-time and volunteers or on-call personnel. This fact, skews the information reported in Employer factors 5, 11, 12, 13, 14, and 17. This aside, however, the purpose of using comparable communities is to permit a comparison of the wages and conditions of the employees who are the subject of the petition to their counterparts. I conclude that a fire department that delivers services through a combination force does not lend itself to comparison against a full time force. For that reason, I will not select Holland and Portage as comparable communities.

V

A comparison of wages and conditions for employees in comparable communities is only one of the factors to be examined by an arbitration panel in reaching its decision in an Act 312 case. In this proceeding, the cities of Adrian, Allen Park, Battle Creek, Bay City, East Lansing, Garden City, Lincoln Park, Muskegon, Port Huron, Saginaw, Southgate, Trenton, and Wyoming will be considered as comparable to the City of Jackson.

Donald F. Sugerman

Donald F. Sugerman

Bloomfield Hills, Michigan
February 1, 1986

APPENDIX

| | ALLEN PARK | ANN ARBOR | GARDEN CITY | HOLLAND | LINCOLN PARK | PONTIAC | PORTAGE | SAGINAW | SOUTHGATE | TRENTON |
|---|---|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | E | F | G | H | I | J |
| **I - PHYSICAL** | | | | | | | | | | |
| 1. Sq. Mi. 6 43 | X | X | X | X | X | X | X | X | X | X |
| 2. Pop. 21-59 | X | | X | X | X | | X | | X | X |
| 3. Density 13-39 | X | X | | X | | X | X | X | X | X |
| 4. SEV 164-739 | X | | X | X | X | X | X | X | X | X |
| a. Res. 37-71 | X | X | | X | X | | X | X | X | X |
| b. Ind. 02-25 | X | X | X | X | X | | X | X | X | X |
| c. Comm.15-24 | | | | X | X | X | X | | X | |
| d. Per. 5-20 | X | X | X | X | X | | X | X | X | |
| **II - FINANCIAL** | | | | | | | | | | |
| 1. Inc.Tot. Mil. 2.4-6 | X | | X | X | X | | X | X | X | X |
| 2. Ann. Bud. 4-22 | X | | X | X | X | | X | | X | X |
| 3. FD Bud. 825-3472 | X | | X | X | X | | X | | X | X |
| 4. FD%Gen.Bud.15-25 | X | X | X | X | X | X | X | X | X | X |
| 5. Per.Cap Cost FD 38-74 | X | X | X | X | X | | X | X | X | |
| **III - FIRE SERVICE** | | | | | | | | | | |
| 1. Size 22-99 | X | | X | X | X | | X | | X | X |
| 2. ISO 3-6 | X | X | X | X | X | X | X | X | X | X |
| 3. Pop.per FF 569-2484 | X | X | X | | X | X | X | X | X | X |
| 4. Al.per FF 2.6-7.5 | X | X | X | X | | X | X | X | | X |
| 5. Al.per M 2.6-10.6 | X | X | X | X | X | | X | X | X | X |
| 6. Prop.loss 500-2.7 | X | X | X | X | X | X | X | X | | X |
| **IV - Characteristics** | | | | | | | | | | |
| 1. No.Dwell. 7642-22M | X | | X | X | X | | X | | X | X |
| 2. Per.Dwell. 2.5-2.7 | X | X | | X | X | X | X | X | X | X |
| 3. Overcrwd. 2.2-6 | X | X | X | X | X | | | X | X | X |
| 4. Pop.below pov. 4-15 | | X | | X | X | X | X | | | X |
| 5. Med. Inc. 15M-25M | | X | X | X | X | X | X | X | | |

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS DIVISION

JACKSON FIRE FIGHTERS ASSOCIATION,
LOCAL 1306, I.A.F.F., AFL-CIO,

Labor Organization,

-and- Case No. L85 D-430

CITY OF JACKSON,

Employer.

INTERIM ADVISORY RULING

I

This dispute between the City of Jackson (City) and the Jackson Fire Fighters Association, Local 1036, I.A.F.F., AFL-CIO (Fire Fighters) is whether a certain provision in their 1982-1985 collective bargaining agreement involves a mandatory or a permissive subject of bargaining. A mandatory subject is one that constitutes or vitally affects wages, hours or other terms and conditions of employment and does not fall within "the core of entrepreneurial control" Fibreboard Paper Products Corporation v. N.L.R.B., 379 U.S. 203, 211 (1964) and includes "only issues that settle an aspect of the relationship between the employer and the employees." Allied Chemical Workers Local 1 v. Pittsburgh Plate Glass Company, 404 U.S. 157, 178 (1971).

Ordinarily, the federal courts defer to the expertise of the National Labor Relations Board in determining whether a

particular item is a mandatory or permissive subject of bargaining. Meat Cutters v. Jewel Tea Company, 381 U.S. 676, 685-686 (1965). "Congress deliberately left the words `wages, hours, and other terms and conditions of employment' without further definition for it did not intend to deprive the Board of the power further to define those terms in light of specific industrial practices." First National Maintenance Corporation v. N.L.R.B., 452 U.S. 666 (1981). Inasmuch as the Public Employment Relations Act is patterned after and closely parallels the National Labor Relations Act, it is not surprising that MERC and the State Courts give great weight to federal precedent. Detroit Police Officers Association v. Detroit, 391 Mich 44, 53 (1974).

The significance of this mandatory - permissive dichotomy is that a party is required to bargain in good faith only over a mandatory subject. N.L.R.B. v. Wooster Division of Borg-Warner Corporation, 356 U.S. 342, 349 (1958). The Michigan Supreme Court has applied the body of federal precedent in this area to disputes involving the public sector. Thus, in Local 1277 AFSCME v. Center Line, 414 Mich 642, 654 (1982), the Court held that the decision to lay off public employees was within the scope of management prerogative and, therefore, not a mandatory subject of bargaining.[1] And it said that an Act 312 arbitration panel "can

[1] MERC, like the NLRB, has special expertise in determining classifications of bargaining subjects. Therefore, it is surprising that the Michigan courts have decided such issues without soliciting the position of MERC or even referring to its decisions. Highland Park Board of Education, 1979 Labor Opinions 387; Eastern Michigan University, 1976 Labor Opinions 679.

only compel agreement as to mandatory subjects."

II

Section 1 of Article VIII of the parties 1982 - 1985 Agreement provides that:

> The City shall at all times maintain a minimum complement of fifteen (15) 24-hour fire fighters on duty each shift.

The City argues that "manning decisions, i.e. how much, if any, fire protection to provide, are a management prerogative and, therefor (sic), a permissive subject of collective bargaining." It reasons that the provision is a minimum manning requirement that, in effect, forbids it from laying off any fire personnel, and conflicts with its prerogative to manage fire operations. It relies on the decision in Local 1277 AFSCME, in support of its position. On the other hand, the Fire Fighters argue that the provision is "an on-duty per shift minimum manpower requirement". It also finds support for its position in Local 1277 AFSCME, noting that the Court approved a lower court decision holding a similar provision to be a mandatory subject of bargaining.

III

At the pre-hearing conference, I stated that I would issue an advisory opinion on whether the disputed provision was a mandatory or permissive subject of bargaining. The reason for it being advisory is that whether a particular subject is mandatory or permissive is for MERC and the courts to decide. An Act 312

arbitration panel has jurisdiction to establish contract provisions. Conversely, it does not have jurisdiction to define the terms used in PERA. I also noted in my confirming letter to the parties that to avoid fragmentation of this case, the panel would ultimately deal with the provision as though it was a mandatory subject. That is still the plan which will be followed.

Based exclusively on the language of Article VIII and case law, I believe that at this juncture the position of the City is stronger than that of the Fire Fighters. The Fire Fighters seem to suggest that a shift manning provision is, per se, a mandatory subject of bargaining. I do not agree. In the case cited for that proposition [Alpena v Fire Fighters Association, 56 Mich App 568 (1974)] the court said:

> The union representative testified that the number of firemen on duty affected not only the public safety, but also the firemen's safety. This position was supported by extensive testimony concerning fire fighting practices and procedures. A safety practice is a condition of employment. We hold, therefore, that the manpower award was within the subject matter and jurisdiction of the arbitration panel.(at 575, case citations omitted.

It was the fire fighters' safety[2] and the extensive testimony relating thereto that formed the basis for the finding that shift manning was a mandatory subject of bargaining. Since there is no

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[2] The "public safety" while an important governmental consideration does not, in my opinion, involve a term or condition of employment and cannot be used to establish a mandatory subject of bargaining.

record in the instant case, there is no evidence showing the necessary linkage between the fire fighters' safety and the manning requirement.[3]

The Fire Fighters recognize that a "total complement employed requirement" would not be a mandatory subject of bargaining. A provision designed to satisfy that objective, but masquerading under an acceptable designation would not receive approval either. The provision must primarily involve safety (or some other term or condition of employment).

The City asserts that safety claims for the manning provision will not withstand analysis. It points out that if it were to close a station or materially reduce the equipment in operation it would nonetheless be required to employ the same number of fire fighters.[4] Finally, it argues that if proportional lay offs were rejected as a safety claim in Local 1277 AFSCME, then certainly the restriction against any lay offs, even with substantially curtailed services, a fortiori militates against a finding of safety considerations. It is simply too early in the game to decide this issue. The Fire Fighters must be given an opportunity to demonstrate the nexus between shift

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[3] It is also possible that the manpower clause might involve employee workload, which has been held a mandatory subject of bargaining. Little Rock Downtowner, 145 NLRB 1286 (1964); Beacon Piece Dying and Finishing Company, 121 NLRB 953 (1958).

[4] According to the Petition there are 60 fire fighters. The City claims that under the manning provision it is required to employ 58 fire fighters.

manning and safety, workloads, or any other factor that would establish the provision as a mandatory subject of bargaining.

In Fire Fighters Union, Local 1186 v. City of Vallejo, 526 P.2d 971 (1974) the Supreme Court of California was faced with an issue similar to that posed by the disputed provision; a manpower - safety claim as opposed to a policy consideration. It said:

> Given the parties' divergent characterization of the instant manpower proposal, either one of which may well be accurate, we believe the proper course must be to submit the issue to the arbitrators so that a factual record may be established, The nature of the evidence presented to the arbitrators should largely disclose whether the manpower issue primarily involves the workload and safety of the men (`wages, hours and working conditions') or the policy of fire prevention of the city (`merits, necessity or organization of any governmental service'). On the basis of such a record, the arbitrators can properly determine in the first instance whether or not, and to what extent the present manpower proposal is arbitrable. at 979.

IV

Perhaps I was overly optimistic to suggest that an interim decision, even one that is only advisory, could be issued solely on the basis of argument by the parties. After a careful review of the cases, I am convinced that the holding of the California court quoted above sets forth a sensible procedure. In order to properly evaluate this issue it is necessary to have a complete record. A record is also needed in the event either party pursues this matter in court. Accordingly, this issue will be taken up during the hearing. For the reasons set forth above,

the Fire Fighters will have the burden of proof.

Donald F. Sugerman

Donald F. Sugerman

Bloomfield Hills, Michigan
January 8, 1986

fire fighter will receive $24,578 and will rank next to last among the thirteen comparable communities. If the Union's Offer wins, a fire fighter will receive $25,515. and move up two places.

When dollars are used, what standard is to be employed in making comparisons? Are employees whose wages are in issue to be moved to the average? To the median? Or to some other place on the scale? Comparability is better served by using percentages. An examination of the eleven cities[3] that had settled contracts for 1985-86 shows increases over the previous year ranging from 2.5% to 5%. The average increase in this group is 4.09% and the median is 4.0. Thus, the City's Offer of 3% rather than the Union's of 7% is closer to the model. When ability to pay is factored in, the City's lower offer should be accepted, and it is.

Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston

[3] The two comparable communities without contracts are Bay City and Garden City.

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Donald F. Sugerman

Michael F. Ward

Ronald R. Helveston DISSENT

[3] The two comparable communities without contracts are Bay City and Garden City.

It is somewhat difficult to use the same formulation for 1986-87 because of the number of comparable communities that have yet to settle contracts for the year. Of the seven cities with contracts, the average is 3.8% and the median 3.8%. Adrian appears to have settled for an unusually low figure - 1%. If it is excluded from the computation, the average is 4.3% and the median is 4.5%. It seems likely that with the CPI remaining almost flat, second year increases in the still to be heard from communities will parallel those for 1985-86. If that is the case, the City's Offer, again somewhat low, is more acceptable on an individual as well as a cumulative basis. Again taking into consideration the finances of the City, a conservative approach is warranted. The City's Offer for 1986-87 is accepted.

Donald F. Sugerman

Donald F. Sugerman

Michael F. Ward.

Michael F. Ward

Ronald R. Helveston

Of the comparable communities only one, Trenton has settled with its fire fighters for the 1987-88 year. The increase there is 3.5% For the three years involved in this proceeding, the Trenton wage settlement is 2.5%, 5.5%, and 3.5% for a cumulative

It is somewhat difficult to use the same formulation for 1986-87 because of the number of comparable communities that have yet to settle contracts for the year. Of the seven cities with contracts, the average is 3.8% and the median 3.8%. Adrian appears to have settled for an unusually low figure - 1%. If it is excluded from the computation, the average is 4.3% and the median is 4.5%. It seems likely that with the CPI remaining almost flat, second year increases in the still to be heard from communities will parallel those for 1985-86. If that is the case, the City's Offer, again somewhat low, is more acceptable on an individual as well as a cumulative basis. Again taking into consideration the finances of the City, a conservative approach is warranted. The City's Offer for 1986-87 is accepted.

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total of 11.5%.[4] Although it is dangerous to predict the future, these figures and those of the other comparable communities suggest a pattern. And that pattern is one of increases averaging between 4% and 4.5% per year. Absent unusual circumstances, that amount seems fair to both the employees and to the City.

For the last year of the contract, the City has proposed 3.5% and the Union 7%. On a cumulative basis, the Union's Offer, albeit high, is closer to the three year estimate of between 12% and 13% for the comparable communities. By that time, the steps taken by the City to improve its financial condition, hopefully, will have borne fruit. These increases will enable the fire fighters to maintain their relative position among their counterparts in the comparable communities. Accordingly, the Union's Offer for 1987-88 is accepted.

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affected by the assignment." Moreover, work as a project manager is not considered when it comes to promotions. It is also significant that no grievance was ever filed by Captains alleging that they were performing work in a higher rated classification.

For the reasons set forth above, the Panel concludes that the expanded duties of Captains since the reorganization are not such as to warrant an increase in grade and rank. Therefore, the Offer of the City is accepted.

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## 3. STAND-BY PAY (Economic)

The three Assistant Chiefs and the Fire Inspector are on an on-call schedule. In a reorganization of the Department in 1983, the work week of Chiefs/Inspector was changed from a fifty-six hour cycle to a forty hour schedule; from 8:00 A.M. to 4:00 P.M., Monday through Friday with a one hour paid lunch period.[5] The

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Michael F. Ward

Ronald R. Helveston

## 4. UNIFORMS AND UNIFORM ALLOWANCE (Economic)

Being a paramilitary organization, Department employees are required to wear uniforms. Under the current arrangement, an account is maintained for each employee who is credited with $160.00 annually. Through the use of purchase orders, employees obtain articles that make up the uniform. These items are distinguished from protective clothing or "turn out gear" worn by fire fighters in fire suppression work.

The Union contends that the $160.00 allowance has been unchanged since 1976 and is no longer adequate to provide a fire fighter with a uniform. It proposes to increase the allowance to $250.00, an amount that it claims is still below the cost of maintaining a uniform and less than the equivalent increase in

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one. In the comparable communities there is a split; eight have uniform allowances and five provide uniforms. A significant factor is the collective bargaining contracts between the City and the Fraternal Order of Police and the United Steel Workers of America. Those contracts have provisions similar to the one being proposed by the City; uniforms are supplied to police officers and to maintenance and other designated employees. Rather than becoming embroiled in a dispute over escalating costs for clothing, it seems natural to permit the City to supply the items that make up the uniforms for fire personnel.

Based upon the foregoing, the City's Offer will be accepted.

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Michael F. Ward

Ronald R. Helveston

5. DENTAL/OPTICAL COVERAGE (Economic)

The contract currently provides reimbursement - of up to $500.00 per year - for dental expenses incurred by employees, their spouses and dependant children. The Union seeks to increase this flat rate to $750.00, permit its use for optical expenses too, and allow the amount to be carried over from year

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accepted. The Union links optical and dental benefits together. Under its proposal, there is no limitation on optical benefits. An employee is entitled to reimbursement for all optical expenses, limited only by the maximums.

Only four of the thirteen comparable communities have optical benefits. And each of those plans has restrictive coverage. For example, in Allen Park, it is limited to a refraction and glasses once every two years; in Lincoln Park, it is limited to $150.00 per contract period (three years in this case) and; in Southgate, the city is limited to contributing $21.00 per employee, per year. Neither the comparable communities nor any of the other Section 9 standards warrant the introduction of an optical benefit, yet alone an open ended one of the type proposed here.

If the dental coverage is woefully inadequate, as asserted by the Union, it is difficult to determine exactly how it is improved by increasing the amount of coverage, but adding another undetermined expense to be paid from the same pie. For these reasons, the City's Offer will be accepted.

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Michael F. Ward

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## 6. PRESCRIPTION RIDER FOR RETIREES (Economic)

The Union proposes that effective January 1, 1987, the City pay for a prescription drug rider (with a $3.00 co-pay feature) to the medical/hospitalization insurance it furnishes to employees who retire after July 1, 1985. The City opposes this additional benefit.

To support this benefit, the Union relies on the comparable communities and on the equities of the situation. The City opposes the benefit because of its financial condition and the long term cost of this item that it projects as being in excess or $350,000.00.

Most of the comparable communities have some form of prescription drug rider for retirees. The Union's equitable argument is a powerful one; retirees on a fixed income are battered by inflation, at a time they can least cope with rising costs. The Panel is sympathetic to this dilemma.

While the overall CPI has had a moderate rise in the past two years medical and related costs have outdistanced all others. For example, in the City Exhibit filed September 22, 1986 shows a 1.6 percent increase for all items in the twelve months ending July 1986. For that same period, medical care cost led all other

increases and jumped 7.6 percent. Retirees have no protection against this unfortunate situation.

The City's costing of this item is totally misleading. It does not consider the cost for the term of the contract - which is exceedingly modest. Instead, it tracks all current employees from retirement to date of anticipated death and adds the highest cost on a cumulative basis. The same gerrymandering can be done for any benefit, but it is not the accepted method of determining cost.

The above factors lead the Panel to accept the Union's Offer.

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## 7. PENSION BENEFITS (Economic)

There are two pension programs that cover fire fighters. One plan is variously referred to as the "Charter," "Old," or "Closed" Plan. It covers fire fighters and police who were on

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An examination of the comparable communities convinces the Panel majority that the full package of benefits should not be implemented at this time. No comparable community has the twenty year retirement provision and only one community has the automatic escalator provision of the type proposed here; three others have a clause tied to the CPI that may go up or down. The Union's argument that these benefits will persuade the twenty Old Plan participants to transfer is to put the cart before the horse; especially when the estimated cost of the two items is considered. The City's Offers on the Service Years Requirement and on the Post-Retirement Escalator are accepted.

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The duty and non-duty disability proposals present an altogether different situation. The Union's proposal is designed to harmonize the two plans. The Union has represented that the smaller disability benefit under the Act 345 Plan is the primary

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reason why Old Plan participants continue in that Plan and switch at the last possible moment. Its assertion will not be tested. The comparable community test supports the non-duty disability proposal. Three communities also have the higher Act 345 duty disability benefit. The actuary considered the two item jointly in estimating the cost, which is nominal.

The interest and welfare of the public will also be served if this benefit moves the twenty active Old Plan participants to promptly transfer to the New Plan. Both actuaries predict substantial savings to the City if the transfer is accomplished; they differ only on the amount. If this savings occurs, it may form the basis for subsequent negotiated improvements in the New Plan. In view of the equity of providing a benefit for employees who cannot work because of illness or injury; the equity of bringing the benefit under the two plans into parity; the minimal cost of the benefit coupled with the potential savings to the City and; the comparable communities test (non-duty disability)- The Union's Offers on Duty and Non-Duty Disability Pensions are accepted.

Donald F. Sugerman

Ronald R. Helveston

Michael F Ward dissenting
Michael F. Ward

8. HEART AND LUNG PRESUMPTION (Non-economic)

An employee who becomes ill as a result of respiratory or heart disease has the burden of establishing that it was work related in order to be eligible for duty disability benefits. Because of the hazards of fire fighting and several instances in Jackson where fire fighters who allegedly sustained such duty related illnesses were initially denied benefits, the Union proposes to shift the burden of proof by adopting a presumption that the illness is duty related. The City opposes this change.

A five member Pension Board (Mayor, City Manager, Police Representative, Fire Fighter Representative, and a disinterested person appointed by those four[8]) decide whether the disease or illness is duty or non-duty related. "Four concurring votes shall be required on any decision or action by the Board." The decision of the Board is not necessarily the final word on the subject of disability; it may be contested.

The Board undoubtedly relies on opinions from medical experts. As we all know these "experts" frequently give conflicting opinions. The Union argues that if its proposal is accepted, a disabled employee will receive benefits while the

[8] The Union incorrectly notes that the 5th member is appointed by the Mayor.

matter is being contested. That might very well be the result because it is likely that Board members elected by the police and fire fighters will vote together to defeat a contrary motion. The Union objects to the present voting arrangement on the grounds that, "The political undercurrents and proclivities are obvious in this situation." They are just as obvious if it is reversed.

The current system, while not perfect, is basically neutral because it makes no presumption about the cause of the disability. This may work a temporary hardship on an employee whose condition is initially held to be non-disability related and is subsequently found to have a duty related disease or illness. But it is one common to all of the comparable communities, other City units, and for most workers throughout the State. Accordingly, the City's Offer is accepted.

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9. UNION ACTIVITY ON CITY TIME (Non-economic)

The current Agreement contains the following provision:

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10. RATE OF PAY; OVERTIME, CALL-BACK, ACTING RANK (Economic)

When fire suppression employees work overtime, are called-back to work, or work in an acting capacity in a higher classification, their rates of pay are calculated by dividing their annual salaries by 2080 hours. This is the method called for by the Agreement; for overtime and call-back, it has been in existence for the past twenty years, and possibly longer. Forty hour personnel are treated as working 2080 hours annually, but fire suppression employees work on a fifty-six hour schedule or 2912 hours per year. There lies the rub.

The City proposes that these premium pay items be determined by dividing the employee's annual salary by 2912 hours rather than 2080 arguing that the "actual" number of hours worked should be used. The rationale for this change is that it will save the City money and is supported by the practice in the comparable communities. Translating this into real dollars, the average Jackson fire fighter earned $1641.00 in premium pay at $18.07 per

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some extent, offsets the higher rate caused by using an artificial denominator.

A change in formulation, especially where it has historical roots, should be made only where a need for change has been demonstrated. That need is not present here. Accordingly, the Union's Offer is accepted.

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11. WORK WEEK FOR 40 HOUR PERSONNEL (Economic)

The Assistant Chiefs, Chief Fire Inspector, and Fire Inspector work from 8:00 A.M. to 4:00 P.M. Monday through Friday with a one hour paid lunch period. The City views this schedule as being a thirty-five hour work week. It proposes to extend the work day to 5:00 P.M. making it a forty hour work week.

The rationale for this change is threefold: First, the Chief works until 5:00 P.M. and as a result, he frequently has to answer telephone inquiries during this one hour overlap that would otherwise be handled by one of the Assistant Chiefs;

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stand-by pay for these same employees, the City argued that Assistant Chiefs knew that rotating on-call duty was required when they accepted the positions. They also knew the work week schedule, as did the Chief who was the architect of the reorganization. No persuasive reasons having been advanced to support this drastic change in schedule, the Union's Offer will be accepted.

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12. VACATIONS (Economic)

The thrust of the City's proposal is to achieve cost savings by reducing the vacation times for fifty-six hour personnel while leaving intact the vacation times for forty hour employees.[11] It would do this by "convert[ing] the present system of weeks earned to a system of hours earned and taken each year." The City

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No evidence was presented that the forty hour employees whose cause the City is championing have registered any complaints.

Another justification for the change is the situation among comparable communities and other City units. The number of duty days of vacation earned by employees in the comparable communities does not appear to favor the City's contention. The number of duty days earned by fire suppression employees in Jackson is about average (at every level - 1 year, 5 years, etc.). The City proposal would reduce the vacation entitlement by roughly one third across the board and would move Jackson to the lowest point on the scale of comparable communities. Nothing in this record justifies such a reduction.

The fact of the matter is that fire fighters who work on twenty-four hour schedules are sui generis. Their schedules cannot be compared to employees in other City departments who also work a forty hour week any more than they can be compared to forty hour Fire Department employees. For the above reasons, the Union's Offer will be accepted.

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That is one of the components that make up arbitration procedures. The City should be able to select for acting positions those fire fighters who have demonstrated an interest and ability to function in the position. If it is the seniority person, so much the better. Seniority has an important place in the implementation of contracts. But to apply seniority in utter disregard of the facts is unreasonable. For that reason, the City's Offer will be accepted.

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## 14. RESIDENCY (Non-economic)

The City proposes a residency requirement for new hires. Fire Fighters hired after July 1, 1986, must live in the City or become residents within twelve months as a condition of employment. The City Council believes that resident fire fighters "will be more responsive to the needs of the community, be a more visible, positive influence upon the community and be more readily available to serve the needs of the Fire Department." The City relies on these assertions plus the fact

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15. EXCLUSIVE AGREEMENT CLAUSE (Non-economic)

The City proposes that the following provision be added to this contract:

> It is understood and agreed that this Agreement constitutes the sole, only and entire agreement between the parties hereto and specifically cancels and supersedes any other agreements, civil service ordinances, personnel policy, past practice or understanding existing prior to the Agreement.

The purpose for this clause being advanced it to "prohibit employees from processing grievances through the contractual procedures and then reprocessing them through civil service ordinances, i.e. two bites at the same apple."

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> living up to their mutual commitments as embodied not only in the actual contract itself but also in the modes of action which have become an integral part of it.[12]

The underpinnings of a long standing relationship should not be casually and carelessly removed. To accept the proposal as worded has the potential for doing substantial harm.

The wrap-up clause is, of course, a mandatory subject of bargaining.[13] As such, it is better left to direct negotiations where the parties can identify the past practices, decide which ones are to be continued, and provide for them by incorporating them into the agreement, or in some other way.

The City noted two instances where the procedures of the Civil Service Commission were used to resolve disputes that allegedly were also contractual. There is no evidence that the Union, or the individual involved, exhausted one procedure and, failing to obtain the desired result, tried the other. The evidence indicates only two incidents in over ten years where an overlap ocurred in that both procedures may have been used.

This issue is more of a housekeeping detail than an actual problem. The Union does not seriously disagree with limited restriction articulated by the City. The City's proposal will be

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[12] Coca Cola Bottling Company, 9 LA 197 (Jacobs 1947).

[13] NLRB v. Tomco Communications, Inc. __F.2d__, 97 LRRM 2660, 2664 (9th Cir. 1978).

modified[14] to provide for an election of remedies. "If an employee or the Union processes a complaint or grievance that arguably constitutes an alleged violation of both the Agreement and the Civil Service Ordinance, the first forum chosen will be the exclusive method used for the resolution of that dispute."

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16. MINIMUM MANNING (Economic)

When the City filed its Answer to the Act 312 Petition it identified one of its issues as "Minimum manning elimination." This prompted the Union to write to the Director of MERC requesting that the issue be stricken from among those being submitted to arbitration because it was not raised during negotiations or mediation. The City replied that the issue had been previously raised and that the issue was encompassed within

14 The Union asserts that this issue is economic. The Chairman disagrees. To be considered economic, a proposal must directly involve a matter of economics. A wrap-up clause is only indirectly or tangentially economic in nature. Therefore, the Panel may modify the final offer.

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16. MINIMUM MANNING (Economic)

When the City filed its Answer to the Act 312 Petition it identified one of its issues as "Minimum manning elimination." This prompted the Union to write to the Director of MERC requesting that the issue be stricken from among those being submitted to arbitration because it was not raised during negotiations or mediation. The City replied that the issue had been previously raised and that the issue was encompassed within

14 The Union asserts that this issue is economic. The Chairman disagrees. To be considered economic, a proposal must directly involve a matter of economics. A wrap-up clause is only indirectly or tangentially economic in nature. Therefore, the Panel may modify the final offer.

agreement on manning and the remaining six cover the subject by policy or past practice. Minimum manning in the comparable cities is on a total compliment, shift, or platoon basis. (The manning in Battle Creek is also tied to equipment). The City argues that those departments that have manning requirements as a matter of policy may change it unilaterally. That is not necessarily so, e.g., see City of Trenton v. Trenton Fire Fighters Union, supra. With the preponderance of the communities having a manning provision, the status quo will be continued. This requirement will not unduly disturb the City inasmuch as Chief Braunreiter testified that 15 men per shift was the most efficient and proper way to run the department and a method he would like to continue (Vol. 3, p.157).

Donald F. Sugerman

Donald F. Sugerman

Ronald R. Richardson
Assent to the adoption of the Union's last offer of Status Quo on the safety manning provision.

Note: This Document may be signed in counterpart.

Dated: January 8, 1987