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STATE OF MICHIGAN

COMPULSORY ARBITRATION

IN THE MATTER OF:

THE CITY OF LANSING,

EMPLOYER,

and

FRATERNAL ORDER OF POLICE,
CAPITOL CITY LODGE NO. 141
(911 DIVISION), UNION

ARISING PURSUANT TO ACT 312,
PUBLIC ACTS OF 1969, AS AMENDED.

CASE NO. L90F-0264

ARBITRATION PANEL OPINION AND AWARD
IN ACT 312 PROCEEDINGS

APPEARANCES:

ALLEN J. KOVINSKY, Chairman

JAMES HEYDEN, Employer Delegate

JERRY LAWSON, Union Delegate

KAREN LaLONE, Union Delegate (Substitute)

CITY OF LANSING, by RICHARD PUTNEY, Labor Relations Director
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Lansing, MI 48933

FRATERNAL ORDER OF POLICE, CAPITOL CITY LODGE NO. 141
(911 DIVISION), UNION
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PRELIMINARY FACTUAL BACKGROUND

The City of Lansing, employer (hereinafter referred to as "the City"), and the Fraternal Order of Police, Capitol City Lodge No. 141 (911 Division) (hereinafter referred to as "the Union"), have been parties to a series of collective bargaining agreements. The 911 Unit is a Unit which is recognized as being subject to the provisions of Act 312 of the Public Acts of 1969. On July 22, 1991, the Union filed a Petition for Arbitration pursuant to the provisions of Act 312. Subsequently, on January 17, 1992, the representatives of the City and Union met with the impartial member of the Act 312 Arbitration Panel, Allen J. Kovinsky, for the purpose of setting forth the issues in dispute as well as any stipulations between the parties. At that time, Arbitration hearing dates were scheduled, and hearings subsequently took place on April 9, 10, and 13, 1992. Subsequently, the parties submitted last best offers on a timely basis and, subsequent thereto, the parties submitted briefs in support of their respective positions.

The parties have stipulated that the prior Collective Bargaining Agreement, as well as any Amendments and modifications to which the parties agreed prior to the Arbitration proceedings shall be and are hereby incorporated by reference as a part of this award. The parties further stipulated that the comparable communities used by the parties pursuant to the provisions of Act 312 would be the City of Battle Creek, the County of Muskegon, the City of Kalamazoo, the City of Grand Rapids, the City of East Lansing, the City of Sterling Heights, and Eaton County. The comparable communities were, by virtue of the stipulation, accepted

by the panel.

The issues were presented by agreement of the parties with the Union proceeding on each of its issues first, and the City responding with its rebuttal. The City, upon the completion of the Union issues, then proceeded with its issues, and upon the completion of each of its issues, the Union responded with its rebuttal. The parties presented numerous exhibits, as well as oral testimony and stipulations. The exhibits and the testimony are so voluminous as to prohibit a complete discussion in this Opinion and Award with respect to each and every exhibit and all of the testimony contained in the transcripts. However, the exhibits and the testimony were thoroughly reviewed prior to the issuance of the Award.

The Panel, pursuant to Section 8 of Act 312 of the Public Acts of 1969, has identified each of the issues before it, as either an economic or non-economic issue. The Panel, with respect to each issue hereinafter set forth, has adopted the last best offer, with respect to economic issues which, in the opinion of the Panel, most nearly complies with the applicable factors prescribed in Section 9 of Act 312 of the Public Acts of 1969, as hereinabove set forth. Further, with respect to those issues which have been defined as non-economic, the findings, opinions and orders of the Panel have been based upon the applicable factors prescribed in Section 9 of Act 312 of the Public Acts of 1969. The Panel has taken into consideration, in addition to the factors set forth in Section 9, the exhibits introduced by the parties, the testimony and arguments of the parties set forth in their briefs, as well as their last

best offers.

It is the belief of the Panel that each of the issues, as decided by the Panel, has been supported by competent, material and substantial evidence based upon the entire record. In addition, the Panel has taken into account the fact that ability to pay or a claim of poverty, as it is commonly known, has not been raised as an issue before the Panel. However, the Panel has also taken into consideration the City's plea that it must remain fiscally responsible.

It was further stipulated by the parties, due to the delay in holding hearings, obtaining transcripts and filing briefs, that each of the parties has specifically waived the six (6) month time requirement for the filing of the Act 312 Award.

I. WAGES

In its last best offer, the Union has requested an award of wages of four (4%) percent on July 1, 1990; four (4%) percent on January 1, 1991; three (3%) percent on July 1, 1991; three (3%) percent on January 1, 1992; and four (4%) percent on July 1, 1992. The effect of the Union wage proposal would grant an increase to the employees of an effective six (6%) percent for the fiscal July 1, 1990 fiscal year, four and one-half (4-1/2%) percent for the July 1, 1991 fiscal year, and four (4%) percent for the July 1, 1992 fiscal year. However, the overall effect would be an increase of eighteen (18%) percent without compounding the increases as proposed by the Union. The compounding effect would obviously increase those percentages by an additional amount.

The City, in its last best offer, has proposed a wage increase effective October 1, 1990, of five (5%) percent, a further wage increase of five (5%) percent effective October 1, 1991, and no increase for the fiscal year commencing on July 1, 1992.

The Union notes that the current wages for members represented by the Collective Bargaining Unit, effective July 1, 1989, consist of seven steps, from a low of $20,920.00, to a high of $27,799.00. The Union's last best offer for the first year of a new Collective Bargaining Agreement, would raise the wages from the prior enumerated figures to $22,627.00 effective January 1, 1991, at the low step, to a high of $30,067.00. The City's last best offer would raise the steps from the low of $20,920.00 to $21,966.00, and in the seventh step from $27,799.00 to $29,189.00.

The Union's wage proposal for the second year effective on January 1, 1992, including a prior requested increase on July 1, 1991, would increase the wages in the lowest step to $24,005.00 per year to the highest step of $31,898.00 per year.

The City's last best offer would raise the lowest step effective October 1, 1991 to $23,064.00 per year to the highest step of $30,648.00 per year.

The Union's third year proposal, effective July 1, 1992, would raise the lowest step to $24,965.00, and the highest step to $33,174.00, assuming the Union's proposals in the first and second years were adopted by the Panel.

There would be no change in the wage rates if the Panel were to adopt the City's proposal with respect to the third year of the Agreement commencing upon July 1, 1992.

Furthermore, in each of the three years, the Union has proposed that the current practice of granting merit increases should be continued.

The Union has noted that the Panel had ruled that each year of the Collective Bargaining Agreement would constitute a separate issue insofar as wages are concerned. Accordingly, both the Union and the City were aware of the fact that the Panel could adopt all of the City's wage proposals or, alternatively, all of the Union's proposals, or one or more of the annual proposals of the City and likewise one or more of the annual wage proposals and last best offers of the Union.

The Union believes that each of its wage proposals establishes a pattern that is consistent with wages afforded to other employees in the City, as well as a pattern of compensation that is supported by comparable statistics.

A comparison of the comparable communities indicates that if the Union's proposals would be accepted in the first year, based upon those figures which were available, only the City of East Lansing would have a higher rate of pay. In the second year, the City of Lansing 911 Operators would have the highest rate of pay among the comparable communities, and the same would be true for the third year of the Agreement. However, it should be noted that a number of the comparable communities had contracts which expired in 1991 and figures were unavailable for either 1991 or 1992. Nevertheless, with the possible exception of the City of Grand Rapids, it is most unlikely that any of the other comparable communities would have a rate of pay for 911 Operators in excess of

that proposed by the Union.

The Union, in support of its contention for its proposed wage increases, indicates that the position of the City that the improvements will create an unfair and insurmountable economic burden is unsupported by the evidence. The Union notes that, unlike other bargaining units under the jurisdiction of the City, who are dependent upon the general fund in order to establish rates of pay and fringe benefits, the funding for the equipment and operating cost of the 911 Center is primarily secured from revenue generated from a separate millage established for the specific purpose of funding the 911 program. Since the millage is based upon property values if, through normal inflationary increases property values increase so, too, does the amount generated by the millage for the 911 Center. Thus, the Union claims that the impact of modifications to the Collective Bargaining Agreement, insofar as wages is concerned, cannot be economically devastating to the City but, rather, has a minor impact upon the City general fund. The Union, based upon that analogy, concludes that it is entitled to receive an "equitable wage increase".

The Union contends that the City's last best offer, insofar as the dates proposed by the City are concerned, do not have any logical or established intervals that are proportionately related to the effective date of the Collective Bargaining Agreement, nor to the fiscal year of the City. The Union notes the difficulty of comparing the City's last best offer based upon the utilization of effective dates of October 1 of each year, as opposed to the normal July 1 effective date of wage increases, as well as the Collective

Bargaining Agreement. For example, the first year wage increase as proposed by the City of 5% having been delayed for three months beyond the commencement date of its fiscal year in effect only grants the Union an effective increase of 3.75% The Union also alleges that since the City's second year proposal is also based upon an effective date of October 1, that proposal also only constitutes an effective increase of 3.75% in the second year.

In support of its wage proposal, seeking increases at six (6) month intervals in the first two years of the new Collective Bargaining Agreement, the Union alleges that it has sought to accomplish a number of goals and address at least some of the objections voiced by the City to the Union's initial wage proposals. For example, the Union notes that by providing for wage increases of a lesser amount on a more frequent basis, the wage rates are increased, but the actual cost to the City during each year, as well as the overall contract period is reduced. This argument is based upon the fact that for the first year the Union seeks two 4% increases, the actual cost in that year only amounts to approximately 6.08%. However, the Panel wishes to note that the overall proposal of the Union for the first year would still establish a wage rate that is 8% higher than the preceding wage rate, although in the first year the cost may only be 6.08%. Nevertheless, after the first year, the cost is 8%. The same would be true with respect to the second year of the Union proposal. Thus, while in the first two years the City would pay out a total of 6.08% in the first year and an additional 6.08% in the second year, compounded on the first year's increase of a total of 8%, the

Union feels that the overall cost to the City would be less than if it were to propose 8% effective July 1, 1990, and an additional 8% effective July 1, 1991.

Further, in support of its contentions, the Union notes that its employees in the 911 Center have assumned more complex and extensive duties than were previously performed during prior Collective Bargaining Agreements. It notes that its members have assumed duties and responsibilities previously performed by police officers, as well as performing in a more complex and difficult atmosphere. Thus, the Union reasons that the compensation sought is not unreasonable in light of the enhanced work obligations and responsibilities its members have been asked to assume.

The Union acknowledges its proposal is more costly than the City's, but believes it is more reflective of the appropriate compensation which should be made available to 911 employees. Its position is more closely reflective of the relationship its members should hold to other comparable communities, and is not so expensive that it will unreasonably obligate the City to pay compensation that it cannot realistically afford.

The City, in contravention of the Union proposals, and in support of its own proposals, notes that the burden of proving by a preponderance of the evidence the validity of its claim for wage increases beyond those offered by the City rests with the Union. The City notes that the burden of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who, therefore, should naturally be expected to bear the risk of failure

of proof or persuasion. It notes that that standard has been accepted and adopted by labor arbitrators. The City further notes that the burden of proof incorporates both the burden of proceeding and the burden of persuasion. The burden of proceeding is merely a procedural distinction which requires the party who is the proponent of a particular issue to proceed forward first, while the burden of persuasion requires the proponent to make such an evidentiary showing that it is entitled to a decision in its favor.

The City alleges that the Union proposal represents an expense which the City is not prepared to assume. Therefore, it is incumbent upon the Union both to offer and prove a sound basis or rationale for its wage proposal. The City maintains that the Union, in its presentation to the Panel, failed to fulfill that condition. For example, the City notes that the Union in part based its wage proposal upon the fact that another Union (the Teamsters), enjoyed a reclassification which disrupted the historic relationship between the wages of the 911 Operators and the members of the Teamsters Union who perform services in the jail. The City notes that, while the Teamster members did receive a reclassification and wage increases in each of the three fiscal years commencing on July 1, 1989, 1990, and 1991, with the possible exception of merit increases, all Teamster wages had been frozen for the fiscal year commencing on July 1, 1992. The reclassification may have resulted in a two-step increase on the wage scale but, it took place in two different fiscal years and the two steps combined equalled an additional 10.4159%. Thus, for those Teamsters who enjoyed the reclassification over the three

year period commencing on July 1, 1989, and terminating on June 30, 1992, they received an effective overall increase of 24.4159%. However, as previously noted, for the fiscal year commencing on July 1, 1992, their wages were frozen. Thus, over a four year period of time, the Teamster members averaged slightly over six (6%) percent per year, including the increase in wages which resulted from the reclassification. The City further notes that the 911 Union, while it may have originally requested a reclassification, subsequently withdrew its proposal. The reclassification of the Teamster members, according to the City, was designed to address and correct an historical problem. Part of the problem was related to establishing reasonable pay differentials for supervisory, clerical, technical and professional employees.

The City further objects to the Union evidence that members of the City of Lansing Executive Management Compensation Plan received a 10.38% wage increase. The Union believed that that constituted a one year increase. In fact, that assertion was subsequently corrected on the record when it was stipulated that administrative employees received a total increase of 14% over three fiscal years. Further, with the exception of possible merit increases, as opposed to across the board wage increases, all City administrative salaries have been frozen for the fiscal year commencing on July 1, 1991. It was further indicated that, although the Teamster salaries were frozen as of July 1, 1992, the salaries are subject to possible change commencing in January of 1993. However, whether or not that change occurs will be based upon the collective

bargaining process between the City and Teamster representatives. In addition, the first Teamster wage increase, rather than taking place on July 1, 1989, took place on October 1, 1989, thus, in that year, the Teamsters only enjoyed a 3% wage increase, since the increase was effective for only nine months, although their overall rate of pay from and after that point of time was effectively increased by 4%.

The City further notes that for the July 1, 1990, fiscal year, Teamsters, exempt employees, police and firefighters all settled for a 5% wage increase. Thus, the City maintains that the internal comparables do not support the requested wage increase of the Union and, accordingly, the Union has failed to meet its required burden of proof.

The City objects to the testimony and evidence submitted in support of the Union's proposed wage increase commencing on July 1, 1991, based upon its assertion that the testimony submitted by the Union does not constitute adequate proof. The City notes that the Union witness, Karen Lalone, indicated that its second and third year proposals would allow the City to bear the burden of a wage increase more easily than if it were to increase the wages all in the first year for a three year contract.

The City notes that in addition to failing to provide any supporting evidence to coordinate the substantial improvement in wages, the compounded increase of the last best offer wage improvement would be 19.1% of payroll, which is approximately $1,080,000.00. Moreover, the City notes that other economic items requested by the Union would add approximately 6% additional costs

to the current payroll, above and beyond the wage increases. The City believes that an overall increase of 25% of payroll constitutes a fiscally irresponsible position by the Union, and one which the City is not willing to assume.

The City further notes that, pursuant to Section 9 of Act 312, one of the factors to be considered by the panel is the conditions of employment as well as the wages and fringe benefits enjoyed in comparable communities. It notes that the Act further mandates attention to overall compensation in those communities. The City notes that its own 911 technicians already receive significantly more overall compensation than the comparable communities utilized by the parties for purposes of these proceedings. The City further notes that the purpose of arbitration under Act 312 is to complement the collective bargaining process rather than frustrate it. The City believes frustration would occur if the Panel were to award the Union's proposal on wages. It notes that all of the City unions and exempt employees which had completed negotiations as of the close of the arbitration proceedings had agreed to wage increases of 5% in the first and second years of their agreements and a wage freeze in the third year of their agreements. It believes that those settlements should be utilized as a basis for the Panel's award in these proceedings. Otherwise the Union's proposals would exceed both the internal and external comparables and be detrimental to the collective bargaining process.

The City notes that, pursuant to Section 9 of Act 312(C), the interest and welfare of the public and the financial ability of the unit of government to meet the costs is a factor to be taken into

consideration by the Panel. In addition, the City notes that, pursuant to Paragraph (H), the Panel is obligated to consider such other factors, which are 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. The City believes that it has introduced relevant economic information, both internally and externally from its budget to substantiate its position. For example, property assessments are frozen, there is a decline in state shared revenues, a decline in the City income tax and revenue forecasts for the next fiscal year, and other factors which the City believes will adversely affect its budget in terms of revenue and expenditures.

The City notes that its external comparison of fringe benefits to comparable communities can only lead one to the conclusion that the 911 employees in the City of Lansing enjoy at least comparable if not greater fringe benefits and that their wages were higher in 1990 than every other comparable community without a wage increase. With the addition of the City's last best offer, the City 911 operators would be the second highest paid of all comparable communities on a 1990 versus 1992 comparable basis, even though they would not receive, according to the City proposal, a wage increase in 1992.

The City notes that it has attempted to be fiscally responsible with regard to operating millage levy and debt service

levy, since there has been a 45% increase in operating levy, and a 300% increase in debt levy. The millage has increased from 10.92 mills to 17.4 mills. However, according to Ms. Lazar, the City revenues have not grown at a sufficient pace to keep up with increasing costs. The City has attempted to meet its burden by raising taxes steadily. However, the City is subject to a number of property tax limitations related to truth in taxation rollbacks, Headlee rollbacks, and an assessment limitation.

Between 1986 and the current fiscal year, property tax collections increased by 73.82%. However, due to the fact that the City of Lansing is a home-rule City, it has a maximum operating levy authorized under the City Charter, and subject to Headlee limitations and state tax rollbacks. The current maximum is 20 mils. In addition, the City levys a City Income Tax which is applicable to residents and non-residents. The City is also subject to numerous other costs over which it has little or no control, such as a combined sewer overflow, subject to an E.P.A. mandate, which is estimated to subject the City to approximately $176,000,000.00 in costs. It notes that the City of Lansing has the highest property taxes of any comparable communities. It currently levys approximately 31.78 mils. Thus, City of Lansing residents have been required to assume a greater tax burden than residents in comparable communities. In addition, the State Equalized Valuation growth has taken place outside of the corporate limits of the City of Lansing in the suburbs for the past decade. The problem is further compounded by City support of State facilities which, in turn, do not pay their fair share of taxes for

that support. For example, the State of Michigan does not pay for any free services, water, streets, or any other kind of services except for a 50% fire reimbursement. Property assessments have been frozen and State shared revenue has been reduced. The current budget reflects a reduction from the prior fiscal year in excess of $1,000,000.00. In addition, revenue estimates based upon the City Income Tax have been revised downward. The City has projected a deficit for fiscal year 1992-1993 of $860,000.00, compounded atop a deficit of $1,425,000.00 in the preceding fiscal year. In addition, at the time of the hearing, the City was contemplating eliminating 60 full-time jobs and a number of part-time positions from the subsequents year's budget, including a whole bargaining group function. A proposed reduction between Teamsters and exempt personnel of 50 to 75 positions was also being contemplated. Even with those reductions, a projected deficit of $1,896,000.00 was made by the Budget and Finance Department. Ms. Lazar indicated that, although revenue growth in good years was running 2% to 3%, the growth of expenses was three times as much as the rate of growth in the revenue side of the budget. 76% of the City's revenue is based upon the City Income Tax, SEV, and State-shared revenues. The City cannot affect an increase in any of those three items. In addition, the City has lost income as a result of a decrease in interest rates, thus generating less revenue from investments. Ms. Lazar noted that the City is not yet bankrupt, nor was it pleading bankruptcy, however, the City was concerned about its practical ability to pay for the cost of services. No reduction in services nor in the number of employees

was contemplated with respect to the 911 Unit.

It should be noted that, while the City certainly is experiencing adverse financial times, it enjoyed a fund balance of approximately $10,288,000.00 at the time of the hearings. In addition, as previously noted, the City was not pleading poverty. It was merely indicating that if the current trend continues in a relatively short number of years there would be no fund balance available for wage and fringe benefit increases.

The City notes that its proposed wage increases for the first and second year of the Collective Bargaining Agreement can be paid. It further states that the third year proposal of no increase maintains the status quo for the bargaining unit in terms of avoiding layoffs, but does represent layoffs and early retirements for other employees within the City. The City does not believe that it is in a position to reduce any positions in the 911 Unit in order to offset a third year wage increase, due to the fact that it is a 7 day, 24 hour per day service. It notes that any award of the Panel for a third year would increase the projected deficit for fiscal year 1992 - 1993, above and beyond the current projected deficit of $860,000.00. The 911 operators in the City of Lansing, pursuant to the City wage proposal would, as previously noted, be the highest paid among the comparable communities for both 1990 and 1991. In the fiscal year commencing on July 1, 1992, the City notes that its 911 operators would become the second highest paid among the comparable communities, but further notes that the highest paid community, Sterling Heights, requires employee contributions of 3% for the first $7,800.00 of annual earnings, and

5% over $7,800.00, while the City of Lansing 911 dispatchers pay nothing whatsoever to their pension plan.

Finally, the City notes that, based upon internal comparables, the City has offered the same wage increase to the 911 Unit as it had previously given to its Teamsters and exempt employees.

Union Exhibit B-2 indicates that only the City of Kalamazoo and the City of Sterling Heights had Collective Bargaining Agreements in force at the time of the hearing, which included the third year of this Award (July 1, 1992 - June 30, 1993). All of the other comparable agreements ended or terminated on or before June 30, 1992. In terms of employees, the City of Lansing had the largest 911 Unit, consisting of 39 full time employees. The remaining comparables had from 11 to 30 full time employees. Union Exhibit B-5 indicates that many of the other comparable community 911 Units also included other cities, counties, and/or townships. The City of Lansing 911 Unit dispatches 6 fire units, 7 medical units, and 7 police units. The populations of the comparable communities indicate that the City of Lansing has the greatest population with approximately 193,000, while the lowest is in the City of Kalamazoo with 79,200 (Union Exhibit B-6). The State Equalized Valuation for 1991 indicates that the City of Lansing has the third highest S.E.V. The City of Sterling Heights has the highest at 2.429 billion, the City of Lansing had 1.439 billion, and the lowest was in the City of East Lansing, with 444 million. Union Exhibit C-5 indicates that, for the fiscal year 1989-1990, the top pay of a 911 technician was $27,799.00. The top pay in 1991 - 1992, for a 911 supervisor was $43,946.00, and for a

patrolman, $36,655.00. A sergeant in the police department had a top pay of $41,436.00. (Union Exhibit C-5). Union Exhibit C-6 indicates that in 1989 the 911 Unit enjoyed a 3.845% wage increase. The Lansing jail employees enjoyed a similar percentage increase while the 911 division supervisors enjoyed a substantially higher increase which was based in large measure upon a reclassification which took place at that time. In subsequent fiscal years, the increases for the jail employees and the 911 division supervisors were virtually identical at either 4.762% or 4.763%. Union Exhibit C-8 indicates that a fire dispatcher, a civilian dispatcher in the fire department, received a top salary of $30,942.00 for the fiscal 1991 - 1992 year. A detention officer in the jail in the same fiscal year received a top pay of $32,656.00. The requirements for the 911 technician and the civilian fire dispatcher are virtually identical, with the exception of the fact that no physical skills test is required of the 911 member, while a physical skills test is required of the fire dispatcher, but a psychological test is required of a 911 technician, while no psychological test is required of a fire dispatcher. Union Exhibit C-10 and City rebuttal Exhibit C-10A indicate a number of wage increases for various employees throughout the City, including across the board wages increases on October 1, 1989, July 1, 1990, and July 1, 1991, of 4%, 5% and 5% respectively. In addition, some employees during the same time frame received additional increases due to either reclassification or merit increases which are reflected in the wage scales set forth on those Exhibits. Union Exhibit C-12 indicates that all of the comparable communities with the exceptions of the

City of Kalamazoo and Muskegon County pay FICA, as do the employees. In Kalamazoo and Muskegon County the employees only pay the 1.45% for medicare. Union Exhibit C-12 also provides comparisons of Delta Dental benefits which will be referred to subsequently. Union Exhibit D-1 through 26 contains wage data previously set forth herein. Union Exhibit D-2 indicates that at the time of the hearing the City had proposed wages with increases of 3%, 4%, and 3.5% in each of the respective three fiscal years. This would have resulted in a top wage in 1992 of $30,820.24, as opposed to its current last best offer which would result in a top salary of $30,648.00. Union Exhibit D-3 indicates that in the City of Battle Creek in 1991, the top wage for a senior dispatcher would be $24,216.00, in the County of Muskegon, $27,576.00, in the City of Kalamazoo, $28,542.00 with an additional increase in 1992, bringing the top wage to $29,962.00, in the City of Grand Rapids, $28,193.00 or $30,320.00, depending upon the 911 classification, in the City of East Lansing in 1992, $28,100.00, in the City of Sterling Heights in 1992, $30,513.00, or in 1993, $31,810.00, and in Eaton County in 1991, $26,451.00. Union Exhibit D-8 indicates that cost of living increased from June of 1988 to June of 1991, based upon the Detroit CPI Index approximately 18.1%. Union Exhibit D-10 represents the General Fund balance of the City from 1981 through June 30, 1991. It indicates that in 1981 the Fund balance was $12,285,000.00, while on June 30, 1991, the Fund balance was $11,148,000.00. The lowest Fund balance during that period of time was $7,811,000.00 on June 30, 1982, while the highest Fund balance was $12,684,000.00 on June 30, 1990. Union

Exhibit D-11 indicates that total revenues between 1981 and 1991 increased from $39,861,000.00 to $70,397,000.00. From 1983 to 1991, operating expenses increased from $43,689,000.00 to $69,339,000.00. Thus, for the fiscal year commencing on July 1, 1990, and ending on June 30, 1991, the revenues of the City exceeded the operating expenses by approximately $1,060,000.00. Union Exhibit D-15 indicates that the total expenditures in 1991 were in the sum of $70,967,000.00, which exceeded the total revenue by $570,000.00. Union Exhibit D-17 indicates that the General Fund balance in 1981 represented 22.56% of total expenditures, and in 1991 represented 15.71% of expenditures. 1981 for the ten year time frame represented the highest General Fund balance expressed as a percentage of expenditures, while 1987 represented the lowest General Fund balance represented as a percentage of expenditures. During the same 10 year time frame, the police budget has increased from $8,813,000.00 to $13,320,000.00, the general administration budget from $9,943,000.00 to $20,084,000.00. The unreserved Fund balance in 1982 was $6,789,000.00, and in 1991 was $10,103,000.00 with a projection for 1992 of $9,764,000.00. Union Exhibit D-25 indicates that between the fiscal year ending June 30, 1981 and the fiscal year ending June 30, 1991, the City experienced five years of surpluses, and five years of deficits. In each of those years, the City had projected a final budget deficit, and in those years in which there was, in fact, a deficit, the City had projected a much larger deficit than that which actually took place. For example, in 1981 - 1982, a projected deficit of $9,158,000.00 occurred, while an actual deficit of $1,955,000.00 took place. In

1982 - 1983, and 1983 - 1984, there were projected deficits totalling in excess of $11,400,000.00, when in reality surpluses occurred of $330,000.00. In 1990 - 1991, a projected deficit of $8,356,000.00 was made, while the final deficit was $1,558,000.00. In the previous fiscal year, the projection was $5,774,000.00, and in fact the City experienced a surplus of $881,000.00.

The testimony of Ms. Lalone on behalf of the Union with regard to wages indicated that while the bargaining unit has 39 budgeted positions, in actuality approximately 35 are filled. The 911 Unit handles police, fire, and ambulance emergency calls. In addition, they respond to telephone inquiries after hours and on holidays and weekends for various police jurisdictions. The 911 Unit also does lien work for various agencies, checking warrants, running license plates, and obtaining other types of information for the police units under the 911 jurisdiction. In addition, the 911 Unit dispatches. It takes reports from officers and also prepares its own reports. Ms. Lalone, in support of the Union wage proposal, indicated that the 911 operators had received substantially higher salaries than employees working in the jail until the reclassification of those employees which resulted in a two step increase in their salaries, placing the jail employees ahead of the 911 Unit operators in terms of comparable salaries. She further stated that the 911 operators had also requested a reclassification but were told that there was no provision in the Collective Bargaining Agreement for a reclassification and, accordingly, the City would not have to engage in such a process. Ms. Lalone also indicated that a raise was justified due to the 911 operators

having to become familiar with new equipment and procedures as well as performing new responsibilities. Accordingly, she analyzed the situation of the 911 operators to that of the jailers who were reclassified as a result of new duties which resulted in a change in the jailers' job description. The new duties referred to by Ms. Lalone were reflected in Union Exhibit E-28 through 33. She further testified that the second and third year requested increases were designed to accomodate the City and the City's ability to pay, rather than having to pay an extremely large wage increase in one year at the beginning of the Collective Bargaining Agreement.

Ms. Lalone indicated that the supervisors in the 911 Unit who are members of the Teamsters Union also had received a reclassification resulting in a step and pay increase.

On cross examination, Ms. Lalone indicated that the Department handles approximately 7,000 reports per year. She further indicated that it was unusual for a 911 center to have civilians taking actual police reports with no police contact. She felt that taking certain police reports constituted doing the work of a police officer. The same was true with respect to taking accident reports. Ms. Lalone admitted that she was unfamiliar with the reclassification procedures set forth in the Teamsters Collective Bargaining Agreement. She further admitted that the 911 Unit had not requested a reclassification during the collective bargaining negotiations which preceded the 312 proceedings. She further explained her analogy of the 911 Unit to the jail by indicating that when she started in the Department, the dispatchers alternated

between working in the jail and working in the 911 center. After the Teamsters organized the jail unit and obtained job classification, the dispatchers were no longer allowed to work in the jail. Admittedly, the 911 operators are not responsible for handling prisoners. They do not escort prisoners to Court, nor do they run prisoners' records with regard to their criminal history. There is no interfacing with prisoners by 911 operators. Ms. Lalone further testified that the calls coming into the 911 center actually decreased by approximately 7.6% in 1991 from the 1990 level. In addition, the criminal offenses reports decreased by approximately 30%. However, that was apparently a composite figure and the reports generated by 911 operators were only down 8.94% whereas reports generated by police officers were down 41.76%. In 1991, the 911 Unit received 23,627 calls for service which resulted in 10,644 dispatches. It was further clarified during the testimony of Ms. Lalone that, while the two Teamster units received wage increases of 4%, 5% and 5% in the 1989, 1990, and 1991 fiscal years, they also received a two step increase due to a reclassification which combined equalled 10.4159% in additional salary increments. Thus, over the three year fiscal period the Teamster units received 24.4159% in wage increases with a freeze being placed upon the wages as of July 1, 1992, with the possibility of additional wage increases taking place on or after July 1, 1993, subject to the collective bargaining process. It should also be noted that the reclassification took place over a two year fiscal time frame, thus accounting for wage increases in excess of the 4% or 5% in two fiscal years, rather than one fiscal

year due to the reclassification salary increases.

On redirect examination, Ms. Lalone indicated that initially when the 911 operators are working on a computer or answering telephones, they are responsible for recognizing a malfunction and identifying the nature of the malfunction in order to explain it to the supervisor so that the malfunction can be rectified. The new telephone system is computerized and, in addition to performing the normal functions associated with a telephone it is also able to keep track of statistics, as well as prioritizing the order of the calls coming in. The telephones also keep track of the time of each conversation, how long it takes to go into a ready mode for the next call, and all of the statistics. The 911 system is an enhanced system, which means that when the call comes in, the address of the call is noted on a screen, the name of the person that the phone is registered to, and whether or not it is a business or residence or coin operated phone.

City rebuttal Exhibit 10-A was clarified during the proceedings in order to indicate that the Teamster employees did not receive the initial 4% wage increase until October 1, 1989. The administrative employees received the wage increase on July 1, 1989. The executive pay plan employees also received a similar increase at a similar time.

Charles Smiley testified that with respect to Union Exhibit C-7, the 14.42% increase in wages for 1989 for Teamster employees in the Lansing jail included the total wage increases received by the jailers for across the board increases and reclassification. It was made up of a 4% wage increase and a 10.42% reclassification

increase. He also corrected a computation on Union Exhibit D-4 which indicated a top figure of $36,478.00 for a City of East Lansing 911 operator, which should have been $26,478.00. The starting figure was corrected to be $20,384.00. The City of Battle Creek was corrected to a top pay of $23,285.00, and a starting pay of $22,100.00, for a regular dispatcher. For the City of Kalamazoo, the figures for 1990 were corrected to a starting pay of $19,982.00, and a top salary of $27,186.00. In Sterling Heights, the salary in 1990 had an entry rate of $21,503.00, with a top rate of $25,764.00. In 1991, the top rate of pay in Kalamazoo was $28,543.00, and for 1992, $29,963.00. The top rate in Sterling Heights was corrected to be $30,513.00.

Craig Baylis testified on behalf of the Union that in computing the costs of the Union's demands at the time of the hearing he obtained the base salary for the entire Unit from Ms. Lazar. That was calculated to be $1,026,000.00, plus overtime of $53,000.00. He then utilized that base figure for purposes of determining what the Union wage increase would cost the City. For each percent of increase requested by the Union, the cost was estimated to be $10,795.00. This did not include any roll-up costs for FICA or workers compensation or any other fringe benefits which would be increased by the same percentage or a pro-rata increase based upon that fringe benefit's cost in terms of payroll dollars. Mr. Baylis then prepared Union Exhibit D-27, which results in calculations for the cost of the Union proposals at that time, based upon three times the cost for the first year proposal, two times the cost for the second year proposal, and one times the cost

for the third year proposal. At that time the cost, based upon the Union position, would have been in excess of $500,000.00. However, that figure would be reduced based upon the last best offer of the Union, which was substantially less than the position of the Union at the time of the hearings. The budgeted cost for the bargaining unit of $1,079,000.00 prior to any wage increases was for the number of budgeted positions (39). Accordingly, if less positions were filled, then that cost would be reduced by the salary attributable to each position which was not filled.

In addition to the testimony previously referred to hereinabove, Janet Lazar testified in rebuttal to the Union position and in support of the City's position on wages, that she the Director of Budget and Management and Deputy Director of Finance for the City of Lansing, and has been employed by the City for the past 16-1/2 years. She had participated in the collective bargaining negotiations with the 911 Unit. During the course of Ms. Lazar's initial testimony City Exhibits 1 through 19 were introduced. On City Exhibit 1, which is a salary schedule of the comparable communities, in addition to the information contained therein, it was stipulated that the 1993 salaries for the City of Kalamazoo commenced on January 1, 1993, and the salaries in 1993 for the City of Sterling Heights commenced on July 1. The salaries reflect that the City of Battle Creek had a top wage for a regular dispatcher of $22,576.00, and for a senior dispatcher of $24,216.00 in 1991, with no figures available for 1992 or 1993. The County of Muskegon, for a level one dispatcher, had a top rate of $17,000.00 in 1990, $17,722.00 in 1991, and $18,430.00 in 1992. For a level

two dispatcher, the top wage was $21,914.00 in 1990, $22,845.00 in 1991, and $23,759.00 in 1992. For the City of Kalamazoo, the rates for a dispatcher were $27,186.00 in 1990, $28,543.00 in 1991, $29,963.00 in 1992, and $31,466.00 on January 1, 1993. In the City of Grand Rapids, the dispatchers consist of two classes. Class 951 had wages of $27,109.00 in 1990, $28,193.00 in 1991, and $30,195.00 in 1992. Class 952 in the City of Grand Rapids had wages of $29,154.00, $30,320.00, and $32,472.00 in each of the three respective years. The City of East Lansing had a top wage of $26,478.00 in June of 1990, $26,873.00 in December of 1990, $27,477.00 in June of 1991, and $28,101.00 in December of 1991, with no 1992 figures available beyond the salary increase which took place on December 23, 1991. The City of Sterling Heights, for the years 1990 through 1993 had a top wage of $25,764.00, $29,270.00, $30,513.00, and $31,810.00 effective July 1, 1993. Eaton County had a top wage in 1990 of $25,701.00, and $26,451 in 1991, with no figures available for 1992 or 1993.

City Exhibits 2-1 through 2-11 represent a comparison of the comparable communities with the City of Lansing on fringe benefits such as FICA, health care, life insurance, workers compensation, longevity, paid time off, vacation, sick leave, and if there are any sickness and accident policies, holidays, residency requirements, retirement plans, shift premiums, parking and other types of fringe benefits. Ms. Lazar indicated that City Exhibit 2-11 represents the educational reimbursements provided by the various comparable communities as well as items involving shift premium, parking and transportation, and other benefits if any.

City Exhibit 3 represents a graph comparison of the salaries of the 911 employees from 1986 to 1990, versus the CPI-W. The CPI-W is the Consumer Price Index for industrial, office and urban workers. Basically, the Exhibit indicates that the salaries of the 911 employees increased slightly more than the Consumer Price Index during that time frame.

City Exhibit 4 is a similar graph depicting the difference between the Consumer Price Index from 1986 to 1992 and the increase in health care premiums. The graph indicates that health care premiums escalated from approximately $2,700.00 in 1986, to over $5,000.00 per employee in 1992. The Consumer Price Index during the same years increased from slightly over 100 to about 130, so the net effect that, while the Consumer Price Index was increasing by approximately 30%, health care premiums almost doubled. Ms. Lazar indicated that the cost for the 911 employees for health care premiums was greater than some other units which had already agreed to health containment measures. Both the Teamster supervisors and the jail detention officers had agreed to health care cost containment. The system in place for those who agreed to a health care cost containment policy is two tiered. People hired after 1988 were responsible for the payment of all premium increases exceeding 5% a year, compounded on a cumulative basis. This meant that at the time of the hearings, some employees were paying $70.00 per month for their health care premium. In addition, they had agreed to a post-retirement health care containment policy. In return, certain amendments were made to the pension system in an alternative early retirement option which represents a portion of

the City proposals and will be referred to subsequently in this Opinion and Award. The 5% cap became effective in 1988 and the post-retirement health care cap became effective in 1990.

City Exhibit 5 indicates the property tax rates for 1982 through 1992 in the City of Lansing. The operating levy increased from 10.25 to 14.90 mils. The debt service levy increased from .67 to 2.5 mils, and the overall tax rates increased from 10.92 to 17.40 mils. Ms. Lazar testified that the millage rate reflected in City Exhibit 5 did not include the 911 millage since that was a County-wide millage as opposed to a City of Lansing millage. The millage was currently in either its fifth or sixth year. The millage is .85 mils. It is levied, controlled and disbursed by the Ingham County Board of Commissioners, which in turn disburses a portion of that millage to the City in order to operate the 911 center.

City Exhibit 6 is a bar graph representing the increase in property tax rates from 1982 to 1992, which is the same information as contained in City Exhibit 5.

City Exhibit 7 represents the operating levy millage in terms of mils, actual dollars, and comparative increases for the period 1986 to 1992. During that time frame, the operating levy millage increased from 10.25 to 14.90, and the property tax collections increased from $13,080,000.00 to $22,736,000.00. That Exhibit also did not include the 911 millage. City Exhibit 7 further demonstrates the increase in property tax collections, which results from an increase in both the State Equalized Valuation and the tax rate. During the time frame set forth in City Exhibit 7,

the property tax collections increased by a cumulative total of 73.82%, of which 19.5% was due to increases in the State Equalized Valuation, and 54.25% were due to raising the millage rate.

City Exhibit 8 demonstrates the City's operating millage versus the Charter millage limitation, based upon the fact that Lansing is a home rule City. The current maximum is 20 mills pursuant to the Charter. The City was not subject to a Headlee rollback at the time of the hearing. The cost to the City concerning the combined sewer overflow EPA mandate of $176,000,000.00 is attributable at least 50% to the General Fund. The servicing of that debt needs to be addressed out of either the property tax which would require an additional 5 mills to service, which would eliminate any millage available to the City for other operating costs based upon the current millage being utilized or, in the alternative, it will be necessary for the City to attempt to formulate a new utility district, which still would represent a new fee or tax to the residents. The EPA mandate requires that combined sewers handling storm water and sewage be separated.

In the past, Federal grants have been available for the separation of sewers. However, that is no longer the case. Thus, sewers will have to be separated and a new treatment facility constructed.

City Exhibit No. 9 is a bar graph representing the growth and general fund operating levies based upon the growth and S.E.V. versus tax rate increases. City Exhibit No. 10 represents the comparison of the City of Lansing property tax levies versus the property tax levies in the comparable communities as well as the

property tax equivalent in terms of the income tax levied by the City of Lansing versus the income tax levied, or in most cases, not levied, in other comparable communities. The Cities of Lansing, Battle Creek and Grand Rapids all levy a 1% City income tax on residents and a 1/2 of 1% on non-residents. The total property tax levies in Lansing are 17.4 mills down to a low of 6.525 mills in Muskegon County. The total equivalent millage factoring in the income tax goes from the low of 6.525 mills in Muskegon County, to a high of 31.78 mills in Lansing. The equivalent millage in Battle Creek and Grand Rapids where City income taxes are levied are 26.6314 and 22.134 mills respectively. The tax burden in the City of Lansing in approximately five times higher than that in Muskegon County and 25% higher than the City of Battle Creek which has the next highest burden amount the comparable communities. The City Exhibit did not include a calculation for the millage that is being levied for the operation of the 911 center. That millage is being levied against all of the residents of Ingham County. City Exhibit No. 11 is a bar graph representing the relative tax effort of the Cities which are comparable communities. The relative tax effort of the communities is based on a formula utilized by the State of Michigan in order to determine state revenue sharing. The higher the relative tax effort, the more dollars per resident are levied. This becomes a positive factor with regard to the State's revenue sharing determinations. In other words, those communities which levy the highest rate of taxes are treated more favorably under the State revenue sharing formula. The City of Lansing among those communities set forth on City Exhibit No. 11 has the greatest

relative tax effort. The Exhibit also included the .85 mills levied for 911 operating expenses. The Exhibit includes all taxes being paid by City of Lansing residents including school and county taxes.

City Exhibit No. 12 represents a comparison of State Equalized Valuation increases between the City of Lansing and Ingham County in the years 1980 through 1991. Ingham County enjoyed an increase during that time frame of 84.19% while the City of Lansing only had an increase of 52.45%. Thus, the growth in State Equalized Valuation in Ingham County was approximately 60% more than that in the City of Lansing. The City has experienced deteriorating property which has required demolition and has been turned into vacant land or bought back by the City for future redevelopment. This acts as a hindrance to the growth in State Equalized Valuation. In addition, all property owned by the State is exempt from taxation. However, all of the State employees working in the City of Lansing must either pay the resident or non-resident income tax. This is somewhat offset by a reduction in the number of State employees during the prior two years.

City Exhibit No. 13 is a comparison of the population in the City of Lansing and comparable communities. It differs from Union Exhibit No. D-6. The source is the Michigan Department of Management and Budget. It indicates that the populations of the comparable cities are 50,677 in East Lansing, as the smallest population, to the largest population in Grand Rapids of 189,126 with a population in the City of Lansing being the third highest at 127,312. It would appear that the reason for the difference in the

Exhibits of the Union and the City are based upon the Union having provided population figures for the entire jurisdiction served by 911 Unit in a comparable community which may include other cities or townships while the City of Lansing Exhibit represents the actual population in each community regardless of the overall jurisdiction which it serves.

City Exhibit No. 14 represents a comparison of the State Equalized Valuation in growth in the comparable communities for the years 1989-1991. It indicates that the growth in S.E.V. in the City of Lansing was the lowest among the comparable communities at 9.44% while the City of Battle Creek enjoyed the greatest growth at 20.45%. The Exhibit further indicates that the 1991 S.E.V. for the City of Lansing was the fourth highest among the comparable communities.

City Exhibit No. 15 is the Executive Budget for the City of Lansing for fiscal year 1991-92, and City Exhibit No. 127 is the Executive Budget for fiscal year 1992-93. City Exhibit No. 15 reflected a reduction from the prior year's budget for revenue in an amount in excess of $1 million. Subsequently, the income estimate was further revised downward. Admittedly, the budget until it is finalized upon the conclusion of the fiscal year represents an estimate by the Department of Budget and Finance with respect to potential revenues and expenses. The City has experienced a reduction in revenues in part due to cutbacks by the State of Michigan and General Motors in the employee work force. The 1991-92 budget estimated a loss or deficit in the sum of $1,425,000. That was to be made up from the general fund balance.

The budget for 1992-93 (City Exhibit No. 16) in some respects had good news for the City. Rather than a $1.425 million deficit at the time that the budget was prepared, the deficit was projected as only being $860,000. Thus, the projected deficit was some $565,000 less than the original estimated deficit in City Exhibit No. 15. This was due in part to a number of cost containment measures. For the next fiscal year (July 1, 1992 through June 30, 1993), the projected deficit is in the sum of $1,896,000 based in part by eliminating 60 full time and a number of part time positions. In addition, revenue growth is running at best 2 to 3 percent annually, while the growth and expenses is increasing at double digit figures. The City's S.E.V. is flat and for the current year property taxes are frozen. In addition, for the 1992-93 fiscal year, the budget does not contain any contingency or reserve funds. All contingencies and reserves are to be accounted for in the fund balance. The City may also be subject in the near future to a ruling which would require it to book up to $4 million in workers compensation liability that would have to be deducted from the fund balance and expensed immediately. It should be noted that as of the date of the hearing, City Exhibit No. 16 had not been formally adopted by the City Council, although it represented the proposed budget by the Mayor.

City Exhibit No. 17 is the Charter of the City of Lansing. The relevant portion for purposes of the hearing is set forth in Article 7 entitled "Taxation and Finance." It provides in Article 7.101 that the Mayor on or before the fourth Monday in March of each year is obligated to submit to the City Council a proposal for

the annual estimate of all City revenues and annual appropriation of expenditures for all City agencies except for the Board of Water and Light for the next fiscal year beginning on July 1st. In addition, Section 7.102 provides that the City Council must adopt a statement of City-wide budget policies and priorities each year, and shall transmit it to the Mayor no later than October 1. Section 7.103 sets forth requirements which must be contained in the Mayor's budget and message. In addition, Section 7.104 and Section 7.105 provide for hearings and adoption which must occur no later than the third Monday in May of each year. Section 7.108 provides for supplemental appropriations during the fiscal year. It allows for the transfer of unencumbered balances in whole or in part from any account and to provide for expenditures of revenues in excess of those in the budget or in order to meet a public emergency affecting life, health, property or other public peace which may require emergency appropriations as provided by law. In addition, Section 7.110 provides that the Director of Finances is required in October, January and April of fiscal year to submit to the Mayor and Council data showing the relationship between the estimated and actual revenues and expenditures to date. In addition, if the revenues are less than anticipated, the City Council by resolution reduce appropriations except amounts required for debt and interest charges to such a degree as may be necessary to keep expenditures equal to the revenues. Section 7.201 limits the power of the City to assess taxes to 2% of the assessed value of all real and personal property in the City for the ad valorem annual general tax levy.

On cross examination, Ms. Lazar indicated that reserves or funds allocated for settlements in appropriate departments were contained in the 1990-91 budget. No monies were set aside or allocated in the 1991-92 budget. The same is true for the 1992-93 budget. In addition, the City had not reserved any funds for potential bargaining unit contracts or arbitration decisions. A $350,000 capital improvement had been allocated for the 911 center contingent upon release of monies by Ingham County from the .85 mills that are levied for the operation of the 911 center. Although, 911 is funded through the County millage, it is included in the total police department budget. In addition to the 911 millage, governmental units that receive services through the 911 center do not make direct contributions to the City of Lansing. Ms. Lazar testified that she had received a 5% increase in wages on July 1, 1990, and an additional 5% on July 1, 1991. In addition, Ms. Lazar indicated that her wage rate was frozen as of July 1, 1992, and there would be no wage increase for that year. Ms. Lazar also indicated during the course of cross examination that with respect to overtime, the original budget estimated amount had been exceeded.

On redirect examination, the City introduced City Exhibits Nos. 18 and 19 which are the Collective Bargaining Agreements for the Teamsters Supervisory and Clerical, Technical and Professional Bargaining Units. The Collective Bargaining Agreement identified as Exhibit No. 19 at page 59 in Appendix B contained the procedure for classification review of teamster positions. It requires a committee which evaluates requests for reclassification. Ms. Lazar

is a member of that committee. The same procedure is applicable to the supervisory Bargaining Unit as set forth in City Exhibit No. 18. Mr. Putney, on behalf of the City, stipulated that if the City had wished to engage in reclassification of 911 positions, provided that the Bargaining Unit agreed, it could have done so even though the 911 Unit Collective Bargaining Agreement did not contain a reclassification procedure.

Upon being recalled as a witness, Ms. Lazar introduced Joint Exhibit 1, the Collective Bargaining Agreement effective July 1, 1987, and terminating on June 30, 1990, between the City of Lansing and the Union. In addition, a portion of the 1990-91 budget was produced as Joint Exhibit 2. The information contained in Joint Exhibit 2 relates to the wages exclusive of fringe benefits in the 911 Unit for that 1990-91 fiscal year. Joint Exhibit 3 is the 1991-92 portion of the budget with respect to the 911 Unit exclusive of fringe benefits. Joint Exhibit 4 indicates the fringe benefit rate as a percentage of salary for the fiscal years 1991, 1992, and 1993. The fringe benefits include a blended rate for all of the 911 Unit including salaried members of the Teamsters. It also indicates that many of the employees contribute 4 percent to the retirement program, but the 911 Unit, which is the subject matter of these proceedings, does not. The fringe benefits constituted 36.27 percent of payroll in 1991 and 1992, and is estimated to cost 37.3 percent in 1993. Joint Exhibit 3 reflects that 1990-91 budget for the 911 communication center for salaries was estimated to be $1,403,000 with an additional $284,000 in overtime, sick leave reimbursement, longevity, holiday pay,

miscellaneous and operating expenses, operating supplies, repair and maintenance, and equipment lease/purchase. For 1991-92, the 911 Unit salaries were $1,360,000 with an addition $290,000 for the other items set forth in the 1990-91 budget. Joint Exhibit 5 contains revenue file control figures for the fiscal years commencing on July 1, 1989, July 1, 1990, and July 1, 1991, terminating on June 30th of each year. In 1990 and 1991, the City had estimated that they would receive $300-$350,000 for equipment. None of that money was received. In the 1991-92 fiscal year, the City had estimated that it would receive $350,000 for equipment, and actually had received $330,000. In the three fiscal years, the City had projected that it would receive in the 1990 fiscal year $1,833,000 but actually received $1,596,000 from the County millage. The next year it estimated that it would receive $1,994,000, and actually received $1,721,000, and finally in the last fiscal year, the City estimated it would receive $2,097,000 and had received $1,276,000. However, additional payments could have been made subsequent to the close of the hearings for that fiscal year. In the fiscal year ending on June 30, 1991, the City had a budget for the entire 911 operation including fringe benefits in the amount of $2,204,000. They were reimbursed $1,721,000 from the County millage for those costs. The costs include both the supervisory and non-supervisory employees in the 911 Unit. It was believed that in the year ending on June 30, 1992, the City would receive approximately the same percentage of reimbursement for the operation of the 911 Unit as they had received in 1991. No indirect costs are billed to the County 911 millage rate since the

City is not receiving 100% of the direct related costs. The ratio of reimbursement to actual costs for the 911 Unit has remained fairly steady since 1986. Even though the City's S.E.V. has remained static, the increase in the County S.E.V. has contributed additional funds to the 911 Unit since the .85 mills are levied upon all real and personal property in the County. However, for fiscal year 1992-93, except for new construction, there will be no increase in the S.E.V. based upon a freeze. Joint Exhibit 6 is a letter from a policy analyst, John L. Neilsen, who is employed by the Ingham County Controller's office. It indicates that the City will receive approximately $1,839,000 for the 1991-92 fiscal year from the 911 millage. It is uncertain whether or not any further increases in the wages and fringe benefits of the 911 employees would be offset by a proportionate increase in the 911 revenue distributed by the County to the City. Ms. Lazar indicated that it would not be unreasonable to expect that the City would receive approximately $400,000 to $500,000 more from the millage by the end of the 1991-92 fiscal year.

City Exhibit No. 20 defines the CPI used by the City in prior exhibits. It covers 32% of the total population whereas the CPI-U covers approximately 80% of the total population.

It was further stipulated that for the fiscal year commencing on July 1, 1990, the City had reserved approximately $36,000 for 911 wage increases and approximately $15,000 for increases in fringe benefits. However, since no wage increases were granted and no fringe benefits were granted during that fiscal year, the monies were placed in the general fund and the budget year was closed out.

In other words, the reserves were not carried forward on July 1, 1991. The amount placed originally in reserve for wage increases represented a four percent increase for nine months of the fiscal year. It should be noted that an additional $64,000 for that fiscal year had been transferred into overtime in excess of the original budgeted amount of $28,550. No reserve was established for the July 1, 1991 through June 30, 1992 fiscal year. The same is true with respect to the July 1, 1992 through June 30, 1993 fiscal year.

WAGES - DISCUSSION AND DECISION

Section 9 of Act 312 of the Public Acts of 1969 sets forth the basis for findings, opinions and orders. Among the relevant factors set forth therein, we find the lawful authority of the employer, stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet those costs, 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 in public employment and comparable communities, and in private employment and comparable communities, the average consumer prices for goods and services commonly known as the cost of living, 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, changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, and 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 private employment.

The panel has taken into consideration, where applicable, each of the factors set forth in Section 9. With respect to the issue of wages, there is no question regarding the lawful authority of the employer, nor with respect to any stipulations that the parties may have entered into. The interest and welfare of the public and the financial ability of the unit of governmental to meet the costs of wage increase have been thoroughly reviewed. It is clear that among the comparable communities the City of Lansing residents bear the greatest tax burden. It is equally clear that while the City of Lansing has the financial ability to meet the costs associated with the Union request for wage increases, nevertheless, the City must maintain a financially fiscal responsible position. On the one hand, the City has a fund balance in excess of $10 million. According to acceptable accounting standards, most units of government are expected to maintain a fund balance which is the equivalent of at least ten percent of the annual budget. The fund balance that the City of Lansing currently enjoys is approximately

15% of the annual budget. However, the solid position of the fund balance of the City is offset by a number of factors including escalating costs exceeding increasing revenues and substantial potential future costs for items such as workers compensation and E.P.A. mandated storm water and sanitary sewer separation. The cost of wages to the City with respect to the 911 Unit and the financial ability of the City to meet those costs is tempered by the fact that the 911 Unit is funded to a large measure by the .85 County mill. Historically, the County millage has reimbursed the City for approximately two-thirds of the cost associated with the 911 Unit.

No exhibits were offered with regard to private employment in the comparable communities, nor within the City of Lansing. However, in the public sector, both the external and internal comparables indicate that the 911 Unit compares favorably. Historically, the 911 Unit has received the highest wages of any of the comparable communities. The 911 Unit is also being offered in the first two years of this Agreement wage increases which are comparable to those granted to other employees within the City. However, the wage increases sought by the Union are in part reflective of the fact that the Union feels that members of the Teamsters Union have received higher wage increases due to the fact that in addition to the across the board percentage increases given to the Teamsters, they also received a reclassification amounting to a wage increase of approximately 10.42 percent. Thus, while there has been no claim of parity between the 911 Unit and the Teamster employees, the historic differential in wages whereby the

911 employees receive higher wages than the Teamster employees has been eliminated, and in fact, the Teamsters are now receiving higher wages. Nevertheless, it must be noted that although the 911 Unit did not have access to the reclassification procedures utilized by the Teamsters due to a lack of such procedure within their contract as opposed to the Teamsters contract, nevertheless, the 911 Unit chose not to seek a reclassification or a reclassification procedure during the collective bargaining negotiations nor is such an issue before the panel. Accordingly, while some recognition must be given to the fact that the Teamsters over an approximate three year period enjoyed average wage increases in excess of eight percent per year and even with a freeze for the 1992-93 fiscal year, would still average an excess of six percent, this in and of itself cannot act as a justification for similar or identical wage increases in the 911 Unit. Externally, the 911 Unit has historically enjoyed the position of being the highest paid among the external comparable communities. In the event that the City's wage offers were to be imposed by the panel, that historic placement would no longer exist.

In considering the average consumer prices for goods and services commonly known as the cost of living, the three year proposal offered by the City would be somewhat less than the increase in the Consumer Price Index based upon an historical ten year review. The Consumer Price Index has increased approximately forty percent or four percent per year over the last ten years without taking into the consideration the compounding effect. The offer of the City would be an effective increase of ten percent

but, in terms of real money in the first year, since it would only cover nine months, it would only amount to 3.75 percent with an additional five percent in the second year and the carry over of those monies with no further increases in the third year. Effectively, for the term of this Agreement, the City offer could be viewed as an average of either 3-1/3 percent per year, or something less than three percent based upon the first year only being 3.75 percent in actual dollars. On the other hand, the offer by the Union which would consist of four raises in the first two years totalling fourteen percent and a raise in the third year of an additional four percent for a total of eighteen percent overall would result in an average of six percent per year. This is tempered by the fact that the Union offer is split into six month increments in the first two years, thus giving an effective wage increase of six percent in the first year, and an additional 4-1/2 percent in the second year exclusive of any compounding effects. The average for the Union offer over the three year period could be considered to be either six percent per year based upon the overall effect or something less than five percent per year based upon the actual wages sought by the Union in the first and second years of the Agreement.

Having reviewed all of the applicable factors, the panel is of the opinion that neither the City offer nor the Union offer with respect to all three years meets the criteria set forth in Section 9 of Act 312. Accordingly, each year will be treated as a separate and distinct issue for purposes of awarding wage increases. The panel also regrets the fact that the wage offers do not reflect the

same time frames. The City offers for the first and second years are based upon an October 1 date. The Union offers for the first and second years are based on a July 1 and January 1 date. Historically, the changes in salary have taken place at the commencement of the new fiscal year which falls on July 1. Apparently, since some other bargaining units had delayed their initial wage increases in 1990 until October 1, the City, in order to gain uniformity, has followed through with that date as being the commencement date for the wage increase in the first and second years of this Agreement with the 911 Unit. On the other hand, the Union, in order to lessen the impact of its wage proposals, chose to bifurcate its proposals in the first two years into six month increments. While this results in an eventual cost of eight percent for the first year and six percent for the second year, the actual cost as previously noted in the first and second years would be six percent and four and a half percent. Thus, the panel is faced with a choice of proposals which not only differ as to amounts but also differ as to the commencement dates for the increased wages in the first and second years.

Based upon a review of the record as well as the application of the statutory criteria, the panel is of the opinion that the last best offers of the City of Lansing for the first two years of the Agreement will more nearly comply with the criteria set forth in Act 312 than would that of the Union. Accordingly, the Union shall receive a wage increase in the sum of five percent retroactive to October 1, 1990, and an additional five percent retroactive to October 1, 1991.

However, I do not find that the City's offer of no increase on July 1, 1992, comes anywhere near meeting the statutory criteria. The City certainly has the ability to pay a wage increase. The fact that certain other employees have chosen to freeze their salaries while being worthy of consideration with respect to the City's last best offer in the third year, is not in and of itself the sole factor to which the panel must look. Some of those employees, according to the testimony, may well receive a raise in January of 1993. In addition, although the reclassification issue is not before the panel, it is clear that even if those employees represented by the Teamsters do not receive a raise in fiscal year 1992, nevertheless, they would have received substantially greater monies as a result of the reclassification and the across the board wage increase than did the 911 Unit. Moreover, the 911 Unit request in its last best offer of four percent effective July 1, 1992, would only increase the payroll by approximately $50,000. Assuming that the historic relationship of the County millage continues to be utilized, the most that the four percent increase would cost the City in terms of the payroll without reference to rollup and fringe benefit costs would be approximately $15,000 to $17,000. When viewed in light of a $75 or $76 million budget, the amount is virtually infinitesimal. Accordingly, the panel for the third year of the Collective Bargaining Agreement awards the Union's last best offer and the employees shall receive a wage increase effective July 1, 1992, in the sum of four percent.

Panel Member Heyden concurs with the panel's determination in the first and second years, and dissents as to the third year.

Panel Member Lalone dissents with the panel's determination for the first and second year, and concurs with the third year.

LONGEVITY

Under the current Collective Bargaining Agreement, although it is stated in terms of dollars rather than percentages, the employees receive two percent, four percent, six percent or eight percent. This was based upon a ceiling or cap of $16,000. Both the City and the Union in their last best offers agreed that the cap or ceiling should be changed to $17,000 on October 1, 1991, and $19,000 on October 1, 1992. Accordingly, both the City and the Union having agreed to an identical change, the panel will adopt the modification to the longevity payments as hereinabove set forth.

Both Panel Member Heyden and Panel Member Lalone concur.

SHIFT PREMIUM

The current Collective Bargaining Agreement provides its members of the Bargaining Unit working a shift commencing between the hours of 6:00 p.m. and 6:00 a.m. receive a shift premium in the amount of 40 cents per hour. The Union seeks an increase to the sum of 55 cents per hours effective July 1, 1991, and a second

increase to the sum of 65 cents per hour effective July 1, 1992. The City in its last best offer has proposed an increase to 50 cents per hour for all hours worked between 6:00 p.m. and 6:00 a.m. commencing on July 1, 1990, 55 cents for all hours worked between 6:00 p.m. and 6:00 a.m. commencing on July 1, 1991, and 60 cents per hour for all hours worked between 6:00 p.m. and 6:00 a.m. commencing on July 1, 1992.

The Union introduced in support of its position Union Exhibits G-1 through 3, and D-27. The City relied upon computations set forth in City Exhibit No. 2. No testimony was offered in support of either the Union or the City positions. Exhibit G-2 indicates that Teamster members in the City of Lansing receive a premium between the hours of 6:00 p.m. and 6:00 a.m. of 55 cents, 65 cents and 75 cents per hour for the years commencing on July 1, 1990, July 1, 1991, and July 1, 1992. Firefighters who work the second and third shifts have received a shift premium in the sum of 75 cents per hour since January 1, 1989.

External comparables indicate that in the City of Kalamazoo, employees working from 2:00 p.m. to 8:00 a.m. receive a flat payment ranging from $100 to $600 based upon service ranging from six months to five years. The City of East Lansing receives no shift premium, nor does Eaton County. The City of Sterling Heights pays an afternoon shift premium in the sum of 30 cents, and a midnight shift premium in the sum of 50 cents per hour. The City of Battle Creek pays no shift premium. The City of Grand Rapids, commencing on January 1, 1990, paid 45 cents per hour for the afternoon shift and 50 per hour for the midnight shift, and those

sums were increased by 5 cents per hour commencing on January 1, 1991. The County of Muskegon pays no shift premium.

The Union contends that its position represents a fairer and more equitable approach to an improvement in the shift premium. It will more closely coincide with the shift premiums afforded by the City to other bargaining units. Even then, the Union's last best offer is less than the amounts received by other bargaining units in the City. Thus, while not equalizing the 911 employees with Teamsters and Firefighters, the Union proposal more closely coincides with other bargaining units than does that of the City. The Union has estimated the cost of its proposal as being $7,200 in the first year and an additional $4,800 in the second year, for a total cost of $12,000. However, it should be noted that since the $7,200 would also carry over into the second year, the actual cost over the contract period would be $19,200. The Union notes that the cost pursuant to the City's proposal would be $2,400 in each year. However, it is the belief of the panel that the cost associated with the City's last best offer are not accurately stated since the 1990 proposed increase by the City would be in the sum of 10 cents per hour rather than 5 cents per hour which would, according to the Union figures, cost approximately $4,800 in the first year, with an additional $2,400 in cost in the second and third years. Thus, the total increase in cost would be $9,600 but the actual dollars expended would be a total of approximately $21,600 based upon the $4,800 cost in the first year carrying over into the second and third years, and the additional $2,400 cost in the second year carrying over into the third year, along with the

additional $2,400 cost of the third year. Thus, the actual cost in total dollars based upon the union proposal for the three year period is less than the actual cost of the City proposal. Ultimately, however, the cost in future years would be greater based upon a higher shift premium ultimately being arrived at in the Union proposal of 65 cents per hour as opposed to the City proposal which would have a maximum of 60 cents per hour.

There is no question that the shift premium offered by the City more nearly complies with the external comparables than does that of the Union. On the other hand, internally based upon a comparison with the Teamsters Union and the Lansing Firefighters Union, the 911 Unit last best offer more nearly complies with internal comparables. Consideration also must be given as it was in the case of wages to the fact that these costs will in all likelihood be passed along to the County millage on a ratio of approximately $2.00 paid by the County for each $1.00 paid by the City. It is the opinion of the panel that based upon the internal comparables as well as the small difference between the parties and the fact that most of the cost will in all likelihood be paid through the County millage revenue sharing, the Union proposal more nearly meets the requirements of Section 9 of Act 312. Accordingly, there will be no increase in the shift premium for the July 1, 1990 fiscal year. Those employees who worked between the hours of 6:00 p.m. and 6:00 a.m. shall receive retroactively an additional 15 cents per hour for shift premium from July 1, 1991 through June 30, 1992, and an additional 10 cents per hour for all hours worked between July 1, 1992 and June 30, 1993.

Panel Member Heyden dissents.

Panel Member Lalone concurs.

HOLIDAY PAY

The Union seeks a provision regarding overtime compensation on holidays which would provide that employees who are required to work more than eight hours on a holiday will receive double time for all hours worked in excess of eight hours. The City position is to retain the status quo.

The Union maintains that its proposal is designed to eliminate the practice of an employer requiring employees working a regular holiday shift to work an addition four hours in order to make up staff shortages which have been occasioned by the failure of the employer to schedule enough employees to work on the holiday shift, or due to the absence of an employee for reasons of illness. The Union maintains that otherwise employees working in excess of eight hours on a holiday receive a rate lower than the employee earned during the first eight hours worked on a holiday. An employee who works on a holiday currently is paid time and a half for the first eight hours worked at the employees hourly rate of pay, plus an additional eight hours off with pay to be taken on another date. In effect, the employee receives a total of 20 hours of pay. Any hours worked in excess of eight hours are compensated for at the rate of time and a half on a holiday. Accordingly, an employee who works twelve hours on a holiday would receive eighteen hours of pay

plus an additional day of eight hours that they can take off and be compensated for. Thus, the Union contends that while the employees receive time and a half pay for the additional hours worked, they do not receive any additional time off at a compensated rate equivalent to the additional hours worked. Thus, the Union believes that the employees who work in excess of eight hours a day are being treated in a disparate fashion while being inconvenienced to a greater extent on the holiday than those employees who only work eight hours. The practice, according to the Union, encourages the employer to work employees on a holiday more than eight hours in order to avoid bringing in other employees since the cost is significantly cheaper since the employer does not incur any additional compensated time off for the additional hours worked by an employee over and above the original eight hours as opposed to additional compensated time off for each employee who is brought in up to eight hours. The Union notes that by routinely engaging in this practice, the employer is allowed to condense three shifts of eight hours into two twelve hour shifts, thus utilizing the services of only two employees as opposed to three employees, and saving an additional eight hours of compensated time off. The Union believes that its proposal would eliminate the windfall to the employer and fairly compensate employees required to work more than eight hours on a contractually designated holiday. The Union alleges that the employer has offered no credible evidence to refute the justification for the increase in holiday compensation, and further that the claim of the employer that it is required to engage in the activity based upon the shortage of personnel neither

addresses the specific issue pertaining to appropriate and fair compensation to employees required to work more than eight hours on a holiday, nor is anything more than a subterfuge for saving the additional eight hours of compensated time off.

The City maintains that the Union failed to meet its burden of proof under any of the criteria for justification for awarding the Union's last best offer as set forth in Public Act 312. It further alleges the Union offered no rational in support of its proposal, nor did it sustain the burden of proving that the cost of the proposal was justified. In addition, the City maintains that the Union failed to sustains its burden of proving the merits of its proposal by reference to the conditions of employment in comparable communities. In addition, the City maintains that no other bargaining unit in the City enjoys a double time payment for hours worked in excess of eight hours on a holiday. The only Union Exhibit offered is H-1 which merely sets forth the Union proposal on this issue. Ms. Lalone testified as to the current method of compensating employees who work on a holiday. She indicated that in the past, overtime had not been a problem, but within the last year, it had become a problem since the City was requiring more overtime to be worked by employees on holidays. She testified that hours worked in excess of eight hours on a holiday are compensated at time and a half, but no bank time or compensated time off is received with regard to the additional hours, although the first eight hours do receive a credit which may be utilized as compensated time off. Ms. Lalone could not state with any degree of certainty the number of employees who have been required to work

beyond eight hours on any given holiday. She believed that at least one employee was being required to work in excess of eight hours on each holiday.

Based upon information received from Mr. Smiley, Ms. Lalone testified that to the best of her knowledge, none of the comparable communities had a provision similar to that which had been proposed by the Union. In addition, it would appear that no internal unit of the City has a comparable provision.

Since none of the internal or external comparables have a similar provision, and since no exhibit was offered documenting the number of employees who are required to work in excess of eight hours on a holiday, it would appear that the Union has failed to sustain its burden of proof. Accordingly, the last best offer of the Union is denied, and the status quo as offered by the City shall be maintained.

Panel Member Heyden concurs.

Panel Member Lalone dissents.

UNION LEAVE

Article 3, Section 4 of the Collective Bargaining Agreement entitled "Lodge Leave Time" provides that the Lodge has a total of 97 hours per fiscal year of Lodge leave time for functions deemed necessary by the Lodge President. The time is granted to the

President or Trustee in increments of not less than two hours. The Union seeks to increase the amount of leave time from 97 to 150 hours. The City's last best offer wishes to retain the status quo.

The Union maintains that the reason for this request is based upon the fact that during the last several years, additional time has been needed for Union activities. There have been occasions when Ms. Lalone has had to do Union business on her own time because the time provided under the terms of the current Agreement had already been exhausted. The Union acknowledges that the current time as well as the proposed increase in the time would be subject to prior approval of management and could be utilized by either the President of Trustee of the Union. The Union points out that the employer chose to refrain from presenting any rebuttal testimony or exhibits regarding this issue. Exhibit Nos. I-1 through I-3 were introduced in support of the Union position. Exhibit I-2 indicates that Teamsters receive 208 hours of Union leave time, Lansing Firefighters are allowed a total of 144 hours of leave time, the City of Kalamazoo grants up to 300 hours annually of Union related leave time, the City of East Lansing has no specific amount of time, but the Lodge President is allowed to attend Lodge meetings during working hours up to four times per year. In Eaton County, one employee may attend State Labor Council meetings without pay, up to three days at a time and at a total of no more than six days in one calendar year, for a total of 48 hours. Sterling Heights allows one member of the Bargaining Unit to be released from work at full pay for purposes of negotiations, grievances or other matters with City representatives, but it does

not cover other Union related activities. In addition to that provision, an additional 40 hours of unpaid leave time per contract year is granted to the unit for Union related activities. Battle Creek has no provision for Union leave time other than for special conferences which apparently are meetings between the City and the Union. The City of Grand Rapids allows a total of six days per year to attend conferences, but it is unclear as to whether the six days is related to a single individual or can be taken by more than one individual. The City of Muskegon has no provision for Union leave time. Ms. Lalone indicated that due to a coalition of Unions, the 97 hours per year for the two employees simply was not sufficient. In addition, she indicated that the hours are paid time off. The requested increase in the hours would also be paid time off.

On cross examination, Ms. Lalone admitted that various Union activities related to the Collective Bargaining Agreement including the meeting on grievances, attending arbitration hearings and negotiating the Collective Bargaining Agreement are compensated by the City over and above the 97 hours set forth in the Collective Bargaining Agreement. Ms. Lalone also acknowledged that the Union had not sought to have employees who are required to attend arbitration meetings, for example, switched from one shift to another so that they would not be working eight hours and then coming off the midnight shift to a morning meeting. She claimed to be unaware of the fact that in other bargaining units if the President or one of the members of the bargaining team was on the night shift, they could be transferred to the day shift in order to

participate in management Union meetings including arbitration, the grievance procedure, and negotiations. She indicated that with regard to the 312 arbitration proceedings, she had requested the time off for herself and Mr. Smiley as early as the 18th of January, and no one from the City had indicated that Mr. Smiley could be transferred from the midnight shift so that he would be working a day shift and be able to be present at the hearings during his normal hours of work. She also testified that generally the 97 hours of Union leave time are used for preparation such as preparing exhibits for arbitration proceedings, or interviewing witnesses for grievance proceedings and preparing an appropriate defense. In addition, she has used the time for preparing for meetings with a coalition of other City unions. It has not been necessary for her to use the time for Union meetings of her own union since she is assigned to the day shift and the union meetings do not take place at that time. She stated that it was her belief that she had already exhausted all of the 97 hours in the current year as of the date of the hearings. On occasion, Ms. Lalone has in fact changed her schedule in order to allow the City the avoidance of overtime payments. She admitted that she has never failed to complete a task due to the fact that she had run out of Union leave time. However, some of the work that she has done on behalf of the Union has been accomplished at night on her own time. She has also spent days when she is not scheduled to work on Union business. Finally, Ms. Lalone indicated that the FOP does conduct state and national conventions for which the additional hours could be utilized. While the external comparables are varied, some of

which would justify an increase and others of which do not, the internal comparables insofar as the Teamsters and Lansing Firefighters are concerned, certainly exceed the current leave time hours in the 911 Unit. The granting of the Union proposal would result in little, if any, inconvenience to the City. It would not appear that Lodge representatives have abused the provision in the past, nor could they reasonably be expected to abuse it in the future. In addition, management does have the right to deny the leave time in the event of an emergency or a situation requiring the employee to be on the job. Under no circumstances is the leave time granted without at least a 72 hour prior notification unless management deems it necessary to do so. Since, management offered no testimony and no exhibits with regard to this issue, and since the internal comparables are currently in excess of the leave time in the Union 911 contract, and since the cost at best would be minimal to the City, it is the opinion of the panel based upon the criteria set forth in Act 312 that the last best offer of the Union more nearly complies with and fulfills the criteria of the Act. Accordingly, the Union's last best offer is awarded by the panel, and the Collective Bargaining Agreement shall be amended to provide for 150 hours of Union leave time. However, that provision shall not be retroactive. It shall only apply from the date of the award forward or in other words for the fiscal year commencing upon July 1, 1992.

Panel Member Heyden dissents.

Panel Member Lalone concurs.

RETIREMENT

In support of its retirement proposals, the Union introduced Union Exhibit Nos. J-1 through J-5. Union Exhibit No. J-1 indicates that the City was proposing a new alternate retirement system with a 2.0 multiplier. The Union was proposing a new alternate retirement system if the multiplier was changed to 2.5. Union Exhibit No. J-2 presents a comparison of the current system with the proposal to modify it by the City in nine areas for present employees only. Under the present system there is a defined benefit plan. Under the proposal by the City, the option would have to be selected within six months of signing of the contract. Retirement under the present system is at age fifty-eight with a minimum of eight years service. Under the defined plan, there would be three options which would allow all the funds in the account to be left in the account until retirement age, or the funds could be rolled over into an IRA type of fund, or upon leaving the City, the employee would take all monies along with any earnings on the account to the point in time that the employee left. Under the present system, retirement also can occur at age fifty-five with twenty-five years of service; an employee can only take monthly payments; there is no lump sum payment; the monies cannot be part of an estate but are only paid to the current spouse under the current formula, the payment is based upon a multiplier of two times years of service times final average compensation; the amount of payment would not be affected by program investments, in

other words, the payment is fixed based upon the formula; and the City would propose to add to the present plan a duty and non-duty disability plan for employees with ten years of service or more, provided that the employee who was injured was unable to perform his/her present job. The City proposal in addition to the items hereinabove set forth would also provide that the City would contribute five percent for the retirement plan and one percent for the post-health care; the monies would be held in separate accounts for each employee; once a payment was made on the account by the City, all monies would be out of the control of the City; any funds now in an employee's present retirement account would be rolled over into the new account; there would be a financial planner provided by the City to help the employee determine what would be in the employee's best interest before any change would be made; there would be a long term disability plan providing for both on duty and non-duty related injuries; and any new employee hired would only have the option to enter into the new defined contribution plan proposed by the City as opposed to enrolling in the current plan. Union Exhibit No. J-3 is a further comparison of the present plan and the plan proposed by the City. Under the present system, there is a defined benefit upon retirement based upon the formula of a determination of final average compensation times a 2.0 multiplier times years of service. For example, an employee with twenty-five years of service would receive fifty percent of his final average compensation annually as a pension. In addition, under the present system, a retiree receives City paid health care. As previously noted, employees are eligible to retire

at a minimum of fifty-five years of age with twenty-five years of service or fifty-eight years of age with eight years of service. Under the proposed plan, the employees would have two basic options. They could continue in the defined benefit plan with the same formula but an added early retirement option when vested of early retirement when age plus service equals sixty-five points. They also would have a voluntary option during a six month window period to transfer to the defined contribution system. The amount to be transferred would be based upon an actuarial determination based upon the present value of the individual's pension which would be transferred in cash to a separate trust account known as a money purchase plan. The plan would allow employees to select their own investment mix upon various options, and when the employee leaves the City, the total dollar value of their account plus any earnings would become available to the employee. The monies could either be taken in a lump sum or rolled over into an IRA or be converted to an annuity which would pay out a monthly pension. The amount of the account would vary with earnings of each employee plus their investment choice performance. According to Exhibit No. J-3, in both of the cases set forth above, current employees would retain the same post retirement health care as if the new system had not been modified. A current employee would have the option to remain under the current system or to enroll in the new defined contribution system. New employees hired after the effective date would only be able to enroll in the defined contribution plan. Union Exhibit J-4 represents an internal comparison of other employees in the City as to their current

pension benefits as opposed to the 911 Unit. Employees covered under the executive plan, elected officials, Teamsters, District Court exempt employees, and employees represented by the U.A.W. all are entitled to retire with eight or more years of service at age fifty-eight, or under a rule of sixty-five based on service and age. They all have a 2.5 percent multiplier times years of service times final average compensation, and they all contribute four percent of their salary to the pension plan. The 911 Unit, park police, District Court Teamsters, and non-union housing employees all have a 2.0 multiplier with the same formula for retirement. The 911 Unit and the non-union housing employees do not contribute to the pension plan, while the park police contribute 3.4 percent of their salary and the District Court Teamsters contribute three percent. According to a note at the bottom of Union Exhibit No. J-4, of 680 Teamster employees, approximately 90 chose the defined benefit program proposed by the City.

The Union's proposal seeks to increase the multiplier from 2.0 to 2.5. It further provides that the rule of sixty-five would be applicable to members of its Bargaining Unit, and that the City's defined contribution plan would be applicable to employees hired into the Bargaining Unit after the effective date of the Collective Bargaining Agreement. In addition, the Union's last best offer includes a provision that employees in the Bargaining Unit would contribute to the increased cost of the retirement improvements based upon an employee contribution of four percent of the employee's wage effective July 1, 1992, and a reduction to three percent for the employee's contribution to the retirement system

effective June 30, 1993. The Union believes that the City's last best offer in relation to the retirement issue is essentially the same with the exception of the fact that the City's position did not include an increase in the multiplier but did include a provision for employee contributions toward the cost of the improved system. In addition, the Union notes that the parties are in apparent agreement with regard to the retention of health care benefits by members of the Bargaining Unit upon retirement and are in agreement with regard to the benefit formula of age plus service equally sixty-five points.

Exhibit J-5 according to the Union indicates that the cost associated with increasing the multiplier from 2.0 to 2.5 percent with the inclusion of the rule of sixty-five if new hires are limited to participation in the defined contribution plan proposed by the City would increase the cost by 4.15 percent. The Union believes its proposal constitutes the most sensible and economically effective means of improving the retirement program available to members of the Bargaining Unit. The Union notes that the Bargaining Unit members would be paying a significant share of the cost of the improvements. This then satisfies the City's concern of being fiscally responsible since the improvement in the retirement program for current members of the Bargaining Unit would be incurred without incurring a significant cost on the part of the employer. The Union notes that the adoption of the Union proposal would make it consistent with six other groups of employees who already enjoy the same benefits insofar as retirement is concerned. The Union has proposed a contribution in the sum of four percent

during the first year that the increase in the pension plan would take effect which is equal to that paid by other bargaining units which currently enjoy the various benefits hereinabove set forth. In the second year, the Union would seek to decrease its contribution from four percent to three percent.

In opposition to the Union proposal, the City alleges that the Union had the burden of proving by a preponderance of the evidence the validity of its position on the issue of retirement and has failed to sustain that burden. The City has indicated that there is no sound basis or rationale for the Union proposal. The City notes that based upon the Union's last best offer, the cost of its proposal would be approximately four percent of payroll or an additional $43,180 per year. The City believes that the Union failed to present any evidence to support the additional cost for their retirement proposal. In support of that contention, the City alleges that the Union has failed to indicate that its proposal is enjoyed in comparable communities. For example, the City notes that Eaton County has a 2.25 multiplier; Kalamazoo is 2.5; Grand Rapids is 2.4 with thirty years of service; Muskegon County is 2.25; Battle Creek is 2 percent which reduces to 1.7 percent based on the age at retirement; East Lansing is 2.0; and Sterling Heights is 2.0. The City believes that if the Union proposal were to be granted, the 911 operators based upon an overall composite of wages and fringe benefits would rank number one among the comparable communities, and in fact would represent a considerable additional cost per employee beyond that of any of the comparable communities. The City also alleges without further explanation that the internal

comparables do not support the Union's proposal.

Ms. Lalone testified on behalf of the Union with respect to the Union's pension positions. She indicated that the employees are currently vested with eight years of service, and have a 2.0 multiplier. The Union was requesting a 2.5 multiplier. She indicate that the new defined contribution plan offered by the City was acceptable to the Union on a voluntary basis for current employees, and a mandatory basis for future hires. Ms. Lalone also indicated that while the employees did not currently contribute to the pension plan in the 911 Unit, in prior years there had been an employee contribution. However, a number of years ago, the City assumed the employee contribution portion of the funding of the plan. She also indicated that if the City were willing to increase the multiplier from 2.0 to 2.5, the employees would be willing to contribute to the plan. In fact, she stated that in order for the plan to be feasible, it would be necessary for the employees to contribute. It was further noted that City Exhibit No. 2-10 sets forth the comparable provisions in the various communities. The multipliers have previously been noted. It should also be noted that insofar as employee contributions are concerned, the City of Lansing employees contribute nothing; Eaton County contributes six percent; it is unknown what if any contribution is made by the Cities of Kalamazoo, Battle Creek and East Lansing; the City of Grand Rapids employees contribute two percent; Muskegon County employees contribute three percent of the first $4,200 of salary, and five percent on the balance; and the City of Sterling Heights contributes three percent of the first $7,800, and either four or

five percent on the balance of their salary.

The City in rebuttal to the Union proposals and in support of its own proposals introduced the testimony of Ms. Lazar as well as a number of exhibits which will be referred to at the appropriate time.

Ms. Lazar indicated that Union Exhibit J-5 was prepared by Gabriel Roeder, the actuarial firm for the City's retirement systems. She had requested a cost proposal based upon changing the eligible ages from the current plan which requires either 55 years of age with 25 years of service or 58 years with 8 years of service to include a 65 point program and also to change the multiplier from 2.0 to 2.5 for the first 35 years, 1.5 through 40 years and 1.0 over 40 years. The actuarial study focused upon the current system and the cost if either current employees or new hires were placed in the alternate system proposed by the City which is the Defined Contribution System whereby the City pays 5 percent annually for retirement and 1 percent for deferring the cost towards post-retirement health care. The cost of increasing the multiplier was 3.21 percent of payroll. That was based upon retaining the existing system. The cost would be 1.66 percent of payroll if new hires are placed in the Alternate Defined Contribution System. Ms. Lazar also indicated that the City would be willing to allow current employees to transfer into the Defined Contribution System based upon a transfer of the funded present value of their benefit as determined by the actuaries. Ms. Lazar indicated that employees in the Defined Contribution System would have the option of either taking a lump sum payment upon leaving

the City or transferring the funds into an annuity or an IRA. The actuaries had indicated that if the current system was closed to new hires based upon the fact that a 30 year amortization is being used for funding the past service credit unfunded liability the cost for the improvements to the system would be relatively higher since there would be no new employees coming into the system. Ms. Lazar further clarified testimony of Ms. Lalone by indicating that since the new system proposed by the City was based upon a defined contribution there would be no multiplier. Accordingly, Ms. Lalone's testimony with regard to the multiplier was only applicable to the present system and not the proposed new City Defined Contribution System. It would appear that with respect to the City's proposed new Defined Contribution System, the only difference between the City and the Union, at the time of the hearing, was that the Union wanted new hires to be automatically placed in the new system as did the City but the Union also wanted current employees to have the option to transfer from the current system to the new system which the City had not agreed to as of the time of the hearing. The current employees, according to the Union, would be given a one-time window period in which they could elect that option to transfer from the old to the new system. The testimony further clarified the point that the contribution by Union members would only be applicable to those who remained in the old system and those who chose to transfer into the new system and/or future hires in the new system would no longer be required to make any contribution. Ms. Lazar further testified that the Rule of 65 was simply an early retirement option for employees in

the old system which was given in conjunction with the implementation of the Defined Contribution Plan but it is not applicable to the Defined Contribution Plan. Ms. Lazar indicated that the cost of improving from a 2.0 to a 2.5 multiplier was exacerbated by virtue of the fact that there is a large past unfunded service credit liability for which the people with the greatest amount of service credit and the most expensive are the ones who will pay the least in the near future and be the ones who are most likely to retire in the near future. Thus, the cost of funding the system would continue even though there may no longer be any employees contributing to the system thus the entire future liability after all the current employees retire would fall upon the City. The increase from the 2.0 to a 2.5 multiplier represents an almost dollar for dollar increase in an individual's pension which translates into a 25 percent increase. The current retirement system includes many other bargaining units and accordingly, even if no further 911 employees were to come into the system and all the current 911 employees retired that would still be employee funding available for the current employees and other bargaining units who are members of the same system and contributing to it until such time as they had all retired.

According to Ms. Lazar, the other employee groups who enjoy a 2.5 multiplier received it over a period of 3 years some 6 to 9 years ago. It was gradually phased in from 2.0 to 2.3 to 2.4 to 2.5 over a 3 year period. As the multiplier increased so did the rate of contribution from the employees which began at 2.5 percent and increased to 3 and subsequently 4 percent. The overall cost of

the improvement was approximately 5 percent and accordingly the employees paid all but 1 percent of the cost. The Teamster units paid for the Plan by a direct reduction in their salaries. The UAW took a smaller wage increase and accordingly did not contribute to the Plan when the multiplier was increased. The Union contradicted the testimony of Ms. Lazar with respect to the UAW and supported its belief that the UAW employees were in fact contributing to the Plan. All of the bargaining units which enjoy the 2.5 multiplier have also accepted the Alternate Defined Contribution Plan with the exception of the UAW. In addition, it was noted that the Housing Commission no longer has employees in any City retirement system. Upon further checking it was determined that the UAW was not contributing to the old Plan based upon having taken a lesser wage increase in a prior collective bargaining agreement. District Court employees settled with the City by accepting the Defined Contribution Plan and utilizing the Rule of 65 as an early retirement, however, there was no increase in their multiplier and they continued to contribute in the old system 3 percent of their wages. The Teamsters had previously accepted the Defined Contribution Plan and had increased the multiplier by contributing a portion of their wages. The Teamsters also had obtained the Rule of 65 as an early retirement option. During the current round of negotiations with the Teamsters, the City had offered another early retirement incentive.

On cross-examination, Ms. Lazar indicated that the City, for the old retirement system, currently pays 17.62 percent of payroll. That figure includes the 3 to 4 percent contributions being made by

employees represented by various bargaining units. The Defined Contribution Plan requires a contribution of 5 percent of eligible pay for retirement and an additional 1 percent segregated for post-retirement health care with a vesting period of 3 years rather than 8. With the option of the employee upon leaving the service of the City obtaining the additional 1 percent which was segregated for health care and in turn giving up the right to post-retirement health care. Ms. Lazar further indicated that the 6 percent being paid by the City into the alternate system represents approximately the same amount as is being paid into the current system by the City. For example, in 1991 the normal cost was 7.3 percent. In addition, the City is paying 6.27 percent for unfunded past service liability. Thus, the comparison between the Defined Benefit and the Defined Contribution Systems made by the witness was related to the payment for current service cost as opposed to total cost. The Defined Contribution System would not require any past service funding. In the current system, the City is unfunded for post-retirement health care. It has been calculated that at some point in the future the City will pay approximately 1.5 percent of payroll cost by utilizing the Defined Contribution System. Ultimately, when the current system is either fully funded or all of the participants in the system have died the actual savings to the City will be in excess of 7 percent based upon the current numbers provided that the City's percentage of payment to the Defined Contribution System remains the same 6 percent. However, that will not fully occur for 40 or 50 years potentially. The witness further clarified the impact if employees in the 911 unit

remain in the current system and contributed to the system. Assuming a 4 percent contribution and an overall cost of 4.15 percent Ms. Lazar indicated that the City would be required to pay more than 1.5 percent. This is based upon the fact that a number of employees would pay the 4 percent for a relatively short period of time before they retired and most of the employees would pay the 4 percent for less than the 30 years that are used to actuarially fund the Plan. Accordingly, at some point in the future, as the years go by and the number of retirees increase, the City would absorb a larger and larger portion of the 4 percent employee contribution in addition to the .15 percent additional cost to the City.

On redirect examination Ms. Lazar indicated that the purpose behind the City proposing the Alternate Defined Contribution System was that it would allow the City to have a defined and capped cost over time as part of a long term cost containment strategy. In addition, it would not penalize current employees who would remain in the current system. All units which have agreed to the alternate system have a mandatory provision that any new hires must join the Plan. Nor does any employee in any other bargaining unit who elected to transfer from the old system to the new system have the right to return to the old system. What they have in a one-time one-way window period which allowed no reversal after the determination had been made to transfer from the old to the new systems.

One additional factor was presented during the course of Ms. Lazar's testimony and that is while the employees in the new

system are not required to contribute to the system, they do have the option to contribute up to 5 percent of their salary in addition to the amounts contributed by the City.

For purposes of continuity, upon the completion of the Union's presentation and rebuttal by the City witnesses on the retirement issues, the City then proceeded with its presentation with respect to its proposed pension changes. Ms. Lazar testified as follows: Ms. Lazar described the City's proposal as the alternate retirement system which consisted of a defined contribution qualified plan. It would be the same Plan that had been negotiated and adopted by City Teamsters, District Court Teamsters and city and district court exempt employees, executive and elected city officials. The purpose of proposing an alternate retirement system was to move from a defined benefit plan to a defined contribution plan for persons hired after the point in time when the alternate system was agreed to and became effective. In addition, the City proposed to give persons in existing defined benefit plans the option, solely at their choice during a one-time window period to move the present funded value of their currently accrued benefit in a lump sum from the Defined Benefit Plan into the Defined Contribution Plan. From that point forward, the new Plan would be mandatory for all persons hired after the date the Plan was approved and persons who elected to switch from the Defined Benefit to the Defined Contribution Plan would be precluded in the future from switching back.

Under the Defined Benefit Plan the current multiplier was 2.0 times number of years of service times final average compensation for the employee's 2 highest years of earnings. The Plan required

8 years to be vested. Employees could retire either at 58 years of age with a minimum of 8 years of service or 55 years of age with a minimum 25 years of service.

In the new Defined Contribution Plan, an early retirement option had been offered to current employees who chose to stay in the Defined Benefit Plan whereby they could choose to retire without a reduction in their benefits under their existing formula when their age and years of service totaled a minimum of 65. For current employees who transfer into the Defined Contribution Plan for purpose of computation of post-retirement health care benefits, the same Rule of 65 would be applicable.

For new hires in the Defined Contribution Plan, 5 percent of payroll is contributed for retirement purposes and 1 percent for defrayal of post-retirement health care. New hires would not have the same post-retirement health care plan that current employees enjoy. Current employees who utilize the Rule of 65 would be considered to be a member of the alternate health care plan as well. The Rule of 65 is only available within the formation and creation of the new Plan. In conjunction with the alternate health care proposal for those who elect to transfer and avail themselves of the Rule of 65.

On cross-examination, Ms. Lazar clarified the 6 months window period. It is basically a 4 month window in which to make the election. It takes an additional 2 months from the date when the election is made for the actual transfer to be effectuated. However, Ms. Lazar indicated that whether the initial window period was 4 months or 6 months would not be a cause of objection insofar

as the City was concerned. City Exhibit 21 is an actuarial study performed by Gabrielle, Roder on the City's proposed alternative retirement system as it pertained to various Teamster units. City Exhibit 22 is the master agreement between the City and the Ingham County with regard to the distribution of the millage assesssed for the operation of the 911 unit.

Union Exhibit J-6 constitutes a memorandum of understanding between the City of Lansing and Teamster's Local 580 regarding a voluntary reduction in force. It also involves an early retirement program with regard to that bargaining unit. Ms. Lazar explained that due to budgetary limitations the City had determined to cut a number of positions in the Teamster bargaining units. Thus, the City offered a voluntary reduction incentive as opposed to engaging in extensive layoffs. However, if an insufficient number of employees chose to accept the incentives the City intended to layoff as many people as necessary in order to reduce the bargaining unit to the point where the proposed savings would be effectuated. The Plan had not been offered to other bargaining units since the Teamster units represented the targeted area of reduction and it was the intention of the City to either stop delivery or reduce delivery of a number of service. In certain areas, services could not be reduced and accordingly no voluntary incentive program was required. It was anticipated in the executive budget for fiscal year 1992-93 that non-public safety departments would be cut by approximately 10 percent, public safety departments were cut by 2 percent except in the case of police and 2 percent adjusted after a retroactive arbitration award for non-

supervisors.

Ms. Lazar further clarified the Defined Contribution System in terms of vesting which would require an employee to have 3 years of service. A similar incentive program for early retirement had also been offered to the park security unit. It was also intended to offer a similar plan to City exempt and executive personnel where reductions had been targeted. A similar plan was also, at the time of the hearing, being formulated for the park police.

Subsequent to the close of the hearing, a number of exhibits were supplied by stipulation of the parties. Exhibit 21 constituted the Plan for Voluntary Reduction in Force consisting of 5 pages, the City of Lansing Early Retirement Plan/Money Purchase Plan consisting of 7 pages and the City of Lansing Early Retirement Plan Employee's Retirement Plan consisting of 18 pages. Exhibit 22 was a compilation of a number of letters between the City of Lansing and Ingham County and the 1991-92 and 1990-91 and 1989 basic contract for the 911 millage payments. Exhibit 23 represents a compilation of information obtained from the actuaries with regard to cost estimates for members of the Plan who were either eligible to retire by January 2, 1993 or could retire or were not eligible to retire but could do so under window provisions which would allow the addition of 5 years of credited service or members who would have had 8 or more years of actual credited service by January 2, 1993 but would not have been eligible for immediate retirement benefits by that date even with the addition of 5 extra years of credited service. City Exhibit 24 consists of a Memorandum of Understanding between the City and Teamsters

regarding a voluntary reduction in force along with various incentives and windows of opportunity that would be available to employees who chose to avail themselves of the voluntary reduction provisions. City Exhibit 25 is the City of Lansing classification and compensation plan for classified service employees dated July 1, 1985.

DECISION AND DISCUSSION - UNION AND CITY RETIREMENT ISSUES

The Union and the City collectively have proposed a number of changes with regard to the current retirement system and/or the implementation of an alternate retirement system known as the Defined Contribution System. Although for convenience, the parties have lumped together their proposals under the generic heading of retirement; for purposes of this award, the alternate retirement system will be considered a separate issue from the current retirement system and the Union proposals for changes in the current retirement system will be treated as individual issues, as well as, including the Union's dual proposal for a 4 percent contributory rate by the employees effective July 1, 1992 with a reduction to 3 percent effective June 30, 1993.

The Union has proposed "employees hired into the bargaining unit on or after July 1, 1992, may only participate in the Defined Contribution Plan adopted by the City." The City has a similar proposal for new hires. Accordingly, for new hires in the 911 unit, from and after the date of this award, the City and Union joint proposal is hereby adopted. That is to say that all

employees hired into the bargaining unit on or after July 1, 1992 shall only be eligible for participation in the Defined Contribution Plan (Alternate Retirement System) adopted by the City and proposed during the course of these proceedings.

There remains for consideration by the panel three separate Union proposals which include raising the multiplier from 2.0 to 2.5 in the current system (Defined Benefit Plan), the rate of contribution to be made by the members of the 911 unit which constitute two separate issues and finally the Union proposal with regard to the 65 point formula being utilized by current employees.

With respect to the multiplier, it is clear that the overwhelming majority of employees in the current retirement system do enjoy a 2.5 percent multiplier. Those employees obtained the multiplier by either engaging in a contribution of 4 percent or, in the alternative, accepting a lower increase in wages. The external comparables indicate that one or more communities also enjoy a 2.5 percent multiplier. However, many of those communities do not enjoy such a multiplier. Based upon the fact that the City, in the future, by virtue of the adoption of the alternate retirement system plan, will enjoy savings with respect to the retirement system, and further, based upon the Union's offer to contribute to the Plan through employee deductions and based upon the internal comparables, it would seem likely that the additional costs associated with the implementation of a 2.5 percent multiplier would be fairly minimal in the initial years of such an increase. It is acknowledged that in future years as fewer and fewer employees contribute to the Plan, the City may have to bear a

larger proportion of the costs which has been estimated to be 4.15 percent. However, as is true with all of the costs associated with this unit, those costs also may be passed along to the County for reimbursement under the 911 millage assuming, the County continued to fund the 911 unit in the same proportion as has existed in the past two-thirds of the costs of the Plan which are to be borne by the City would be reimbursed through the millage. Accordingly, the impact upon the City General Fund would be minimal at best. For the reasons hereinabove set forth, it is the decision of the panel that the Union proposal, with respect to increasing the multiplier from 2.0 to 2.5, is hereby awarded.

With respect to the rate of contribution, the Union has proposed that on the effective date of the Agreement, each employee would contribute 4 percent of the employee's salary toward the cost of the improvement. It has also modified that 4 percent effective June 30, 1993 to 3 percent. The Union's last best offer, with respect to the employee contribution of 4 percent commencing upon the effective date of this improvement, is hereby granted. That contribution rate is commensurate with the internal comparables in other bargaining units which currently enjoy a similar multiplier. The Union proposal to reduce the rate to 3 percent effective June 30, 1993 is hereby rejected. It represents an amount less than that paid by other bargaining unit members who have obtained a similar benefit. In addition, there has been no testimony nor any evidentiary support offered which would be of a persuasive nature to allow a reduction in the contribution rate. Accordingly, it is hereby ordered that the employees, upon the effective date of

this Agreement, shall have the sum of 4 percent deducted from their salary as a contribution to the current Defined Benefit System. Those employees who avail themselves of the window period in the City Alternate Retirement System by transferring from the Defined Benefit System to the Defined Contribution System upon the effective date of their entry into the Alternate Retirement System shall be relieved of the burden of contributing 4 percent to the Alternative Retirement Systems (Defined Contribution System).

With respect to the Union proposal regarding the Rule of 65, it would seem that the Union wishes to have the rule applied to both the current system and the Alternate Retirement System. No other bargaining unit received that type of a benefit. It is the understanding of the panel that the Rule of 65 was used in conjunction with the window period in the Alternate Retirement System in order to allow employees to transfer into that system and retire when they might not otherwise have been eligible to retire but based upon the benefits attainable in the alternative retirement system which translates into an actuarially determined lump sum amount based upon the actuarial determination of the current amounts attributable to that individual employee in the current retirement system which would have been transferred into the Alternate Retirement System. The City's proposal for an Alternate Retirement System, pursuant to the Brief filed by the City, includes adopting exactly the same Plan that had already been negotiated and adopted with the other bargaining units who had approved the alternate retirement system including City Teamsters, district court teamsters, city exempts, executives and city-elected

officials. Accordingly, since the Union proposal is not support by either external or internal comparables with respect to the Rule of 65, it is hereby rejected with the understanding that those employees who elect to transfer and utilize the window period in the alternate retirement system will be eligible to retire under the Rule of 65 as did other employees in units which had adopted the Alternate Retirement System.

Panel Member Heyden concurs with regard to the adoption of the City Alternative Retirement System, the 4 percent employee contribution right and the rejection of the Rule of 65 as propounded by the Union, he further dissents from the awarding of the new multiplier.

Panel Member Lalone concurs with the awarding of the multiplier from 2.0 to 2.5 and concurs with regard to the initial employee contribution of 4 percent but dissents with regard to the rejection of the reduction in the contribution and the implementation of the Union's 65 point formula. She also concurs with regard to the adoption of the City Plan both as it pertains to new hires and those options available to current employees who wish to transfer from the Defined Benefit Plan to the Defined Contribution Plan.

CITY ISSUE - COMPENSATORY TIME

The City has proposed that any employee must utilize all bank compensatory time prior to retirement. The Union seeks to retain the status quo. City proposal, placing a ceiling of 40 hours of

accrual on compensatory time, also refers to compensatory time which is accumulated in lieu of holiday pay as well as regular compensatory time. Ms. Lazar testified that insofar as the City was concerned, the proposal of the City had always been its understanding the practice as to the way in which compensatory time was to be utilized. However, upon review of the records it turned out that there was no uniform or clear practice. The City does not include lump sum payments in either a retirement contributions or retirement computations. The City does have a personnel rule regarding the utilization of compensatory time and is attempting to obtain uniformity among all of the bargaining units. The proposal of the City is already in place for the Teamsters, exempt employees, and fire fighters. Basically, any employee who had accumulated more than 40 hours of compensatory time would be required to take time off with pay prior to retirement until they had exhausted the hours in excess of the amount provided by the City rule. There is no potential savings to the City with regards to this proposal beyond the possible savings related to litigation which the City has encountered in other bargaining units. Employees are allowed to include overtime compensation in the calculation of final average compensation for retirement purposes under the Defined Benefit Contribution Plan. The concern of the City basically is related to the fact that in one bargaining unit an employee who had accumulated compensatory time argued, apparently successfully, that the lump sum payment for the compensatory time should be included in final average compensation for calculation purposes. This has the affect, obviously, of

increasing their pension. Ms. Lazar acknowledged that if the collective bargaining agreement were clear in eliminating lump sum payments from calculations it would make no difference to the City whether an employee burned off the compensatory time prior to retirement, or in the alternative, simply received a lump sum payment upon retirement. The issue of utilizing compensatory time is also in part tied into another City issue which would require a cap of 40 hours on the accumulation of holiday compensatory time.

The Union offered no rebuttal nor any exhibits to the City proposal.

This issue should have been one which could have been resolved by the parties during contract negotiations. If both parties had agreed that any lump sum payments were not includable in FAC final average compensation then the City would not have propounded the issue. Clearly, it is the City's belief that lump sum payments are not includable in the final average compensation calculations. However, having been burned once, they want to make certain that they do not face the same issue a second time. The position of the City is clearly understandable. In the absence of the utilization of a lump sum payment in final average compensation, it should make little difference to Union members whether they receive the lump sum payment or are required to leave early and be compensated for the number of hours and/or days that they have accumulated. In the absence of any Union rebuttal and in the absence of any Union exhibits, the panel is persuaded that the position of the City should be awarded. Apparently, the position is consistent with other internal comparable units. Accordingly, the City is entitled

to have a provision in the collective bargaining agreement requiring employees to utilize all compensatory time prior to retirement.

Panel Member Heyden concurs.

Panel Member Lalone dissents.

Holiday Pay and Compensatory Time Accrual

The City seeks to limit the accrual of compensatory time to a maximum of 40 hours, be it regular compensatory time or in lieu of holiday pay. The City offered no exhibits in support of its contention. Ms. Lazar testified that the City wished to cap the accrual of regular and holiday compensatory time in order to limit compensatory time pursuant to the wishes of the City Council. Secondly, from a financial point of view, an unlimited accrual of unpaid time, which has been earned but not paid, means that potentially when someone leaves, the City would have to hold open a position for extended periods of time thus impacting in a negative manner on services until such time as the accrued compensatory time had been paid. This apparently has been based upon the fact that the City is not willing to pay comp time to an employee who has already left the service and a salary to a new employee for the same position at the same time. Third, Ms. Lazar contended that the unlimited accrual of compensatory time was never intended by the City. Apparently, during negotiations with respect to the utilization of compensatory time, no one from the City made

the connection with the need to have a cap and to insist that the time be allowed to be taken off within a more defined period. The City wishes to have the compensatory time taken off within a defined period rather than an undefined unlimited period. The net effect of the City proposal would be that an employee, after reaching a cap of 40 hours, would be paid time and a half for all hours worked on an overtime basis and in all holiday situations beyond the normal 8 hour schedule. There would be no change in the City's current payment practices with the exception of the fact that once an employee reached the 40 hour limitation the employee would automatically receive compensation for the hours worked on an overtime basis rather than having the opportunity to bank the time. Ms. Lazar acknowledged on cross-examination that an employee who banks compensatory time and then utilizes it at a future date is no more costly to the City than if the City were to compensate the employee in cash for the excess hours immediately unless the City is required to replace the employee who is left on compensatory time with another employee who is working on an overtime basis. However, she stated that there would be a service cost in terms of less employees being available to provide services to the public. No cost savings calculations had been compiled. In order to utilize compensatory time, an employee must first obtain the approval in advance of management. The Fire Fighter's Agreement contains a cap of 80 hours of compensatory time. Ms. Lazar further clarified the issue to be one which only relates to the accumulation of compensatory time for working on holiday in excess of 8 hours since, to the best of her knowledge, there were no other

situations in which employees could obtain compensatory time.

Charles Bauer testified that he was the director of the Lansing Police Department Communications Center and has held that position since August of 1987. Mr. Bauer explained that staffing is based on a very tight margin in the Communications Center and does not provide for any long term absences of incumbents in the position. A long term absence adversely affects the center's manning situation and during periods of long term absences, the center is forced to fill the incumbent's position with other employees on an overtime basis. There are currently 39 authorized positions, the incumbents for which perform telephone operator's work, radio dispatcher's work and the computer terminal work. A marginal level of staffing requires a minimum of 7 persons on the day shift. If less than 7 are present it becomes necessary to fill the position with a person on overtime. The afternoon shift requires a minimal staffing of 8 on weekdays and 9 on Fridays and Saturdays. The night shift is divided into periods of time. From 3:30 a.m. until 7:30 a.m. a minimum staffing level consists of 6 persons. From 11:30 p.m. until 3:30 a.m. a minimum of 8 person is required on a Friday or Saturday night. In the prior fiscal year, over $80,000 had been expended at the center for overtime. The original budget amount was approximately $48,000. Part of the overtime is attributable to the accumulation and subsequent utilization of holiday comp time. Mr. Bauer testified that it would be more efficient and economical to pay time and a half on the holiday for hours in excess of 8 hours rather than allowing the employees to accumulate the time and subsequently compensating the

employees while off work and having to fill that position with an employee on overtime. Mr. Bauer acknowledged that the utilization of compensatory time off is not the only contributing factor to the overtime utilization at the center. Overtime is also incurred as a result of individuals being ill or on vacation or disciplinary suspension or termination. Although the center has 39 budgeted positions, in point of fact, there are only 35 employees as of the date of the hearing. The number constantly fluctuates according to Mr. Bauer. At one time in 1992, all but one of the 39 positions had been filled. Two trainee technicians had voluntarily terminated their employment and a third technician had been promoted to another position thus lowering the staffing level from 38 to 35 persons. It was anticipated at the time of the hearing that the vacant positions would begun to be filled with applicants commencing in May of 1992. However, when a new trainee is placed upon the job additional costs are incurred. This is due in part to the fact that a seasoned dispatcher is assigned to a trainee in order to help them learn the job. The person doing the training is designated as a field training officer. However, that officer is in fact a dispatcher who has special training and a special designation to carry out that responsibility for which they receive additional pay. Training officers perform regular duties when not training. Therefore, it becomes necessary to fill the training officer's position with other employees on an overtime basis. Mr. Bauer then indicated that any savings which the City has received as a result of an unfilled position is consumed by the additional overtime payments made to employees in order to fill the

position as well as the additional staffing required due to the necessity of training a newly hired staff. The holiday staffing level is the same as any regular daily staffing level based upon the nature of the services which are being performed 24 hours a day 7 days a week. In fact, occasionally on holidays when special events are taking place, the staffing levels may have to be increased.

On cross-examination, Mr. Bauer admitted that he did not know the exact amount of money that was paid in overtime or training as opposed to the amount of money that was saved by having an unfilled position. The department had also issued a policy statement indicating that no employee in the bargaining unit could utilize compensatory time if it required that the department utilize a person on overtime. However, that policy was limited in scope and nature. There are, in fact, situations in which an employee who is on compensatory time is receiving pay while another employee fills the first employee's position on an overtime basis. Mr. Bauer acknowledged that in order for an employee to utilize compensatory time, the employee must first obtain the approval of management. Mr. Bauer estimated that approximately half the employees do, in fact, take cash rather than compensatory time.

On redirect examination Mr. Bauer indicated that employees are allowed to use compensatory time in lieu of vacation time off. Six technicians are allowed to be on vacation per day. That represents 2 per shift. By practice, those 6 employees will be allowed to utilize comp time for vacation time and the employer will call in other employees on overtime to cover the compensatory time off

employee's absence. The employees who utilize comp time in lieu of vacation time still retain their vacation days. Then when they go on a regularly scheduled vacation it often becomes necessary to fill their position with a person on an overtime basis. Technically, vacation time off is also subject to approval of the management but in practice if the vacation time slot is available the employee is usually allowed to take it. To the best of Mr. Baurer's knowledge, no person has ever been denied a vacation spot.

On recross examination, Mr. Bauer acknowledged that even with the proposal of the City, employees would still be allowed to utilize comp time in lieu of vacation time but it would be limited to a maximum of 40 hours in any given year. The Union Exhibit K-1 represents a list of accumulated compensatory time for 911 technicians as of March 26, 1992. The number of hours ranges from zero to a high of 76.5. Only 3 employees have accumulated more than 40 hours of compensatory time.

Union Exhibits K-2 through 13 were introduced for rebuttal to the position of the City. Union Exhibit K-2 simply is the proposal of the City to limit the accrual of compensatory time to a maximum of 40 hours and the Union response to maintain the status quo. Union Exhibit K-3 represents the current contractual language which does not contain a cap on the accumulation of comp time received for working on a holiday. Union Exhibit K-4 through 13 is an arbitration award dated January 7, 1990 by Arbitrator Dallas L. Jones. Arbitrator Jones found that the City had violated the collective bargaining agreement between the 911 unit and the City

of Lansing when it unilaterally and prospectively determined that police technicians would no longer be allowed to substitute accrued holiday compensatory time for periods of leave time reserved for vacations. Arbitrator Jones found that there was a past practice which allowed employees to utilize compensatory time in lieu of vacation time. He further found the City guilty of violating that past practice by refusing to allow employees to utilize compensatory time in lieu of vacation time. Even though the arbitrator acknowledged that the City was incurring increased overtime costs there had been no hard evidence to indicate, how much, if any the overtime costs were increased by the utilization of compensatory time in lieu of vacation time.

The issue of the accumulation of compensatory time is deemed to be an economic issue. Accordingly, either the last best offer of the City for a cap of 40 hours or the status quo position of the Union must be accepted by the panel. The position taken by the City with regard to this issue is clearly one that is related to cost containment. The position of the City is not unreasonable with respect to attempting to contain costs by reducing the amount of overtime. At the same time, the position of the City is equitable insofar as the employees are concerned since it does not completely eliminate the accumulation of compensatory time but rather requires a ceiling or a cap of 40 hours. Thus, employees will be allowed to accumulate up to one week of additional compensatory time which could be utilized as additional vacation time off. While, Union Exhibit K-1 is indicative of the fact that very few employees have accumulated compensatory time in excess of

40 hours, nevertheless, if the City believes that it will help reduce overtime costs and thus reduce the burden on the general fund in the absence of compelling reasons to the contrary, there is no reason why the City proposal should not be accepted. The employees will suffer no loss in pay since any hours which are accumulated in excess of 40 hours will be compensated for by way of a cash payment. In addition, the City is seeking to obtain uniformity with regard to the accumulation of compensatory time in all of its bargaining units. For the reasons hereinabove set forth, the last best offer of the City is hereby accepted and awarded.

Panel Member Heyden concurs.

Panel Member Lalone dissents.

City Issue - Probationary Period

The City seeks to increase the probationary period for new hires in the bargaining unit from the current requirement of 6 month to 1 year. In addition, the City would propose that any interim pay increments during the 1 year period be deferred until the employee has achieved a permanent employment status at the end of the 1 year probationary period.

The Union's last best offer on this issue is to accept an increase in the probationary period to 1 year for persons hired after the affective date of the panel's award but to retain the status quo with regard to interim pay adjustments rather than

deferring the interim adjustments for the 12 month period.

Since the proposal involves 2 separate and distinct issues, the panel will consider the extension of the probationary period as a separate and distinct issue from that of the deferral of the interim payments. Accordingly, the panel concurs with both the Union and the City and awards both the Union's and City's offer to extend the probationary period for new hires to 12 months. Both panel members concur.

The second issue is a monetary issue and accordingly either the last best offer of the City or the last best offer of the Union must be accepted. At the time of the hearing the parties stipulated that insofar as fringe benefits are concerned the extension of the probationary period to 12 months would not affect the fringe benefits. However, the parties did not agree upon whether or not a merit increase should be given at the end of the old 6 month probationary period or it should be put of until such time as the employee successfully completed the new 12 month probationary period. It would appear from the testimony that as a matter of practice, employees who successfully completed the 6 months probationary period in the past automatically received a merit increase. However, according to the City, the merit increase was tied into the successful completion of the probationary period. The City agreed during the course of the hearing that if the 12 month probationary were to be awarded the successful employees who complete the probationary period would receive a retroactive merit increase for the prior 6 months.

Due to objections of the Union, the panel met in executive

session to determine whether or not the issue of the merit pay increase was properly before the panel. By 2 to 1 vote the panel agreed that that issue was properly before the panel. It was deemed to be an economic issue. The panel was unanimous that it was an economic issue. Likewise, the panel was unanimous in considering the extension of the probationary period to be a non-economic issue. With respect to the merit pay issue, Mr. Bauer testified that only those employees who successfully completed the current 6 month probationary period were granted a merit pay increase. If employees were placed upon an extended probationary term and successfully completed that probationary extension they would be given the merit pay increase retroactive to the termination of their first 6 months of employment. Mr. Bauer also testified that with respect to the last 4 trainees the decision of the City was that they would not receive a merit pay increase in light of the fact that their probationary period had been extended until such time as they successfully completed the probationary period at which time they would receive the merit pay increase retroactive to the completion of their first 6 months of employment. Mr. Bauer, on cross-examination, testified that in his opinion the merit increase had always been tied into the successful completion of the probationary requirement which constituted the meritorious service justifying the increase in pay. The practice of granting merit pay increases, according to Mr. Bauer, had been reduced to a City personnel policy. Which was subsequently received as Exhibit 25. Under the current Collective Bargaining Agreement, a probationary employee would commence his employment at

a salary of $20,920 annually. The next step is $21,922 and the employee, pursuant to the City proposal, would receive the difference in pay for the 6 months between the completion of 6 months of employment and 12 months of employment provided the employee successfully completes the probationary period. By way of example, an employee who hired in on January 1, 1992 would receive the current pay of $20,920. With a 12 month probationary period, the employee would then go to $20,922 on January 1, 1993. However, the employee would also receive $501 in retroactive pay. Commencing on July 1, 1993, the employee would then proceed to the next pay of the pay scale at $22,987. Thus, the step increases would take place in 12 month increments after the first 6 months of employment provided the employee first successfully completes his 12 month probationary period. The City concurred that under its proposal an employee would move to step 2 after 12 months of employment and step 3 after 18 months of employment with each succeeding step occurring 12 months from the date of the completion of the 18 months of employment.

The City position with regard to the imposition of merit pay increases is entirely reasonable in light of the extension of the probationary period. In fact, employees will loose no monies whatsoever under the City proposal provided that they successfully complete their probationary period. After the twelfth month they will be in step 2 and will receive one half year's retroactive compensation for the difference between the salary in step 1 and step 2. They will then obtain step 3 upon the completion of 18 months of employment and each succeeding step 12 months thereafter.

Contrary to the assertion of the Union, the City has offered a reasonable rationale for the modification of the payment of the merit increase. In fact, it would appear that the merit increase has always been related to the successful completion of the probationary period whether it took 6 months or the probationary period was extended in which case if successfully completed the employee in the past received a retroactive payment. There is nothing new in the City's proposal with regard to the payment itself. The only distinction is that no employees will be eligible to receive the merit increase after the first 6 months of employment since they will not have completed the probationary period. However, all employees who do successfully complete the probationary period will receive the retroactive payment.

For the reasons hereinabove set forth, the City proposal with regard to the method of payment of the merit increase, is hereby adopted and awarded.

Panel Member Heyden concurs.

Panel Member Lalone dissents.

City Issue - Health Care

The City issue on health care has been deemed to be an economic issue. City Exhibit 26 represents the Consumer Price Index for the year 1978 through 1990. It indicates a compounded annual increase of 5.52 percent. City Exhibit 27 is a comparison of monthly Blue Cross/Blue Shield rates for the years 1984 through

1991. During that period of time, the Consumer Price Index went from 102.2 to 125.6. During the same period of time, the family health care coverage premiums increased by 89 percent, the 2 person health care premiums increased by 100.84 percent, the single health care premiums increased by 108.64 percent with an average annual premium increase for the 3 types of coverage pegged at 97.49 percent. City Exhibit 28 indicated that between 1978 and 1991 the Blue Cross/Blue Shield family coverage monthly premium increased from $93.51 to $353.00 or accumulative percentage increase of 277.5 percent compounded annually at the rate of 10.8 percent. The current 2 person health coverage requires a monthly premium of $347.33 as opposed to $108.06 in 1980 and the single health coverage requires a monthly premium of $153.98 as opposed to a monthly premium of $45.10 in 1980. City Exhibit 30 is entitled City of Lansing Health Care Handbook, Blue Preferred Program Plan D. Ms. Lazar, during the course of her testimony, explained that the City was proposing going to an alternative health care plan as outlined in City Exhibit 30, for the purposes of cost containment. The benefit levels remain the same, but there are potential cost savings for the City by using a preferred provider panel, or a limited provider panel, which consists of physicians who are willing to accept the payment for the services set forth in the Plan as established by Blue Cross/Blue Shield. In addition, coverage is provided for non-provider panel services, unlike the current City HMO or PHP Plans, which have no coverage for services performed by an out-of-panel provider. The City proposed the Plan D as the basic group plan for this bargaining unit. However,

employees could opt to obtain a different plan, provided that they chose to pay the premium differential between the base Plan and any alternative Plan. If an individual under Plan D selects a physician who is not a member of the Plan, the Plan provides 80% coverage and the subscriber-employer is required to pay 20%. In cases of emergency service, outside of the normal service area, the Plan covers the services without requiring the co-payment. If an employee is hospitalized in a non-provider facility and unable to be moved for medical reasons, there would be no co-payment required. Cost savings are estimated to be approximately 13% of the premium costs from the normal Blue Cross/Blue Shield base. To put that cost savings in perspective, the cost of Plan D would be in excess of $45.00 per month less than the curren Blue Cross/Blue Shield plan for a family. The same would be true with respect to the two person premium and with respect to single coverage, the cost savings would be approximately $20.00 per month per subscriber. The City further believes that the cost savings will be carried into future years as well, by experiencing less of an increase than would occur under the current Blue Cross/Blue Shield plan. Based upon prior experience, the City receives a decrease in its premium rates from Blue Cross about once every four or five years due to the Blue Cross accounting methods and reserve accounts. However, in the next year, the City usually experiences an unusual heavy percentage increase. The City of Lansing is an experience-rated employer.

On cross examination, Ms. Lazar indicated that the proposed Plan is already in place for Teamster Union members, supervisory

and clerical/technical. It is also an optional plan for the firefighters. It is the base plan for City exempt, executive, elected and Court exempt employees. The proposed Plan also represents an optional Plan for the police department. In the units in which the Plan is optional, an employee has the right to either select Plan D or a different Blue Cross/Blue Shield Plan. In the police and fire departments, if the employees do not select Plan D, they are not required to pay the difference in the premium. However, in the other bargaining units and among the other employee groups, the opposite is true. The 13% savings, as calculated by the City, includes both savings under the base Plan, and lower contributions under the alternative Plans by the City, which in turn would be offset by the employee contributions. On occasion, Blue Cross/Blue Shield representatives meet with the City in order to readjust monies held in reserve. Occasionally, when the reserves are adjusted, the City receives a rebate.

The rationale of the City in proposing the Plan is based upon the fact that the level of increases in health care costs are becoming unsupportable and, thus, the City is attempting to try to protect the coverage its employees have by finding a cheaper means of obtaining the same level of benefits. The City does not wish to be placed in a position of either having to cancel health coverage or go to plans which contain substantially lower levels of benefits. The proposal is a straight cost containment matter due to the overall economic constraints. Health care costs represent the single largest uncontrolled area of costs in most unit budgets. The City is trying to avert problems which have occurred in other

units before reaching a crisis stage. The other three Plans which are available to the employees include a basic Blue Cross/Blue Shield Plan, a Blue Cross/Blue Shield HMO - Health Central, and the Physicians Health Plan, which is a closed panel preferred provider option. The proposed Plan D is designed to provide the same coverages as the Blue Cross/Blue Shield Plan, but with a limited provider panel. The rates for the HMO and PHP Plans vary from year to year, and currently employees are required to pay the difference if the rate increase in one of those plans exceeds the cost of the base Blue Cross/Blue Shield rate. Ms. Lazar testified that as far as she knew, not only were the level of benefits identical to the basic Blue Cross/Blue Shield Plan, but the level of deductibles and co-pays were also the same, with the exception of the imposition of an 80/20 co-pay if a subscriber used an out-of-panel provider.

Since 1988, members of the Teamsters Union were required to pay any premium increases above 5%. A number of those individuals who were still entitled to have the basic Blue Cross/Blue Shield Plan, opted to transfer to the new Plan D since they no longer were required to pay a portion of the premium. This approximated 25 or 30% of the Teamster Bargaining Unit. In addition, all newly hired employees in the Teamster Bargaining Units are required to either select Plan D or pay the difference between Plan D and whatever other Plan they select. The City was proposing, in addition to Plan D as an alternative, with the stipulations on the payment of the difference in premiums if an employee were not to select Plan D, that all new hires in the 911 Unit would have Plan D as their base, and if they chose a different Plan, they would be required to

pay the entire differential in the premiums between the Plan chosen and Plan D. Employees have the right one time per year to switch from one plan to another.

In opposition to the City proposal, the Union introduced Union Exhibits L-1 through 19. The Union has made it clear that it has no objection to the City offering Plan D to its members as an additional option, but it opposes the imposition of Plan D as the base plan which would require employees who select other plans to incur a significant portion of the premium for the alternative plan based upon the differential in the premium for the alternative plan as opposed to Plan D. Union Exhibits L-2 through 5 demonstrate additional costs assumed by employees in other bargaining units who selected a plan or remained in a plan other than the base Plan D. For example, in Union Exhibit L-2, an employee paid $49.29 per month in the Physicians Health Plan. After the introduction of Plan D, the same employee who elected to remain in the Physicians Health Plan was required to pay the sum of $69.55 per month. In Union Exhibit L-3, an employee who was in the traditional Blue Cross/Blue Shield Plan was required to pay $5.08 per month. In Exhibit L-4, an employee who previously paid $50.00 per month, after the introduction of Plan D, was required to pay $95.69 per month. Union Exhibit L-5 indicates that Ms. Lalone had no deduction taken from her paycheck since Plan D was not an option, and therefore the employee was not required to pay a portion or all of the difference in premium between Plan D and the plan selected by the employee. Union Exhibit L-7 demonstrates that in the District Court where Plan D is the base plan, employees who

selected family coverage in a PHP or Blue Cross/Blue Shield base semi-private plan were required to pay monthly premiums of $3.74 and $5.42 respectively. In the fire department, according to Union Exhibit L-8, employees who selected the Blue Cross semi-private plan on the family rate also were required to pay a monthly premium in the sum of $5.42. The same is true in Union Exhibit L-9 for an exempt employee. It should be noted that that employee was one who was hired before May 1, 1988. In a department in which exempts were hired after April 30, 1988, the employees contributed nothing to Plan D, but paid $90.27 for Blue Cross ward coverage for a family, $95.69 for Blue Cross semi-private coverage, $91.57 for Health Central coverage, and $74.46 for PHP coverage. All of those rates were for the family plan, with lesser rates for double or single coverage. Union Exhibit L-11 demonstrates that the same premiums were required to be paid by Teamsters hired after April 30, 1988. For those Teamsters hired before May 1, 1988, there were no premiums required except for Blue Cross semi-private coverage, which was in the sum of $5.42 for full family coverage. In the police department supervisory unit, employees were required to pay $5.42 for the Blue Cross semi-private coverage, and nothing for the ward or Health Central coverage for a family unit. However, husbands and wives were required to pay a $4.43 monthly premium for Health Central and a premium of $2.47 per month for the PHP. In the UAW Parks, Public Service and Miscellaneous group, no premiums were paid for Blue Cross ward coverage and a monthly premium of $5.42 was paid for the Blue Cross semi-private coverage. Nothing was paid for family coverage under Health Central or PHP, but

husband and wife coverage required a premium of $6.22, and $4.26 respectively. Union Exhibit L-15 represents the 911 Unit and indicates that the Unit currently pays nothing for Blue Cross ward coverage and nothing for Health Central and PHP coverage. A Unit employee with a family currently pays $5.42 for Blue Cross semi-private coverage monthly. Union Exhibit L-16, which is the Park Security Department, indicates that those employees pay nothing for Blue Cross ward coverage, but do pay $5.42 per month for Blue Cross semi-private coverage for a family, $3.91 per month for Health Central family coverage, and $4.00 per month for PHP family coverage. The premiums for husbands and wives are greater for the Health Central and PHP coverage. Union Exhibit L-17 refers to Teamster employees who were hired prior to May 1, 1988, and subsequently transferred from either the Base Plan D to the Blue Cross/Blue Shield plan, the Health Central plan, or the PHP plan after Plan D had become the base for the payment of premium differentials. An employee who selects Blue Cross ward coverage for a family pays a monthly premium in the sum of $103.67, semi-private coverage for a family requires a monthly payment by the employee in the sum of $109.09, Health Central family coverage requires a monthly payment by the employee in the sum of $93.42 per month, and PHP coverage requires the employee to pay a monthly premium in the sum of $93.51 per month.

Union Exhibit L-18 refers to Teamster employees who were hired after May 1, 1988, and prior to October 29, 1990, who subsequently transferred from Plan D to one of the other plans, with Plan D becoming the base for the payment of the premium differential. An

employee choosing Blue Cross ward coverage has a total monthly deduction of $193.94. Semi-private coverage requires a monthly deduction of $204.78, Health Central coverage requires a deduction of $184.99, and PHP coverage requires a deduction of $167.97. Each of those figures contains two portions: one is for the premium differential utilizing Plan D as a base, and the other represents the cost containment provision. Union Exhibit L-19, for Teamster employees hired on or after October 29, 1990, with Plan D becoming the base for the payment of the premium difference and cost containment for payroll deductions effective February 20, 1992, requires the same premium as set forth in Union Exhibit L-18.

DISCUSSION AND DECISION

In support of its proposal with regard to the utilization of health care Plan D as the base plan for this bargaining unit, the City maintains that it has met the six part test outlined in its brief. Those tests include the proposition that the City proposal is consistent with internal comparables as well as external comparable communities, the City has sustained its burden of justifying its proposal in view of the overall settlement, the City has established a sound rationale in support of its proposal, and the City has met its burden of proof by a preponderance of the evidence validating its position on the issue, among other items. The City has indicated that the cost over a period of time will represent a savings to the City. The proposal further represents a cost containment without reducing the level of benefits. The overall settlement cost for wages, longevity and shift premium can

be offset over time by the cost containment provided in the health care proposal. The proposal is within the health care benefits provided in comparable communities and, finally, the cost containment in Plan D is similar to those agreed upon by the firefighters, police non-supervisors, Teamsters and exempt employees. The City believes that it has demonstrated that revenues have fallen short of expenditures and the evidence presented in City Exhibits 15 and 16 are indicative of the fact that the City will be facing deficit budgets. Therefore, in order for the City to offer any improvements, cost containment must be continued in the health care areas.

The Union, in opposition to the City proposal, notes that the base plan refers to that plan which is made available as a health insurance program which is used as a base in order to determine whether or not employees are required to make contributions with regard to the additional cost attributed to other alternative elective health programs made available to employees under the terms of the Collective Bargaining Agreement. The Union further notes that the current base plan is more expensive than the plan presently being proposed by the City, which means that the alternative plans which have been elected by the members of the bargaining unit are less expensive because the difference in cost is currently lower. The Union has no objection to the employer offering Plan D to the employees as an option, but does object to the option being designated as a base plan because of the obvious economic consequences.

The Union further argues that the City has failed to provide

credible exhibits in support of its position with regard to its request that the Panel adopt its proposal. The Union believes that the City is less than totally serious with regard to its proposal for the adoption of this plan based upon the fact that it had not been presented to the Union or the Panel until after the hearings had been completed. The Union concludes its argument on this issue by indicating that the City failed to meet its burden of establishing the desirability of adopting their proposals with the limitations attached and the significance that those limitations have with regard to members of the bargaining unit.

A comparison of the external comparable communities indicates that with respect to employee contributions for the basic Blue Cross/Blue Shield plan, no figures were provided for Eaton County, the City of Kalamazoo requires an employee contribution of $144.00, no information was supplied for the City of Grand Rapids or Muskegon County or Battle Creek or East Lansing or Sterling Heights. With respect to the Blue Care Network, Eaton County employees pay the sum of $570.96, and Kalamazoo employees pay the sum of $144.00. No amounts are indicated for any other community. With respect to the Physicians Health Plan, Eaton County employees pay the sum of $283.68, and Kalamazoo employees pay the sum of $140.00, with no amounts being indicated for the remaining comparable communities. In addition, the Exhibit does not indicate whether or not the amounts paid in Eaton County and Kalamazoo are annual or monthly contributions.

If the City Plan were to be adopted, employees hired after the effective date of the Plan who select either Blue Cross, Health

Central or PHP coverage would be required to pay premiums for family coverage ranging from $167.97 per month to $204.78 per month. These monies are not insignificant. They represent approximately 10% of the employee's salary. This would mean that the salary increases hereinabove granted by the Panel would be reduced by more than 66-2/3%. Even for employees hired before the effective date of the Plan, the premiums are significant and would represent approximately 5% of an employee's starting base pay. Clearly, the City would obtain significant cost savings if its Plan were to be adopted. However, for those employees who chose to remain in one of the other plans, the burden upon the employee is simply too great. Perhaps, if the City were to have offered Plan D with a gradual phase-in of employee contribution rates, it would have been deemed to be acceptable. But the Plan simply cannot be imposed upon the bargaining unit by this Panel, which would effectively require the employees to either select Plan D as their base plan, or sustain the burden to a substantial extent of the City's cost containment policies. Employees who have paid either a very small monthly premium or no premium at all for their health care coverage cannot be expected to suddenly pay up to 10% of their salary for the same coverage. Moreover, it is clear from the Exhibits that many other employees of the City are not subject to the imposition of Plan D as their base plan. Accordingly, based upon both the internal and external comparables, as well as the factors set forth in Section 9 of Act 312, the proposal of the City is hereby rejected. The proposal of the Union to maintain the status quo with regard to health care coverage, plus allowing the

City to offer Plan D as an option to members of its bargaining unit is hereby accepted and awarded.

Panel member Heyden dissents.

Panel member Lalone concurs.

CALL-BACK PAY - CITY ECONOMIC ISSUE

An employee who is called back to work after completing a regular shift or who is called in to work on a scheduled day off currently receives a minimum of 3 hours of pay at time and one half. If the call-back or call-in pay period overlaps with the beginning of an employee's regular work shift, the employee is only compensated at the overtime rate for the time worked prior to the commencement of the employee's regular shift. The City proposes to reduce the 3 hours minimum to a guarantee of 2 hours. This, according to the City, would more nearly comply with payment for services which are actually delivered, as opposed to payment for a minimum number of hours during which time the employee may or may not actually be working.

The external comparables indicate that Eaton County provides 2 hours, Kalamazoo did not have a provision for call-back pay, Grand Rapids pays 4 hours, Muskegon County 2 hours, Battle Creek 2 hours, East Lansing 2 hours, and Sterling Heights 3 hours.

The internal comparables indicate that some bargaining units have call-back pay at the rate of 2 hours, and some have it at the rate of 3 hours.

On cross examination, Ms. Lazar indicated that the City did not maintain any records indicating how much time the employees

actually work when they are called back, as opposed to receiving the minimum three hour call-back pay at time and one half. In addition, the City provided no records indicating the number of times an employee in the bargaining unit or, for that matter, all of the employees, are called back and receive the 3 hour minimum pay. Furthermore, Ms. Lazar indicated that the call-back provision does not refer to an employee whose shift is extended beyond the normal quitting time, in which case the employee is compensated for the actual time worked at time and one half. It only applies to those employees who have already left work for the day or are not scheduled to work that day in the first place. Ms. Lazar further indicated that at times the City has a sufficient amount of work to keep the employee busy for the entire 3 hours and at other times the employee may be released before completing the 3 hours even though the employee would receive the 3 hours of pay at time and one half rates. There is no contractual limitation with regard to the employer having the right to utilize the employee who has been called in to work for the entire 3 hour period. However, there may be practical problems in that the work stations may be filled and the employees cannot be assigned to do other bargaining units' work. In addition, work sites might not be available for the employees who have been called back to work for the entire 3 hour period of time. The City offered no Exhibits in support of its proposal, with the exception of City Exhibit 2, and the call-back provisions as may be contained in the Teamster Collective Bargaining Agreements.

The Union, by way of rebuttal, through the testimony of Ms.

Lalone, indicated that to the best of her knowledge, during her 15 years of employment, no employee was requested to come back to work for the 911 center for a 15 minute period of time and collected the 3 hour minimum. In fact, usually the employees who were called back to work split a shift between two employees and, accordingly, each employee works 4 additional hours. In rare instances, an employee may be called in and only work 2 hours. Rarely is an employee called back to work who works less than 3 hours.

The Union, in opposition to the City proposal, has alleged that the minimum compensation provided for in the call-back provisions of the Collective Bargaining Agreement, are designed to compensate employees who are required to return to the work site once they have left for the intrusion upon their personal time, as well as the additional expenses which may be incurred by them in returning to the work site and adjusting their babysitting and other personal arrangements once they have released the caregiver from the responsibility to provide such service on a given day. Of course, that only applies in the case of a single individual who has a child or an adult relative who requires constant attention. Further, the Union alleges that the amount of compensation is merely sufficient to satisfy the requirement that when the employee returns to work under those circumstances it becomes economically feasible and beneficial to the employee. According to the Union, the call-back provision acts as a deterrent to recalling employees under circumstances which are not reasonably necessary, or that require extremely short durations of work, since the employer is required to seriously contemplate the economic consequences of its

request. The employer may avoid the expense related to the call-back provision by simply requesting an on-site employee to work additional overtime. This would seem to be an appropriate solution, since the operation involved in this bargaining unit consists of 24 hours per day, 7 days per week and, accordingly, there are always employees at work, one or more of whom may be available to continue to work beyond their scheduled shift, rather than calling in an employee who has already left for the day or who is not scheduled to work that day.

The Union further alleges that the City did not demonstrate any significant economic impact by modifying the status quo with regard to this provision.

The City, in its brief, simply indicated that its proposal with regard to call-back pay falls within the category of a clean-up provision. It presented information regarding the problems resulting from call-back pay, but did agree that the occurrence of a call-back situation in which an employee works a minimal amount of time is rare.

Based upon the external and internal comparables, as well as the testimony of the City and Union witnesses, the Panel is constrained to find, pursuant to the criteria set forth in Act 312, that the City has failed to meet its burden of proof. No economic justification has been set forth by way of records which would indicate that the City would achieve any significant economic savings if the call-back provision were to be changed and reduced from 3 to 2 hours. In addition, the City has adequate other means of having employees continue to work without the necessity of

calling employees in to work a minimal amount of time and receive the 3 hour call-in pay. As noted by the Union witness, where an employee is absent, two employees are usually called in to split the absent employee's shift and, accordingly, those employees would have worked in excess of the 3 hour minimum call-in pay requirement. For the reasons hereinabove set forth, the last best offer of the City is rejected and the last best offer of the Union, retaining the status quo, is accepted and awarded.

Panel member Heyden dissents.

Panel member Lalone concurs.

EMPLOYEE TELEPHONE NUMBERS

At the time of the hearing, the parties mutually stipulated that the City issue with regard to the furnishing of a telephone number by an employee had been resolved by amending Article 21, Section 1, the first paragraph, by placing a period after the word "number", in the fourth line of that paragraph, and eliminating the words "if any". Based upon the stipulation of the parties, the paragraph shall be amended as hereinabove set forth.

Panel member Heyden concurs.

Panel member Lalone concurs.

CITY ISSUE - PROMOTIONAL PROCEDURES

The issue of promotional procedures has been determined by the Panel to be a non-economic issue. In support of its position, the City introduced City Exhibits 31, 32, 33, 34 and 35. In addition, the Union offered Exhibit C-12. The Exhibits referred to as City

Exhibits 31 through 35, while introduced during the City's presentation on promotional procedures basically were items related to the overall economic issues and the City's position with regard to fiscal responsibility, as well as indicating that there had been a property tax freeze.

In addition, during the presentation on promotions, the City and Union agreed that all other portions of the Collective Bargaining Agreement would continue into a new Collective Bargaining Agreement, except as modified by virtue of this Award, including Memorandums of Understanding and Appendices in the back of the Collective Bargaining Agreement. The parties further stipulated that the contract would be for a period of three years commencing on July 1, 1990, and terminating on June 30, 1993. In addition, all wage and fringe benefits which are susceptible of a computation will be paid on a retroactive basis in accordance with the past practice of the parties. Further, it was stipulated that employees who had been terminated, quit, or otherwise severed their employment relationship prior to the issuance of the award, will not be eligible for retroactive benefits.

It was further stipulated that any changes which have been awarded by the Panel for the retirement plan will only affect retirees who terminate their employment relationship with the City after the issuance of the Award. Accordingly, current retirees would remain under the current plan. The increase in the multiplier will not affect any current retiree's benefit.

All tentative agreements reached prior to the commencement of the proceedings or during the proceedings which represent a change

in the Collective Bargaining Agreement or an indication of the retention of the status quo with respect to those sections of the contract which have not been altered or been proposed as an issue in the arbitration proceedings will continue in full force and effect for the life of the Collective Bargaining Agreement which is the subject matter of these proceedings. That also includes any Appendices in the back of the Collective Bargaining Agreement.

Finally, with regard to the last issue propounded by the City regarding promotional procedures, the parties reached a stipulated agreement. Appendix A of the current Collective Bargaining Agreement, I through V, will be retained. In addition, a new Section entitled VI has been introduced into evidence and marked as Joint Exhibit 7. That Exhibit will be added to Appendix A by stipulation of the parties. Accordingly, it is the Award of the Panel that Appendix A of the contract will remain in effect for I through V, with the addition of Joint Exhibit 7 as VI.

Panel member Heyden concurs.

Panel member Lalone concurs.

On behalf of the Panel, I wish to thank the representatives of the City and Union for the courteous and expeditious manner in which the proceedings were conducted.

ALLEN J. KOVINSKY
Act 312 Impartial Arbitrator - Panel Member

JAMES HEYDEN, Employer Delegate

Karen Lalone

KAREN LALONE, Union Delegate

Dated: September 14, 1992