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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act 312 Arbitration between

CITY OF LIVONIA

and Case No. D96 I-2157

LIVONIA FIRE FIGHTERS UNION,
LOCAL 1164, IAFF, AFL-CIO

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OPINION AND AWARD

received at mexc 7/2/98 mm

Act 312 Arbitration Panel

Theodore J. St. Antoine, *Chairperson*
Paul J. DeNapoli, *Union Delegate*
Raymond Pomerville, *City Delegate*

Appearances:

For the City – George T. Roumell, Jr., Esq., Amy E. Neuberg, Esq., Gregory T. Schultz, Esq., Riley & Roumell, Ford Building, 7th Floor, Detroit MI 48226. Also present: Ronald J. Engle, Michael T. Slater, Frank J. Landy.

For the Union – George H. Kruszewski, Esq., Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, 1000 Farmer Street, Detroit MI 48226. Also present: Michael Riesterer, Michael Kelly, James G. Montgomery, John Orzech, Tamara Smith.

BACKGROUND

The Livonia Fire Fighters Union filed for interest arbitration on May 1, 1997, pursuant to Act 312 of 1969, as amended, following mediation efforts on March 3 and 11,

1997. The City of Livonia answered on May 14, 1997. MERC Chairman Maris Stella Swift, by an order dated November 25, 1997, appointed Theodore J. St. Antoine of Ann Arbor, Michigan, as impartial chairperson of an Act 312 arbitration panel to resolve the dispute. A prehearing conference was held on November 26, 1997. Hearings were conducted on January 9, 19, 26, 29, and 30, February 2, and March 18, 1998. On April 7, 1998 last offers were due. Post-hearing briefs were filed on May 15, 1998. Executive sessions of the arbitration panel took place on June 1 and July 1, 1998.

The City of Livonia has a population of approximately 100,000 and is located some 15 miles northwest of downtown Detroit. The Fire Department consists of 90 uniformed positions, ignoring vacancies existing at the time of the arbitration. The two major divisions are fire suppression and fire prevention. Fire suppression has 84 members, operating through five fire stations and two units of 42 members each. A Captain, assisted by a Lieutenant, heads each station. Each unit handles a 24-shift and is commanded by a Battalion Chief. The units in turn are comprised of three platoons having 14 members each. Two platoons are on duty at all times, with the contract requiring a minimum of 21 firefighting personnel always present. In ascending order, the ranks are Fire Fighter, Assistant Driver, Fire Engineer, Fire Lieutenant, Fire Captain, Senior Captain, and Battalion Chief. All are members of the one Fire Fighters Union.

Fire prevention has four 40-hour employees, a Fire Marshall, a Senior Fire Inspector, and two Inspectors. They are equivalent in rank, respectively, to Battalion Chief, Captain, and Lieutenant. In addition, there is a Training Coordinator, a 40-hour employee who has the rank of Battalion Chief and who is responsible for training Department members in fire fighting and medical services. All these persons are also

members of the Union. The only officer not in the Union is the Fire Chief, who is responsible for the entire Department, including the clerical and other nonuniformed personnel in administration.

GENERAL PRINCIPLES

Section 9 of Act 312 of 1969, as amended, MCL § 423.239, lists eight separate criteria to be considered by an arbitration panel in resolving police and fire fighter interest disputes. These factors have all been duly considered by this Panel, with particular emphasis on subsections (c) (the public interest and the governmental unit's financial ability to pay) and (d) (the comparable wages, hours, and employment conditions of other employees). Subsection (e) (the cost of living), which is ordinarily of considerable significance, was less stressed by the parties and the Panel in this instance because of the relatively stable inflation rate of recent years and the absence of wages as an issue in this arbitration.

The Chairperson of this Panel is on record in a number of interest arbitrations that, to best preserve healthy, voluntary collective bargaining, the soundest approach for an outsider in resolving union and employer disputes is to try to replicate the settlement the parties themselves would have reached had their negotiations been successful. See, *e.g.*, *County of Saginaw & Michigan Fraternal Order of Police*, MERC Case No. L90 B-0797 (1992); *Macomb County Professional Deputies Association & County of Macomb*, MERC Case No. D91 I-1674 (1992). The truest measure of that hypothetical agreement is likely to be the actual contracts that have been concluded in similar units of comparable communities or in comparable units of the same community. As a subsidiary factor in the

analysis, the Chairperson will also place the burden of proof on the party seeking to change the status quo.

The parties have agreed on the following municipalities as comparables for the purposes of this arbitration: Ann Arbor, Canton Township, Clinton Township, Dearborn, Dearborn Heights, Pontiac, Royal Oak, St. Clair Shores, Southfield, Sterling Heights, and Westland.

ISSUES I & II: PENSIONS – MULTIPLIER; SOCIAL SECURITY ROLLBACK

The parties' first two issues, both economic, are related and will be considered together. The Union's initial proposal is an increase in an employee's annuity factor, or "multiplier," to 2.8% for the first 30 years of service, with a maximum of 75% of final average compensation, effective December 1, 1996. The City is prepared to accept the increase in the annuity factor but only in conjunction with an increase in the employee's retirement contribution from 2.7% to 3.56%, both increases to be effective on the date of the Award.

Second, the Union proposes: "For employees retiring December 1, 1996 or thereafter, there shall be no benefit reduction at full Social Security age." The City would agree to eliminate the rollback of the employee's annuity factor, but again only in conjunction with the increase in the employee retirement contribution from 2.7% to 3.56%. Both the rollback elimination and the contribution increase would be effective on the Award date. By letters dated June 3 and 4, 1998, respectively, the Union and the City agreed that the effective dates of all proposed changes could be treated as separate issues.

Increase in Employees' Pension Contribution. The City contends that, including amortization payments, its costs for funding the fire fighters' pension is 34.34% of

payroll as compared with 20.55% for the police and 20.73% for the general employees (U-35, p. 2-A). Even on normal cost, the fire fighters' figure is 22.29% while the police's is 20.29% and the general employees' 16.20% (*id.*). In addition, the health insurance portion of retirement is higher for fire fighters at 5.9% of payroll versus 4.25% for police. All this is true, says the City, even though fire fighters and police receive the same salary on the basis of the parity concept.

The City seeks the 3.56% contribution from fire fighters on the grounds that this is the weighted average paid by the police (C-42e; U-35, p. A-2). Although there is only one Fire Fighters Union in Livonia covering all uniformed personnel except the Chief, there are two police unions. The Lieutenants and Sergeants Association represents the police command officers, equivalent to the 29 union members of the Fire Department holding the rank of Lieutenant or higher. The Police Officers Association of Michigan represents the police general officers. The police command officers pay 5.21% toward their pension costs and the police general officers pay 2.55%, while all fire fighters pay the same 2.7%, even though almost one-third hold a rank equivalent to police command officers. In addition, AFSCME general employees in Livonia contribute 3.1% of their salary and AFSCME supervisory employees contribute 3.66% (III Tr. 68).

Finally, the City points out that the pension costs per fire fighter in Livonia are higher than those in any other comparable community, and significantly higher than several (C-34). According to the City's calculations, the discrepancies range from $22 in Westland and $192 in Dearborn Heights to $6,473 in Ann Arbor and $6,790 in Dearborn. The Chairperson calculates the average deviation from Livonia among the ten pertinent comparables as $3,213.

The Union counters the City's arguments for an increase in the fire fighters' pension contribution by emphasizing that the increase in the police command officers' rate was not a *quid pro quo* for the kind of increase in the annuity factor sought by the fire fighters here. Indeed, says the Union, the City absorbed the costs of this benefit when it was negotiated in the current contract of the Livonia Police Officers Association, which represents general officers (U-32, p. 1, ¶ 1(B)(b)), and when a similar increase and a Social Security rollback elimination were negotiated by the Lieutenants and Sergeants Association for 1995 and 1999 (U-32, p. 2, ¶ 1(C)(b) and (c)). Rather, the increase in the contribution rate in 1993 for command officers was negotiated in connection with their gaining retirement with full benefits at age 50 and 10 years of service, or at any age with 30 years of service, in the 1991-94 contract (U-32, p. 3, ¶ 2(C)(b)). Neither the Fire Fighters Union nor the Police Officers Association has negotiated a similar benefit. Therefore, concludes the Union, parity does not justify the added pension contribution sought by the City.

Parity in the strict sense apparently once played a more prominent role than today in the pension contributions of Livonia police and firefighters. For the most part the rates were equal during the 1980s (U-33). But that pattern was broken in 1988 and has never been restored. The Union may be correct in its explanation of the specific reason for the increase in the police command officers' contribution rate in 1993. The City has been persuasive, however, about the larger differences in pension costs among Livonia fire fighters, on the one hand, and the City's police, other City employees, and fire fighters in comparable communities, on the other hand. On balance, we are satisfied that the City's proposal for an increase in the fire fighters' pension contribution rate to 3.56%, effective

as of the date of this Award, is supported by the evidence outlined above. The figure, reflecting a weighted average of the amounts paid by the members of the two police unions, will serve to promote the spirit of parity, if not its letter, between police and fire fighters viewed as a whole. And 3.56% is not intrinsically out of line; the Fire Fighters Union negotiated 4.0% in the early '80s and 3.7% in the early '90s (U-33).

Effective Dates of Increased Annuity Factor and Social Security Rollback Elimination. The Union argues that both benefits, the increase in the annuity factor to 2.8% and the elimination of the Social Security rollback, should be made retroactive to December 1, 1996, the first day of the contract at issue. The Union points out that this is a year after the annuity factor increase became effective for the Livonia Police Officers Association and that the elimination of the Social Security reduction was granted to both police unions retroactively to December 1, 1995 (U. Br., p. 19, citing U-32). The City's response is that "traditionally, any changes in the pension plan begin at the date the parties sign the agreement because that is when the new funding begins" (City Br., pp. 21-22).

We do not doubt that it is common for major, expensive changes in pension plans to become effective when the agreement is executed. At the same time, however, it is not uncommon to have various benefits made retroactive to the beginning of a contract's term. Employers take this into account by establishing contingency funds for such eventualities (and have the use of the money in the meantime). Even the City recognizes effective dates for pension provisions may be "flexible" (City Br., p. 21). In the present instance there is evidence that the police unions were actually granted retroactivity for the very same sort of benefits sought by the fire fighters here, even if not for such a lengthy

period. Under this Award, the City will receive a substantial employee contribution in return for the increased annuity factor and the Social Security rollback elimination. Retroactivity like that accorded the other unions would seem a fair part of the tradeoff, and shall be applied.

ISSUE III: DEFINED CONTRIBUTION PLAN

At present the City of Livonia has a defined benefit plan for fire fighters, whereby the amount of the pension received upon retirement is determined by a preset formula. The City now proposes to establish a defined contribution plan, whereby the amount of the funding is preset and the amount of the pension is determined by the total contributed and the accumulated earnings upon retirement. The Union is prepared to accept the notion of a defined contribution plan that would differ little from the City's proposal for current employees. But there are two major differences in the parties' last offers.

First, while the City would allow current employees to opt for either the existing defined benefit plan or the new defined contribution plan, it would make the defined contribution plan mandatory for new employees. The Union calls for both groups to have the option of choosing either plan. Second, the City would set its contribution rate for existing fire fighters at 13% of wages (broadly defined) but for new hires at 9%. The Union would have the same City contribution rate of 13% for both groups.

The City strenuously maintains that its long-term goal is a defined contribution plan and that it would never have agreed in collective bargaining to a dual system of indefinite duration (City Br., pp. 41-42, citing III Tr. 172-73). A defined contribution plan is superior for an employer, the City points out, because it can better predict its costs and can avoid onerous actuarial studies. At the same time, current fire fighters will not be

adversely affected since they will be free to select either plan. Furthermore, the City believes a defined contribution plan will also be beneficial for new hires, for whom it will be mandatory. Although it will shift the risk of investment to the employee, it will provide such advantages as earnings from market growth, the absence of any defined benefit cap, broader survivorship rights, the lack of any minimum retirement age, tax savings, portability, borrowing capability, and so on (III Tr. 93, 102-06, 120-22). The only comparable with a defined contribution plan, Canton Township, makes it mandatory for all employees (C-34; III Tr. 185-86).

In support of its position, the City observed that under its recent contracts with the two AFSCME unions, all new employees will be required to participate in a defined contribution plan, and under its recent contract with the police command officers, all new hires off the street will be required to participate in a defined contribution plan (III Tr. 65-69, 76-77). To demonstrate the attractions of a defined contribution plan, the City noted that 49% of the eligible AFSCME and exempt employees voluntarily elected to switch to it from their defined benefit plan (III Tr. 72).

The Union was quick to respond that the City's reference to the police command officers was misleading, since in fact no one is hired into that unit "off the street" (U. Br., p. 104, citing V Tr. 95). By contract, only City police bargaining unit members can be promoted into command officer positions (J-8, Art. 11.2; J-11, Art. 10). The Union went on that it opposes making defined contribution plans mandatory for new hires, since it is universally acknowledged that such plans place the risk of loss on the employee and are thus not best for everyone. Moreover, the Union saw no evidence to support the City's contention that the continued operation of two plans was too expensive.

In addition, the Union strongly objected to the "two-tier" approach whereby the City would contribute 13% of wages on behalf of current employees but only 9% on behalf of new employees. According to the Union, this could cause morale problems among employees working side by side on the job. Moreover, the difference could not be justified on the basis of past service cost amortization, since the only evidence introduced by the City suggested a much lower figure than 4% (U. Br., p. 101, citing III Tr. 99, 108). The Union emphasized that the City's Finance Director conceded the City will be paying less under its proposed defined contribution plan than now even if it had to contribute 13% on behalf of all employees (III Tr. 181).

In defense of the disparity in its contribution rates, the City declared that it is in line with internal comparables, consistent with current practices in the State of Michigan, and justified by the distinctions between existing and future employees. Both AFSCME locals accepted smaller contribution rates, 12% and 7% respectively, with the greater disparity of 5% as the price for allowing current employees to elect between the two plans (III Tr. 75). The City's expert knew of no plans in Michigan – although he mentioned only a few specific plans – where the rates for new and existing employees were the same. The need to account for the past service credit of incumbents is the standard explanation for this differential in employer contributions (III Tr. 97-98).

The proposals on the defined contribution plan present an economic issue, and the Panel is obligated to adopt one party's offer or the other's. The Chairperson is not convinced that the City has demonstrated either the financial need or the actuarial justification for the 4% differential between the contributions on behalf of current and future fire fighters. Yet I am even less convinced, on the basis of both the internal and

external comparables, that the City would ever have agreed to granting an option to new hires to elect between a defined benefit and a defined contribution plan. I also realize there is a nationwide trend toward defined contribution plans. As is said in a standard text, Steven L. Willborn, Stewart J. Schwab & John F. Burton, Jr., *Employment Law: Cases and Materials* 774 (2d ed. 1998):

> Historically, defined benefit plans were the predominant form of pension plan. As recently as 1975, more than two-thirds of pension plan participants were in defined benefit plans (27.2 of 38.4 million participants).... In 1991, 58 percent of pension plan participants were in defined contribution plans. A number of factors contributed to the shift toward defined contribution plans, including economic factors (e.g., [slow growth in firms offering defined benefit plans]), legal factors (e.g., compliance with laws is more costly for defined benefit plans), and the preferences of both employers and employees (e.g., defined contribution plans are easier to link with current performance and permit greater employee mobility). DOUGLAS L. KRUSE, PENSION SUBSTITUTION IN THE 1980s: WHY THE SHIFT TOWARD DEFINED CONTRIBUTION PLANS? (National Bureau of Economic Research Working Paper No. 3882, 1991).

If the City's proposed 4% disparity between the 13% contributed on behalf of current fire fighters and the 9% contributed on behalf of new hires does not stand up under actuarial and other scrutiny, that can always be adjusted in future negotiations. At least the City has provided support for the notion of *some* disparity on the basis of both internal and external plans. We have no evidence before us, however, of the existence anywhere of options permitting new employees to select either a defined benefit plan or a defined contribution plan. We shall therefore adopt the City's last offer on the subject.

ISSUE IV: DISABILITY PENSION AND WORKERS' COMPENSATION

Section 2.96.290A of the City of Livonia's Retirement Ordinance provides a disability pension for all "totally and permanently incapacitated" employees who have "ten or more years of total service" (J-1, p. 145). Section 2.96.290B provides for the

waiver of the ten-year service requirement if the Board of Trustees finds (1) the incapacity is one "arising out of and in the course of the member's duties in the employ of the city" *and* (2) "The member is in receipt of workman's compensation on account of such incapacity" (J-1, p. 146; "worker's compensation" in U-34, p. 19). The Union would delete Subsection B(2), the requirement that a member must be receiving workers' compensation before the ten-year service requirement may be waived. The City would maintain the status quo.

The Union argues that the requirement for the receipt of workers' comp benefits is unnecessary, redundant, potentially a cause of delay, and contrary to the practices in eight of the eleven comparable communities – Ann Arbor, Clinton Township, Dearborn Heights, Royal Oak, St. Clair Shores, Southfield, Sterling Heights, and Westland (U. Br., pp. 22-23, citing U-39; U-44; U-45; U-46; II [corrected] Tr. 160-63). Livonia already has adequate safeguards, the Union contends, to ensure that a duty disability retirement is based on a duty-related cause. A three-person medical committee must examine and document the nature of the injury or illness and the retirement board must approve. Most important, says the Union, workers' compensation proceedings may be unduly prolonged and at least one fire fighter remained without benefits while his case was being appealed (IV Tr. 29).

The City responds that the medical committee under the ordinance does not necessarily have the expertise available to workers' compensation specialists. In addition, the City lacks the means of monitoring whether an employee may have recovered. The Workers' Compensation Bureau has such capacities built in. Regarding the particular fire fighter whose case was mentioned by the Union, the City pointed out that the Workers'

Compensation Magistrate found he had unreasonably refused an offer of work and, while claiming a disability, was actually working as a police officer in another township (Bur. WDC Op. No. 011095059, Dec. 16, 1994).

If eight of the eleven comparables had disability pension plans like Livonia's, with years-of-service requirements waivable upon the approval of a retirement board without the need for the member's being in receipt of workers' compensation, that would be powerful support for the Union's position on this issue. As the Chairperson sees it, however, that is not quite the situation. Six of the eight municipalities have adopted the State of Michigan's Act 345 of 1937, dealing with Firemen and Policemen Pensions (U-39; U-46). That statute has a considerably different structure from Livonia's on duty and nonduty disability, although it does indeed not require the receipt of workers' comp benefits (see MCL § 38.556 (d) and (e)).

A Union witness testified, without elaboration, that of the five other comparables, Ann Arbor and Royal Oak do not require workers' compensation (II Tr. 162-63). She was not certain about the other communities. The Union may be technically correct that the two named jurisdictions do not always demand the "actual receipt" of worker's comp benefits (U. Br., pp. 22-23). Nonetheless, both Ann Arbor and Royal Oak, as I read the ordinances, *do* normally call for the member's being "in receipt of" or "paid" workers' compensation as a condition for waiving the otherwise applicable 10-year service requirement (U-44, § 1:568(2)(b); U-45, § 20(a)(2)). We have not been cited any special contractual or other type of exception to these provisions for the benefit of fire fighters. And this is an issue on which the Union bears the burden of proof.

We are left with the conclusion that only six of the eleven comparables – a bare majority – clearly authorize duty-related disability pensions on the basis of a medical committee's findings, without receipt of workers' comp as a condition, and those six are operating under a differently structured State statute. While the City's stated rationale for retaining the workers' compensation requirement may be less than airtight, it is not implausible. There are obvious advantages in relying on the State Bureau's expertise and its monitoring capabilities (IV Tr. 49-53). And the sole example of an "abuse" presented by the Union, in terms of an excessive delay before a final administrative decision, appears at best to be something of a mixed bag. The fire fighter's claim was at least questionable (*id.*, p. 51; Bur. WDC Op. No. 01195059, Dec. 16, 1994). The Union has not established its case and the City's last offer thus prevails.

ISSUE V: PROMOTIONS – BYPASS APPEAL PROCEDURE

Under the existing block system for promotions in the Livonia Fire Department, all employees are placed in groups of ten in a certain job classification based on seniority, and all promotions to a higher classification go first to the top employees in the next lower classification (J-2, App. A-1, ¶¶ 2, 3). Paragraph 4 of the Block System provides that the Chief may "by-pass" the top man for promotion "due to his lacking certain requirements or experience" (J-2, App. A-2, ¶ 4). Paragraph 4 continues: "The man [who is bypassed] shall have the right of appeal through the Commission and any decision of the Civil Service Commission shall be binding" (*id.*).

The Union would delete the preceding sentence and substitute the following: "The by-passed employee may elect to appeal to the Civil Service Commission or through Article 7, Grievance Procedure, provided, further, that there shall be no appeal from the

Civil Service Commission to arbitration or from arbitration to the Civil Service Commission." The City proposes no change in the status quo on this issue as such, although it seeks a total overhaul of the block promotion system.

The Union argues quite simply that a promotional bypass is the only personnel decision excluded from grievance arbitration under the contract, and there is no justification for the distinction. Few decisions affect an employee more than the denial of a promotion, and a bypass in effect can even be a form of discipline. All other disciplined employees can elect either arbitration or the Civil Service Commission. The Civil Service Commission consists of three persons appointed by the Mayor and, according to the Union, thus "hardly meets this test" of "an impartial decision-maker" (U. Br., p. 30). In no comparable community are such disputes excluded from the arbitration procedure.

In response the City maintains that "allowing a bypassed employee to appeal to arbitration would cause delays in the system and could cause gridlock," and "is not needed" since "[t]here has been only one time an employee was bypassed... in the 40 years of the block system" (City Br., pp. 112, 113, citing VI Tr. 176-78, I Tr. 33, 51). Finally, although no personnel matters are excluded from arbitration in comparable communities, the City notes that Livonia is the only one with a block system governing promotions (City Br., p. 114, citing I Tr. 62-63).

It seems undisputed that Livonia is unique among comparable communities in not allowing all personnel grievances to proceed to arbitration, at least as an alternative to the Civil Service Commission (see U-25). While the City points out that Livonia is also unique in having a block system for promotions, it does not really explain why that distinction should make any difference. In either situation some public official has made a

promotion decision and an employee or a union has challenged it. The Chairperson takes judicial notice that grievances over promotions are the daily grist of the arbitral mills, and Livonia's standard of "certain requirements or experience" is not that unusual or difficult for an arbitrator to apply.

The City's objections are not persuasive. Indeed, the argument based on concerns about delays and "gridlock" and that based on lack of need (because there has been only one promotion dispute in 40 years) might seem to be inconsistent. But even if those arguments are being made in the alternative, neither carries the day. There is no reason a single arbitrator should not be able to decide a case at least as swiftly as a conscientious multi-person Civil Service Commission. And despite the past record of little challenge, the Fire Chief himself raised the specter of what might occur "if I were to bypass people with any frequency" (VI Tr. 177). We shall adopt the Union's last offer.

ISSUE VI: SICK LEAVE CONTROL – FAMILY ILLNESS

Through the following underlined language, the Union proposes to modify Section 2.H.9 of the parties' 1993-96 contract (J-2, p. 2):

> After four (4) unexcused sick leave days for the employee's own personal illness, (which shall not include sick leave used due to illness in the employee's immediate family), are used in any twelve (12) month period, the City may require the employee to produce a doctor's certificate for current and future use of sick leave by the employee for the employee's own personal illness and this employee may be sent, at the City's option, to the City's physician for examination to determine in the physician's opinion whether the employee is able to return to work. No phone calls shall be made to the home pursuant to this provision.

The City for its part would leave the language unchanged. This is an issue on which the parties disagree as to categorization; the Union treats it as noneconomic and the City as economic.

The Union first declares that the insertion of "unexcused" merely reflects current practice. The Chief, for example, has expressly spoken of "unexcused" sick leave beyond the four days or 96 hours in referring to the Department Standard Operating Procedures on the subject (C-59; U-67; U-68; U-69). The City apparently agrees with this "liberal" interpretation, but relies on it to argue there is no need for the proposed change in the language (City Br., p. 136).

More important, the Union would exempt leave to attend to an ill or injured family member from the four-day (96-hour) maximum after which a doctor's certificate is required. The Union points out that neither the police patrol contract nor the police command contract contains such a requirement. Furthermore, the Civil Service Rules and Regulations governing sick leave controls for all City employees do not call for a doctor's statement for the use of sick leave for family illness (U-66; II Tr. 110-11). Rule 26.2(e) merely provides that the "department has knowledge that such illness necessitates the presence of the employee" (U-66, p. 43).

The Union goes on that when the current language was negotiated, the only change from the wording of the Civil Service Rules and Regulations was the addition of language prohibiting employer calls to the home to verify the employee's presence. The intent, says the Union, was to leave in effect the CSC's exemption of sick leave for family purposes from the four-day rule (U. Br., pp. 33-34, citing IV Tr. 112-13, 118-19).

The City replies that CSC Rule 26.2(e) contains language conveniently omitted by the Union, namely, the definition of "sick leave" as an "absence, due to illness, of an employee *or illness in the immediate family*..." (City Br., p. 137; emphasis supplied by the City). Moreover, although the Fire Chief apparently did not have any specific

recollection about a discussion of family illness during the negotiations leading up to the new contract provision, he testified that he did recall a written proposal "that the 96-hour limit would only apply to personal illness, as opposed to sick leave, which is how it eventually got written" (IV Tr. 150-51).

The City places heavy emphasis on the absentee problem it declares it was encountering because of sick leave before the control language was adopted in the 1993-96 contract. Thus, the statistics on employees hired in 1996 or before were as follows (C-23; C-24; C-25; see also C-31):

	Avg. Sick Hours Used	*Total Annual Sick Hours*	*Avg. Days Used*
1993	113	5,006	4.74
1994	98	4,317	4.09
1995	85	3,776	3.58
1996	60	2,680	2.54

The Fire Chief attributed the decrease in these figures to the effectiveness of the sick leave controls (IV Tr. 145). He also stated that the decrease has assisted in staffing and that acceptance of the Union's proposal would be retrogressive (*id.*) It would in effect, the Chief said, enable fire fighters to take eight 24-hour duty days, or 192 hours, off before having to verify their sick leave (*id.*).

The Union counters that the City greatly exaggerates the supposed sick leave problem. A study conducted in 1993 showed that the average sick leave use was just 3.91% of total manpower hours, much less than the 6% to 10% claimed by the City (U-69). Furthermore, the Union alleges abuses under the City's reading of the current language. Thus, an employee was denied sick leave for a family illness because he failed to provide a doctor's slip covering his father-in-law's terminal illness (C-67; IV Tr. 111).

The Chairperson finds considerable merit in the positions of both parties on this issue, both as to the bargaining history and the practical consequences of sustaining one position or the other. On the original negotiations, it counts for the Union that "family illness" may never have been discussed. It counts for the City that "personal illness," as distinguished from "sick leave," may have been part of an abandoned proposal. I am impressed by the improved attendance record under the City's reading of the current contract, but I am also concerned about harsh results flowing from that interpretation. Literally, for example, the present language so read might let the City send the *family member* to its physician to determine whether the employee is able to return to work.

What most influences me, however, is the apparently undisputed recognition that the negotiations resulting in Section 2.H.9 of the 1993-96 contract took place against the background of CSC Rule 26.2(e). Both parties rely on that provision. Yet, as I read it, Rule 26.2(e) treats family illness differently from personal illness, even while regarding them both as a basis for sick leave. I am going to resolve this issue by adopting the Union's proposal in the main, but adding some of the explicit language of Rule 26.2(e), which both parties appear to accept. In so doing I shall, *for this purpose only,* treat sick leave control as a noneconomic issue. It plainly has economic implications, as the City stresses, but then so does almost every provision in a collective bargaining agreement. Yet we must recognize some reasonable distinction between economic and noneconomic matters. Here we are not concerned with a substantive provision like the number of days of sick leave allowed, but only with the documentation or other verification needed to support it. Such a procedural question can fairly be classified as noneconomic.

Section 2.H.9 shall be amended to read as follows:

> After four (4) unexcused sick leave days for the employee's own personal illness (which shall not include sick leave used due to illness in the employee's immediate family) are used in any twelve (12) month period, the City may require the employee to produce a doctor's certificate for current and future use of sick leave by the employee for the employee's own personal illness and the employee may be sent, at the City's option, to the City's physician for examination to determine in the physician's opinion whether the employee is able to return to work. No phone calls shall be made to the home pursuant to this provision. Permission for leave for illness in the immediate family shall be granted only if the department has knowledge that such illness necessitates the presence of the employee.

My intent with regard to the particular proposals of the Union in its last offer is twofold: (1) a doctor's certificate shall *not* be required because of sick leave due to illness in the immediate family, but (2) for permission for *any* leave for illness in the family, the Fire Department must be provided with sufficient information in an appropriate form (which *could* be a doctor's certificate) to let it know that such illness necessitates the presence of the employee. The intention is *not*, as the Fire Chief interpreted the Union's proposal, to allow employees eight unexcused absences, but merely to relieve them of the burden of securing a doctor's statement for a family illness.

ISSUE VII: SICK LEAVE – INCENTIVE PLAN

The Union proposes to add the following new subsection to Section 16 of the parties' 1993-96 collective bargaining agreement:

> E. Employees normally assigned to a 56-hour work week who do not use more than four (4) days of their sick leave banks during the preceding calendar year shall have two (2) additional sick leave days added to their banks and one day added to their vacation banks for the following calendar year.

The City would add no incentive for 56-hour employees.

At present, Section 16.D of the parties' contract provides that 40-hour personnel of the Fire Department receive three additional sick leave days and one additional

vacation day in the calendar year following a year in which they use five or fewer sick leave days (J-2, p. 25). The same incentive is granted to all police patrol and police command personnel (J-8, p. 27; J-11, p. 19). The Union contends that it is doing no more than providing a proportional benefit to fire fighters who work a 56-hour week (U-59; IV Tr. 84). A City that is concerned about alleged abuse of sick leave, suggests the Union, should applaud rather than oppose a measure designed to encourage less leave-taking.

According to the Union, only two of the comparable communities do not provide some type of incentive to reduce the threat of sick leave abuse (U-62). Even more to the point, the Union observes that none of the comparables that provide incentives for 40-hour personnel fails to provide an incentive for 24-hour personnel (*id.*; IV Tr. 75-76).

The City meets this proposal by insisting its premise is faulty: to begin with, fire fighters get proportionately far more sick-leave hours per year than do police officers or general employees. Specifically, that is 216 hours for fire fighters compared with 96 hours for the others, a factor of 2.25 in favor of the former (IV Tr. 98-99). Put another way, fire fighters work 40 % more hours in a year than the others but get 125% more sick leave (IV Tr. 99). So, concludes the City, fire fighters already get preferable treatment on sick leave and should not be compared to other City employees on incentives. In addition, fire fighters are only on duty two or three days a week and are thus likelier to be able to avoid missing work if they get sick. Finally, the parties originally negotiated incentives for 40-hour employees but not for 56-hour employees because they recognized these distinctions, and that deal should not be overturned in arbitration.

As to the external comparables, the City points out that the Union's own exhibits indicate the different communities have practically unique systems for handling sick leave accrual and sick leave incentives (U-60, U-61, U-62). Comparisons become a matter of apples and oranges, and have very little value in determining what should be done in Livonia.

On this issue, the Chairperson believes the City has the better of the mathematical analysis. The fire fighters are disproportionately favored over other City employees on sick-leave accumulation; there is a rational basis for the distinction the parties themselves have drawn between 40-hour and 56-hour personnel on incentives; and the comparables are indeed widely scattered, lessening their value as norms in this instance. The Union has not carried its burden of proof and the City's proposal for the status quo will be upheld.

ISSUE VIII: LIMITED DUTY – HEALING PERIOD

The Union proposes to modify the fourth paragraph of Article 27 of the parties' 1993-96 contract by adding the language underlined below (J-2, p. 38):

> Employees who are injured on the job, and who have medical certification that they can return to work, on limited duty, must do so after three (3) calendar days of the certification that they may return, provided that at least ten (10) calendar days have elapsed between the date of the injury and the date that they are to return to work. * * *

The City proposes to leave the language unchanged.

The Union does not believe the current provision allows a sufficient healing period for officers unable to perform their regular duties. Typically, at present, the officer is shifted to a 40-hour week if the assignment will be of some duration, which creates a scheduling conflict (IV Tr. 184, 187). Furthermore, there appears to be very

little to do on limited or light duty (IV Tr. 191-92). The Union asserts there will be no cost to the City in this proposal, since the disabled person will receive his full salary whether or not he is brought back to work on limited duty (IV Tr. 190). Savings might actually result, the Union concludes, since limited duty could hinder someone in making a full recovery.

The City retorts that this is "another example of the Union attempting to fix a recently negotiated provision which is not broken" (City Br., p. 145). At present, even after a physician has certified the employee is ready to return to work, the employee is given a three-day additional healing period. The Fire Chief testified he relies on the medical certificate to state the limitations on the employee's duties (IV Tr. 189). Of the eleven comparables, eight have no waiting period at all, and only one, St. Clair Shores, has a longer waiting period than Livonia (C-43).

The Chairperson finds the City's position convincing. A doctor's certificate should be good upon issuance. The Union has demonstrated neither need nor common practice in seeking a 10-day waiting period, and its proposal will be denied.

ISSUE NINE: HOURS OF WORK

The Union would add the following new language to Section 19.A (Schedule of Hours) of the parties' 1993-96 collective bargaining agreement (J-2, p. 26):

> Effective following the execution date of the Act 312 arbitration award, the work week of the uniformed members of the Fire Fighting Division of the Fire Department on a 24-hour work shift shall include one (1) additional day of 24-hours off duty in every other 28-day cycle, which shall reduce the average work week for such employees to 53.2 hours per week.

The Union would also modify Section 16.A (Sick Leave) by adding the following as the second sentence (J-2, p. 24):

> All permanent full-time Employees on a 53.2 hour duty week shall accumulate sick leave at the rate of fourteen (14) hours for each completed month of service with unlimited accumulation.

Lastly, the Union would modify the remaining provisions of the collective bargaining agreement to replace any reference to a "56 hour" duty week to a "53.2 hour" duty week effective following the execution date of the Act 312 award.

The City proposes to maintain the status quo. Alternatively, if the Panel adopts the Union's last offer, the City proposes other substantial changes in the terms and conditions of employment. The Union objects to this latter contingent offer as contrary to Section 8 of Act 312, which the Union insists limits the Panel to selecting one or the other of the parties' last offers on an economic issue like this one (U. Br., pp. 42-43).

In support of its position, the Union contends that the 56-hour fire fighters in Livonia work 5.43% above the average of the comparable communities (U. Br., p. 43, citing U-19; I Tr. 70). The annual hours are 2,912 for Livonia and 2,762 on the average for the comparables (U-19). The 53.2 hour week the Union is seeking is the exact average in the other communities. A proportionate decrease in sick pay is in keeping with the tradeoff in hours elsewhere, and the Union would allow for that here.

Within Livonia, the Union continues, the 56-hour fire fighter puts in 40% more hours over a 25-year career than a 40-hour police officer (U-20). Even under the Union's last offer, it would be 33% more. Furthermore, under the Union's proposed reduction in hours, the hourly wage rate of police personnel would still be 30% to 45% greater, depending on rank, than 56-hour fire fighters (U-17).

An important Union argument is that a reduction in hours can be achieved without additional cost to the City. An analysis of staffing levels is said to confirm this

contention (U-22). In 1995-96 only 10 persons were called in on overtime to meet the minimum shift level of 21, an average of just 0.8 monthly overtime call-ins for the whole year. In 1996-97 only 25 persons were called in to maintain minimum requirements, an average of 2.2 monthly overtime call-ins over the year. The Union insists one additional day off every other 28-day cycle can be achieved without hiring more fire fighters. The "worst case" scenario would be a slight increase in overtime on some shifts.

The Union says its proposal would also result in the saving of an annual average of $106,000 attributable to Act 604 overtime, which must be paid for hours worked in excess of 54 per week (U-55; I Tr. 64; II Tr. 110). The overtime budget is now $151,000 (U-15). Any additional overtime, the Union concludes, would not offset the savings resulting from the elimination of Act 604 overtime by the reduced 53.2 hour week.

The City strongly disputes many of the Union's figures. To begin with, says the City, an extra day every other 28-day cycle amounts to 6.5 extra days off per year. The total is 156 hours per year, reducing the present annual 2,912 hours to 2,756. That comes to 52 weeks of 53.0 hours each (City Br., pp. 115-16). With 84 employees in Fire Suppression, that means the loss of 546 work days a year. According to the City, that would require the hiring of 4.75 additional employees at an annual cost of $323,942, thereby creating significant financial problems (*id.*, pp. 117-18, citing C-3; C-4; C-6; C-14; C-15; II Tr. 74-77, 102-06). Alternatively, existing employees would have to work overtime to meet minimum staffing requirements and provide the proper mix of job classifications, at an estimated cost of $343,069 yearly (*id.*, p. 118, citing C-7).

Under the City's analysis, Act 604 will not solve the problem , since the Union's plan would eliminate no more than half the overtime. The Union's proposal still leaves

employees working a tenth day in two 28-day periods a year, instead of the present four, which would cause their hours to exceed the triggering 216 hours for overtime (J-2, p. 20; C-17; I Tr. 87-100). In addition, the change would destroy the existing 5:7 proportionality between 40-hour personnel (over a 5-day week) and 56-hour personnel (over a 7-day week). In effect, fire fighters working 53 hours a week would get a 5% hourly rate increase and those working 40 hours would not.

For a fair comparison with other communities, the City urges consideration of both salaries and average scheduled hours per week (C-9):

	Avg. Hours/Week	*Non-Command Highest Wage*	*Shift Command Highest Wage*
Livonia	56	$46,987	$64,750
Sterling Hts.	56	45,351	60,889
St. Clair Shrs.	56	42,785	51,522
Clinton Twp.	56	43,383	56,705
Canton Twp.	56	43,329	48,694
Southfield	54	48,909	62,244
Dearborn	54	43,672	54,784
Royal Oak	53.1	42,316	54,549
Ann Arbor	50.4	40,245	48,315
Westland	50.4	41,019	49,842
Pontiac	50.4	39,857	51,447
Dearborn Hts	48	45,928	51,750

On the basis of these figures, the City stresses that a proportional relationship can be seen between wages and average hours per week. Thus, the five 56-hour jurisdictions generally pay higher. Livonia pays more to non-command personnel at the highest wage level than any other city except Southfield, and pays the most of all the cities to shift command personnel at the highest wage level.

In the view of the City, internal comparisons between police and fire fighters also confirm the soundness of leaving the average hours worked as they are in Livonia. The City believes a conservative estimate would be that during a typical 24-hour shift, fire fighters spend eight hours in such activities as sleeping, watching television, or other recreation (I Tr. 66-68). With approximately 121 duty days a year, that amounts to a total of 968 hours. Subtracting 968 hours from the currently scheduled 2,912 hours per year results in an annual total of 1,944 hours. That, declares the City, compares favorably with the 2,080 hours worked by police in a year. The parties' bargaining history shows an effort to maintain parity between the two departments, and that means being consistent about average weekly hours as well as wage increases and absolute wage levels.

Livonia is one of five cities out of the dozen comparables where fire suppression personnel work an average 56-hour week. It is the most common single figure among the group, and does reflect the 5:7 proportion in relation to 40-hour personnel which the City claims is standard. In any event, Livonia cannot be said to be substantially out of line with the other comparables. In addition, the Chairperson finds it inescapable that salaries and hours worked must be considered together. To look at hours in isolation would seriously distort the picture. To reduce hours without reducing annual salaries is effectively to raise the hourly wage rate. And yet the parties have separately negotiated and agreed about wages for the new contract term.

The City has forcefully argued the linkage between salaries and hours, and has fully documented the favorable salary scale enjoyed by Livonia fire fighters in relation to those in the other comparable cities. The City stands at or near the top in nearly all job classifications among all the comparables. Part of the price the Livonia fire fighters have

paid for their lofty pay scale is the continuation of the 56-hour week. To tamper with that figure would be to risk subverting part of the wage bargain the parties have already struck for their forthcoming contract. The City's last offer will be adopted.

In view of this disposition, it is unnecessary to consider the Union's argument that the City's alternative proposal is impermissible under Section 8 of Act 312, which requires an arbitration panel to select one or the other of the parties' last offers. For whatever value it may have, however, the Chairperson's own personal opinion is that such an alternative, contingent proposal is indeed contrary to the scheme of Act 312, at least absent the agreement of the other party. That is one of the inherent deficiencies of last-offer arbitration by comparison with the much greater flexibility afforded by traditional collective bargaining.

ISSUE TEN: PROMOTIONS – MODIFICATION OF BLOCK SYSTEM

The City desires a thorough overhaul of the existing promotion system. Details are set forth on pages 17-22 of the City's Last Offer, dated April 8, 1998. The City's own summary of its proposed changes is as follows (City Br., p. 16):

> The City proposes a system of promotion taking into consideration seniority, education and testing. This system will apply to all members of the Department who reach the level of Lieutenant or Fire Inspector after the date of Award. This system will involve a written test and assessment center testing process. In addition, points will be awarded for education and seniority. The current seniority promotional system shall remain in effect for all members of the Department who have reached the rank of Lieutenant or Fire Inspector and above, as of the date of award and for the positions of Firefighter, Assistant Driver and Engineer.

For its part, the Union proposes the following modifications in Appendix A, The Block System, in the 1993-96 contract (J-2, p. A-1 ff.):

1. Modify Paragraph 4 by deleting the last subparagraph, which provides:

Notwithstanding the by-pass provision, all men in the highest Block must be promoted before promotions from the next lowest Block may be affected.

2. Add the following Paragraph 12:

The City will train all members of the bargaining unit to the level of their responsibility including any level that they may assume on an acting basis. To this end, the City shall provide the following minimum levels of training, as prescribed by the Michigan Fire Fighters Training Council:

Rank	Minimum Level
Engineer	Fire Officer I
Lieutenant	Fire Officer I, II
Captain, Senior Captain, and Battalion Chief	Fire Officer I, II, III

The parties devoted more time and attention to this issue – over a third to nearly a half of their respective 100-plus-page briefs – than to any other. The Panel recognizes the importance of the subject to both parties, and has given it the long, careful consideration it deserves. Nonetheless, in the interests of efficiency and in light of the Chairperson's ultimate approach to resolving the dispute, we believe somewhat abbreviated versions of the parties' positions will suffice.

The City scathingly denounces the current "block system" for promotions in the following terms (City Br., p. 57):

> Today, the management of the Department, except for the Chief and Assistant Chief [an unfilled position], are chosen purely based on seniority. Ability, qualifications, and education mean nothing. If a fire fighter is around for 27 years, that fire fighter will become the top manager (Battalion Chief) on duty in fire suppression, responsible for the entire City of Livonia. It does not matter if that person did not take any training course, had any education in fire science or emergency medical service, or established that he had leadership ability and training.

The City proceeds to relate the origin of the block system and the evolution of the Department. Within each job classification, employees are placed in groups or "blocks" of ten based on their seniority. A vacancy in any job classification must be filled by the most senior of the ten employees in the next lower classification. Employees can be "bypassed" for promotion if they lack the necessary qualifications or experience. No one can be bypassed permanently, however, because the City cannot move to the next lower "block" until all the employees in the higher block have been promoted. In fact, the bypass procedure has been used only once, and that employee was eventually promoted.

Historically, the block system developed over 40 years ago when Livonia was a small, rural community and there were concerns about favoritism. At the time, as the City relates, there were no local educational programs for fire science training. Today all that has changed. New technology has emerged and Livonia provides emergency medical services as well as fire suppression. It has now taken on advanced life support, which will require paramedics. About 70-75% of the runs are medical emergencies (VI Tr. 78). To keep up, management principles and techniques have evolved accordingly. Local colleges now offer educational programs tailored for the fire service (IV Tr. 214; VI Tr. 61-63).

The City called on three nationally known experts in fire service and management techniques, as well as the Livonia Fire Chief, the Police Chief, and a 34-year veteran of the Fire Department, to support the thesis that the evolution of the Livonia fire service warrants a promotional system that identifies the most qualified persons for leadership positions. Studies were introduced to show a negative correlation between seniority and assessment scores (VII Tr. 31-34). Furthermore, the City argued, the block system results in continual personnel changes at the top because everyone must "wait his turn" for

promotion (V Tr. 46-47; VI Tr. 92-93, 96-97; VII Tr. 180). This lack of continuity was said to produce a lack of accountability and policy development (V Tr. 139-46, 181-83). The block system was also alleged to have led to the promotion of some employees "beyond their level of competence" (VI Tr. 111-13, 117-20, 166-67).

Of the comparable communities, only Canton Township uses strict seniority for promotion to fire suppression positions, and even it relies on a pass/fail examination for Fire Marshall. (C-87; VI Tr. 126-35). Detroit's seniority-based promotion system should be ignored, in the City's view, since Detroit is not a comparable and has a poor reputation for innovative ideas in fire and rescue services. Internally, the Livonia Police Department has a merit promotional system similar to the City's proposal here. Finally, bargaining history shows a continual evolution of the promotional system, with some of the most glaring problems being resolved by agreement. That indicates negotiations could have resulted in the adoption of the City's plan. By contrast, the City concludes, the Union's proposal is an ineffective band-aid and should be rejected.

The Union's position, in summary, is that the current promotional system has served the City well for over 40 years. It eliminated concerns about nepotism, gave credibility to experience, and eliminated favoritism in the examination process. The City has failed to establish either that there is a need for change or that its proposal would lead to a better system. Act 312 arbitration decisions involving both Detroit and Canton Township, and written by such arbitrators as Robert Howlett, Mario Chiesa, and Jerry Raymond, sustained seniority-based promotion systems in the absence of a clear showing of severe symptoms; "if it ain't broke, don't fix it." The City's outside experts had never

done a study of the Livonia Fire Department and did not purport to criticize its officers (V Tr. 194, 225; VII Tr. 51).

On comparables, the Union insists, contrary to the impression left by the City, that seven of the eleven communities use seniority as the primary criterion for promotion – Ann Arbor, Canton Township, Clinton Township, Dearborn, Royal Oak, St. Clair Shores, and Sterling Heights (U. Br., pp. 57-58, citing U-73; U-74; U-75; U-76; U-79; U-80; U-82). The Union further emphasized that the City's own internal witnesses could not point to any significant problems among fire fighters, and that indeed the citizenry submitted "many, many more" compliments than complaints (VI Tr. 169).

The Union goes on that the bypass clause and the one-year probation period for permanent promotions provide a safeguard against unqualified individuals. Moreover, one of the City's major objections to the block system, namely, the requirement that all persons within a block must be promoted before the City can move to the next lower block, will be eliminated as part of the Union's last offer. Another complaint, the alleged excessive turnover in the top ranks, was not supported by specific evidence about Battalion Chiefs generally, and largely related to the Battalion Chief/Training Office position (C-81). The parties have agreed to change the criteria for promotion to that post. Moreover, it is contended, the Union's proposal that the City provide Fire Officer I, II, and III training for future officers will help ensure competent, well-qualified personnel.

The Union's last principal argument is that the City has not shown its proposal would lead to a better system. The current system, especially as modified by the Union's new proposals, guarantees that those who are promoted will have the necessary knowledge and experience for the position. By contrast, the City's promotional system

would lead to arbitrary and unfair results, especially because of the subjectivity and lack of objective criteria in oral board interviews. Finally, in the Union's view, the City's proposed promotional system will unfairly destroy the legitimate expectations of Fire Department members concerning when they will be promoted.

The City has convinced the Chairperson that, if he were writing on a blank slate, he would opt for the sort of merit-based promotion system it advocates. The City's external and internal witnesses were meticulous and persuasive in their presentations. No experience in today's competitive world suggests that one is best qualified for a higher ranking job just because one has held the next lower post the longest. There is even good evidence to the contrary. Especially in a society where technology and managerial techniques are advancing with stunning swiftness, the more recently educated individual may have a distinct edge on the grizzled veteran long removed from the classroom.

We are not writing, however, on a blank slate. Over forty years of history lie behind Livonia's block promotion system. The whole of the unionized force in the Fire Department, including those who would be likely to profit from a more merit-based system, appear to support it. Expectations for advancement – and undoubtedly many personal and family plans – have been built in reliance on the system's continuation.

None of these considerations, despite their hefty weight, would be dispositive if serious deficiencies or grave abuses could be demonstrated in the present system. But these have not been shown. An occasional mistake by an officer in line of duty is not enough to establish a systemic failure of sufficient proportions to call for an arbitral overhaul. The Chairperson joins arbitrators Howlett, Chiesa, and Raymond in believing that a system in place should not be thrown out in the absence of strong evidence of need.

There is another important factor, mentioned by Mario Chiesa in *City of Detroit & Detroit Fire Fighters Ass'n*, MERC No. D80 B1157 (1985), p. 30. A promotion system is neither a one-time issue, like a single severance payment, nor a constantly recurring issue, like wages, for which an Act 312 quick fix in a given year may be an appropriate remedy. Instead, a promotion system is a basic, ongoing element in the parties' relationship, where stability is a highly desired quality and periodic adjustments to meet developing problems best lend themselves to the give-and-take accommodation of collective bargaining. Only compelling circumstances should warrant an outsider's massive intrusion of the sort sought here by the City.

Finally, the Union's last offer will help to alleviate two of the most justifiable complaints voiced by the City. The deletion of the last subparagraph of Paragraph 4 of Appendix A will mean that a truly unqualified individual can be passed over for promotion as often as necessary, and the City can move on to qualified persons in the next lower block. And, while it may not fully satisfy the City, at least the Fire Officer I, II, and III training the Union proposes for various ranks is a step in the right direction toward ensuring competent personnel at the higher levels. We shall adopt the Union's last offer.

ISSUE ELEVEN: ADMINISTRATIVE KELLY DAYS

The City would delete Section 23.A.3.c of the parties' 1993-96 collective bargaining agreement, which permits an employee to trade so-called Kelly Days with himself, subject to certain specified conditions (J-2, p. 23). The Union would leave the provision unchanged.

Bargaining unit members on a 24-hour shift are scheduled for one day on duty, one day off, one day on, and three days off duty. The middle day of the three days off duty is called a "Kelly Day." At present an individual can trade a Kelly Day with himself, *i.e.*, he can trade a day he would ordinarily be working for a day he is scheduled to be off. According to the Fire Chief, this can cause scheduling problems. The City points out that none of the comparables allows the trading of administrative Kelly Days (C-65).

The Union's response is that the trading of Kelly Days is subject to several conditions, including manpower guidelines and the approval of the Chief or, in practice, that of unit commanders. Section 23.A.3.c was actually inserted into the 1993 contract at the request of the Chief (VII Tr. 210). No abuses have even been suggested. Comparables do not have Kelly Days to trade, because they have three-platoon systems rather than Livonia's two-platoon system. The result is their fire fighters are on duty 24 hours and then off 48 hours. They could not trade a day off without working 48 hours straight.

After such topics as the defined contribution plan and the block system for promotions, this issue comes as something of an anticlimax. Kelly Day trades are already carefully restricted and the City has given no substantial reason for a change. The Union's proposal for maintaining the status quo will be adopted.

The Chairperson is solely responsible for the rationale and language of this Opinion.

AWARD

Issue I-A: The City's last offer concerning the increase in the annuity factor to 2.8% and the concomitant increase in the employee's pension contribution to 3.56% is adopted.

Issue I-B: The Union's last offer as to the effective date of the increase in the annuity factor being December 1, 1996, is adopted.

Issue II-A: The City's last offer concerning the elimination of the Social Security rollback and the concomitant increase in the employee's pension contribution to 3.56% is adopted.

Issue II-B: The Union's last offer as to the effective date of the elimination of the Social Security rollback being December 1, 1996, is adopted.

Issue III: The City's last offer concerning the defined contribution pension plan is adopted.

Issue IV: The City's last offer concerning duty disability pensions and the receipt of workers' compensation is adopted.

Issue V: The Union's last offer concerning promotion bypass appeals to an arbitrator is adopted.

Issue VI: The Union's last offer concerning sick leave control is adopted, as modified in its noneconomic aspects by the language set forth in the Opinion above.

Issue VII: The City's last offer concerning sick leave incentives is adopted.

Issue VIII: The City's last offer concerning a limited duty healing period is adopted.

Issue IX: The City's last offer concerning hours of work is adopted.

Issue X: The Union's last offer concerning the block system for promotions is adopted.

Issue XI: The Union's last offer concerning Kelly Days is adopted.

Theodore J. St. Antoine

Theodore J. St. Antoine, Impartial Chairperson

Paul J. DeNapoli, Union Delegate: I concur on Issues I-B, II-B, V, VI, X, and XI, and dissent on Issues I-A, II-A, III, IV, VII, VIII, and IX.

Raymond Pomerville

Raymond Pomerville, City Delegate: I concur on Issues I-A, II-A, III, IV, VII, VIII, and IX, and dissent on Issues I-B, II-B, V, VI, X, and XI.

July 1, 1998

Livonia, Michigan