6/30/77
ARB

Menominee, City of

COMPULSORY LABOR ARBITRATION

(Pursuant to Michigan Act 312,
Public Acts of 1969, as amended.

In The Matter Of:

CITY OF MENOMINEE, MICHIGAN

-and-

LOCAL 604, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

REPORT OF FINDINGS, CONCLUSIONS, AND AWARD.

Arbitration Panel:

William E. Barstow, Jr., Arbitrator
Steven LeBoeuf, for the Employer
Robert L. Falkenberg, for the Union

June 30, 1977

I.

PROCEEDINGS

June 22, 1976 — Mediation of ongoing negotiations between the City of Menominee and Local 604, International Association of Firefighters, requested from the Michigan Employment Relations Commission by the Union.

July 29, 1976 — Arbitration pursuant to Michigan Act 312, Public Acts of 1969, as amended, requested from the Michigan Employment Relations Commission by Local 604, IAF.

August 31, 1976 — Existing collective bargaining agreement between the parties expires. Fiscal year of the City of Menominee ends.

March 29, 1977 — Arbitration pursuant to provisions of Act 312, PA 1969, as amended, ordered by the Michigan Employment Relations Commission.

April 26, 1977 — Arbitration hearing duly convened at 11:00 A.M. in the Chamber of Commerce Building, City of Menominee, at which were present:

For the City of Menominee (hereinafter referred to as "Employer"):
Thomas A. Ladd, Attorney-at-Law, City Attorney
Steven LeBoeuf, City Clerk, Arbitration Panel Member for the Employer

For Local 604, International Association of Firefighters (hereinafter referred to as "Union"):
F. H. Jabas, Attorney-at-Law
Robert L. Falkenberg, Secretary-Treasurer, Arbitration Panel Member for the Union
Louis J. LeMire, Bargaining Committee Member
Clayton V. Clark, Bargaining Committee Member

May 6, 1977 — Documentation of the comparative wage data which had been presented orally by the Union at hearing received by Arbitrator.

June 2, 1977 — Meeting of Arbitration Panel duly convened at 10:00 A.M. in the Chamber of Commerce Building, City of Menominee, to consider and resolve the issues.

June 2, 1977 — Economic issues identified by Arbitration Panel and award made in all issues.

June 30, 1977 — Report of findings, conclusions, and award issued.

II.

ECONOMIC ISSUES

The economic issues in dispute, as identified by the Arbitration Panel, and as defined by the last best offer of the parties as of date of arbitration hearing on April 26, 1977, are as follows:

A. Wage Adjustments

Note: The prior contract provided that, "The wage base for negotiations for the period beginning September 1, 1976 shall be the wage rate effective September 1, 1975 plus the cost-of-living increase for the period of September 1, 1975 to August 31, 1976." Percentages stated below in relation to the positions of the parties are based on this provision. Also, the hourly rates listed are paid over a 56 hour week.

Union: Proposes a new rate schedule, incorporating increases which vary somewhat in percentage from classification to classification but which approximate 7.2% overall, with hourly rates as follows:

Captain	0-6 months	$3.81 per hour
	After 6 months	3.88
Lieutenant	0-6 months	3.67
	After 6 months	3.74
Mechanic	0-6 months	3.53
	After 6 months	3.60
Pipeman	0-6 months	3.26
	7-12 months	3.36
	After 1 year	3.46

Emplr: Proposes an approximate 6.0% across-the-board increase for new rates as follows:

Captain	0-6 months	$3.60
	After 6 months	3.80
Lieutenants	0-6 months	3.53
	After 6 months	3.63
Mechanic	0-6 months	3.42
	After 6 months	3.52
Pipeman	0-6 months	3.05
	7-12 months	3.22
	After 1 year	3.32

B. Cost-of Living Wage Supplement

Union: Proposes continuation of the cost-of-living bonus incorporated in the previous contract, which provides for a one cent per hour increase for each 0.5% increase in the cost-of-living index as promulgated by the Bureau of Labor Statistics.

Emplr: Proposes discontinuance of the cost-of-living bonus.

C. Vacation Duration

Union: Proposes that the schedule of vacation benefits be extended (the previous maximum was 10 days) as follows:

1-3 years service	3 working days
4-7	6
8-12	8
13-15	9
16-20	10
21-25	11
26 and over	12

Emplr: Proposes continuation of the vacation benefit schedule of the previous contract.

III.

NON-ECONOMIC ISSUES

D. Contract Duration

Union: Proposes a two year contract retroactive to September 1, 1976.

Emplr: Proposes a one year contract retroactive to September 1, 1976 except for the wage adjustment which, it contends, cannot be effective until the next fiscal year under provisions of Act 312.

E. Grieving Union Interests and Work Rules

Union: Concurs in substance with Employer in proposing a detailed statement of grievance procedures, the powers of an arbitrator in relation thereto, and many other grievance considerations, but proposes also the following additional clause: "A grievance may be filed by the Union in matters affecting its rights or privileges only and not on behalf of an employee capable of filing his own grievance."

Emplr: Proposes substantially the same language as the Union, but excluding the above provision delineating the right of the Union to file grievances in its own institutional interests.

F. Composition of Bargaining Unit

Union: Proposes that the captain and lieutenant classifications in the fire department be included in the bargaining unit by express contractual provisions.

Emplr: Proposes that the captain and lieutenant classifications, as supervisory classifications, be excluded from the bargaining unit.

G. Implementing the "Public Safety" Organizational Concept

Union: Proposes that the contract include a provision binding Employer to renegotiate and finalize a new contract with the Union prior to actually implementing the "public safety" organizational concept to which Employer is tentatively committed.

Emplr: Rejects inclusion of any language that would make such a procedural precondition mandatory, but proposes that the contract state its willingness to negotiate concerning "public safety" reorganization effect and problems at any time.

H. Management Rights Provisions

Emplr: Proposes addition of broad and detailed management rights language to the new contract.

Union: Proposes that the language asked by Employer is excessive and would affect established collective bargaining areas unless it is limited.

I. Sick Leave Penalty

Emplr: Proposes adding to the sick leave provisions of the previous contract the qualification that no sick leave pay shall be allowed, "For the first eight hours of any sick leave period after one occasion of sick leave in any one calendar year." Proposes also to eliminate language of the previous contract relating to certification of eligibility for sick leave requested by heads of departments.

Union: Proposes the the sick leave provisions of the previous contract be continued without change.

J. Basis For Promotion

Union: Proposes that promotions to higher rated positions in the bargaining unit be based on seniority only and that the employee promoted be given thirty working days to demonstrate capability to perform the job plus six months probation; however, if Employer should develop a comprehensive written test for firefighting and an in-depth proficiency evaluation, then promotion should be based one-third each on testing, proficiency, and seniority.

Emplr: Proposes that the promotional basis be a matter for management discretion.

K. Factors Breaking Seniority

Emplr: Proposes that seniority be broken by being laid-off, going on leave of absence, or failing without satisfactory reason to report for work within forty-eight hours after notice to the last known address.

Union: Proposes seniority break in case of layoff or leave of absence only after one year, and break after failure without satisfactory reason to report for work after seventy-two hours if notice is by certified mail and after twenty-four hours if service is personal.

L. Employee Anniversary Date

Union: Proposes that each employee's anniversary date for purposes of administration of fringe benefits be his actual date of hire.

Emplr: Proposes that the first fiscal year ending after hire be the employee's anniversary date for administrative purposes.

M. Uniform Allowance

Union: Proposes that a new uniform be issued to each employee on completion of his probationary period, in addition to the $50 annual uniform allowance for each employee beginning after one year of employment.

Emplr: Proposes that the existing grant, of the annual $50 uniform allowance only, be continued without change.

N. Agency Shop

Emplr: Proposes elimination of the agency shop clause that was a part of the previous contract.

Union: Proposes that the agency shop language of the previous contract be continued without change.

O. Call-in Time

Union: Proposes payment of call-in pay (two hours at regular rate) plus time and one-half for all hours actually worked where: (1) employee is recalled for overtime work after his regular 24-hour shift has been completed and he has left the premises after the normal shift ending, and (2) employee is notified less than twelve hours in advance that he will be held over to work overtime for a full additional 24-hour shift.

Emply: Proposes only time and one-half, without call-in pay, in the second instance above.

P. Vacation Splitting

Union: Proposes that vacation time be permitted to be taken in up to four segments so long as no segment is less than 12 hours.

Emplr: Proposes that contract language omit reference to authorization of split vacations because of their administrative inconvenience.

Q. Medical/Hospital Insurance Benefit Ceiling

Emplr: Proposes full medical/hospital coverage under the approved insurance plan continue to be paid by Employer, but only up to a maximum of $850 per year.

Union: Proposes full payment by Employer of medical/hospital insurance coverage without ceiling.

IV.

COLLATERAL CONSIDERATIONS

Environment of the Arbitration

After substantially more than a year of negotiation, the parties nevertheless have presented here seventeen remaining areas of disagreement for arbitration. Many of these might seem susceptible of reasonable resolution. It is difficult to escape an impression that negotiation leading to this point has had an excessively adversary character, rather than the approach of pragmatic trade-off and settlement projected within the policy of Michigan labor law.

Hopefully, greater maturity and understanding of the collective bargaining process will develop during the course of future management-union relations in this community.

Statutory Arbitration Standards

This dispute comes before the Arbitration Panel as a compulsory interests arbitration pursuant to the provisions of Michigan Act 312, Public Acts of 1969, as amended.

Section 8 of the Act provides, inter alia, that "the arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit . . . its best last offer of settlement on each economic issue." The discretion of the arbitration panel in relation to such economic issues is defined specifically by the further provision of Section 8 that "the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9" of the Act.

Section 9 of the Act prescribes the statutory standards for decision by an arbitration panel, both as to non-economic issues and as to choice between last offers in economic issues. This Arbitration Panel hereby identifies the economic issues in dispute as being those issues so designated in Part II of this Report, supra, and certifies that its findings, conclusions, and award relative to all issues are based solely on the standards prescribed by Section 9 of the Act.

V.

FINDINGS AND CONCLUSIONS

Economic Issues

A. Wage Adjustments: Substantial evidence was introduced at hearing concerning area and regional wage levels for comparable job classifications sufficient to indicate conclusively that present firefighter rates in this situs are somewhat low. This view is confirmed by a recent consultant's study commissioned by Employer itself. The Arbitration Panel concludes that the Union's proposed wage schedule more nearly bridges the gap, and offers the further advantage of moving firefighter wages closer to police rates, where they will need to be if Employer implements the "public safety" organizational concept to which it appears tentatively committed.

Employer calls attention to the fact that, pursuant to Section 10 of Michigan Act 312, Public Acts of 1969, as amended, increases in rates of compensation awarded by the Arbitration Panel ". . . may be effective only at the start of the fiscal year next commencing after the date of the arbitration award;" except that ". . . if a new fiscal year has commenced since initiation of arbitration procedures (emphasis supplied). . . such awarded increases may be retroactive to the commencement of such fiscal year . . . ".

Accordingly, Employer urges that Act 312 arbitration was not ordered until March 29, 1977 and therefore that no monetary award of wages can be effective until September 1, 1977 which is the date of commencement of Employer's next fiscal year.

The critical question facing the Arbitration Panel is the meaning of the phrase, "initiation of arbitration procedures." Based on determinations of the accepted meaning given the phrase in past Michigan arbitrating practice and the construction of the phrase by the Michigan Employment Relations Commission, the Arbitration Panel rules that arbitration procedures were initiated in this case by the request by the Union for Act 312 arbitration, forwarded to the Michigan Employment Relations Commission by letter on July 29, 1976. Accordingly, the statute authorizes a wage adjustment retroactive to September 1, 1976.

B. Cost-of-Living Wage Supplement: At most, the next wage renegotiation awaits the parties in little more than a year. The Arbitration Panel concludes that cost-of-living bonus plans have little place where annual wage negotiation is the practice. In any event, such wage supplementation is administratively cumbersome, and can create severe budgetary problems for governmental units. No other labor contract to which Employer is a party contains a wage indexing provision.

C. Vacation Duration: The peculiarities of firefighter work schedules may make extended vacation entitlements less necessary for emotional and family well-being of the firefighter than for other occupational groups. Nevertheless, the previous firefighter vacation benefit has been unduly low in comparison with other of Employer's bargaining units. The Arbitration Panel concludes that the Union's proposed vacation benefit schedule is more equitable, particularly for senior employees.

Non-Economic Issues

D. Contract Duration: If merely a one-year contract retroactive to September 1, 1976 were executed, the parties already would be late in commencing negotiations for the contract to follow. In view of the many negotiating problems that may accompany a move toward the "public safety" organizational concept, this would create a most inauspicious start. Considering also the tendency the parties have exhibited during the past year and a half to engage in adversary tactics rather than negotiate, the Arbitration Panel concludes that a two year contract retroactive to September 1, 1976 should be awarded.

E. Grieving Union Interests and Work Rules: The proposal by the Union, that it be authorized to grieve unilaterally matters relating to its institutional interests, obviously is inappropriate. In substance, this would amount to a free negotiating re-opener rather than a right to grieve, and could make a shambles of management-union relations. The Arbitration Panel concludes that the clause proposed by the Union should be excluded. However, this is not to be understood as denying the right of any individual employee in the bargaining unit to grieve Employer's administration and application of its work rules and provisions of the contract in relation to such individual employee, or as denying the right of the Union to represent such individual employee in grievance proceedings.

F. Composition of Bargaining Unit: Review of the duties of personnel in the firefighting department who are classified as captain or lieutenant indicates that such personnel are not supervisors within the general usage or legal connotation of the term, but rather are working leaders. Based on this factor, the Arbitration Panel concludes that these classifications should remain in the bargaining unit.

G. Implementing the "Public Safety" Organizational Concept: The Arbitration Panel finds it necessary to consider some of the equities of management-union relations during a major reorganization such as implementation of the "public safety" organizational concept will entail. The Panel recognizes the existence of certain questions that are unanswerable in the context of this arbitration, e.g., whether a "firefighter" union as such will be appropriate as a bargaining representative for the probable composite work assignments of the future, or whether Employer legally has the right to commit itself to a procedural precondition that could delay or prevent carrying out an electoral mandate. In any event, a contractual provision to arrive at some sort of agreement in the future before proceeding with "public safety" implementation is in substance an "agreement to agree" and is unenforceable as a matter of general contract law.

H. Management Rights Provisions: The Arbitration Panel observes that the management rights language proposed by Employer is very broad and may in certain instances intrude into the traditional collective bargaining areas of wages, hours, and conditions of employment. The proposed language may even conflict with other provisions of the new contract and thereby create ambiguities that could be a source of future management-union conflicts. However, the Arbitration Panel concludes that if an in-depth statement of management rights will help Employer to feel more secure, such language can be included in the new contract and qualified by an appropriate limiting phrase.

I. Sick Leave Penalty: The proposed penalty, of eight hours pay on the occasion of the second sick leave in a year, is not levied on any other union with which Employer contracts. Evidence introduced at hearing indicates both that possibly excessive sick leave has been used by firefighters in the recent past, and that the problem is being corrected internally without the need for formal procedures. The Arbitration Panel concludes that penalizing an entire bargaining unit for the possible excesses of a few employees is not an appropriate remedy.

J. Basis for Promotion: The Arbitration Panel recognizes that it is established practice in management-union relations to establish express standards for management judgement concerning promotions within the bargaining unit. It is also recognized that, since working leaders are included in the bargaining unit, it is inappropriate that promotion be based on seniority alone. As a further consideration, it is recognized that reasonably valid test procedures for firefighting knowledge are available, although it would not appear that such specific and valid tests have been used by Employer in the past. The Panel concludes that a compromise clause is most appropriate at this point in time, which would base promotion on a combination of seniority, testing, and proficiency with the proviso that seniority shall receive the greatest weight.

K. Factors Breaking Seniority: The Arbitration Panel notes that this is a difficult contractual area, where equities may conflict with administrative needs. The Panel believes that the conflict is most nearly resolved by establishing moderately liberal continuity of seniority together with moderately limited continuity of benefits for employees on leave or lay-off.

L. Employee Anniversary Date: In deference to obvious factors contributing to administrative convenience and efficiency, and in the absence of any large equities to the contrary, the Arbitration Panel concludes that the employee anniversary date for purposes of administering employee benefits should remain the first fiscal year ending after date of hire.

M. Uniform Allowance: A $1,200 budget allocation for uniforms is already a standard part of the fire department budget. Its precise distribution is a function of administrative judgement. The Arbitration Panel concludes that the uniforming of the fire department personnel is better left to internal administrative discussions, rather than to be incorporated in the new contract by rigid provision.

N. Agency Shop: Employer contended at time of hearing that in then current Michigan law the agency shop in public employment was an unconstitutional infringement of employee rights, citing a recent decision by a Michigan Court of Appeals to which the U.S. Supreme Court already had granted certiorari. Conveniently for the disposition of this issue, the U.S. Supreme Court has since ruled unanimously (May 23, 1977) that employees of state and local governments who do not join the union that bargains for them may be required to financially support the union. This decision is in accord with the views of the Michigan legislature, which enacted a statute to that effect a few years back. It extends to the public sector the view of an earlier U.S. Supreme Court ruling (Railway Employee's Department, AFL v. Hanson, 351 U.S. 225, 1956) upholding constitutionality of the agency shop in the private sector. The Arbitration Panel concludes that an agency shop clause should continue to be a part of the contract. Over the years, the agency shop has proved to be a good compromise of variant employee rights.

O. Call-in Time: The Union contends that where an employee is working a full 24-hour shift, and is notified less than twelve hours before its end that he will be held-over to work an overtime full 24-hour shift, he should be granted call-in pay just as if he were recalled for overtime of less than a 24-hour shift after leaving the premises at normal shift ending. The Arbitration Panel concludes that this situation represents a substantial hardship and should be compensated by call-in pay.

P. Vacation Splitting: Evidence at hearing indicated that the question of taking vacation time in segments is largely a matter of administrative convenience. Testimony was conflicting as to whether any member of management actually opposed the practice to any significant degree. The Arbitration Panel concludes that this matter is best left to administrative judgement and control rather than being made a contract term.

Q. Medical/Hospital Insurance Benefit Ceiling: The proposed $850 ceiling on medical/hospital insurance benefits would impose no immediate burden on bargaining unit employees, since this is the present actual cost of the program to the Employer. However, it could represent a costly item in the future. The Arbitration Panel concludes that, since no such ceiling is imposed on the members of any of Employer's other bargaining units, it would be inappropriate here.

VI.

AWARD

Pursuant to authority vested in the Arbitration Panel by the State of Michigan under provisions of Act 312, Public Acts of 1969, as amended, the Panel awards as follows:

Economic Issues

A. New hourly wage rates shall be granted employees in the bargaining unit, effective and payable retroactively as of September 1, 1976, in accordance with the following schedule:

Captain	0-6 months	$3.81 per hour
	After 6 months	3.88
Lieutenant	0-6 months	3.67
	After 6 months	3.74
Mechanic	0-6 months	3.53
	After 6 months	3.60
Pipeman	0-6 months	3.26
	7-12 months	3.36
	After 1 year	3.46

B. The cost-of-living wage supplementation plan embodied in the previous contract shall be discontinued.

C. The following schedule of vacation benefits shall be effective retroactive to September 1, 1976:

For the period September 1, 1976 to August 31, 1977:

1-3 years of service	3 working days vacation
4-7	6
8-15	8
16 and over	10

For the period September 1, 1977 to August 31, 1978:

1-3 years of service	3 working days vacation
4-7	6
8-12	8
13-15	9
16-20	10
21-25	11
26 and over	12

Non-Economic Issues

D. Contract duration shall be two years, commencing retroactively to September 1, 1976 and terminating August 31, 1978.

E. Contract grievance language shall accord with and be limited to the language of Appendix I, this Report. Nothing in the language here shall be construed in such a manner as to preclude the right of any individual employee in the bargaining unit from grieving Employer's administration or application of either work rules or provisions of the contract.

F. The captain and lieutenant classifications shall be included in the bargaining unit, in accordance with the language of Appendix II, this Report.

G. There shall be no requirement that Employer finalize a new collective bargaining agreement with the Union prior to implementation of a "public safety" organizational concept.

H. Management rights language shall accord with and be limited to the language of Appendix II, this Report.

I. The sick leave provisions of the previous contract between the parties shall be continued in the new contract without change.

J. The contract shall provide that promotions within the bargaining unit shall be based on a combination of seniority, testing, and proficiency, provided that seniority shall receive the greatest weight. Reference is made to Appendix III, this Report.

K. The contract shall provide that seniority shall be broken, among other reasons, if the employee is laid-off or on sick leave for over one year, or if the employee is on personal leave for over thirty days; provided, however, that all employee benefits shall terminate after thirty days. Seniority also shall be broken on failure to report for work without satisfactory reason seventy-two hours after notice by certified mail or twenty-four hours after personal notice. Reference is made to Appendix III, this Report.

L. An employees anniversary date for administration of benefits shall be the last day of the fiscal year during which the employee was hired.

M. The distribution of monies budgeted by Employer for uniforming and for uniform replacement shall continue to be controlled as a matter of administrative judgement subject to internal discussion between departmental management and union representatives.

N. The agency shop clause of the previous contract shall be continued in the new contract without change.

O. Article XIII, Section 3, Paragraphs (b), (c), and (d) of the previous contract shall be revised to read as follows:

(b) Any employee who has completed his regular 24-hour shift and is recalled to overtime work after leaving the premises at normal shift ending time shall be paid two (2) hours call-in pay at his regular hourly rate plus pay at time and one-half for overtime hours worked.

(c) Any employee who is notified less than twelve (12) hours before the end of his regular 24-hour shift that he is to be held-over to work a full 24-hour overtime shift shall be paid two (2) hours call-in pay at his regular hourly rate plus pay at time and one-hald for overtime hours worked.

(d) Any employee who has completed his regular 24-hour shift and is held-over to overtime work less than a full additional 24-hour shift shall be paid only time and one half for overtime hours worked.

P. Eligibility to use vacation benefits in segments shall continue to be controlled as a matter of administrative judgement.

Q. No ceiling shall be imposed on the cost of medical/hospital insurance benefits provided by Employer for employees in this bargaining unit.

Respectfully submitted,

William E. Barstow Jr.

William E. Barstow, Jr., Chairman
Arbitration Panel

Mr. Steven LeBoeuf concurs only as to Awards B, D, E, G, H, K, L, M, and P.

Mr. Robert L. Falkenberg concurs only as to Awards A, C, D, E, F, H, I, J, K, M, N, O, P, and Q.

ARTICLE V - GRIEVANCE PROCEDURE

Section 1. Grievance of an employee or the Union shall be a claim, either that a specified provision of this contract has been violated by the employer to the detriment or disadvantage of the employee or Union, or that the employer has applied a specific provision on this contract erroneously, arbitrarily, or unfairly or that the employer has violated department rules.

Section 2. The parties may agree to be bound by the outcome of the grievance on other similar and related grievances arising out of the same or similar facts and circumstances.

Section 3. A grievance shall not be accepted after ten (10) calendar days from the date of the incident or from the date the employee should have known of the incident.

Section 4. The following procedure shall be used in the settlement of grievances.

Step 1. The aggrieved employee shall notify the department head within ten (10) calendar days of the occurence that he is aggrieved. The Union steward shall discuss the grievance orally with the department head and every attempt will be made to settle the grievance at this step. Within five (5) calendar days after the presentation of the grievance, the department head will give his answer orally to the employee, the employee may have the Union representative present.

Step 2. If no agreement is reached in Step 1, the employee may file a grievance in writing within seven (7) calendar days with the personnel director. The "Statement of Grievance" shall name the employee involved, state the provision of this agreement alleged to have been violated by appropriate reference, state the contention of the employee with respect to these provisions, indicate the relief requested, and shall be signed by the employee involved. The personnel director shall give the employee an answer in writing no later than ten (10) working calendar days after the receipt of the written grievance.

Step 3. If the grievance remains unsolved at the conclusion of Step 2, it may be submitted, as stated in Step 2, for binding arbitration at the request of the Union, provided a written notice of request for submission for arbitration is delivered to the personnel director within five (5) calendar days of the date of the personnel director's written decision at Step 2. Within ten (10) calendar days after the date of the written request for arbitration, personnel director or his designated representative, shall make every reasonable effort to agree upon mutually acceptable arbitrator. If

the parties are unable to agree upon a mutually acceptable arbitrator within the time period set forth herein, the parties seeking arbitration shall file a request with the Michigan Employment Relations Commission to submit a list of qualified arbitrators. The arbitrator shall then be selected according to the rules of the American Arbitration Association. The case shall be heard and presented in accordance with the rules of the American Arbitration Association.

The arbitrator shall hear the grievance in dispute and shall render his decision in writing within thirty (30) days from the close of the hearing. The arbitrator's decision shall be submitted in writing and shall set forth his findings and conclusions with respect to the issues submitted to arbitration.

Section 5. Powers of the Arbitrator. The arbitrator shall be empowered, except as his powers are limited below, to make a decision after due investigation in cases of alleged violations of the specific Articles and Sections of this agreement.

1. He shall have no power to add to, subtract from, discard, alter, or modify any of the terms of this agreement.

2. He shall have no power to establish salary scales or change any salaries.

3. He shall have no power to rule upon a termination or services or of a failure to re-employ a probationary employee, except for legal Union activities, or to rule upon the placing of a probationary employee on an additional term of probation not more than ninety (90) days.

4. His power shall be limited to deciding whether the City has violated the express Articles, Sections, and work rules in this agreement; he shall not imply obligations and conditions binding upon the City on this agreement; it being understood that any matter not specifically set forth herein remain within the reserved rights of the City.

5. In rendering his decisions, the arbitrator shall give due regard to the responsibilities of management and shall so construe the agreement so that there will be no interference with such responsibilities, except as they may be specifically conditioned by this agreement.

6. If either party disputes the arbitrability of any grievance under the terms of this agreement, the arbitrator shall decide if the grievance is arbitrable. In the event that the arbitrator's decision is that he has no power to rule, the grievance shall be referred back to the parties without decision or recommendation on its merits.

7. There shall be no appeal from an arbitrator's decision if it is within the scope of his authority as set forth. It shall be binding on the Union, its members, the employee or employees involved, and the City. The Union shall discourage any attempt of its members, and shall not encourage or cooperate with any of its members, in any appeal to any Court or labor board from the decision of the arbitrator, so long as the decision is carried out.

8. Fees and expenses of the arbitrator shall be shared equally by the parties. All other expenses shall be borne by the party incurring them; and neither party shall be responsible for the expenses of witnesses called by the other.

9. Claims for Back Pay. All grievances must be filed ten (10) working days from the time the alleged violation was to have occured. The City shall not be required to pay back wages more than ten (10) working days prior to the date a written grievance is filed.

A. All claims for back wages shall be limited to the amount of wages that the employee would otherwise have earned, less any compensation that he may have received from any source during the period of back pay.

B. No decision in any one case shall require a retroactive wage adjustment in any other case, unless other cases were filed and pending the representative case.

10. The grievance and arbitration clause shall not be a substantive subject of a grievance.

11. The arbitrator may not make an award pursuant to a grievance which in effect grants the Union that which it was unable to secure during collective negotiations.

12. All arbitration cases shall be conducted and be considered as an appellate process.

13. The arbitrator cannot grant relief extending beyond the termination of the agreement, or this agreement as extended by mutual agreement of the parties, if the relief is in conflict with provisions of the succeeding agreement.

14. Excluded from arbitration under this agreement are unadjusted grievances from the period of the prior agreement which question the exercise of rights set forth in the Article of this agreement entitled "Recognition" or over which the City has exercised unilateral discretion in the past.

15. Excluded from arbitration but in no manner waived in any other form are monetary claims by the City against the Union, its officers, or members for a breach of a no-strike pledge of this agreement; also excluded from arbitration is any matter otherwise subject to arbitration but over which the Union strikes contrary to its no-strike pledge in this agreement.

Section 6. General Grievance Provisions.

1. The number of days indicated at each step of the grievance procedure should be considered as a maximum, and every effort should be made to expedite the grievance process. All time limits herein shall consist of calendar days unless otherwise specified. Any time limit may be extended by mutual consent of the parties.

2. The failure of an aggrieved person to proceed from one step of the grievance procedure to the next step within the time limits as set forth herein shall be deemed to be an acceptance of the decision previously rendered and shall constitute a waiver of any future appeal concerning the particular grievance provided the person was physically and/or mentally capable of proceeding to the next step.

3. Failure at any level to communicate the decision on a grievance within the specified time limit shall permit the employee to proceed to the next step of the grievance procedure.

4. It shall be the general practice of all parties to protest grievances at times which do not interfere with or cause interruption of the employee's work program. Release time may be granted only upon the mutual consent of the aggrieved person, the Union and the personnel director or his designee. Such release time shall be without loss of pay to the extent required for such participation in actual meetings with the City or its designated representative.

5. An individual's grievance may be withdrawn at any time but the same grievance shall not be filed a second time. If the settlement is not carried out a second grievance may be filed.

6. The filing of a grievance shall in no way interfere with the right of the City to carry out its management responsibilities subject to final decision of the grievance.

7. A grievance may be filed only by seniority employees. A grievance of a probationary employee shall be held in abeyance until the probation is completed, at which time it shall be processed.

8. All grievance hearing and proceedings are to be conducted outside regular working hours unless mutually agreed by both parties to do otherwise.

9. The grievant must be present except for legitimate excuse at any and all grievance hearings; otherwise, it will constitute an automatic acceptance of the decision previously rendered and shall constitute a waiver of any future appeals concerning the particular grievance, unless it is otherwise agreed by both parties to this agreement.

10. Any written agreement reached between the City and the Union is binding on all employees affected and cannot be changed by any individual.

11. Priority shall be given to deciding discharge cases and the arbitrator shall make his best effort to decide these cases within fourteen (14) days of the hearing.

12. The City in no event shall be required to pay back wages for more than ten (10) calendar days prior to the date a written grievance is filed, if the employee knew or should have known of the facts constituting the basis for the grievance. In the case of a pay shortage for which the employee could not have been aware before receiving his pay, any adjustments shall be retroactive to the beginning of the pay period covered by such pay, if the employee files his grievance within ten (10) calendar days after receiving such pay.

ARTICLE I - RECOGNITION

Section 1. Pursuant to and in accordance with all provisions of Act 379 of the Public Acts of 1965, as amended, the employer does hereby recognize the employees organization as the exclusive bargaining representative for the purpose of collective bargaining with respect to wages, hours, and conditions of employment for the term of this agreement for mechanics and pipe men.

Recognizing Sections 9, 10, and 11 of the P.A. 379 of 1965, declaring it lawful for public employees to join in labor organizations for the purpose of collective negotiation with their public employer through representatives of their own free choice; and declaring it unlawful for a public employer to discriminate in regard to terms of hire or other conditions of employment in order to encourage or discourage membership in a labor organization; and declaring a representative designated or selected for the purpose of collective bargaining by the majority of the public employees in a unit appropriate for such purpose shall be the exclusive representatives of all the public employees in this unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; the employer recognizes the representatives named in this agreement as the exclusive representative of all public employees in such unit, whether or not said employees are members of any association, including employees classified as pipemen, mechanics, lieutenants, and captains; provided, however, that this agreement shall not apply to probationary employees referred to in Article IV, Section 1.

Section 2. The City has the right to hire, suspend or discharge for proper cause, transfer, relieve from duty for lack of work, and assign employees to positions within the confines of this agreement.

Nothing contained herein shall be considered to deny or restrict the City or its rights, responsibilities and authority under the laws of Michigan. Except as specifically stated by this agreement, and as limited by the right of employees to bargain collectively through representatives of their own choosing concerning wages, hours, and conditions of employment, all the rights, powers, and authority the City had prior to this agreement are retained by the City.

It is expressly agreed that all rights that ordinarily vest in and have been exercised by the City, except those which are clearly and expressly relinquished herein by the City, or which are limited by the right of employees to bargain collectively through representatives of their own choosing concerning wages, hours, and conditions of employment, shall continue to vest exclusively in and be exercised exclusively by the City.

Section 3. Such rights as are reserved to the City above shall include, by the way of illustration and not by way of limitation, and except as limited by other provisions of this agreement and by the right of employees to bargain collectively through representatives of their own choosing concerning wages, hours, and conditions of employment, the right to:

A. Manage and control its business, equipment, facilities, operations and to direct the working forces and the affairs of the City.

B. Establish personnel policies and practices including the assignment and direction of personnel, the number of personnel, scheduling and utilization of personnel, the establishment, modification and change of work or business hours or days.

C. The right to hire, promote, suspend, discharge employees, and assign work or duties to employees, determine the size of the work force and layoff of employees.

D. To determine the size of the management organization, its function, authority, amount of supervision and table of organization.

E. Determine the qualifications of employees including physical condition and policy effecting the selection, testing or training of employees based upon the utilization of lawful criteria.

F. Determine the number and location or relocation of its facilities, including the establishment or locations of new buildings, departments, divisions or sub-divisions thereof, and the relocation or closing of offices, departments, divisions or sub-divisions, buildings or other facilities.

G. Determine the services, supplies, equipment and sources thereof for the operation of the City and establishment of methods and means of distribution and/or disseminating its services, methods, schedules and standards of operation and the means, methods and processes of carrying on work including automation and/or contracting thereof or changes thereir and the initiating of new or improved methods or changes therein.

Section 4. The City shall continue to have the exclusive right to establish, modify or change any condition excepting those covered expressly by other provisions of this agreement.

Section 5. The City may adopt rules and regulations.

Section 6. The exercise and implementation of the foregoing rights, powers and duties to the City shall include the right to establish a public safety department. However, prior to the implementation of a public safety department, the City agrees to commence a negotiation of wages, hours and working conditions of any employees of this bargaining unit required to participate in a public safety department provided, however, no agreement need be reached prior to the implementation of a public safety department.

Section 7. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms hereof in conformance with the laws and constitution of the State of Michigan and the laws and constitution of the United States.

ARTICLE IV - SENIORITY

* * *

Section 9. The City honors the seniority principle for all cases of layoff and recall. Seniority shall be broken for the following reasons:

A. If the employee quits.

B. If the employee is discharged and the discharge is not reversed.

C. If the employee fails to report for work within seventy-two (72) hours after notice to report for work is sent by certified mail to the employee's last known address, or within twenty-four (24) hours after notice to report for work is given by personal service on the employee, and the employee does not give a satisfactory reason for failure to report.

D. If the employee is laid-off or on sick leave for over one (1) year, or if the employee is on personal leave for over thirty (30) days; provided, however, that in any of these situations all employee benefits shall terminate after thirty (30) days.

* * *

Section 12. Promotion shall be based on a combination of seniority, testing, and proficiency; provided, however, that seniority shall receive the greatest weight.