

8/7/77  
ARB

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In Arbitration Proceedings  
Arising Under Act 312, Michigan  
Public Acts of 1969 as Amended

In the Matter of the Statutory Arbitration

-----between-----

CITY OF MUSKEGON HEIGHTS POLICE DEPARTMENT

and

TEAMSTERS LOCAL 214 LAW ENFORCEMENT DIVISION

1976-1979

AGREEMENT

FINDINGS, OPINIONS AND AWARDS

PANEL MEMBERS

JAMES ALLEN, Teamsters Local 214 Delegate

CHARLES MONTGOMERY, City of Muskegon Heights,  
Delegate

NICHOLAS A. GEORGE, Impartial Chairman

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CHRONOLOGY OF  
COLLECTIVE BARGAINING HISTORY

Jan. 30, 1976	Union advises City it has filed for recognition.
Mar. 30, 1976	Board certifies Local 214.
Apr. 23, 1976	Union appoints Stewards.
May 10, 1976	Union requests mediation.
June 10, 1976	Union requests arbitration.
June 25, 1976	Union presents original demands.
June 30, 1976	FOP agreement expires.
July 8, 1976	Union wires City re: residency clause.
Aug. 17, 1976	Union makes three additional demands and proposes a wage schedule.
Sep. 29, 1976	City makes salary proposal.
Nov. 3, 1976	City replies to Union demands.
Dec. 29, 1976	Union declares "total impasse".
Jan. 3, 1977	Conclusion of mediation; Union requests arbitration.
Jan. 13, 1977	Union presents City 24 issues subject to arbitration.
Apr. 19, 1977	Union reports status of negotiations.
May 3, 1977	MERC appoints arbitrator.
May 5, 1977	Union writes to arbitrator.
May 23, 1977	Arbitrator holds preliminary hearing.
June 15, 1977	Hearings concluded.
Aug. 1, 1977	Union's Post Hearing Brief received.
Aug. 2, 1977	City's Post Hearing Brief received.
Aug. 22, 1977	Final meeting of Arbitration Panel.

ARBITRATOR'S EXHIBITS

1	Prior Agreement with Fraternal Order of Police	July 1, 1975
2	Union's Original Proposal for New Agreement	June 25, 1976
3	Union's Additional Demands (3) and Proposed Wage Schedule	Aug. 17, 1976
4	City's Proposed Salary Increases	Sept. 29, 1976
5	City's Reply to Union Proposals	Nov. 3, 1976
6	Union's Request for Arbitration	Jan. 3, 1977
7	Union's List of 24 Issues Subject to Arbitration	Jan. 13, 1977
8	Union's Status of Negotiations	Apr. 19, 1977
9	Union's Letter to Arbitrator	May 5, 1977
10	Arbitrator's Letter to the Parties	May 12, 1977
11	Relationship of Sworn Police Officers to Population	June 17, 1977

CITY'S EXHIBITS

- 1 City's Reply (November 3, 1976) to Union Proposal
- 2 Union's Proposal of June 25, 1976
- 3A City's Agreement with Command Officers (FOP) 7/1/76 to 6/30/79
- 3B City's Agreement with Firefighters (AFL-CIO) 7/1/76 to 6/30/78
- 4 Salary and Fringe Benefit Survey of Greater Muskegon
- 5 Salary and Fringe Benefit Program of North Muskegon
- 6 Salary Survey -- Area 2 -- Michigan Municipal League 1977
- 7 Union's Telegram Re: Residency -- July 8, 1976
- 8 Residency Requirement -- April 20, 1976
- 9 City of Muskegon Agreement 1976-1977 -- Excerpts
- 10 City of Muskegon Agreement 1976-1977 -- Entire Agreement
- 11 City of Norton Shores Agreement -- March 19, 1976 -- Excerpts
- 12 City of Norton Shores Agreement -- March 19, 1976 -- Entire Agreement
- 13 City of Roosevelt Park Agreement -- March 17, 1977 -- Entire Agreement
- 14 City of Grand Haven Agreement -- 7/1/76 to 6/30/78 -- Entire Agreement

UNION EXHIBITS

- 1A Proposed Language May 23, 1977
- 1B Union's List of Open Issues May 23, 1977
- 2 Sample Check-Off Authorization
- 3 Union's Letter of May 10, 1976
- 4 Union's Letter of June 10, 1976
- 5 "The Police Officer is a Professional Employee"
- 6 Population & Salary Comparisons
- 7 Sources of Information for Union Exhibits
  - (a) Salaries, Wages & Fringe Benefits in Michigan Municipalities over 4,000 population 1977
  - (b) State of Michigan 1975 Uniform Crime Report by Department of State Police
  - (c) P.O.A.M. 1975-76 Wage & Fringe Benefit Survey
  - (d) Crime in the U.S. 1974 by F.B.I.
  - (e) 1970 Census of Population U.S. Department of Commerce, Bureau of Census
- 8 Work Load Statistics of Cities of Immediate Population Range
- 9 1975 Crime Data
- 10 Cost of Living
- 11 Life Insurance
- 12 Minimum Court Time & Pay
- 13 Holiday Pay if Worked
- 14 Uniform & Equipment Allowance
- 15 General Equipment Catalogue #140, Stephens, Inc.
- 16 City's Purchase Order (1-9-76) for One Patrolman's Outfit
- 17 Sick Leave
- 18 Hospitalization Riders

## UNION EXHIBITS

- 19 Minimum Call Back & Rate of Pay
- 20 Discharge & Discipline
- 21 Grievance & Appeal Procedure
- 22 Cities With Binding Arbitration
- 23 Two-man Car Assignments
- 24 Promotions
- 25 Management Rights
- 26 Muskegon County Management Rights Clause
- 27 No Strike and No Lock Out
- 28 Stewards
- 29 General: Meetings -- Special Conferences
- 30 Work Periods
- 31 Workman's Compensation
- 32 Union Security & Check- Off
- 33 Probationary Period
- 34 Lay-Off
- 35 Residency
- 36 Union's Letter of August 17, 1976 Re:
  - (1) Residency
  - (2) Shift Preference
  - (3) Salary Schedule
- 37 Residency
- 38 Arbitration Award: City of Inkster & Teamster Local #214
- 39 Certificate of Representation (MERC)
- 40 Union's Letter of April 23, 1976 Re: Election of Stewards
- 41 Probationary Employees Included in Agreement

## UNION EXHIBITS

- 42 Employees' Service Record
- 43 Savings Clause--Validity
- 44 "Entire Agreement"
- 45 Waiver
- 46 Maintenance of Standards
- 47 Legal Assistance
- 48 Injury
- 49 Shift Preference
- 50 Safety & Equipment
- 51 Union Representation
- 52 Hospitalization for Retiree & Spouse
- 53 Target Range
- 54 Transportation
- 55 Non-Police Functions
- 56 Compensation Plan
- 57 Check-Off Authorization Forms (See also #2)
- 58 Position Classification
- 59 Leave of Absence
- 60 Duration & Renewal
- 61 Traverse City Contract
- 62 Hamtramack Award

## AGREED UPON ISSUES

The Panel orders the inclusion of the present language of the following Articles of the expired (FOP) Contract in the forthcoming agreement:

Article I	RECOGNITION
Article II	NON-DISCRIMINATION
Article XIII	VACATION LEAVE (add seniority as the determining factor in selecting dates of vacation period)
Article XV	MILITARY DUTIES AND OBLIGATIONS
Article XVII	LEGAL ASSISTANCE
Article XVIII	LONGEVITY
Article XIX	RETIREMENT
Article XXIII	ACCUMULATION OF SENIORITY
Article XXV	EDUCATION PLAN
Article XXIX	HOLD HARMLESS
Appendix "B"	UNION CHECK-OFF AUTHORIZATION

## INDEX OF ECONOMIC ISSUES

The Panel ruled, and the parties concurred, that the following issues were "Economic" and subject to the last best offer of each party, as provided in Section 8 of Act 312:

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2	Cost of Living	20
3	Life Insurance	21
4	Minimum Court Time & Pay	23
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7	Sick Leave (Funeral Leave)	31
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11	Tow-Man Car Assignment	40
15	Stewards	51
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18	Workmen's Compensation	57
26	Maintenance of Standards	76
27	Injury	77
28B	Equipment	78
30	Hospitalization Retirees & Spouses	82
32	Transportation	84
34	Appendix "C" -- Position Classification	88

# INDEX OF NON-ECONOMIC ISSUES

The Panel agreed, and the parties concurred, that the following issues were "Non-Economic" and subject to Section 9, Basis for Findings, Opinion and Orders of Act 312:

<u>Issue Number</u>	<u>Subject</u>	<u>Page</u>
Preliminary	Duration of Agreement	6/97
10	Discharge and Discipline	36
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23	Savings (Validity) Withdrawn by Union	72
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28A	Safety	78
29	Union Representation	81
31	Target Range	84
33	Non-Police Functions	86
35	Leave of Absence	90
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## NEW ARTICLES BY AGREEMENT

The parties, having agreed on the language for the following issues, have asked the Panel to make that language a part of the new Agreement and the Panel so orders with respect to the following issues:

Check-Off Authorization Form

Duration of Agreement

Injury

Representation of Probationary Employees

Safety

Savings Clause

Service Records

Shift Preference

Target Range

Transportation

Veterans' Employment Rights

## COMPARABILITY OF CITIES

In the "City of East Detroit and The East Detroit Police Officers Association," January 24, 1977 Panel Chairman Mario Chiesa wrote, "It is often a difficult task for an arbitration panel to choose those communities which it considers comparable to the one involved in the litigation. The elements of comparability are so numerous that it is doubtful whether any one city is truly comparable with another. Geographic location is important, and it is often stated that contiguous or at least close by communities should be considered comparable because, *inter alia*, they are within the area in which the city acquires its labor. Yet the mobility of our population dilutes this argument. Physical size, population, population density, number of officers, and a multitude of other items are relevant to the question of comparability."

The Panel is convinced that, in this case, both parties have been sincere in their efforts to use communities that are truly comparable. The City has chosen the communities within the County and one in an adjacent county. The Union has referred both to other units within the County, and to communities of nearly equal population throughout the state. The Panel considered all of them.

## LAST BEST OFFER

In "City of East Detroit and Fire Fighters Association" May 17, 1977, Arbitrator Barry C. Brown wrote, "The theory of a last best offer is that both parties will moderate their original position to a middle ground to make their offer more attractive to the arbitration panel."

## IDENTIFICATION

City of Muskegon Heights: City; Heights; Employer; Department

Local 214: The Union; the Local; Teamsters

Joseph A. Valenti: President, Local 214; the Union Spokesman

R. Max Daniels: Counsel for the City; the City Spokesman

Nicholas A. George: The Arbitrator; the Chairman

James Allen: Union Panel Delegate

Charles Montgomery: City Panel Delegate; City Superintendent,  
City Manager

Michigan Employment Relations Commission: MERC

Transcript: T

Fraternal Order of Police: FOP

The masculine pronoun, whenever used, includes the feminine pronoun and the singular pronoun also includes the plural pronoun unless the context clearly indicates otherwise.

## INFORMATION AND BACKGROUND

This Arbitration is pursuant to, and under the provisions of Act 312, Public Acts of 1969, as amended, providing compulsory binding arbitration for the determination of unresolved contractual issues, both economic and non-economic, in police and fire departments.

By letter received May 3, 1977 from the Michigan Employment Relations Commission, (MERC), Nicholas A. George was named Impartial Chairman of a Panel of Arbitrators to resolve a dispute involving contract negotiations between the City of Muskegon Heights Police Department and the Law Enforcement Division of Local 214 of the Teamsters Union. MERC's letter stated that the request for arbitration had been originated by the Union in its letter to the Commission dated January 3, 1977 (although the Union contends that it had formally requested arbitration in its letter of June 10, 1976--Union Exhibit 4), and that there had been "both collective bargaining and mediation, which under the statute, are conditions precedent to arbitration". The Union had designated James Allen as its delegate; the City had not as yet appointed a delegate, but subsequently named Mr. Charles Montgomery, its City Superintendent. Mr. Karl Kujawski of MERC's Grand Rapids Office had served as mediator (and would do so again).

On May 5, 1977, the Chairman received a letter from Mr. Joseph Valenti, President of Local 214 (Arbitrator's Exhibit No. 9) stating in essence that the Union had been unable to "establish a firm

position of the Employer" and suggesting that the Arbitrator "convene a pre-hearing conference.....to establish ground rules, and to clearly define those issues that are subject to this Panel". The Chairman 'phoned Mr. Charles Montgomery, the City Manager, who told him that while there had been some "confusion", the City had just reached agreement with its Command Officers, who are represented by the Fraternal Order of Police, (FOP), and who had also represented the Patrolmen until June 30, 1976, and that he was optimistic about reaching agreement with Local 214. He also told the Chairman that R. Max Daniels of Balgooyen, Daniels and Balgooyen, now represented the City. He asked the Chairman to delay calling the hearing in order to give the parties an opportunity to get together and try to reach agreement. When the Chairman failed to hear further from the City, he called Mr. Daniels. Mr. Daniels disclosed that no further talks had been had with the Union and that none were scheduled. On May 12, 1977, the Chairman wrote the parties that an informational hearing before the full Panel would be held on May 23 to determine the issues that remained unresolved, and that no proposals or arguments would be heard at that time (Arbitrator's Exhibit No. 10).

#### HISTORY

A representation election held by MERC (Case No. R-76 B 42), by consent of the parties, resulted in the certification of Teamsters Local 214, Law Enforcement Division, as the exclusive representative of "all sworn police officers, including detectives, but excluding supervisors and all other employees" (Union Exhibit No. 39). The certification was

dated March 30, 1976. Subsequent events are listed in the Chronology (Arbitrator's Exhibit No. 12). The Union demands sent to the City with the Union's letter of June 25, 1976, proposed many changes in the old Fraternal Order of Police (FOP) contract due to expire one week later (Arbitrator's Exhibit No. 1), and asked that their proposal (sic) "remain in full force and effect during the period of negotiations". However, the City continued to operate under its former agreement, and continued to pay its police officers in accordance with the schedule of that agreement, long after it had expired.

A study of the Union's proposals, including that of June 25, 1976, and others throughout the negotiations, indicates the Union's anxiety to preserve what its members had, much of which was not included in the old FOP contract. Some of these items are found in written policies of the Department, but many of them are simply past practices, not set forth in writing anywhere, e.g. the promotion policy (T III pp. 70-109). The City, on the other hand, has enjoyed a tranquil and comfortable relationship with the FOP, (continues to represent its Command Officers) and the contract contained identical language, in many respects, for the two groups in its police department. The City was wary of the new union, and could not understand the Union's demands for so much additional language with respect to employees' rights, and so much less language for management rights. An example of this feeling is found in City's Exhibit No. 1, where the phrase "The present provisions are sufficient" appears 16 times. In answer to the Union's request to delete much of the language in the management rights clause of the FOP Agreement which reduced the

66 lines to 11 lines, the City responded, "Present management rights clause sufficient. No changes needed".

In its own eyes, the City's answers are very logical, and there are those who would agree with its oft-stated position, "If you can't show us that our employees have suffered an injustice under the language of the old FOP contract, why should we change it? It's been working fine." But, in spite of the long, and sometimes frustrating, negotiations, there was no evidence of ill will between the parties. The City's attitude may be described as "benevolent but assertive". For example, Captain John R. Thompson, administrative assistant to the Chief of Police, gave a very orderly and straight-forward description of the Department's promotional policy, and described its administration in detail (T III pp. 70-19). The Union was unable to challenge him, nor cite a single example of injustice under that policy. Yet, all the Union now asks is that that very policy which has been in existence for some time, be reduced to writing and made part of the Agreement to assure that the policy which has worked so very well is not changed.

Further evidence of the City's policy relative to the treatment of its police officers is found in its Police Manual, dated 3 June 1975. In Section 10, page 23, there is this language:

4. Authority in the department shall be exercised with firmness, kindness and justice. Superiors shall sustain their subordinates when they can do so consistently with departmental regulations and gentlemanly conduct, and avoid, as far as circumstances warrant, censuring them in the presence of others. Superior officers are forbidden to injure or discredit those under their authority by tyrannical or capricious conduct or by abusive language.

## PROCEEDINGS

The informational hearing was held, as scheduled, on May 23, 1977 in the conference room of the City Superintendent. All members of the Panel were present, and both parties were properly represented. The Union was represented by its President, Mr. Joseph A. Valenti, and the City by its counsel, Mr. R. Max Daniels of Balgooyen, Daniels & Balgooyen. The Union presented a list of 27 unresolved issues that it proposed to arbitrate (Union Exhibit 1b), and proposed language for some of these unresolved issues (Union Exhibit 1a). As the parties checked their respective notes relative to issues supposedly already agreed upon, the list of unresolved issues expanded, until by the end of the session there were 33 open items, 11 of them economic. Fourteen issues had been resolved in principle, and the Chairman instructed the parties to submit initialed language on these at the next session. They failed to do so.

During this session, two challenges relative to the Panel's scope of authority were raised. The City challenged the Panel's authority to rule on non-economic issues (T I pp. 19-20), and the Union challenged the Panel's right to order a contract for more than a one-year period (T I pp. 74). The Chairman denied both of these objections, and ruled that the Panel did have authority over both matters.

Immediately before adjournment of the informational hearing, the Union promised to supply proposed language for all open items if it had not already done so, and the parties agreed to make at least one more

effort to reduce the open issues through mediation prior to the next session, set for June 13, 1977 (T I pp. 99-101). A short mediation session of some three hours was held in Grand Rapids, with Mr. Karl Kujawski, the State Mediator, in attendance. The session was not productive (T II p.6).

#### PRELIMINARY ISSUE - - LENGTH OF AGREEMENT

The first item discussed during the session of June 13, 1977 was the length of the new agreement and retroactivity. The City wanted a three-year contract while the Union did not want to go beyond two years, with the first year being retroactive to July 1, 1976. However, the Union said that it would not challenge the Panel's authority to order a three-year contract starting July 1, 1976. The Panel then went into Executive Session and did order a three-year agreement starting July 1, 1976. With respect to retroactivity, the Panel ruled that the entire contract would not be retroactive per se, but that each economic issue would stand on its own (T II pp. 9-17). The City's delegate concurred in this order; the Union's delegate dissented. Although this was the first matter considered, it is not shown in the transcript as Issue No. 1, and it will henceforth be described as "the preliminary issue". Altogether, there were four days of hearing, May 23, June 13, June 14, and June 15, 1977. The parties agreed that they would send the Chairman their briefs and their "last best offers" within two weeks following the receipt of the transcript; they also agreed to send the Chairman initialed language covering the items already agreed upon between the two parties.

The Chairman received the Union's post-hearing brief on August 1 and the City's brief and a copy of its proposed Agreement, along with two exhibits, on August 2. A copy of each item was forwarded by the Chairman to the Panel Member representing the other party on August 4.

## AWARD

The Agreement resulting from this proceeding shall be for a term of three years, starting July 1, 1976. Only those items specifically so indicated shall be retroactive.

## ISSUE NUMBER 1--WAGES

## ECONOMIC

As an introduction to its evidence and argument, the Union presents its Exhibit 5, which the Chairman has entitled "The Police Officer is a Professional Employee", and argues that "there is a basic fundamental difference between the Union's position and that of Muskegon Heights..... (that) causes the Local Union to proceed to arbitration". It further charges (1) that the City has failed in its "duty and obligations towards the Police Officers", and (2) states its opinion that ".....for the most part (the Heights Police Officers) exercise a greater degree of impact on their society because of work load crime statistics shown in the Composite". The Union then sets forth in 14 paragraphs requiring two full pages, a description and enumeration of a police officer's duties and responsibilities.

While a great deal of this language applies alike to all police officers, some of it is not, to the Chairman's best knowledge, applicable to Heights Police Officers, nor did the Union offer any evidence in support of such contention. For example, the Union failed to introduce any specific evidence that the City requires its officers to have "professional training at the college level as a condition of employment and advancement". Although the evidence does show (FOP Contract p. 23) that the City rewards those officers who have associate or bachelor degrees with additional compensation, there was no evidence that the Department is "presently calling for college education to be a prerequisite into this field".

As to the Union's second charge that Heights officers carry a heavier work load than police officers in most of the other cities of immediate population range, the Chairman is not convinced that Union's Exhibits 8 and 9 have a direct bearing on the value of the services of police officers, or the salary they should be paid. As an example, Union's Exhibit 8 p. C-1 shows that police officers in Benton Harbor, where the work load is greatest, are paid less than those in six other communities of comparable size (Union's Exhibit 6 p. 2). Chairman's Exhibit 11 shows that Muskegon Heights has 1.8 police officers per 1,000 population, while Ecorse with 2.7 police officers per 1,000 population pays the highest salaries in the group, even though their officers rank fourth in work load.

It is difficult for the Chairman to assign much weight to the Union's exhibits in this regard. To make a valid comparison it is necessary to know, at the very least, the causes that contribute to the exceedingly high number of crimes in Benton Harbor, Ecorse and Muskegon Heights. The

Chairman is convinced that this exhibit does not bear on the issue at hand, especially since the City concedes that its police officers "have a job to do.....and do a job".

The Chairman experiences the same problem with Union's Exhibit 9, "1975 Crime Data-Cities of Immediate Population Range". If this were the only consideration, and if we are to be influenced by these statistics and the Union's reasoning, Muskegon County Sheriff's Deputies and Norton Shores Police Officers deserve only half as much remuneration as officers in the City of Muskegon and Muskegon Heights where the work load is twice as great as that of the first two groups. Of course, this is incorrect, and Union Exhibit 6, p. VII shows that each of these four departments pays its police officers approximately the same amount. Then, too, it must be pointed out that police officers perform many other duties in addition to investigating crimes. The Chairman finds the information in Union Exhibit 9 inconclusive and of little value in determining a proper salary program for the Police Officers of Muskegon Heights.

In its Exhibit 6, the Union has selected for salary comparison eight Michigan cities having a population of 16,000 to 18,047 (permanent residents) based on the 1970 census. It has also elected to compare with four other units with varying population, all within Muskegon County. The City, in its Exhibit 4, compares its salary schedule with three of the four units within the County chosen by the Union, with one other city in the County and with one in an adjoining County. In order to avoid confusion, the Chairman has elected to compare salaries as of July 1, 1976, irrespective of the date on which they went into effect. His objective is to arrive at

a sound comparison for that date, and to then determine the figure to be used for July 1, 1977 and July 1, 1978. In all cases the figures used for comparison are the salaries paid to fully qualified police officers who have progressed to the top of the range, whether the period required for this progression be three years as in the case in the Heights or four years, which prevails in most other communities. No add-ons of any nature are included. The Heights maximum rate (\$12,150) is the same for both 1975 and 1976, since the parties have been in negotiations since the expiration of the FOP contract June 30, 1976, and there was no increase on July 1, 1976. The City, in its Exhibit 4 has submitted salary figures of other cities as of June 20, 1977, while Union's Exhibit 6 shows the effective date for each city in its comparison.

## SALARY COMPARISON OF AREA UNITS

UNIT	July 1, 1976	July 1, 1977	% Incr.	July 1, 1978	% Inc.
Muskegon County Sheriff's Deputies (157,000)*	\$14,800	\$15,700 <u>3/</u>	6.1	\$16,600	5.7
City of Norton Shores (4176)*	14,200	15,100	6.3		
Roosevelt Park (4176)*	14,500	15,660 <u>1/</u>	8.0		
City of Muskegon (44,631)*	14,500	15,500	6.9		
North Muskegon (4,243)*		12,400 <u>4/</u>			
Grand Haven (11,844)*	13,720	14,750 <u>4/</u>	7.5		
Heights Police Sargeants	13,800	15,300	10.9		
Heights Fire Sargeants	13,050	13,940	6.8		
Heights Fire Fighters	12,750	13,640	7.0		

Footnotes on following page.

The average salary for the four units in Muskegon County, (excluding Muskegon Heights) as of July 1, 1976 was \$14,500; the average for the same units as of July 1, 1977 is \$15,490, an increase of \$990 or 6.8%. If the two small units in City's Exhibit 4 are included, the average for July 1, 1977 drops to \$14,852. Union's Exhibit 6 p. 2 shows eight Michigan cities with a population range of 16,000 to 18,047 paying salaries (as of July 1, 1976) ranging from \$13,200 plus cost of living allowance to \$17,315, for an average of \$14,890. The Union may contend that North Muskegon and Grand Haven should not be included in arriving at an area average because of the size of their population, and because Grand Haven is not in Muskegon County. However, the Arbitrator finds that the population of North Muskegon is approximately the same as that of Roosevelt Park, one of the cities included in the Union's Exhibit 6, and while Grand Haven is in another county, it is practically contiguous to Muskegon Heights. The City's Exhibit 4 is believed to be more meaningful, and will be used by the Panel for comparison purposes. The average yearly salary paid to a fully qualified police officer by the six communities above on June 20, 1977 is \$14,852 compared to an average of \$13,800 paid a year earlier. This is an increase of 7%. The Arbitrator chose to inquire into one more area--the salaries paid by Muskegon Heights to its fire fighters and its police command officers. These are shown in the table on the preceding page.

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\*Population - 1970 Census

1/ City's Exhibit 4 shows \$15,400.

3/ Not shown in City's Exhibit 4.

4/ Not shown in Union's Exhibit 6.

While a Heights police sargeant was paid \$750 more than a Heights fire sargeant on July 1, 1976, the difference was increased to \$1360 on July 1, 1977. Thus, if the difference between the top rate of the Heights fire and police sargeants on July 1, 1977, \$1360, were added to the fire fighter's rate of \$12,750, we would have a top figure of \$14,110 for the Heights patrolmen as of July 1, 1976. Admittedly, this is an assumption and an extrapolation.

In its letter to the City, dated August 17, 1976, (Arbitrator's Exhibit 3), the Union proposed a top rate of \$17,010 for the police officers. While the letter does not specify the effective date, the Arbitrator assumes that it was meant to be July 1, 1976. In a letter to the Union, dated September 29, 1976, (Arbitrator's Exhibit 4), the City proposed a three year contract, with a "15% increase in base salary to be distributed 1/3 in the first year, 1/3 in the second year and 1/3 in the third year". The base salary for a patrolman in Muskegon Heights with a minimum service of three years on June 30, 1976 was \$12,150; a 15% increase would amount to \$1,822.50. If 1/3 (\$607.50) were added to each of three years, the new salary schedules would have been \$12,757.50 as of July 1, 1976, \$13,365 as of July 1, 1977, and \$13,972.50 as of July 1, 1978. Statistics indicate that the 1977 increase for the area was closer to 7%. Muskegon Heights granted a 10.9% increase to police sargeants, 6.8% to fire sargeants and 7.0% to fire fighters.

Section 8 of Michigan Act 312 provides, "As to each economic issue, 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". Section 9, "Basis for findings, opinions and orders" provides that the Panel must consider among other things ".....the financial ability of the unit of government to meet the costs", and must consider a "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services, and with other employees generally". This, in the opinion of the Arbitrator, requires that he also consider the wage rates of the fire fighters and command officers of the police department, for they are "other employees" of the same employer.

It is incumbent upon the Panel to arrive at a "standard" against which to compare the "last best offer" of each party. The average of the four units within Muskegon County cited by the Union is \$14,500 as of July 1, 1976. Taking the salary agreed upon by the City and its fire fighters as of July 1, 1976, \$12,750, and adding the July 1, 1977 additional paid to police sergeants as compared to fire fighter sergeants, we arrive at an extrapolated salary for the police officers of \$14,110 as of July 1, 1976. The police sergeant's salary as of July 1, 1976 was \$13,800--less than the average patrolman's salary for the four units in Muskegon County (\$14,500) or the extrapolated figure of \$14,110. If the Panel were to order a salary of, say, \$14,000, which would seem indicated by all the facts, while the sergeants received only \$13,800, this would certainly present a serious morale problem to the City. However, this obvious imbalance will have largely corrected itself as of July 1, 1977 if the police

officers are granted a \$750 increase over the \$14,000 to \$14,750 at that time while the sargeants will be receiving \$15,300. At this point, there will be a \$550 difference in favor of the sargeants. Furthermore, the lowest paid sargeant (\$14,800) will be paid \$50 more than the highest paid patrolman.

The Panel is persuaded that starting July 1, 1976 the police officers should receive a salary of \$14,000 if they have completed at least three years of service. Effective July 1, 1977, this should be increased by five (5%) per cent to a rate of \$14,700. At this point, the Panel recommends an increase of \$750 every six months (as provided in the Command Officers Agreement) starting January 1, 1978, with the final increase under this Agreement occurring on January 1, 1979. This would result in the following schedules:

	<u>Patrolmen</u>	<u>Sargeants</u>
July 1, 1976	\$14,000	\$13,800
January 1, 1977	14,000	14,550
July 1, 1977	14,750	15,300
January 1, 1978	15,500	16,050
July 1, 1978	16,250	16,800
January 1, 1979	17,000	17,550

However, the Panel does not wish to "piece meal" its wage award by ordering one party's offer for one year and another party's proposal during another year. It will, therefore, order the offer of the party which comes closer to meeting the Panel's criteria for the term of the Agreement -- July 1, 1976 to June 30, 1979. This total is \$45,750 as applied to a patrolman having a minimum of three years experience. All differentials are to remain unchanged.

PRESENT AGREEMENT:

Appendix "A", Compensation Plan (p. 27) of the FOP Agreement provides, inter alia, "Effective July 1, 1975, Patrolman \$11,550 -- \$12,150.

UNION'S POSITION:

Effective July 1, 1976 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Effective January 1, 1977 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Effective July 1, 1977 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Effective January 1, 1978 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Effective July 1, 1978 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Effective January 1, 1979 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

Such money's adjustments are to be made retroactive where there is a demand for retroactive pay on all hours worked, including overtime hours and premium hours.

CITY'S POSITION:

Patrolman

July 1, 1976 - \$12,300.00 - \$12,900.00	January 1, 1977 - \$13,050.00 - \$13,650.00
July 1, 1977 - \$13,800.00 - \$14,400.00	January 1, 1978 - \$14,550.00 - \$15,150.00
July 1, 1978 - \$15,300.00 - \$15,900.00	January 1, 1979 - \$16,050.00 - \$16,650.00

The rank of corporal was abolished in 1975.

Patrolmen assigned to the Detective Bureau will be designated as investigators.

While a patrolman is assigned to the Detective Bureau as an investigator, his annual salary rate shall be increased by \$300.00 and he shall receive this increase while he serves as an investigator.

While a patrolman is assigned to the Detective Bureau he shall receive any balance remaining as a credit in his uniform allowance in the form of a cash uniform allowance payable monthly and divided in equal payments over the remainder of the fiscal year.

When an investigator is reassigned to be a patrolman, if he has any amount remaining in the uniform allowance after deduction of the amounts paid to him when assigned to the Detective Bureau, this amount may be used as it was prior to the assignment to the Detective Bureau.

After having expended much time and effort in arriving at a "standard" with which the Panel proposed to compare the last and best offers of the two parties, the Panel finds itself presented with a most pleasant surprise; the parties have made identical last best offers!

While the Panel's "standard" provided a total salary of \$45,750 for the three year term of the Agreement, each party's offer would provide a total three year salary of \$44,325 -- \$1,425 less than the Panel's three year "standard" or \$475 per year.

In the opinion of the Panel, both proposals specifically provide for retroactivity; the Union's proposal by its very wording, and the City's proposal through the dates and rates therefore as stated in its last best offer. However, the City's challenge to Retroactivity, which it brings up for the first time as issue 41 will be dealt with subsequently.

#### AWARD

The Panel awards the Union's last best offer.

#### RETROACTIVITY

The Panel feels very strongly that only the general wage increase, as applied to all hours worked, including overtime hours, and premium hours, should be made retroactive to July 1, 1976.

Act 312, Section 10 provides, inter alia:

".....Increases in rates of compensation awarded by the arbitration panel under Section 10 may be effective only at the start of the fiscal year commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of the arbitration procedures under this act, the foregoing limitation shall be inapplicable and such awarded increases may be retroactive to the commencement of such fiscal year....."

Union's Exhibit 4, being a letter to the City dated June 10, 1976 with a copy to the Michigan Employment Relations Commission says, in part, ".....so that we may retain our rights under the Compulsory Arbitration Act 312, we are requesting and initiating binding arbitration in accordance with the Act". Since the City's fiscal year is from July 1, to June 30, the Panel does have the authority to order retroactivity.

In its post-hearing brief -- for the first time -- the City challenges the Panel's authority to order retroactivity. As a matter of fact, this issue was discussed in the Executive Session of the Panel on June 13, 1977 when the Panel discussed the length of the new agreement to be mandated. It was determined at that time that the Panel did have the authority to order retroactivity. Volume II of the Transcript on page 14 states,

"ARBITRATOR GEORGE: Back on the record, please. The Panel has met on the issue of duration and come to the following conclusion: That the contract will run from July 1, '76 through June 30 of '78 (later corrected to June 30 of '79). And that, of course, there would be a one-year retroactivity. The decision was concurred in by George and Montgomery (the City's Panel Member) and dissented by Allen."

Later, we find (T Vol. II pp. 16-17),

"ARBITRATOR GEORGE: The Panel has agreed that we will order a three-year contract, one year of which will be retroactive. But the question of retroactivity is not a blanket retroactivity. In other words, each monetary -- each economic issue will stand on its own as to its effective date. It may be effective in 1976, it may not be effective 'til '78."

The City raised no objection; in fact, its Panel Representative had already concurred.

The City, in its post-hearing brief, now contends that the provisions of Section 10 of Act 312 preclude the Panel from awarding retroactivity because the Union had not submitted any proposals until July 2, 1976, two days after the close of its prior fiscal year. This is not correct. The City's own Exhibit 2 is a letter dated June 25, 1976 from Mr. James Allen, Business Representative of Local 214, to Mr. Charles Montgomery, City Superintendent, containing "the demands of your employees, members of Teamsters Local 214". Attached to this letter are seventeen pages of demands. Furthermore, the City, on p. 2 of its post-hearing "Brief and Last Best Offers on Economic Issues" proposes a schedule of salaries beginning with July 1, 1976. The Panel finds it incongruous for the City to propose a salary rate for the fiscal year commencing July 1, 1976, and at the same time contend that "the increase in rates of compensation awarded by the Panel may be only effective prospectively, not retroactively as provided in Section 423.240 of Act 312. The Panel overrules the City's contention.

At the time that the Panel ordered a three-year agreement, the Chairman emphasized to both parties that while the Agreement would date back to July 1, 1976, this was not to be construed as blanket retroactivity to that date. The Chairman said that the matter of retroactivity would be considered individually for each economic issue. There was not at that time, and there is not now, any question but that equity and fairness require that there be an order for a salary adjustment for the year July 1, 1976 to June 30, 1977, and the Panel has so ordered. With respect to all other matters -- both economic and non-economic -- the Panel orders that the new terms shall be effective as of July 1, 1977, unless a later date is specified.

## ISSUE NUMBER 2--COST OF LIVING

## ECONOMIC

## PRESENT AGREEMENT:

The expired FOP Agreement did not provide a Cost-of living clause.

## UNION POSITION:

The only way a wage earner can protect his wages against inflation is through a cost-of-living clause. And even then, he is continually attempting to "catch-up" with cost-of-living increases that have already occurred.

## CITY'S POSITION:

The City has made a generous offer with regard to wages. This will cost \$4,500 per employee over the three year life of the Agreement. Only two of the eight communities selected in Union Exhibit Six contain such a cost-of-living provision. If this arrangement were to be extended to all City employees, it would result in chaos. Increases which are to be paid under the wage proposal do in fact reflect the cost of living. Furthermore, the City has no cost-of-living clause in any of its other agreements.

## PANEL'S OPINION:

The City's wage proposal is indeed a generous one. It provides for a \$1,500 annual increase on a base of \$12,150 or more than 12%. In the three-year term of the contract, a patrolman's salary will have gone from \$12,150 to \$16,650, an increase of \$4,500 or 37%. Surely, that far exceeds any foreseeable increase in the cost-of-living index.

AWARD

The Panel denies the Union's request for a cost-of-living clause.

## ISSUE NUMBER 3--LIFE INSURANCE

## ECONOMIC

## PRESENT AGREEMENT:

The expired FOP Agreement provided, "For Life Insurance the City pays the full premium.....

Effective July 1, 1972, full time employees are insured for \$8,000."

UNION'S POSITION:

The Union contends that the selected comparable cities provide an average of \$12,750 paid life insurance for police officers while the City maintains an \$8,000 policy. Life insurance costs for the most part are minimal, yet provide "welcome economic relief" to survivors of an officer killed in the line of duty. The Union's last and best offer is:

Effective July 1, 1977 an amount equal to the patrolman's salary, rounded off to the highest thousand. Effective July 1, 1978, an amount equal to the patrolman's salary, rounded off to the highest thousand.

CITY'S POSITION:

The City challenges the accuracy of the Union's exhibits on this issue. It further states that during the life of the previous agreement it had voluntarily increased this item from \$6,000 to \$8,000. The City's last and best offer is:

\$10,000 base amount of term insurance.

PANEL'S OPINION:

Of the four units in the immediate area cited by the Union, two provide more life insurance than does the Heights. All but one of the units with a comparable population cited by the Union provide more

life insurance than the Heights. The one provides only \$5,000, four provide \$10,000, one has \$13,000, another has \$20,000, and the top one provides \$31,000. Inasmuch as the City has proposed a policy in the amount of \$10,000, this will place the City in the group with four others who provide the same amount.

AWARD

The Panel grants the City's proposal.

ISSUE NUMBER 4--MINIMUM COURT TIME PAY

ECONOMIC

PRESENT AGREEMENT:

The present system provides for a payment of \$6.00 per half-day plus mileage and \$12.00 for full day, with the officer turning in to the City any subpoena fees he may receive.

UNION'S POSITION:

The Union states that its composite demonstrates clearly and unquestionably that the average court time granted is in excess of two hours at time and one half. The Union's last best offer is:

Effective July 1, 1977 two hours  
at time and a half.

## CITY'S POSITION:

The Command Officers have agreed to \$12 per half-day and \$24 per full day. This offer represents approximately double what is now being received by the officers. On many occasions the half-day payment would represent a fifteen minute to half-an-hour appearance in court. Appearing in Court is part of a policeman's duty and it cannot be made excessively financially rewarding or this would encourage contested matters and perhaps would lead to quarterline tickets and arrest. The City's last and best offer for minimum court-time pay is \$12 for half day and \$24 for full day, with the officer turning into the City all subpoena fees he may receive.

## PANEL'S OPINION:

The Union's Exhibit Number 12 is most persuasive. It shows clearly that all of the units in its two sample groupings pay not less than two hours at time and one-half -- and one pays three hours at time and one-half. In spite of the large salary increase ordered by the Panel, the Panel feels that this issue should stand on its own, and orders the adoption of the Union's proposal with the following language:

AWARDMINIMUM COURT TIME AND PAY  
(A New Article)

Any police officer, who, in the line of duty must appear in Court outside of his regularly scheduled work hours in a duty case, shall be paid a minimum of two (2) hours pay at the rate of time and one-half.

MINIMUM COURT TIME PAY

If he is required to remain in Court for more than two (2) hours, he shall be paid for all such hours at the rate of time and one-half ( $1\frac{1}{2}$ ). All witness fees paid to a police officer are to be turned in to the City, irrespective of whether his appearance is during on-duty or off-duty hours. No payment will be made under this provision if the officer is on sick leave or is being paid Workmen's Compensation.

ISSUE NUMBER 5--WORK PERFORMED ON A HOLIDAY

ECONOMIC

PRESENT AGREEMENT:

The expired FOP Agreement provides, "Employees who work 8 hours on a holiday shall be paid for four hours of additional time....."

UNION'S POSITION:

The Composites submitted by the Union of comparable cities clearly show that the average pay for officers working a Holiday is double time or sixteen hours pay. "...the Command Officers receive two times the hourly rate for working a Holiday." The Union's last and best offer is:

Effective July 1, 1976 all members of the Bargaining Unit who have worked a Holiday, to be paid two times the hourly rate for all hours worked.

CITY'S POSITION:

The City proposes that employees who work on

Holidays will be paid double time for hours actually worked, regardless of when they should begin. This is the City's last and best offer.

PANEL'S OPINION:

It is regrettable that the parties did not resolve this issue during negotiations. There is only one difference between the two proposals; the Union wants it to be retroactive to July 1, 1976, while (it is assumed) that the City would have it effective July 1, 1977. While it is not incumbent upon the Panel to assess responsibility for the long delay in these negotiations, it feels strongly that a generous retroactivity posture would only encourage such delays.

AWARD

The Panel orders this portion of the prior Agreement be changed to the language proposed by the City, to wit: "Employees who work on holidays will be paid double time for hours actually worked regardless of when they should begin." This clause shall be effective as of July 1, 1977.

ISSUE NUMBER 6--UNIFORM ALLOWANCE AND  
CLEANING ALLOWANCE

ECONOMIC

PRESENT AGREEMENT:

Article XX of the FOP Contract, on page 20 provides: The clothing allowance for new

employees is \$250.00 during the first twelve months of employment, and of this amount the City pays  $\frac{2}{3}$  or \$166.00. Employees may utilize this initial clothing allowance at any time during the first twelve months of employment. Beyond this period, they shall receive the regular annual \$133.00 allowance, and this shall be prorated to allow the first anniversary of their employment to coincide with the balance of the fiscal year.

Beyond this initial allowance for new men, all employees will receive a regular annual clothing allowance up to \$200.00 annually, of which the City will pay  $\frac{2}{3}$  or \$133.00. This allowance shall be computed to coincide with City's fiscal year.

All items of uniform must be approved by the Department Head. The City's regular purchasing procedure will be followed.

The City will pay for repairs to clothing damaged in the line of duty where claims are reasonable.

The following items are included in the patrolmen's clothing allowances and are shared with the City on a  $\frac{2}{3}$ -- $\frac{1}{3}$  basis: Police uniform caps and cap covers, blouse coats, reefers, trousers, leather jackets, shirts, shoes, ties, belt, holster, blackjack, insignia, rainwear, gloves, name bars, tie clasps, police emblems, and identification folders. All items which are purchased by any member of the department, regardless of seniority on a  $\frac{2}{3}$ -- $\frac{1}{3}$  basis, shall become the sole property of the officer six months after the date of purchase.

In the event an officer should leave the employ of the City prior to this six month period having expired, he shall reimburse the City for its share of the articles and retain sole ownership.

The patrolman must furnish, at 100% cost to himself, the following items: His weapon, handcuffs, flashlight, clipboard or other leather folder, and such other approved clothing which he may choose to buy, such as insulated jackets for wear under the reefer, storm rubbers or boots, etc...

Items which are furnished and paid 100% by the City include the following: Badge, night-stick, and holder, ammunition, safety helmet, identification cards and photos, police manuals, shoulder patch insignia, and training literature, flashlight bulbs and batteries. These remain the property of the City.

#### UNION'S POSITION:

The Union argues that "supportive evidence shows that all departments of comparable cities supply all uniforms and equipment. In addition, they supply a clothing allowance, and, in some cases, a cleaning allowance. This Local Union represents the employees of 131 law enforcement agencies in the State of Michigan, all of which provide a service revolver to the employee. I (the Union President) can honestly say that there is no city or county in Michigan that does not supply the service revolver, except Muskegon Heights."

The present limited benefit level of clothing allowance does not realistically represent today's cost of the uniform to be purchased. Therefore, the Panel should award the Union's position, based on the overwhelming supportive evidence herein contained. The Union's last and best offer is:

1. Effective upon issuance of the Award, all uniforms, leather goods and weapons to be supplied to each Officer by the City.
2. That an annual uniform allowance of \$200, effective July 1, 1977 be paid to each Officer.
3. Effective July 1, 1978 a \$250 uniform allowance be paid to each Officer.
4. Such amounts paid to uniformed Officer also be paid to each non-uniformed Officer.
5. Such checks be issued on or about December 1 of each contract year.

## CITY'S POSITION:

The City's last and best offer represents a sizeable increase in the payments by the City in connection with uniform and equipment..... The patrolman, in the past, was required to purchase the items listed on page 21 in Article XX in the expired FOP contract which under this offer will now be paid for by the City except for his weapon, which he still must provide and which remains his particular property. The initial clothing allowance is increased from two-thirds of \$250 for new employees to 100% of \$250 for new employees. The annual clothing allowance is increased from two-thirds of \$200 or \$133 to three-quarters of \$200 for 1977, to be increased to 100% of \$200 in 1978. The annual clothing allowance may be used for either clothing replacement or dry cleaning or a combination of both. These changes and adjustments bring the City of Muskegon Heights in line with the surrounding communities.

The City's last and best offer is that clothing allowance for new employees hired after July 1, 1977 be \$250 during the first twelve months of employment. Of this amount, City pays 100%. After the first twelve months of employment and for all present employees beginning July 1, 1977, the City shall pay three-quarters of up to \$200 (\$150) annually which amount may be used for clothing purchases or dry cleaning of uniforms. After July 1, 1978, City will pay \$200 annually to be used for clothing purchases and/or dry cleaning.....City, in addition, will furnish handcuffs, flashlights, clip boards or other leather folders, badge, night-stick and holder, ammunition, safety helmet, identification cards, flashlight bulbs and batteries. All items of uniform must be approved by the Department Head. The City's regular purchasing procedure will be followed.

The City will pay for repairs to clothing damaged in line of duty if claims are reasonable.

## PANEL'S OPINION:

## FIREARMS

The Union argues that 131 law enforcement agencies in the State of Michigan, wherein the Union represents the employees, all provide their police officers with service revolvers. The 1976-77 Wage and Fringe Benefit Survey of the Police Officers Association of Michigan does not show a table of cities or counties providing service revolvers, but it does show 29 cities with Gun Allowance running from \$150 to \$547 - - it also shows eight counties with Gun Allowance running from \$50 to \$365. These cities and counties together total only 37, and the Chairman suspects that most, if not all, of these payments are in fact salary supplements.

## CLOTHING AND CLEANING

In its Exhibit Number 14, the Union lists five units with no initial clothing allowance; one with \$100 for clothing and \$200 for cleaning; one having \$175 for clothing and no cleaning allowance; one at \$225 plus cost of all cleaning; another at \$225 for clothing and an additional \$225 for cleaning; one at \$250 plus \$175 for cleaning; one at \$275 plus \$125 for cleaning; and the highest paying \$300 for clothing plus \$102 for cleaning.

The City has offered a net \$250 for clothing for new employees for the first year of their employment; after that it will pay a net \$150, to be used for dry cleaning or replacement. Effective July 1, 1978 the City will pay \$200 net annually, to be used for clothing replacement and/or dry cleaning. It will also provide its Police Officers with a number of items which they have heretofore been required to purchase with their own funds.

AWARD

The Panel is persuaded that there is merit to the Union's contention that the Department should provide each man with a service

revolver, "just as the Fire Department provides fire engines". Had the Union made such a request, it would have been granted, but under Section 8 of the Act this is not possible, since it is not a separate issue. The Panel urges the City to give consideration to this item.

The Panel finds the City's last and best offer more in keeping with the provisions of Sections 8 and 9 of Act 312, and orders the adoption of the City's last and best offer.

The Panel urges the parties to delete the fractions contained in this language as it is both confusing and misleading. Why not state in plain net dollars the amount the City will pay, rather than two-thirds of this, three-fourths of that. This may well help allay any suspicion in the minds of the Police Officers.

## ISSUE NUMBER 7--PAID FUNERAL LEAVE

## ECONOMIC

## PRESENT AGREEMENT:

Article XIV, Section 7 provides inter alia, "Proper Reasons for Sick Leave. Sick leave may be taken for any one of the following reasons and is to be considered a matter of grace rather than a matter of right..... absence to the extent of four days due to the death of a wife, husband, child, brother, sister, or parent or related member of his immediate household.....Sick leave may also be used for the following purposes, provided the use is within reason, and the privilege not abused for attendance at the funeral of a close friend or relative."

As the Chairman understands, such funeral leave in the past has been charged against an employee's accumulated sick leave (T II p. 108).

## UNION'S POSITION:

The Union's last and best offer is as follows:

Effective July 1, 1977 the Employer provide three days paid, non-deductible from any of the benefits now received or that will be received as a result of this award, to each employee who attends a funeral as outlined in Section 7 of Article 14.

## CITY'S POSITION:

The City's last and best offer is:

Up to four days general leave be granted under the Section Seven Article Thirteen (sic) of the present contract, with three days being designated as funeral leave and one day chargeable to accumulated sick leave.

## PANEL'S OPINION:

The two offers are practically identical, the only difference being that the employee may take a fourth day off if he wishes with the fourth day being charged to his sick leave. The Chairman feels that the meaning would be clearer if the Union's language were adopted as a separate item, rather than as a part of the Sick Leave provision.

AWARD

Effective July 1, 1977 the Employer (will) provide three days paid funeral leave, non-deductible from any of the benefits now received or that will be received as a result of this award, to each employee who attends a funeral as outlined in Section 7 of Article 14.

## ISSUE NUMBER 8--HOSPITALIZATION RIDERS

## ECONOMIC

## PRESENT AGREEMENT:

Here the Union is asking for the addition of riders to the hospitalization plan to

provide coverage for dental care and prescription drugs. The present plan does not provide either of these coverages.

#### UNION'S POSITION:

Union's Exhibit 18 shows that of the eight comparable cities by population, two have the dental coverage, and three provide for prescription coverage. In Muskegon County itself, one of four units provides these benefits.

The Union's last and best offer is:

Prescription Drug - Effective January 1, 1978 the Employer to pay for the Blue Cross/Blue Shield \$2 Prescription Rider Premium.

Dental - Effective July 1, 1978 the Employer to pay the premium costs of the Teamsters Eye and Dental Program. (The cost of such plan is \$156 per member year for full family coverage). Based on twenty Officers, total cost to the City would be \$3,121 per year.

#### CITY'S POSITION:

Both of these riders are very expensive, and the cost is not justified due to the benefits provided.

The City's last and best offer is:

The current insurance program as contained in the present contract on Page 18, Article Seventeen is adequate, and does conform with units cited by the Union in their Exhibit Eighteen.

PANEL'S OPINION:

It is the Panel's opinion that the Union's request is premature.

AWARD

The Union's request is denied.

ISSUE NUMBER 9--MINIMUM CALL BACK TIME AND PAY

ECONOMIC

PRESENT AGREEMENT:

Article XI, OVERTIME AND CALL-IN TIME, found on page 9 of the former FOP Agreement provides "Where an employee is called back to work for emergency service, he shall receive a minimum credit of one and one-half (1-1/2) hours overtime paid at time and one-half even though he may have worked less than one and one-half hours".

UNION'S POSITION:

The Union contends that its Exhibit 19 clearly indicates that comparable cities pay an average of almost three hours (2.99) at time and one-half.

This is the Union's last and best offer:

"Effective July 1, 1976 -  
present policy,  
Effective July 1, 1977 -  
two hours call back at time  
and a half,

Effective July 1, 1978 -  
three hours call back pay  
at time and a half."

CITY'S POSITION:

The City calls attention to an error in the Union's calculation in its Exhibit 19. It says that the average for the reported cities should be 2.09 rather than 2.99 shown in the exhibit. The City is willing to pay a minimum of two hours, and to delete the requirement that the call-out be for emergency services.

The City's last and best offer is:

"If an employee is called back to work he shall receive a minimum of two hours at time and one-half even though he worked less than two hours. The requirement that he be called out for "emergency service" is to be deleted."

PANEL'S OPINION:

The Panel is persuaded that the City's proposal more nearly meets the criteria of Act 312.

AWARD

The City's proposal shall be incorporated in the new Agreement.

ISSUE NUMBER 10--DISCHARGE AND DISCIPLINE  
NON-ECONOMIC

PRESENT AGREEMENT:

Article IX of the FOP Agreement, pp. 7 and 8 spells out a rather lengthy procedure for handling discharges and suspensions.

UNION'S POSITION:

Mr. Valenti, the Union spokesman, said (T III p. 16) ".....discharge and discipline, grievance and appeal procedures, and binding arbitration basically are all almost the same thing".

CITY'S POSITION:

The City contends there is no need for a change - - "the grievance and appeal position (sic) has not been needed very often".

PANEL'S OPINION:

It is apparent to the Panel that the Union is more concerned with a lack of an arbitration provision as the final step of the grievance procedure. There was no specific evidence produced by the Union indicating any miscarriages of justice under the provisions of this Article. Therefore, the

Panel has elected to by-pass the issue of Discharge and Discipline and address itself to the much more important matter of arbitration. However, in order to avoid any future misunderstanding, the Panel orders the following language to be added to Article IX of the expired FOP Agreement:

AWARD

10. Notwithstanding any other provisions of this Agreement, an employee who is served with a written notice that he is to be discharged or suspended, may, if he feels wronged, avail himself of the grievance procedure at Step 3 by presenting a written grievance to the City Manager or he may have his Steward present his grievance to the City Manager, as soon thereafter as convenient, but in no event more than ten (10) calendar days following receipt from the City Manager of a written statement setting forth the findings of the Personnel Board.

ISSUE NUMBER 10 (CONT'D)--GRIEVANCE AND  
APPEAL PROCEDURE

NON-ECONOMIC

PRESENT AGREEMENT:

The expired FOP Agreement (pp. 4-5) provides a four step grievance procedure, starting with the Department Head, proceeding to the City Manager and ultimately to a Personnel Board, ".....which Board shall report in writing to the City Manager its findings and recommendations".

## UNION'S POSITION:

The Union is quite concerned with the fact that a disciplined or suspended employee has no recourse beyond the Personnel Board, which is itself a creature of the Employer. The Union does not believe that the members of the Personnel Board "are professional enough to interpret a labor agreement".

## CITY'S POSITION:

The present contract providing for a City Personnel Board has worked for many years without problems. The City is also concerned with the expense (to both parties) of arbitration. There is no need for an arbitration provision.

## PANEL'S OPINION:

The Panel strongly supports the principle of binding arbitration as the terminal step of the grievance procedure. The grievance procedure was conceived as a means of providing an employee who felt that he had been ill-used, or otherwise deprived of his rights under the terms of the agreement, an opportunity to seek redress. This is the quid pro quo of the no-strike pledge. More than ninety per cent of the collective bargaining agreements in private industry depend upon arbitration to maintain labor peace within the operation between contract negotiations. It seems to the Chairman that arbitration is even more essential in public employment, and especially in the case of police officers and fire fighters who are, by law, forbidden to strike. If the employees may not strike, what avenue do they have for seeking a reversal of an improper action on the part of management? There must be an orderly and expeditious opportunity for justice.

This is not to say that the City has dealt unjustly with its employees. There was no evidence of this, and the Union was not persuasive in its testimony on this point. However, this is one area where the Panel is not satisfied to "leave well enough alone". That will not do, because there are no assurances that "well enough" will always be that way. Circumstances change and people change. In this case, the employer is a political creature, and politics often lead to unexpected events. The employees should not be expected to wait until they have been mistreated before they insist on the assurance so important to them. Their most potent weapon, the right to strike, has been denied them.....We must find an alternative. That alternative is binding arbitration.

#### AWARD

The Panel orders the inclusion of an arbitration clause, and the following language shall be inserted as Step 5 of the Grievance Procedure in Article VI of the expired FOP Agreement:

Step 5. If the Personnel Board fails to submit such a report within thirty (30) calendar days, or if the employee does not agree with the Board's report, the grievance may be submitted to binding arbitration as follows:

(a) The Union must submit written notice of its intent to arbitrate to the City Superintendent within 15 calendar days following the completion of Step 4 above. Such notice shall set forth the grievance as originally submitted, cite the contract provision allegedly violated, and state the relief or redress being sought. If the Union fails to submit notice of its intent to arbitrate before the expiration of the aforesaid fifteen (15) day period, the grievance shall be deemed to have been settled on the basis of the City's last answer to the grievance.

(b) The Union shall also submit the information in (a) above to the Michigan Employment Relations Commission, and ask for a list of five arbitrators from which the parties will select the arbitrator by each party striking a name in turn until only one name remains on the list. The Union shall strike first.

(c) The arbitrator shall have authority to resolve only those disputes concerning matters covered by this agreement. He shall have no power to ignore, to add to, or delete from, or modify or otherwise change any of the terms of this agreement, or its supplements, or its amendments, if any. The arbitrator shall interpret the Agreement in the light of the laws and precedents applicable to and affecting municipalities.

(d) The fees and expenses of the arbitrator shall be shared equally by the parties. Each party shall bear the expenses of its own witnesses and/or representatives.

(e) In any award involving back pay, back pay shall commence no earlier than the day the grievance was filed and shall be at the rate of forty hours straight time pay per week, less any payment, remuneration, benefit or compensation received by the employee during that period from any source.

The decision of the arbitrator shall be final and binding.

(f) A grievance involving discipline, discharge and/or suspension shall automatically be instituted at Step 3 as provided in Article IX, "Discharge and Suspension", and proceed as provided through steps four and five, if required.

ISSUE NUMBER 11--TWO-MAN CAR ASSIGNMENTS

ECONOMIC

PRESENT AGREEMENT:

The expired FOP Agreement has no language bearing on this item.

## UNION'S POSITION:

The Union contends that there is "an unwritten loose policy on the assignment of men". The Union asks that the policy be put in writing so that it cannot be changed. The Officers want written assurance that the "policy of two-man cars after the hours of darkness be maintained" at no less than the present level. The Union's last best offer is that the Panel must find in support of the Union's position.

## CITY'S POSITION:

A recent study indicates that one-man cars are actually safer than two-man cars. The City does not now propose to change its present policy, but it wants to be "flexible". The City's last best offer is that "the two-man car assignments remain as is, an unwritten policy and not being a part of the Agreement".

## PANEL'S OPINION:

In his presentation to the Panel, the Union President stated (T III p. 39), ".....it is our position that in this department there is an unwritten, loose policy on the assignment of men. We are not asking for any basic change here.....We are asking that the policy be placed in writing so that it cannot be withdrawn....."

The City replies that the present policy does provide for two-man cars after darkness (T III p. 40). "We are not proposing that there be a change in the one-man (sic) cars being assigned. The City's position is that the policy be flexible .....and under certain conditions a one-man car be assigned without violation of the Agreement."

The Panel is not convinced that the Union has made a case for its request. Although the Union

has submitted voluminous reports from the Federal Bureau of Investigation, the Michigan State Police, and the Police Officers Association of Michigan, it makes no reference to any specific page or portion of these reports nor does it quote from them. It lists four departments in the County that employ two-man cars during certain hours after darkness. But there is no indication that the agreements contain language requiring this arrangement, nor do we have a rundown on the 8 cities within the immediate population range. The Union has reproduced pages 230 to 234 of the FBI report, "Crime in the United States, 1974". Page 230 indicates that more officers are killed in the line of duty during the hours of 8:00 PM to 3:00 AM than at any other time during the 24 hour period. Page 231 is not germane to this issue since it deals with the police records of identified killers of police officers. Neither is page 232 germane; it, too, deals with the killers, not the hours of the assaults. Page 233 comes to grips with the Union's request. Under Type of Assignment, it states that of those officers assaulted in 1974, 37% were in two-man vehicles while 41% were in one-man cars; not a very significant difference. The other 22% were on various other assignments. In the same paragraph, it is reported that ".....in the highest assault incidence activity of police responding to disturbance calls, 46% of the victims were in two-man vehicles and 46% in one-man vehicles - - no difference whatsoever. Page 234 has no direct bearing on this issue.

The report of Police Officers Association of Michigan on page 15 lists but 13 cities with a contract clause requiring a minimum number of personnel on duty while 175 listed units, including Muskegon, operate one-man scout cars.

During the hearing, reference was made several times to assaults on Heights officers. The names mentioned were those of Johnny Harris, Irene Johnson, John Scott and Richard Hartwell. While there was some difference of opinion concerning how these attacks might have been avoided, the fact remains that in these two incidents there were two officers present at the time of the attack, and, obviously, the presence of the second officer did not deter the assailant nor prevent the attack. (T IV pp. 43-49).

The Panel does not believe the Union has demonstrated a need for two-man scout cars at all times during the hours of darkness. There is little evidence that many other cities have recognized such a need. As a matter of fact, other cities - - Cadillac, Dearborn, Farmington Hills, Riverview and Garden City among others, have recently denied requests for such a provision.

The "direction of the work force" and "the right to manage its operations and services efficiently and economically" are historically management responsibilities and the City (and the Panel, in this case) would be derelict in its duty to bargain away this responsibility. The Union has stated (T III p. 57) ".....the Union does not intend to take away the ..... duties and responsibilities of this City....."

The Panel has ruled this an economic issue, and orders the City's proposal on two-man cars as it more nearly meets the criteria of Section 9 of the Act.

#### AWARD

The Union's request for a clause setting forth the City's current policy on two-man cars is denied.

#### ISSUE NUMBER 12--PROMOTIONS

#### NON-ECONOMIC

#### PRESENT AGREEMENT:

The expired FOP Agreement is silent on this point.

UNION'S POSITION:

The Union seeks to establish a "fair, equitable and non-discriminatory means" in the promotion of a Police Officer to next higher rank.

CITY'S POSITION:

The City has an unwritten policy for promotions, and has no objection to putting that policy in writing. However, it does not believe the policy should be made a part of the Agreement. Furthermore, it is willing to include in the Agreement a statement that "promotions shall be in accordance with the promotional policy contained in the police manual".

PANEL'S OPINION:

In the Union Exhibit 24, the first sentence reads, "The position of the Union is to establish a fair, equitable and non-discriminatory means in the promotion of a police officer to the next highest rank". The Panel endorses and supports this laudable objective. The Union sets forth several alternatives for the attainment of this:

- (a) A three-part examination system.
- (b) A written test provided by the Michigan Municipal League.
- (c) An examination or test, administered by a tri-partite panel consisting of a representative of the Union, a representative of the City and a third person mutually selected to serve as a chairman.

After offering these options, the Union proposes, among other provisions, that an employee qualify on the basis of 55% on his written examination, 25% on his oral examination, and 20% on past experience. The proposal applies only to promotions to the rank of detective since it refers to "promotions within the Bargaining Unit". Subsequently, it is even more explicit when it speaks of ".....employees trying for promotion from Patrolman to Detective.....". We are then told that Norton Shores promotes by written examination, Roosevelt Park by seniority, and the City of Muskegon requires four years experience as a patrolman (to qualify for sergeant), both a written and an oral examination, and Civil Service qualifications.

Most interesting, and least explicit of the examples given is that of the Muskegon County Sheriff's Department. Among other things, it provides that, "Promotions shall be based upon demonstrated capacity, and quality and length of service and also based on a systematic consideration of qualifications (amount and quality of education and training), ability to perform at an advanced level, quality of previous work performance and length of service (seniority). Length of service shall be the determining factor when other factors are equal". It seems to the Panel that while all of these are very important qualities, they are most difficult to measure. Only on seniority can one really be positive. How do we measure "quality of service", "quality of education", "ability to perform at an advanced level"? The Union is tampering with a Pandora's Box, and coming close to trampling on Management Rights.

The testimony of Captain John R. Thompson (T III pp. 70-104) impressed the Panel. It was straightforward and complete in the most minute detail. He was most persuasive when he stated that he knew of no dissatisfaction with the present method of promotion. The Panel is convinced that the Union would be advised to leave the matter of promotions in the capable hands where it now lies. There was no evidence of any irregularity in the administration of the promotion program, or that the City had treated its employees in an unfair, capricious, inequitable or discriminatory manner in making promotions.

Should any dissatisfaction develop, the problem can be dealt with in future negotiations. The Panel denies the Union's request for a detailed promotion clause, but mandates the following:

AWARD

A new article containing the following language, is to be included in the new Agreement:

PROMOTIONS

Promotions shall be in accordance with the promotion policy contained in the City's Police Manual.

ISSUE NUMBER 13---MANAGEMENT RIGHTS

NON-ECONOMIC

PRESENT AGREEMENT:

Article V (page 2) of the former FOP Agreement contains a lengthy, very detailed, all inclusive Management clause requiring two closely typed pages.

UNION'S POSITION:

The Union is suspicious of the language and contends that it contains numerous clauses that could be used by the City to negate many provisions of the Agreement. The Union says in its brief (p. 23), "The City presently has the right to completely eliminate all patrolman positions and to replace them with civilian employees. They have the right to change every condition of employment, including wages, hours

of work, and all benefits except one, seniority. ....If the City's position is upheld, this clause would continue to be contrary to the spirit and interest of the Public Employees Relations Act and Act 312 .....We therefore request of the Panel, that a fair and equitable Management Rights Clause be substituted, incorporating the rights of the employees as well as the rights of the City."

## CITY'S POSITION:

The City responds that throughout the proceedings, the Union has frequently stated that it would like the employees' specific rights spelled out "so they can be assured they know where they stand". The City argues that this management rights clause does spell out specific rights which should please the Union - - this management rights clause has worked - - the Union has established no need for a change.

## PANEL'S OPINION:

The Union does not object to a management rights clause (T. III p. 57); it has such clauses in many, if not most, of its agreements. It is basically in agreement with the doctrine of residual rights. Once upon a time, Management had all the rights, then organized labor began to attack some of these rights, and Management began to make concessions. It agreed that it would no longer lay off the employees whom the foreman might not like. Management granted seniority rights to its employees, and with each negotiation these rights gained more importance - - affecting such matters as layoffs, promotions, transfers, shift preference, and choice of vacation periods. Management agreed that it would no longer discipline or discharge "without just cause". It agreed to holiday pay, sick pay, vacation pay, and on and on. But from the very outset, Management made it clear that every prior right it had bargained

away was set down in the agreement, and what had not been conceded in the agreement was still Management's unrestricted right. To put it another way, "the employee's rights are set forth in the agreement, and what isn't in the agreement is still a "Management right". This is the doctrine of residual rights. So, the rights of the employees sought in the Union's proposal are already in writing, and they supercede the Management Rights Clause.

The Union argues, unpersuasively, that the management rights clause in the old FOP Agreement is contrary to PERA. It further contends that the language of the present clause makes the balance of the agreement meaningless. The Arbitrator does not see it this way. After 12 paragraphs setting forth "some" of the management rights, the present article provides in paragraph four, "These specific management rights clauses contained hereinabove shall be subject to the seniority provisions and other terms of this contract". 1/ Still, the Union urges the Panel to adopt the language of the Muskegon County Sheriff's Agreement which says in part, "..... All authority which said Employer or the Sheriff has not abridged, delegated, or modified by this Agreement are retained by the Employer.....". Under different circumstances, the Chairman would accede to the Union's request because he is convinced that the Union's proposed language is adequate and that the sole purpose of the additional language is to point out to the employee the specific management right that the employee may be questioning at the moment. However, it is a well established maxim in labor relations that changes should only be made for good and sufficient reasons. The Union has said, "It is not the position of the Union to emasculate the rights of management, nor to obtain benefits which have not been negotiated nor awarded by the Panel.....". The Union has brought no specific charge that management has abused the provisions of the present clause or its intent in any manner.

In a recent Opinion and Award, (City of Farmington Hills and Teamsters Local 214, 3-31-77) Arbitrator Thomas V. LoCicero wrote, "A review of the clauses in other contracts supports the claim that some are less and some are most inclusive.....The essence of the proposed clause is that all the rights the City had prior to the contract are retained except such as have been granted to the Union. To spell

1/ Underscoring supplied.

out all those rights does not add to the effectiveness of the clause.....except to clarify those rights". The Chairman does not believe that there is merit to the Union's charge that the extra language diminishes the rights of the employees. It simply is not true that the present management rights clause "renders the rights and the job security of all officers almost useless". The employees' rights and their job security are found in the specific clauses throughout the Agreement that provide these rights and their job security.

#### AWARD

The Panel orders that the new agreement shall include all of the present management rights clause except for paragraph 4, previously quoted, which shall be changed to read:

The specific management rights clauses contained hereinabove shall be subject to the seniority provisions and all other terms of this contract. In the event of any conflict with a specific provision of this Agreement, the specific provision shall prevail. Any charged violation of this article may be processed through the grievance procedure.

ISSUE NUMBER 14--NO STRIKES AND NO LOCKOUT

NON-ECONOMIC

PRESENT AGREEMENT:

Article VIII (pp. 6-7) of the expired FOP Agreement contains a typical no strikes-no lockouts provision.

UNION'S POSITION:

"We say that we are not going to strike and we will do anything that we possibly can to prevent a strike" but ".....These men have the right to picket any time they so desire, as long as they are off-duty". (T III p.111)."Their present collective bargaining agreement completely forbids picketing. That's unconstitutional." (T III p. 112).

CITY'S POSITION:

The City cites a number of other agreements containing substantially the same language. It argues that to picket is to interfere with and interrupt the activities of the City.

PANEL'S OPINION:

The Union's primary objection to the language of this clause in the former FOP Agreement, is that dealing with picketing the employer's premises. The Union contends that it would picket only for informational purposes, that this is a constitutional right and that the parties cannot legally abridge it.

The Panel does not agree with the Union, and fears that if any picketing for whatsoever purpose were to take place, such action would materially interfere with the Department's operations, even if it only caused temporary confusion. The Panel will not argue the legal question raised by the Union; if the Union is correct, the clause is null and void.

Within Muskegon County, the Panel knows of at least five agreements that forbid picketing; the City's agreements with the FOP (for its Command Officers), and with the International Association of Fire Fighters, Muskegon and Norton Shores both with the FOP, and Roosevelt Park with its independent patrolmen's union.

AWARD

Because the structure and herarchy of the Teamsters Union is different than that of the FOP, the Panel orders the following change in the language of Par. 2 of Article VIII of the former FOP Agreement:

"The President, the Business Agent, the Steward and the Assistant Steward of the Union shall take prompt affirmative action to try to prevent, or to stop, any wildcat strike, work stoppage, slow-down of work, picketing, or work interference of any kind."

## ISSUE NUMBER 15--STEWARDS

## ECONOMIC

## PRESENT AGREEMENT:

Article VII (pp. 5-6) of the prior Agreement provides for one steward and one alternate steward. Their primary function is to investigate and present grievances. They also have a communication function. There is no provision for payment for their duties, but they have been paid for all time spent in connection with grievances.

## UNION'S POSITION:

The Union is asking that the Steward (and/or Alternate Steward) be paid for time spent in performing all his Union responsibilities.

## CITY'S POSITION:

The City objects because this may well lead to payment for time spent discussing Union business. The posting of notices can be done at shift change.

## PANEL'S OPINION:

The Union cannot expect the City to pay the Union representatives for every minute spent on Union business. When a member assumes the position of Steward, it is understood that he is, in fact, serving his fellow-member, and he must be willing to devote some of his own time to his Union duties.

The Union's last best offer is found on p. 8 of its Exhibit Ia. It sets forth the Steward's duties and provides that he or his alternate "shall be allowed time off with pay to perform the (above) duties and activities".

The City's last best offer includes the present language and "The addition of Section Three to read, 'Steward or alternate shall be permitted during working hours to perform the duties listed in Section One, without loss of pay'".

AWARD

The Panel orders the adoption of the City's proposal.

ISSUE NUMBER 16--GENERAL MEETINGS/  
SPECIAL CONFERENCES

ECONOMIC

## PRESENT AGREEMENT:

Article XXIV, Section 3 of the prior agreement, (p. 23) provides: "The Union may schedule meetings

on Police Department property, insofar as such meetings are not disruptive of the duties of the employees or the efficient operation of the Department, upon notification to and prior approval by the Department Head. These meetings shall not be attended by policemen on duty." 1/

There is no provision for special conferences.

#### UNION'S POSITION:

The Union asks that Police Officers on duty be permitted to attend these (Union) meetings as long as they respond to their calls. The Union also asks that special conferences "for important matters not normally subject to the grievance procedure (will) be arranged between the Union and the employer.....upon the request of either party". "The members of the Union shall not lose pay for time lost in such special conferences." (Union's Exhibit la p. 35).

#### CITY'S POSITION:

The City responds that it opposes the Union proposal because "to allow all Police Officers on duty to attend Union meetings and be paid for attending Union meetings is not a proper function of the City. Union meetings are strictly an internal matter....."

With respect to special conferences, the City is opposed to this provision which would require that two Union representatives be paid as much as one hour's pay each to discuss matters which could be handled by telephone. It says there is no need for a special conference which would result in extra expense to the City. Furthermore, this could well result in an additional step in the grievance procedure.

1/ Underscoring supplied.

## PANEL'S OPINION:

The Union is asking that the "present-practice of permitting Police Officers on duty to attend Union meetings (T III p. 35), providing these officers cover all necessary calls", be formally written into its Agreement.

The former FOP Agreement, on page 23, specifically provides "These meetings shall not be attended by policemen on duty". The City's spokesman said (T III p. 131) ".....our position is that the people on duty still not be permitted to attend the meeting", and again, "they permit them to have them (the meetings) on the premises, but persons on duty are not permitted to attend". When asked if that had been the practice in the past, he replied, "yes". Mr. Carl Morse, a member of the Bargaining Committee, interjected, "No, they haven't been allowed to attend" (T III p. 131). Then Mr. Daniels said, "They've allowed variances in the operation. And I'm sure they'll continue to allow variances". (T III p. 131). Mr. Valenti said, "They allow them to attend the meeting" (T III p. 132). Later, Mr. Valenti explained, "What we've done is taken the practice and placed it in writing. (T III pp. 135-6). Again, we have not changed or added or increased their liability, nor have we decreased our responsibility to the public by this type of approach. They've been allowed to have these meetings as long as they respond to their calls (T III p. 136). The discussion concluded with the City's statement, "Well, once again, the language as is consistent (sic) does have some discretion in the department as presently laid out, and things have functioned well under the present system. Once again, there is no need for change in the language; therefore, I would stay with the present language".

The Chairman is convinced that both parties are reciting the facts as each one believes them to be. He is confident that there is no intent to misrepresent. Yet, the parties are saying different things - - and at different times - - and neither party called witnesses to support its position, and neither party cited any such provisions in other agreements. Apparently, past practice has not been consistent. The old contract states in plain unambiguous language (p. 23) "These meetings shall not be attended by policemen on duty". There can be no question about the meaning of those words;

but the uncontradicted testimony was that they have been attended by "policemen on duty". Surely, if this statement were not accurate, the City would have objected vociferously and brought in witnesses to prove its position.

This is an economic issue and the last best offer of the Union is its proposal in Union Exhibit 1a, p. 35: "Section 3 Meetings - Amend as follows: Add: These meetings may be attended by Police Officers on duty provided these officers cover all necessary calls".

"Section 4. Add new Section Four entitled Special Conferences"

Special conferences for important matters not normally subject to the grievance procedure will be arranged between the Union and the Employer or his designated representative upon the request of either party.

Such meetings shall be between not more than two (2) representatives of the Employer and not more than two (2) representatives of the Local Union. Arrangements for such special conferences shall be made in advance and an agenda of the matters to be taken up at the meeting shall be presented at the time the conference is requested. Matters taken up in special conferences shall be confined to those included in the agenda. Conferences shall be held between the hours of 9:00 a.m. and 4:00 p.m. and limited to one (1) hour duration. The members of the Union shall not lose pay for time lost in such special conferences.

Special conferences shall be scheduled within ten (10) days after the request is made unless otherwise agreed.

The City's last best offer is stated as follows:

"The changes in Section One are agreed upon. The second paragraph of Article Twenty-four, Page 23 is omitted since it does not refer to the Teamsters Local, but the previous FOP. The changes proposed in Section Three are not acceptable to the City.....The proposed Section Four.....(provides for meetings).....outside the control of the City and cannot be approved by the City....."

AWARD

The Panel denies the language changes requested by the Union.

ISSUE NUMBER 17 (ALSO 28)--WORK PERIODS  
SHIFT PREFERENCE

NON-ECONOMIC

These two issues covering Work Periods (old FOP Agreement) and Shift Preference (Local 214 Proposal) have been combined.

The Parties have resolved this issue, and by mutual request of the Parties, the Panel makes the following Award:

AWARD

Article X of the former Agreement (p. 9) shall be changed by the deletion of paragraph 2 and the addition of the following two paragraphs:

All members shall be allowed to select their shifts not less than twice a year nor more than four (4) times a year on a seniority basis. The City shall not institute shift preference selection more than four (4) times in a fiscal year.

Regular work shifts and their starting and quitting times shall be established and instituted within thirty (30) calendar days after the execution of this Agreement. Any subsequent change in such shifts, or their starting and quitting times shall not be put into effect until seven (7) calendar days after notice of such change is made in writing to the Union.

## ISSUE NUMBER 18--WORKMEN'S COMPENSATION

## ECONOMIC

## PRESENT AGREEMENT:

Article XIV of the expired Agreement (p. 14) provides that the City Manager may authorize supplementary payments to an employee receiving Workmen's Compensation.

## UNION'S POSITION:

The Union asks that the City Manager be required to authorize such supplementary payment without any reference to Sick Leave as in the expired Agreement.

## CITY'S POSITION:

The present provision is a liberal one which permits the City Manager to authorize supplementary payments, and charge them to the employee's sick leave bank at 50%. The City expresses concern that if such payment is made mandatory, as the Union is asking, the

supplementary payment may disqualify the employee for Workmen's Compensation payments. If such payment remains voluntary, the particular circumstance may be taken into account for each employee's best interest. The City also maintains that it should not be required to make supplementary payments to employees who may have no sick leave credits or who may exhaust them.

#### PANEL'S OPINION:

In its last best offer, the City proposes no change in this provision. The Union proposes that effective July 1, 1977, "The City shall authorize a salary payment which, with Workmen's Compensation Disability Payment, equals the regular full salary. These payments are to continue until the employee returns to work or until the Workmen's Compensation benefits expire".

During the hearing, the Chairman asked the Union spokesman, ".....you say now, on behalf of the Union, that the City need have no concern about this (exhaustion of Sick Leave credits) because you wouldn't ask that it be paid to someone who had no credit in his bank. Do I quote you correctly?" Mr. Valenti replied, "That is correct, sir" (T III p. 154). The Union's last best offer is quite different.

The Panel would like to guarantee the payment to which the employee would be entitled by reason of his accumulated sick leave, and the assurance against an "overdraft" which the Union had indicated it was willing to give. But the Union's last best offer not only fails to give this assurance, but it makes no reference whatsoever to a charge against accumulated sick leave. It now asks for outright supplemental pay.

The Panel is of the opinion that the City's last best offer comes closer to meeting the criteria set forth in the Act 312.

AWARD

The Union's request for a change in the Workmen's Compensation supplemental provision in Article XIV, Section 8 (p. 14) of the expired Agreement is denied.

ISSUE NUMBER 19--UNION SECURITY/CHECK-OFF

NON-ECONOMIC

PRESENT AGREEMENT:

Article III on p. 1, Article IV on p. 2, and Article XXI on p. 21 cover these items. Article III provides that membership in the Union is not compulsory, but those who are not members must, nevertheless, "pay to the Union an amount equal to the Union's regular and usual initiation fee and its regular and usual dues". Payments shall commence with the first check-off date following the ending of his probationary period. Article XXI provides a probationary period of not less than six months. Article IV - - Check-Off requires the City to deduct only dues from the employees' pay checks.

UNION'S POSITION:

The Union asks that all new employees who do not become Union members be required to pay an amount equal to the Union's initiation fee. It further requests that the Employer include the initiation fee in the check-off.

## CITY'S POSITION:

"The City does not wish to have additional bookkeeping required for initiation fees....."

## PANEL'S OPINION:

The Union proposes that initiation or agency fees be included in Article III, Union Security of the old FOP Agreement. The City objects to checking off initiation fees before the employee completes his probationary period. The Union counters by saying that it will not insist that the City check off initiation fees before the employee has completed his probationary period if such period is not longer than six months. The Union also asks that monthly dues for probationary employees also be checked off. The old Agreement (Article III p. 1) provides that "For each new employee such payment shall commence with the first check-off date following the ending of his probationary period". Although the Union says that it does not seek to represent a probationary employee except for discharge because of Union activity (T I p. 12), the probationary employee is, nevertheless enjoying the benefits of the Union's negotiations and he should pay his share of the costs.

Neither the Union nor the City has asked for a change in the length of the probationary period, however, the Panel recommends that an extension of not more than six months may be granted whenever merited. This provision is dealt with elsewhere.

As for the additional bookkeeping required to check-off initiation fees, the Chairman feels that whatever extra bookkeeping is involved will be minimal and will avoid the necessity of having the Steward disrupting the work of the Department while he is acting as a collector.

AWARD

*Jwa  
Cen*

The Panel orders the addition of a new paragraph to Article III (p.1) of the prior Agreement, as follows:

Section 3: Initiation fees. Every new full-time employee covered by this Agreement must pay an initiation fee starting with the first check-off date following the completion of his probationary period, and his placement on the seniority roster. The amount of this fee shall be spread equally over a period of twelve (12) months.

The Panel also orders the amendment of the present Article IV (p.2) to read as follows:

The City agrees to deduct from the wages of such employees in accordance with the expressed terms of a signed check-off authorization, a copy of which is attached to this Agreement and marked Appendix "B", the membership dues of the Union, or an agency fee in a like amount, insofar as approved by the Local Union, in amounts designated by the Union. Said deductions shall be made out of the first payroll period of each month and immediately forwarded to the Financial Secretary of the Local Union.

## ISSUE NUMBER 19B--PROBATIONARY PERIOD

## NON ECONOMIC

## PRESENT AGREEMENT:

Article XXI (p. 22) of the old FOP Agreement provides, "In the event of satisfactory completion of the probationary period by an employee, a letter may or may not be written by the Department Head, ....."

## UNION'S POSITION:

The Union objects to having the employee "kept in the dark" with respect to the satisfactory completion of his probationary period.

## CITY'S POSITION:

The City is willing to have the article amended so that the Department Head is required to write such a letter, and to provide that the employee's seniority, after he has completed his probationary period, shall be his last date of hire.

## PANEL'S OPINION:

The Panel agrees with the Union's request that probationary employees not be "kept in the dark" with respect to their probationary status. It is

a well-established principle in employee relations, and in human relations, too, that "a man has a right to know where he stands". While the Panel will not include this recommendation in its order, it suggests that a probationary employee be evaluated each month as a matter of policy, that he be informed of his progress, or lack of progress, after ninety days, and if he is to be terminated, this should be done as soon as it is shown that he is not making sufficient progress. It serves no good purpose to retain him on the payroll beyond that time.

On the other hand, if a probationary employee has demonstrated a sincere desire to be a member of the force, and has shown some progress, the City may salvage its investment in the man by affording him further opportunity to qualify and enjoy meaningful employment by extending his probationary period for not more than an additional six months, at the end of which time he should either be placed on the permanent roster or dismissed.

#### AWARD

The Panel orders that Article XXI of the old FOP Agreement be amended, commencing with the last sentence of the present article to read as follows:

When a probationary employee has successfully completed his probationary period, his name shall be placed on the seniority roster, and a recommendation for a six-month incremental increase in pay shall be submitted on the standard forms provided for this purpose. The employee shall receive a notice from the City, with a copy to the Union Steward, advising the employee of his successful completion of his probationary period. His seniority date shall be as of his last date of hire.

## ISSUE NUMBER 20--LAY-OFF

## NON-ECONOMIC

## PRESENT AGREEMENT:

Article XXII (p. 22) of the expired Agreement spells out the lay-off procedure.

## UNION'S POSITION:

The Union has no quarrel with the provisions of this clause, but contends the language is incomplete. It asks that a "lay-off" be defined as "a reduction in the work force due to a decrease of work or lack of funds". It further asks that the Employer be forbidden to assign the work of laid-off employees to non-Union members except in case of emergency. It asks that employees be given a fourteen-day advance notice of lay-off. It wants the City to cooperate "in every way possible" if the employee files for unemployment compensation. And it wants recalls to be made by certified mail, giving the laid-off employee fourteen days to report back to work.

## CITY'S POSITION:

The City replies that the language sought by the Union would place unreasonable burden upon the City. It promises that when the City has advance notice concerning lay-offs, it will relay the notice to those employees who may be affected. It objects to recall notice by certified mail with a fourteen day grace period as being "unreasonable". The City's responsibility for unemployment compensation is already spelled out by statute; the Union's request may lead to additional grievances. The restriction as to

work being performed by non-Union members would mean that command officers would be unable to fill in as may be required.

PANEL'S OPINION:

In its Exhibit #34, the Union states, "The Union basically finds no objection to the Lay-Off language, Article XXII, page 22, contained in the present Labor Agreement. Our basic problem lies in the fact that the language is incomplete". The Exhibit then sets forth the language requested by the Union, to wit: (1) a definition of lay-off, (2) prohibition of the use of non-Union employees to perform the work of laid-off patrolmen, except in emergencies, (3) fourteen days notice of lay-off, and (5) written notice of recall by certified mail. Mr. Valenti stated that this request was consistent with the provisions of other labor agreements. When asked by Mr. Daniels if any other unit in the County had these provisions, Mr. Valenti responded that the Sheriff's Department did have the fourteen day provision. No other agreement was cited, and the Union did not submit a copy of the clause in the Sheriff's Agreement.

When the City asked what problems had been encountered under the language of the old FOP Agreement, Mr. John Scott, the Union Steward, replied that a problem involving CETA employees had occurred several years ago. The Union mentioned no other problems. The Panel is not persuaded that any employee has been placed in jeopardy because of the language of the old Agreement, nor is it convinced that the Union's request for a fourteen day lay-off notice is prevalent in a significant number of agreements. The Chairman finds no mention of such a clause in the POAM 1976-77 Wage and Fringe Benefit Survey.

However, the Panel believes that several of the clauses proposed by the Union may well serve to clarify the lay-off procedure, and orders the following changes in Article XXII p. 22 of the former FOP Agreement:

AWARD

Preface the article by inserting, "Lay-Off is a reduction in personnel due to a decrease or a rearrangement of the work-load of the department, or to a reduction in the department's budget".

At the end of the present Article XXII add:

"When a laid-off employee is to be recalled, the City will mail notice of his recall to the employee's last known address as indicated on the employee's personnel record. The employee must, within three calendar days following receipt of such notice inform the City of his intent to return to work, and must actually return to work within fourteen calendar days following receipt of such notice. Upon his return, he shall be assigned to the shift on which the vacancy exists."

ISSUE NUMBER 21--RESIDENCY

NON-ECONOMIC

PRESENT AGREEMENT:

This is no residency requirement in the expired Agreement, but the City has incorporated City Ordinance #359, adopted October 11, 1976, in all of its other Union Agreements. The ordinance requires that all new employees must either be or become residents of the Heights. It also provides, inter alia, that present employees, other than Department Heads, who now reside outside the City may continue to do so unless they move; then, they must locate within the City or be terminated.

## UNION'S POSITION:

The Union prefaces its argument with the statement that this is one of the most serious issues before the Panel. During the proceedings the Panel heard testimony that this is one of two issues that led to the certification of the Teamsters Union. The Union's evidence and argument are in two parts: (a) The City acted illegally in adopting the ordinance, and (b) The provisions of the ordinance are unfair to the employees because the City does not offer housing and educational opportunities comparable to those found in the immediate suburbs. The Union asks that Residency not be required.

## CITY'S POSITION:

First, the City argues that the ordinance is valid and enforceable in this (sic) contract. The residency provision is contained in every contract agreement which has been negotiated and completed with the various City bargaining committees, including the clerks, the Fire Department and another Teamster Local, the D.P.W. The City asks that it be a part of this Agreement.

## PANEL'S OPINION:

This subject is indeed a very important one. There are 44 pages devoted to it in the Transcript Vol. III (pp. 177 - 221) plus many more pages in Volume IV. Much of the discussion concerned the City's right to enact the ordinance. The Chairman does not challenge this right. The more pertinent question is whether the City may unilaterally make residency a condition of continued employment.

The Union is asking the Panel to rule Ordinance #359 of the City of Muskegon Heights inapplicable to members of Local 214. The City maintains that the Panel has no authority to pass on the Union's request, that the Union should have filed an unfair labor practice charge with the Michigan Employment Security Commission. Mr. Daniels said, (T III p. 212), "The Arbitrator has no jurisdiction to determine the political acts of this ordinance. The proper method is through the Labor Department's Law Judges. They (the Union) haven't done it, they can't raise it at this time, and therefore residency is not a proper subject for determination". Yet, the City did negotiate a residency clause with the unions representing its command officers, its D.P.W. employees and its fire fighters. And, as a result of these negotiations, the City relaxed the provisions of the original residency ordinance passed in July 1976, and enacted a new ordinance on October 11, 1976. In connection with these negotiations, Mr. Daniels said, (T III p. 209) "We reached agreement with the other units, and one of the conditions of agreement, first of all, was that an ordinance be passed to have the residency - - the present residency ordinance be more liberal, that it does not require persons to move into the City who are currently employees unless they make a move and they live outside the City.....And I will submit to the Panel copies of each of the contracts showing that the ordinance which was passed there is a part of it".

The Panel finds that under the provisions of Act 312, it does have authority to arbitrate residency for the City's police officers who are members of Local 214.

The Panel will not, however, consider the Union's request on the basis of the legal technicality that the City failed to heed the Union's advice that residency was a proper subject for collective bargaining. It will base its decision solely on the merits of the issue, the weight of the evidence, and the well-being of its police officers and the taxpayers of Muskegon Heights who provide their salaries.

The Panel finds Union Exhibit 35 persuasive. It also gives much weight to the testimony of Police Chief Willie Howell and his Administrative Assistant, Captain John R. Thompson. There is a great deal of emotion involved in this issue, and it is one of the most important clauses in the entire agreement.

It effects both present and future employees; it can lead to both discrimination and reverse discrimination. It vitally effects the personal life of the police officer, and even more so the lives of his wife and his children, and as noted above, it concerns the citizens of the community. In "The City of Inkster and Teamster Local 214", March 4, 1975, Arbitrator M. David Keefe wrote, "The Board of Arbitration.....should commend the Council for the posture which it took on the matter as evidencing dedication to serve the interests of the citizenry....."

There is no need to burden this Opinion with the plethora of legal, social and moral arguments, both pro and con, the parties advanced; both parties are well aware of them. The Panel is convinced that the issue must be resolved on the basis of only one critical consideration -- response time. The Panel had an opportunity to question Captain John Thompson (T IV pp. 21-36) and Chief Willie Howell (T IV pp. 59-65). Captain Thompson felt strongly that police officers should be permitted to have a private life of their own and to live wherever they choose as long as they are within ten miles of the city limits of Muskegon Heights. Chief Howell was inclined to favor residency within the City, but said that a dedicated police officer would do his job equally well irrespective of his place of residence; he would limit the distance to within five miles of the city limits.

While the Panel strongly believes that any changes in Ordinance #359 should apply alike to all employees, its authority to order such a change is restricted to the residency of present and future employees who are members of this bargaining unit.

#### AWARD

The Panel orders that all patrolmen shall be exempt from the provisions of City Ordinance #359.

It also orders an additional article in the new Agreement as follows:

Present police officers who are not residents of the City may remain outside the City until such time as they elect to change their place of residence.

If they elect to change their place of residence, they must relocate within five miles of the then established city limits of Muskegon Heights or they will be terminated

Future police officers must be and remain residents of Muskegon Heights.

ISSUE NUMBER 22--REPRESENTATION OF PROBATIONARY EMPLOYEES  
EMPLOYEES' PERSONNEL RECORDS

NON-ECONOMIC

PRESENT AGREEMENT:

The expired FOP Agreement is silent on both of these issues.

UNION'S POSITION:

The Union contends that it may properly represent a probationary employee who may be discharged for alleged Union activity (T III p. 223).

## CITY'S POSITION:

The City responds that it has no objection to this as long as it is understood that probationary employees are not regular employees until after they have completed their probationary period.

## PANEL'S OPINION:

The Panel agrees with both parties and orders the following:

AWARD

The Panel orders the following additional language shall be provided at the end of the old (FOP) Article I:

It is understood that the Union will not represent probationary employees in any matter except in a charge against the City that the probationary employee was discharged for Union activity.

The Panel also orders the following additional language at the end of the present Article XXIV, General Article:

Records of service will be kept in the employee's personnel file, and citations will be awarded in instances of meritorious performance, above and beyond the call of duty. An employee shall, upon request, have access to his personnel file, in the presence of the Employer.

## ISSUE NUMBER 23-- SAVINGS (VALIDITY)

## NON-ECONOMIC

## PRESENT AGREEMENT:

Article XXVIII (p. 25) of the expired FOP Agreement provides, "If any parts of this Agreement are found to be illegal such illegality shall not in any way affect any other part of this Agreement."

## UNION'S POSITION:

The Union (UE 42) reports that this clause has been agreed upon and that the following language should be incorporated into the new Agreement:

If any Article or Section of the Agreement or any addendum thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be reinstated by such tribunal the remainder of the Agreement and addenda shall not be affected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

## CITY'S POSITION:

This is found in the current Agreement as Validity clause, Article XXVIII (p. 25) and this is stipulated and agreed to as it appears in the old Agreement.

## PANEL'S OPINION:

There was quite a discussion as to just what had been agreed to. The City wanted to stay with the present language--verbatim. The Union said the old language was satisfactory but that the Union's proposed language went a step further and provided for a solution to the problem if it should arise. The Chairman prefers the Union's language but is precluded from ordering it because the Union (T III p. 235) withdrew Union Exhibit 43, Savings Clause.

AWARD

The Panel orders the retention of the language in the old Agreement.

ISSUES 24 and 25--ENTIRE AGREEMENT/WAIVER

NON-ECONOMIC

## PRESENT AGREEMENT:

Article XXVI of the expired Agreement (p. 24) provides in essence that this Agreement supersedes all previous Agreements and constitutes the entire (present) Agreement between the parties. Article XXVII (p. 24) is an acknowledgment by the parties that each of them had "the unlimited right and opportunity to make demands and proposals", and that, now that the bargaining has ended, neither party will require the other party to bargain on any matter covered or not covered by the Agreement.

## UNION'S POSITION:

This Article (Entire Agreement) is basically a Waiver Clause under another title. Furthermore, the Union asks to strike the Waiver Clause because it is in conflict with the Maintenance of Standards concept.

## CITY'S POSITION:

The City responds that the Entire Agreement clause is in every one of its collective bargaining agreements and in many other collective bargaining agreements. Furthermore, the Union has "not shown any problems with it, therefore the current language in the contract should be retained."

## PANEL'S OPINION:

Since the Union contends that the Entire Agreement clause is basically another Waiver clause, under a different title, the Panel will consider both of these clauses together.

The Entire Agreement clause says in effect that everything that was agreed upon is contained in the new contract. "If it isn't in the contract, we didn't agree on it. We may have discussed it -- talked about it -- but if it isn't written in the new contract, we did not agree on it." It further says that no matter what may have been in a prior agreement, or any side agreement, or any understanding -- oral or written -- all that is in the past and no longer governs the relations between the parties; everything that is controlling is in the new Agreement. And it also states that any benefits, other than those set forth in the new Agreement, that are provided for by the provisions of a general ordinance, shall not apply to the patrolmen. This, in essence, is what the Entire Agreement clause provides.

Now, let us go to the Waiver clause. This says that neither party shall be required to negotiate on any subject during the term of the new Agreement. Such negotiation may be had by mutual consent, but not by the demand of one party or the other. Each party had ample opportunity to seek changes during the lengthy period of the negotiations and the hearing following the impasse. Both the City and the Union negotiators were experienced practitioners, well versed in collective bargaining, and the Chairman granted both sides every opportunity to introduce new demands and they did do so. Now, the negotiations and the hearing are over, and the resulting agreement runs until June 30, 1979. Until the parties enter negotiations for a new agreement, neither party may demand that the other negotiate a change in this Agreement or an addition to it. This may be done by mutual consent -- but only by mutual consent.

The Panel is of the opinion that each article covers a different subject, and that each is proper; the two are also compatible. Perhaps the logic of these two clauses might follow a little better if the sequence of the clauses were reversed, however the Panel sees no compelling reason for reversing them.

#### AWARD

The language of Article XXVI and Article XXVII of the expired FOP Agreement shall be incorporated verbatim in the new Agreement with the exception of the words, "or based on alleged past practices between the employer and the employees" beginning in line 2 of the first sentence of Article XXVI, which shall be stricken to avoid conflict with the language of the Past Practices clause -- Issue Number 26.

## ISSUE NUMBER 26--MAINTENANCE OF STANDARDS

## ECONOMIC

## PRESENT AGREEMENT:

There is no Maintenance of Standards clause in the former FOP Agreement.

## UNION'S POSITION:

The Union seeks to "protect those benefits and conditions of employment which have been uniformly recognized by the parties and which should not be changed, except as a result of bilateral negotiations." The Union's aim is to allow its members "to rely on those benefits and practices which have been uniformly recognized between the parties."

## CITY'S POSITION:

Since the Panel has declared this an economic issue, the City's last best offer is that the Maintenance of Standards clause not be included in the (new) Agreement.

## PANEL'S OPINION:

The Union's objective is stated by its President very succinctly (T III p. 240): "The idea of a Maintenance of Standards clause in most cases is that the Union is attempting to catch everything that it can....We have somewhat tailored our position, and we are stating that if there is a provable benefit that has been granted to these employees....(they)....have enjoyed but was not incorporated into a collective bargaining agreement....that should continue...."

The Union's efforts to protect all the benefits its members now enjoy is understandable, and there is merit to the Union's request -- just as much merit as there is to the City's position on Management Rights, Waiver and Entire Agreement. In effect, the Union is saying that the negotiators cannot possibly be aware of every benefit and every past practice that the patrolmen enjoyed. It is only fair that they not be denied the benefits they received in the past.

In its Brief, (p. 28) the City stated, "None of the other agreements with the City bargaining agents have Maintenance of Standards Clause." Yet, in the City's Agreement with Local No. 615 of the International Association of Firefighters, Effective July 1, 1976 to June 30, 1978, on page 5, Article VIII, entitled, Past Practices, there is a Maintenance of Standards clause by another name.

#### AWARD

The Panel orders the inclusion of an additional Article, Past Practices, in the new Agreement as follows:

The City agrees that all conditions of employment relating to wages, hours of work, overtime differentials, and working conditions shall be maintained at the highest minimum standards in effect at the time of the signing of this Agreement.

ISSUE NUMBER 27--INJURY

ECONOMIC

The parties having agreed on the language for the resolution of this issue ask the Panel to include the language in its Award.

AWARD

Article XIV, Section 1 (p. 12) of the expired FOP Agreement shall have added to it the following language: "An employee who is injured on the job and is required to leave the job by medical authority will be paid for the whole day."

## ISSUE NUMBER 28--SAFETY AND EQUIPMENT

PART A--SAFETY--NON-ECONOMIC

PART B--EQUIPMENT--ECONOMIC

## PRESENT AGREEMENT:

Neither of these two items (which will be covered as Part A and Part B) is included in the expired Agreement.

## UNION'S POSITION:

Part A: The Union proposes the following language, as an additional Article, in the new Agreement:

"The Employer is required to keep all equipment assigned to the Bargaining Unit in safe operating condition. The Employer will not assign any unsafe equipment to its employees. Any equipment reported unsafe to the City will be checked out prior to such equipment being reissued, and certified as being safe by the City."

Part B: On the subject of Equipment, the Union asks for all the necessary equipment in order that the employee may perform his job as a Law Enforcement Officer. Such equipment shall include a service revolver, fresh ammunition, handcuffs, all leather goods, second-chance vests, shotguns, flashlights, clip-boards, shotgun racks, badges, and any other equipment needed.

CITY'S POSITION:

A. The City has no objection to the Union's proposed language for Part A, and is agreeable to a new Article as sought by the Union.

B. The City's last best offer is to supply necessary equipment as determined by the Chief of Police. Such equipment shall not include a service revolver, but shall include live ammunition, handcuffs, all leather goods, flashlights, clip-boards and other equipment listed under the clothing allowance. Second-chance vests, shotguns and shotgun racks shall be purchased by the Department in such quantities as determined by the Chief of Police. The issuance of second-chance vests, shotguns and shotgun racks shall be at the discretion of and according to the policy of the Chief of Police.

PANEL'S OPINION:

As to Part A, the Panel compliments the parties on having reached agreement on this issue.

As to Part B, the only matters of consequence on which the Union and the City differ are the service revolver and the shotguns. Once again, since this is an Economic Issue; the Panel regrets that it cannot award the Union's request for a service revolver. As for the remainder of Part B, while the Union's request dealt with its proposal that the City provide certain equipment, the discussion dealt almost exclusively with the Union's demand that each police cruiser be equipped with a shotgun at all times. The Union stated that other police

cruisers in this County are so equipped. One Union witness (Mr. Scott) testified "....because of the lack of a shotgun there has been two lives that we can account for that were lost" (T III p. 255). Chief Howell testified (T IV p. 38-59) that shotguns were always readily available in the command cars and were provided within a matter of minutes if circumstances required their use, and that patrolmen had been instructed to await the arrival of a command car in such instances. He went into some detail regarding Mr. Scott's charge that two lives had been lost due to the lack of shotguns, and was very convincing in his explanation of the circumstances surrounding these events. The Panel found the Chief's testimony most persuasive. The Panel was also impressed with the Chief's philosophy on crowd psychology and a crowd's reaction to a display of shotguns. Whether he be right or wrong, he must have the prerogative of operating his Department in what he considers to be the City's best interests.

Irrespective of the Panel's Opinion on the matter of shotguns, it is required to decide this issue in accordance with Section 8 of Act 312 and it must deny the Union's request for Equipment as set forth in the second part of its Exhibit No. 50.

#### AWARD

The Panel grants the Union's and the City's joint request for the language embodied in Part A of Union Exhibit No. 50.

The Panel orders the City's proposal for Part B as set forth in the City's best offer.

ISSUE NUMBER 29--UNION REPRESENTATION  
NON-ECONOMIC

PRESENT AGREEMENT:

The Union structure under the prior Agreement did not require this arrangement, and there is no such provision in the prior Agreement.

UNION'S POSITION:

The Fraternal Order of Police, which represented the police officers heretofore was an internal organization and there was no need for an arrangement permitting a non-employee access to City Property. Local 214 has full time, Union-paid, Business Representatives who are responsible for the proper administration of the Local's many collective bargaining agreements.

CITY'S POSITION:

The City replies that it is not the City's responsibility to provide such a meeting place and "pay stewards and other employees for talking to their Union representative."

PANEL'S OPINION:

The Panel agrees with the Union that its organizational structure is different than that of the Fraternal Order of Police, and that it is necessary for the Union's Business Representatives to have an orderly procedure for meeting with its Stewards and/or City representatives from time to time in connection with the administration of the Agreement.

The City is being unrealistic in its position. It certainly has a right to its opinion, but it should realize that such meetings will take place, one way or another -- unless they are specifically forbidden -- and it is much better for all concerned if this is done above board. The City may well find that the Union Business Representative can be very helpful in the administration of the collective bargaining agreement.

#### AWARD

The Panel orders the inclusion of the following clause in the new Agreement:

#### VISITS OF UNION BUSINESS REPRESENTATIVES

"Authorized representatives of the Union shall be permitted to visit the premises of the Employer during normal working hours to meet with the Stewards of the Union and/or representatives of the Employer concerning matters covered by this Agreement without interfering with the progress of the work force. The Union will arrange with the Employer a mutually agreeable time and place in advance of such visits."

#### ISSUE NUMBER 30--HOSPITALIZATION FOR RETIREES AND SPOUSES

#### ECONOMIC

#### PRESENT AGREEMENT:

Article XVI (p. 18), second paragraph, requires the City to pay full premium for employees and

their dependents. Retirees are eligible for "City-paid hospitalization coverage upon attaining age 65, providing they are drawing City Retirement Benefits." Note that the clause specifies "Retirees"; it is silent about dependents.

#### UNION'S POSITION:

The Union asks that the City be required to "pay full premiums for hospitalization coverage for the Retiree and his spouse immediately upon retirement...."

#### CITY'S POSITION:

The current provision for full premium costs for retirees attaining 65 is sufficient.

#### PANEL'S POSITION:

While the Union bases its request on the statement that this would also cover employees who are injured in the line of duty, the request is to provide this coverage for an additional period which may be as long as ten years for both the retired employee and the spouse.

The City's last best offer is to retain the provision of the expired Agreement.

There was little discussion on this subject during the hearing and the Union failed to show the prevalence of a similar provision in other units within its composites.

If an officer is forced to accept early retirement because of a job-related injury he would be paid Workmen's Compensation. If an officer elects early retirement to seek other employment, he would most likely be covered by the insurance provided by his new employer. The Panel is persuaded that the City should not be required to bear the additional expense of providing this coverage, and is convinced that the City's position more nearly meets the standards of Act 312.

AWARD

The Union's request is denied.

ISSUE NUMBER 31--TARGET RANGE

NON ECONOMIC

The City and the Union have reached agreement on this issue, and the Panel mandates the following language as an additional section in the new Agreement:

The Employer shall make available to its Police Officers a firing range and ammunitions for target shooting. Police Officers shall qualify with their service revolvers a minimum of twice yearly.

ISSUE NUMBER 32--TRANSPORTATION

ECONOMIC

PRESENT AGREEMENT:

This subject is not specifically covered in the expired FOP Agreement.

## UNION'S POSITION:

The Union is asking that the present City practice of paying the tuition costs for courses specified by the Department Head be reduced to writing, and included in the proposed Agreement. It is also asking that the present practice of paying mileage at the rate of fifteen cents per mile, likewise, be incorporated in the new Agreement.

## CITY'S POSITION:

The City makes the following as its last best offer,

The City shall pay the tuition expenses and provide proper transportation for any schooling which is required or approved by the Chief of Police. Employees will receive mileage of fifteen cents per mile, round trip, if class is held outside of Muskegon County and transportation is not otherwise available. Whenever an employee is requested by the Employer to use his own personal vehicle in the line of duty and on the business of the Employer, he shall be accorded the mileage of fifteen cents per mile.

## PANEL'S OPINION:

In the colloquy during the hearing, Mr. Valenti said, "All we've done is more or less placed into writing what is the policy here, except for the fifteen cents part of it -- okay. I stand corrected. Both of these things are present policy. They pay both the tuition and they pay the fifteen cents now. So we

wish to amend the Union Exhibit 54 to be or to read, 'to incorporate the present policy of tuition payment and mileage payment in writing in the collective bargaining agreement'". (T IV p. 82). It is evident to the Panel that both parties are saying the same thing.

AWARD

The Panel orders addition of the language in the City's last best offer to Article XXV of the expired Agreement.

ISSUE NUMBER 33--NON-POLICE FUNCTIONS

NON-ECONOMIC

PRESENT AGREEMENT:

The expired Agreement is silent on this point.

UNION'S POSITION:

The Union asks that the new Agreement provide that a police officer will not be required to perform non-police functions such as janitorial services, going to the post office, bringing in newspapers or bringing in coffee.

CITY'S POSITION:

The Union's request places a restriction on Management Rights. Officers should be, and are,

expected to perform as directed by their command officers. In the event the requests of the command officers are unreasonable, the police officer may avail himself of the grievance procedure. To require an officer to go to the post office to bring in newspapers and to occasionally bring in a cup of coffee is not unreasonable. These are ancillary functions.

PANEL'S OPINION:

The Panel suspects that there is more to this request than meets the eye. The Union negotiators are experienced practitioners and the Chairman does not believe that the Union would bring up such a seemingly trivial request. It is more than a pique. The Panel agrees that these police officers are professional employees and should not be considered errand boys. They should not be treated in a manner that belittles them and demeans them in the eyes of their fellow-workers and - - more importantly- -the public. Respect should begin in the station house! Nor should this sort of assignment be used as a subtle reprimand - - a "put-down".

On the other hand, there is merit to the City's argument that the language the Union is seeking impinges upon Management Rights and may well lead to further requests of this nature.

The Chairman hopes that the City will take prompt, positive action to correct whatever problem of this nature may actually exist. The City's statement relative to the grievance procedure on page 33 of its Brief is now a matter of record.

AWARD

The Union's request for language forbidding non-police functions is denied.

## ISSUE NUMBER 34--POSITION CLASSIFICATION

## NON-ECONOMIC

## PRESENT AGREEMENT:

"Position Classification" is Appendix "C" of the expired Agreement.

## UNION'S POSITION:

The Union contends that it is physically impossible for a police officer to perform all of the tasks enumerated in Appendix "C", and it asks the Panel to either strike the entire Article or to provide that there shall be no penalty for the non-performance of the duties set forth in the Article.

## CITY'S POSITION:

The City counters that these rules and regulations are proper and are capable of being carried out without difficulty.

## PANEL'S OPINION:

The Position Classification, or as it is known in private industry, the job description, requires four pages of single-spaced typing; there is no doubt that it is lengthy, broad and all-encompassing.

The Chairman has read the section very carefully several times, and he can find no fault with it. A job description of the duties of a Police Officer must necessarily be broad and all-encompassing. A Police Officer is a very important person (Union Exhibit 5); he must look after very many things -- not all at the same time, of course -- and, certainly, this is no job for one who is indifferent to his surroundings. The job requires alertness rather than the arms of an octopus. For example, the Union finds fault with the language of Paragraph 4 which provides that a patrolman has a duty to "report all breaches of the peace". The Union complains that a Police Officer cannot possibly know of every breach of the peace (T IV p. 101). So far the Union is correct, but it fails to note that the instant clause also includes the words "....coming to his attention". Is it unreasonable that a Police Officer should be expected to report all breaches of the peace coming to his attention? The Position Classification does not seem unreasonable to the Chairman.

It appears to the Panel that there is more heat than light in the Union's argument. The Union concedes that the clause -- which has been in every contract between the City and its employee representatives since 1968 -- has not resulted in any unfair or discriminatory conduct on the part of the City (T IV p. 97-98), but it expresses concern that the clause may be used in reprisal against the Union should the City be unhappy with the Panel's total decision. The Panel seriously doubts that this will happen, but even if it should, the Union and its members would have the protection of the grievance procedure.

The Panel can find no fault with the language of Appendix "C".

AWARD

The Union's request to strike Appendix "C" or to not have its terms apply in instances of reprimand or discharge, or to rewrite Appendix "C" is denied.

## ISSUE NUMBER 35--LEAVE OF ABSENCE

## NON-ECONOMIC

## PRESENT AGREEMENT:

The present Agreement provides Sick Leave in Article XIV (p. 12), Military Duty Leave, Article XV (p. 15), and (Union) State Lodge Convention Leave Article XXIV (p. 23).

## UNION'S POSITION:

The Union is asking for language providing (Personal) Leave of Absence, Maternity Leave and Union Leave.

## CITY'S POSITION:

The City objects to the Union's request for Personal Leave because it believe the Union's proposed language grants the employee an absolute right to such leave. Furthermore, even if the language were changed, the City

fears that the requirement for a written denial would lead to grievances. The City has no objection to a provision for Maternity Leave, other than the reference to an adopted child. There was no discussion relative to Union Leave.

PANEL'S OPINION:

Since the parties have agreed to the language for a Maternity Leave clause, the Panel will order that. As to Personal Leave, the Chairman understands that all the Union is asking is that the City recognize the right of an employee with a minimum of one year of seniority to ask for a Personal Leave in writing, stating the Employee's reason for requesting the Leave of Absence and the approximate time the Employee expects to be absent. The Union asks for only one thing more: that the authorization or denial by the City be in writing. On page 73 of Volume IV of the Transcript, we find Mr. Valenti saying ".....if the boss says I can go, that's good enough". The Arbitrator then asked, "What if he says you can't?" Mr. Valenti replied, "You can't".

The City maintains that there is no need for a Personal Leave provision. As in the past, whenever a need for a leave arises, it will evaluate the merits of the request and take what it considers "proper action". For its part, the Union is not asking this as a "right"; it simply wants a written procedure for handling such a request, and it concedes that the City has the sole and unrestricted right to grant or deny such a request. It only asks that such permission or denial be in writing.

The Chairman notes that the City has agreed to Personal Leaves of Absence in its current Agreement with its fire fighters represented by Local Number 615 of the International Association of Fire Fighters in Article XXIII, Leave of Absence, on page 22.

The Panel endorses the principle of open communication between the City and its Employees, and it will order such a clause, even though it is not persuaded that the clause is necessary.

The City stated (T IV p. 75), "As far as the Maternity Leave itself ....., we have no objection to that." However, I can't accept all the language in here, because look at the top of page 15, (City's Exhibit 2), it says 'An employee who adopts shall be eligible for maternity leave as required by law or adoption agency'. Mr. Valenti (for the Union) replied (T IV p. 76) ".....we'd be willing to strike the adoption part".

There was no discussion relative to Union Leave.

#### AWARD

The Panel orders the inclusion of the following language in the new Agreement:

#### PERSONAL LEAVE OF ABSENCE

An employee who has at least one year of seniority may request a personal leave of absence, as distinguished from a sick leave or maternity leave. Such leave may not be requested for the purpose of seeking employment elsewhere. The Employee shall submit his request through his immediate superior, stating the reason for his request and the approximate length of time he expects to be away. He will be granted or denied his leave of absence in writing within sixty calendar days of his request.

The City shall be the sole judge of the propriety of such request, and may grant, modify it or deny it, as it may see fit. The granting of such request or requests and the reason (s) thereof shall not be construed a precedent.

An employee on leave of absence will retain his seniority, but shall not accumulate any additional seniority during such absence, nor will he be entitled to any fringe benefits such as insurance, vacation pay, holiday pay, sick leave credits, pension credits, longevity pay credits, step increase credits, or any other benefits or credits during such leave. Except for the continuation of his seniority, he will not be considered an employee during his leave of absence. If he fails to return promptly upon the expiration of his leave, he will be terminated forthwith.

This clause is not subject to the grievance procedure.

#### MATERNITY LEAVE

An employee who becomes pregnant shall be entitled to a maternity leave without pay. Such leave may commence at any time after her physician has confirmed pregnancy, but no later than the fourth (4th) month. Upon confirmation of pregnancy the employee shall give notice to her supervisor not later than the end of the third (3rd) month of pregnancy. Permission to continue working beyond the fourth (4th) month of gestation may be granted upon request of the employee, with written

recommendation of the employee's attending physician.

An employee on such leave status may, with written approval of her physician, return to work after termination of pregnancy. A maternity leave shall end three (3) months following termination of pregnancy. Return to work during this three (3) months shall be defined as return to the position from which the maternity leave was taken. After expiration of maternity leave an employee may apply for an additional nine (9) months leave without pay. Such leave request shall be granted provided it is recommended in writing by the attending physician. Employees applying for reinstatement to the service prior to the expiration of said leave shall be placed at the top of the list to fill the first open position of any classification they previously held, and shall remain on this list for a period of one (1) year following expiration of said leave. In the event of two (2) or more employees falling within the above conditions, or where positioning on a lay-off list is encountered by an employee on pregnancy leave, seniority of the employees involved shall control in determining position on such hiring lists. Employees returning to work following a pregnancy leave must make application to the Personnel Office so that arrangements for a re-employment physical examination can be made.

Vacations, holidays and sick leave and other fringe benefits shall not accumulate during such leave. However, a maternity leave will not be considered an interruption of continuous service for the purpose of eligibility for benefits after return to work and the employee shall

retain any benefit accrued up to the date of the maternity leave.

A maternity leave shall not be considered as sick leave under the sick leave policy.

#### DURATION AND RENEWAL

The parties have asked the Panel to update the former FOP Duration and Renewal clause.

It is contained on the following page.

## DURATION AND RENEWAL

Section 1; Effective Dates: This Agreement shall be binding upon the parties herto and their successors. The terms of this Agreement shall remain in full force and effect to and including the last day of June 1979 and shall continue in full force and effect from year to year thereafter unless either party to this Agreement desires to change or modify any of the terms or provisions of the Agreement. The party desiring the change or modification must notify the other party to this Agreement in writing not less than sixty (60) days prior to the expiration date of this Agreement, or not less than sixty (60) days prior to any subsequent anniversary date hereof. Should either party to this Agreement serve such notice upon the other party, a joint conference of the City and the Union shall commence not later than thirty (30) days prior to the expiration date in the year in which the notice is given.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the \_\_\_\_\_ day of August, 1977.

CITY OF MUSKEGON HEIGHTS, MICHIGAN

By: \_\_\_\_\_

By: \_\_\_\_\_

LOCAL UNION NO. 214 AFFILIATED  
WITH THE INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF  
AMERICA

By: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

### PANEL'S OPINION

The foregoing Panel Arbitration Findings, Opinions and Awards was written entirely by the Panel Chairman and represents his personal analysis of the merits of the respective arguments of the parties and his evaluation of the weight of the evidence presented by each of the parties and its witnesses. It is understood that one or the other of the Panel Members generally disagreed with the Chairman and supported the position of his party. Therefore, although the Panel's total report bears the signature of all three Panel Members, and while each Order was supported by a majority of the Panel Members, the total Award is not unanimous.

The issues to which the Panel gave consideration and ordered Awards is attached. After each issue, each of the delegates has shown his concurrence or dissent by writing in his initials in the column so indicated by the heading.

## PANEL OPINIONS AND AWARDS

<u>ISSUE NUMBER</u>	<u>SUBJECT</u>	<u>PAGE</u>	<u>CONCUR</u>	<u>DISSENT</u>
Preliminary	Duration of Agreement (agreed)	- 6		
1	Wages	E* 7		
2	Cost of Living	E 20		
3	Life Insurance	E 21		
4	Minimum Court Time & Pay	E 23		
5	Holiday Pay (If Worked)	E 25		
6	Uniform & Cleaning Allowance	E 26		
7	Sick Leave (Funeral Leave)	E 31		
8	Hospitalization Riders	E 32		
9	Minimum Callback Time and Pay	E 34		
10	Discharge & Discipline/ Grievance & Appeal Procedure	N** 36		
11	Two-Man Car Assignments	E 40		
12	Promotions	N 43		
13	Management Rights	N 46		
14	No Strikes/No Lockouts	N 49		
15	Stewards	E 51		
16	Meetings/Special Conferences	E 52		
17	Work Periods	N 56		
18	Workmen's Compensation	E 57		
19	Union Security; Check-Off; Probationary Period	59 N 62		
20	Lay-Off	N 64		
21	Residency	N 66		
22	Representation of Probationary Employees (agreed)	N 70		

## PANEL OPINIONS AND AWARDS (Cont'd)

<u>ISSUE NUMBER</u>	<u>SUBJECT</u>	<u>PAGE</u>	<u>CONCUR</u>	<u>DISSENT</u>
-	Service Records (agreed)	N 71		
23	Savings (withdrawn by Union)	-		
24	Entire Agreement	N 73		
25	Waiver Clause	N 73		
26	Maintenance of Standards	E 76		
27	Injury (agreed)	E 77		
See #17	Shift Preference (agreed)	N 56		
28	Safety (A) (agreed) and Equipment (B)	N 78 E 78		
29	Union Representation	N 81		
30	Hospitalization for Retirees and Spouses	E 82		
-	Legal Assistance (agreed)	-		
31	Target Range (agreed)	N 84		
32	Transportation	E 84		
33	Non-Police Functions	N 86		
-	Appendix A (see Wages Issue #1)	E		
-	Appendix B (see Union Exhibit 2)	-		
34	Appendix C - Position Classi- fication	E 88		
35	Leave of Absence	N 90		

By Order of the Arbitration Panel

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 Nicholas A. George  
 Chairman

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 James Allen  
 Union Delegate

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 Charles Montgomery  
 City Delegate

\* Economic

\*\* Non-Economic

## TRANSCRIPTS AND OPINIONS

The contents of the four volumes of Transcripts and the language in the Opinions preceding the Awards, are all a part of the total proceedings and govern the Awards. Either party shall be entitled to produce such Transcripts and/or Opinions in an Arbitration hearing bearing on the meaning of the Awards, should such a question arise.

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Nicholas A. George  
Chairman

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James Allen  
Union Delegate

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Charles Montgomery  
City Delegate

RECEIVED

AUG 1 1977

N. A. GEORGE

IN THE MATTER OF:

TEAMSTERS LOCAL 214  
LAW ENFORCEMENT DIVISION

vs.

THE CITY OF MUSKEGON HEIGHTS

AS SUBMITTED BY:

TEAMSTERS LOCAL 214  
JOSEPH VALENTI, PRESIDENT

The following items are issues to be decided by the panel:

1. Appendix 'C'
2. Cost of Living
3. Discharge and Discipline
4. Equipment
5. Grievance and Appeal Procedure
6. Grievance Arbitration
7. Holiday Pay if Worked
8. Hospitalization Insurances
9. Hospitalization Insurances for Retirees and Spouse
10. Lay Offs
11. Leave of Absence
12. Life Insurance
13. Maintenance and Standards Clause
14. Management Rights Clause
15. Minimum Call Back Time and Pay
16. Minimum Court Time and Pay
17. Non-Police Functions
18. No Strike - No Lock Out
19. Probationary Period
20. Promotions
21. Residency
22. Savings Clause
23. Shift Preference
24. Sick Leave vs. Funeral Leave
25. Stewards Clause
26. Transportation

27. Two "General" Items
28. Two Man Car Assignments
29. Uniform Allowance and Clothing Allowance
30. Union Security and Check Off (Pertaining only to initiation fees.)
31. Wages
32. Waiver Clause
33. Workmen's Compensation
34. Work Periods

In the event that this Local Union has failed to specifically brief a matter that was before this Arbitration panel, our position is as follows:

All items not specifically mentioned herein, but mentioned during the Arbitration proceedings, for purposes of record, will remain as stated on the record at the time of proceedings.

*More over, they may remain as stated on the record at the time of proceedings. but the chairman declines to assume the responsibility of presenting the parties' case*

The following Brief is being submitted by the Union in, essentially, three parts. The first part is listing the issues that have been agreed upon, between the Parties, that will be incorporated into the Award as a part of the Award. I believe the Parties stipulated that this would be done in order that the Award would reflect a full and complete Labor Agreement.

The second part, or, at least what we consider to be the second part of the Brief, contains our positions in terms of what we have categorized as non-economic items. We have done this more or less by reference to the evidence and arguments already submitted by this Local Union and the Exhibits.

The third part of this case contains the Union's last and best offers on the issues, which are categorized as economic, and are subject to last and best offers.

We have attempted to keep our Brief of this case, just that, brief.

This Brief is being filed, pursuant to agreement of the Parties, upon the conclusion of the taking of testimony and the introduction of Exhibits under the Provisions of Act 312 of the Public Act of 1969, as amended.

The City of Muskegon Heights is a Municipal Employer, within the meaning of the Provisions of said Act, and Teamsters Local 214 is a Labor Organization, within the meaning of the Act. The Teamsters Union is certified as the Collective Bargaining Agent on behalf of the employees of the Muskegon Heights Police Department Patrolmen's Unit. The Parties were, in fact, able to reach agreement upon a number of issues, both of economic and non-economic nature. However, the Parties were not able to reach agreement on many issues, which were subsequently submitted to this arbitration panel.

It was further agreed by the Parties, that the panel, under the direction of its Chairman, would issue an Award reflecting all of the issues that were agreed upon, as well as those awarded. The following are issues that were agreed upon and are being incorporated into the Award:

Article 1 - RECOGNITION (Language contained in present Agreement).

Article 2 - NON-DISCRIMINATION (Language contained in present Agreement).

Article ~~13~~ ✓ - VACATION LEAVE (Present language with seniority as determining factor in selecting dates).

Article 15 - MILITARY DUTIES AND OBLIGATIONS - (Language as contained in present Agreement).

Article 18 - LONGEVITY - (Language as contained in present Agreement).

Article 19 - RETIREMENT (Language as contained in present Agreement).

Article 23 - ACCUMULATION OF SENIORITY (Language as contained in present Agreement).

Article 25 - EDUCATION PLAN (Language as contained in present Agreement).

Article 28 - VALIDITY (Language as contained in present Agreement).

Article 29 - HOLD HARMLESS (Language as contained in present Agreement).

Article 30 - DURATION AND RENEWAL (Language as contained in present Agreement).

INJURY (Language as contained in present Agreement).

UNION REPRESENTATION as proposed by the Union,  
as amended.

The following Articles as submitted by the Union:

VETERAN'S EMPLOYMENT RIGHTS

SERVICE RECORD

TARGET RANGE

LEGAL ASSISTANCE

(I believe the language contained in the present Agreement, Article  
17 - LIABILITY INSURANCE was agreed upon.)

The Act itself, pursuant to the Provisions of Section 9, sets forth the factors upon which the Arbitration Panel is to make its findings, opinions, and orders.

The first factor is the issue of the lawful authority of the Employer to engage in the proceedings. There can be no question that the Employer is subject to the Provisions of this Act.

The second factor is based upon the interests and welfare of the Public and the Financial Unit of government to meet those costs. There can be no question, based on the record, the Exhibits introduced, and the stipulations, that the City of Muskegon Heights, in fact, has the financial ability to meet any costs associated with the last and best offers of the Union. As a matter of fact, the question of ability to pay was never raised during the course of direct Negotiations or Mediations (although the City attempted to raise the issue on the last day of the proceedings); therefore, the panel must assume that the City has the present financial ability to meet the Union's demands.

The third factor upon which the panel is to base its findings concerns itself with a comparison of wages, hours, and conditions of employment, of the employees involved in the Arbitration proceedings, with the wages, hours, and conditions of employment of other employees performing similar services, and with other employees generally. With respect to this factor, each of the Parties introduced testimony and Exhibits which they believe to be comparable and supportive of their respective positions.

The fourth factor upon which the panel is to base its findings

is the average consumer price for goods and services, commonly known as the Cost of Living. Other factors include the present overall compensation now being received by employees in the Unit, including their wages and fringe benefits.

The panel must weigh the competent evidence submitted and must render its decision upon such evidence. The following is the Union's Brief on those issues to be decided by the panel.

The following Articles have already been argued and supportive evidence has been submitted, and made part of this record. We believe that the record is clear and contains the position of the Union. We therefore wish to call your attention to our position again, by reference to Union Exhibits 1-A and the particular Exhibit submitted as evidence:

ENTIRE AGREEMENT - Union Exhibit 44

GENERAL SECTION 3 and 4 of Article 24 - Union Exhibit 29

GRIEVANCE AND APPEAL PROCEDURE - Union Exhibit 21

HOSPITALIZATION INSURANCES FOR RETIREES AND SPOUSE - Union  
Exhibit 52

LAY OFFS - Union Exhibit 34

LEAVE OF ABSENCE - Union Exhibit 59

NON-POLICE FUNCTIONS - Union Exhibit 55

NO STRIKE - NO LOCK OUT - Union Exhibit 27

PROBATIONARY PERIOD - Union Exhibit 33

SAFETY AND EQUIPMENT - Union Exhibit 50

SAVINGS CLAUSE - Union Exhibit 43

STEWARDS CLAUSE - Union Exhibit 28

TRANSPORTATION - Union Exhibit 54

UNION SECURITY AND CHECK OFF - Union Exhibit 32

WAIVER CLAUSE - Union Exhibit 45

WORK PERIODS - Union Exhibit 30

DISCHARGE AND DISCIPLINE

The Union's position is contained in Union Exhibit 20.  
The Union is only requesting that the same rights afforded to a criminal, be granted to a Police Officer.

Such rights have been spelled out in the Doctrines set forth in:

Garrity vs. New Jersey, 385 U.S. 493, 1967

and

Spevack vs. Klein, 385 U.S. 551, 1956

MAINTENANCE AND STANDARDS CLAUSE

The Union's position and arguments are contained in Union Exhibit 46. Testimony indicated that over the years the Employer has altered a number of benefits unilaterally, including a restriction of residency, shift changes, Officer assignments, and promotions.

The purpose of the Maintenance of Standards clause is to allow the Parties to rely upon those benefits and practices which have been uniformly recognized between the Parties.

It is not the purpose of the Union to either emasculate the rights of management, obtain benefits which have been <sup>not</sup> negotiated, or awarded by this panel, but rather to protect those benefits and conditions of employment which have been uniformly recognized by the Parties and which should not be changed, except as a result of bilateral Negotiations.

### PROMOTIONS

The Union's position dealing with this subject matter is contained in Union Exhibit 24. You will note that the Departments within the immediate area, by majority, give preference to the most senior qualified man. However, there is no Promotion Procedure outlined in the present Labor Agreement. The Chief, with approval by the Council, can select any Officer he so chooses to be promoted. Such decision is completely unilateral and does not have to be justified, either academically or morally.

The Promotion Procedure, as proposed by the Union is fair, non-discriminatory and equitable. It provides that of those who are qualified, the most senior would be given preference.

There is no supportive evidence submitted or argued by the City. Based on the evidence submitted, it is our position that the panel must find in support of the Union's position.

APPENDIX 'B'

See Union Exhibit 57 for the position to replace the present  
check off form with that of Local 214.

## RESIDENCY

Notwithstanding other issues before this Arbitration, this is one of the most serious issues before this panel. Other than direct wages, this has the greatest impact on the employees in this Unit.

The Union's supportive evidence and argument is found in Union Exhibit 35 and in oral argument submitted to the panel. It can also be found in decisions involving:

Pontiac Police Officers Association vs. City of Pontiac  
397 Michigan 674, Supreme Court Justice Levin

Detroit Police Officers Association vs. City of Detroit  
Case No. 54-411, September 13, 1973

Arbitration Award, City of Inkster vs. Teamsters Local 214  
by M. David Keefe

It is also supported by evidence submitted in the form of a telegram issued July 7, 1976 and a letter issued August 17, 1976.

The Union's basic belief and/or philosophy can be found on the first two pages of Union Exhibit 35. The majority of the comparable cities submitted to the Arbitration panel do not have a form of Residency (7 out of 12).

The simple fact of the matter is, nowhere in our society do we have restraints placed upon the ability of an employee to determine where he wishes to live. It can rarely be found, however, in governmental agencies.

Direct testimony by both Union and City witnesses clearly indicates that the City of Muskegon Heights cannot offer its employees the

RESIDENCY -

same housing and educational opportunities for their families as exist in the immediate suburbs. The lack of new and adequate housing in the City is woefully apparent. Also, the lack of adequate education and the opportunity to attend new and modern school facilities is woefully apparent.

The fact that Residency is a bargainable issue and one which is subject to mandatory Negotiations, has clearly been affirmed by the Supreme Court of Michigan. It is a fact that several Officers, including Command, continue to live outside the City of Muskegon Heights. Under direct cross-examination, the Chief of Police clearly stated that,

T 62, Volume 4: "The Department could operate and function without impairment within a five mile Residency."

Direct testimony by Captain John R. Thompson clearly indicates that he too is only personally against residency, but that the Department could operate without problems within the five mile area.

Had the City not violated the Public Employment Relations Act, the issue of Residency would not have been before this panel. It was not a condition of employment prior to this Local Union winning a Certification election. Over the objections of this Local Union, the City unilaterally placed into effect a change in the working conditions effecting those employees (Residency).

They now want the panel to condone, so they may continue, their violation of the Public Employment Relations Act.

RESIDENCY -

It is the position of this Local Union that the evidence is overwhelming, in terms of supporting the Union's position of no Residency. This, in fact, would only return a condition of employment that was in existence. It is therefore our position, that Residency not be a requirement, effective immediately upon the issuance of this Award.

It should further be noted that the Common Council had taken upon itself a right that was not granted to them by popular vote of the taxpayers of the City of Muskegon Heights.

T. Volume 3, Page 184 and Union Exhibits 36 and 37. The Union's position can be found in Volume 3 starting on pages 178 through 198.

### SHIFT PREFERENCE

The Union's position, arguments and supportive evidence is contained for the most part, in Union Exhibit 49. The Union is requesting that permanent shifts be established and that Officers be assigned by seniority. Such Officers would be eligible to bid on a new shift by seniority, every four months.

We find no evidence submitted by the City other than, "We wish no change." The Union's position is substantiated by comparable cities having rotating shifts.

### TWO MAN CAR ASSIGNMENTS

The Union's position has been stated in Union Exhibit 23. Contained also in Exhibit 23 is supportive evidence submitted by the F.B.I., U.S. Department of Justice in Washington D.C. It also contains the present policies of the immediate area.

Overwhelming evidence is clear and unabridgeable. The immediate law enforcement areas all contain policies assigning two police Officers to patrol cars after dark. The present, unwritten policy of the Department assigns such Officers.

The City offered no conclusive evidence to the contrary, therefore, it is our position that the panel must find in support of the Union's position.

### APPENDIX 'C' - POSITION CLASSIFICATION

The Union's position, supporting evidence, and oral argument are contained on this record. As indicated to the Chairman of the Arbitration panel earlier in this proceeding, if one should read Appendix 'C' and take it verbatim, the Police Officers would be paid in excess of \$25,000. There is no way the Officers can be bound literally by the job descriptions. It is impossible to perform all of the job descriptions contained in Appendix 'C'.

Certainly most Departments write job descriptions and have work rules. There is no question about it; there are guidelines established regarding the duty assignment responsibilities of each Officer. The duty description outlined in Appendix 'C' of the City of Muskegon Heights, however, is so broad, so encompassing, and so involved that it is impossible for a law enforcement Officer to stay within the guidelines without violating them.

As a position of this Local Union, we are requesting that the Arbitration panel either strike these guidelines and not incorporate them into the Collective Bargaining Agreement, or not have such guidelines subject to reprimand or discharge; or, for the Arbitration panel to rewrite practical, fair, and equitable guidelines of a professional Police Officer.

Being a non-economic item, this option remains to the jurisdiction of the panel.

### MANAGEMENT RIGHTS CLAUSE

The Union's arguments are contained in Union Exhibit 25 and orally on the record. The City's position again is, "We wish no change." In terms of this Article, it is obvious why they wish no change. The City presently has the right to completely eliminate all Patrolman positions and to replace them with civiliam employees. They have the right to change every condition of employment, including wages, hours of work, and all benefits except one, seniority. The present Collective Bargaining Agreement contains no rights for the employees, except seniority, if the City chooses to exercise the present Management Rights Clause.

Under the present Management Rights Clause, the City, by subterfuge, could change the present classification, allegedly subtract a few duties from it, and then totally ignore the wage rights set by this panel, by unilaterally establishing a new, lower wage rate.

They could, in fact, do this to any benefit or to any other condition of employment. If the City's position is upheld, this clause would continue to be contrary to the spirit and intent of the Public Employee Relations Act and Act 312.

The City could in effect destroy the Union and the employees within the Bargaining Unit. We therefore request of the panel, that a fair and equitable Management Rights Clause be substituted, incorporating the rights of the employees as well as the rights of the City. (See Union Exhibit 26).

## COST OF LIVING

The Union's position and supportive evidence is contained in Union Exhibit 10. Such evidence and argument includes news articles from:

The Detroit News )  
 ) both articles reported from the U.S.  
The Detroit Free Press) Labor Department

U.S. News and World Report

New York Times

A.F.L. - C.I.O. Research Department

And several articles from the Bureau of Labor Statistics  
This evidence, together with the oral arguments, deals specifically with the impact of inflation on this Bargaining Unit. Perusing the cost of living rise in the last decade, it has become obvious that the only way a wage earner can protect his wages against inflation, is through the protection of a Cost of Living Allowance. According to our composite, a Police Officer earning the maximum salary of \$12,150 per year, has the purchasing power of less than \$8,000 because of the impact and rise in cost of living.

The best of the cost of living adjustments only really recover 50% of the purchasing power lost to high prices. The major reason is the time delay between changes in prices and the adjustment in wages the worker receives. A cost of living tries to catch up with living costs that have already occurred.

Turning your attention to the City's case, you will find little, if any evidence supporting their "We wish no change" position. On the

COST OF LIVING -

basis of the evidence submitted, the Union's last and best offer is as follows:

Effective July 1, 1977 a Cost of Living be implemented based on the 67=100 index, .4=1¢/hour based on the rise in the index. The index is to be completed and paid quarterly and rolled into the base rate. Said index amount to be "capped" at 20¢/hour.

Effective July 1, 1978 a Cost of Living be implemented based on the 67=100 index, .4=1¢/hour based on the rise in the index. The index is to be completed and paid quarterly and rolled into the base rate. Said index amount to be "capped" at 20¢/hour.

HOLIDAY PAY IF WORKED

The Union's position and supportive evidence is contained in Union Exhibit 13. Subject evidence was further supported by oral testimony. The present policy of Muskegon Heights is to pay their Officers twelve hours of pay for all hours worked. The composites submitted by the Union of comparable cities clearly show that the average pay for Officers working a Holiday is double time or sixteen hours pay. The City's only defense was, "We wish no change."

City Exhibit 3, AGREEMENT BETWEEN MUSKEGON HEIGHTS AND MUSKEGON HEIGHTS POLICE COMMAND OFFICERS, which is effective as of July 1, 1976, shows that the Command Officers receive two times the hourly rate for working a Holiday.

Based on all the supportive evidence, the panel should find in behalf of the Union. The Union's last and best offer is as follows:

Effective July 1, 1976 all members of the Bargaining Unit who have worked a Holiday, to be paid two times the hourly rate for all hours worked.

### HOSPITALIZATION INSURANCES

The Union's supportive evidence and proofs are contained in Union Exhibit 18. The following is the Union's last and best offer on the insurances:

Prescription Drug - Effective January 1, 1978 the Employer to pay for the Blue Cross/Blue Shield \$2 Prescription Rider Premium.

Dental - Effective July 1, 1978 the Employer to pay the Premium costs of the Teamsters Eye and Dental Program. (The cost of such plan is \$156 per member/year for full family coverage.) Based on twenty Officers, total cost to the City would be \$3,121 per year.

### LIFE INSURANCE

The Union's supportive evidence is contained in Union Exhibit 11. The comparable cities report an average of \$12,750 paid Life Insurance for Police Officers, while the City maintains an \$8,000 policy. Life Insurance costs, for the most part, are minimal, yet provide welcome economic relief to survivors of an Officer killed in the line of duty.

The supportive evidence is overwhelming and the panel should support the Union's last and best offer:

Effective July 1, 1977 an amount equal to the Patrolmen's salary, rounded off to the highest thousand.

Effective July 1, 1978 an amount equal to the Patrolmen's salary, rounded off to the highest thousand.

MINIMUM CALL BACK TIME AND PAY

The Union's position and supportive evidence are contained in Union Exhibit 19. The proofs of all the cities reported by the Union, as submitted, clearly indicate the average to be almost three hours at a pay rate of time and one half.

Based on the fact that we have stipulated a multi-year contract, the following is the Union's last and best offer:

Effective July 1, 1976 - present policy

Effective July 1, 1977 - two hours call back at time and a half

Effective July 1, 1978 - three hours call back pay at time and a half.

MINIMUM COURT TIME AND PAY

The Union's position and supportive evidnence is contained in Union Exhibit 12. Such position is also substantiated by oral presentation by the Union. The Union Exhibits and composites demonstrate that the present \$6 for one half day and \$12 for a full day's court fees is totally archaic and unrealistic.

The Union's composite demonstrates clearly and unquestionably that the average Court time granted is in excess of two hours at the rate of time and one half pay. Accordingly, the Union urges the panel to adopt their last an best offer as follows:

Effective July 1, 1976 - Two hours at time and a half

Effective July 1, 1977 - Two hours at time and a half

Effective July 1, 1977 - Two hours at time and a half

SICK LEAVE vs. FUNERAL LEAVE

The Union's position is based on the supportive evidence and proofs contained in Exhibit 17. I believe the record shows that the City had no independent evidence supporting their present position or contrary to any evidence submitted by the Union. Therefore the Union's last and best offer is as follows:

Effective July 1, 1977 the Employer provide three days paid, non-deductible from any of the benefits now received or that will be received as a result of this award, to each employee who attends a funeral as outlined in Section 7 of Article 14.

## UNIFORM ALLOWANCE AND CLEANING ALLOWANCE

The Union's supportive evidence and proofs are contained in Union Exhibit 14, on both demands. The supportive evidence shows that all Departments of comparable cities supply all necessary uniforms and equipment. In addition, they supply a clothing allowance, and in some cases, a cleaning allowance.

The present policy of Muskegon Heights Police Department is to provide a limited amount of money for the purchase of a uniform and to provide no clothing or cleaning allowances.

This Local Union represents 131 contractual agreements of Law Enforcement Agencies in the State of Michigan, all of which provide the service revolver to the employee. I can honestly say that there is no city or county in Michigan that does not supply the service revolver, except Muskegon Heights.

The present limited benefit level of clothing allowance does not realistically represent today's cost of the uniform to be purchased. Therefore, the panel should award the Union's position, based on the overwhelming supportive evidence herein contained. The Union's last and best offer is as follows:

1. Effective upon issuance of the Award, all uniforms, leather goods, and weapons be supplied to each Officer by the City.
2. That an annual uniform allowance of \$200, effective July 1, 1977 be paid to each Officer.
3. Effective July 1, 1978 a \$250 uniform allowance be paid to each Officer.

UNIFORM ALLOWANCE AND CLEANING ALLOWANCE

4. Such amounts paid to the uniformed Officer also be paid to each non-uniformed Officer.
5. Said checks be issued on or about December 1 of each contract year.

### WORKMEN'S COMPENSATION

The Union's position and supportive evidence is contained in Union Exhibit 31 and Union Exhibit 1-A. The Union considers Workmen's Compensation or the payment of a Police Officer when injured, to be a very serious matter. We believe it is the duty and responsibility of the City to provide the maximum allowed under the law to any employee who is injured while working for his Employer. An employee, when injured, faces a loss of income, not only for himself, but for his family.

The Union's position as spelled out on page 20, in compliance with the law, reflects what the majority of Labor Agreements now contain. The following is the Union's last and best offer:

Effective July 1, 1976 - No change.

Effective July 1, 1977 - The City shall authorize a salary payment which, with Workmen's Compensation disability payment, equals the regular full salary. These payments are to continue until the employee returns to work or until the Workmen's Compensation benefits expire.

## WAGES

The Union's position and supportive evidence is contained in Union Exhibit 6. Other supportive documentation has been submitted in the form of crime statistical data, both by the F.B.I., and the Uniform Crime Report; Michigan State Police Work Load Data in Union Exhibit 8; The Recognition of a Police Officer as a Professional Occupation in Union Exhibit 5, the Crime Statistical Data as submitted in Union Exhibit 9, and all oral arguments contained on the record.

First, I wish to turn your attention to the City's case. Their Exhibit 4 contains the cities of Muskegon, the City of Norton Shore, the City of North Muskegon, and the City of Roosevelt Park. Based on the record, the figures in the City's Exhibit 4 were incorrect, in terms of the maximum figures shown on their document. When they did correct them, they corresponded to the Union's composite. A second composite, which I understand was later withdrawn, is City Exhibit 5, using the cities of Alma, Alpena, Big Rapids, and East Grand Rapids. There was no evidence submitted by the City of Muskegon Heights supportive of their claim that these cities, together with Exhibit 4, constituted "comparable" cities. On the contrary, the City's basic argument towards wages holds little, if any weight at all.

I now refer you to the Union's wage arguments. The Union's approach is a basic one. It compares the City of Muskegon Heights to other comparable Municipal cities within the immediate population range. There is also a composite of cities within the immediate area. The composite clearly shows the 1975 rates of these cities, the 1976 rates of these cities, and the projected 1977 rates of these

## WAGES

where possible, of the comparable cities. All show the City of Muskegon Heights to be considerably lower than the average of the comparable cities.

The Work Load that Crime Statistical Data submitted, in support of our position, clearly shows that these Officers have more of an impact on their community than any of the other Police Officers used in any of the composites submitted either by the Union or by the City. Crime Statistical Data shows that Muskegon Heights is either number one or number two in that category.

Notwithstanding the crime statistics, the City in effect, has failed to prove its case. Their comparisons have no foundation either by population or by area but seem to be picked at random. For the most part, the figures used by the City were wrong. The Union's case on the other hand, is selected on the basis of population or immediate area (within the County). Our demands are based on that and have been throughout the period of contract Negotiations.

A letter forwarded to the City, which I believe is part of this record, indicates that the Union had no difficulty in accepting the wage proposal by the City but it was the fringe areas and language areas which blocked the settlement.

It would appear that the City's Exhibit 3, the Muskegon Command Police Officers Association, accepted a similar settlement, which totals a \$4,500 pay increase, covering a three year period and commencing July 1, 1976 with rate adjustments of \$750 each six month period. It would therefore call for \$1,500 per year for three

## WAGES

years, paid by increments of \$750 on July 1 and \$750 paid on January 1 of each contractual year.

However, the Union's case is different, so the adjustment should be far greater. Proofs submitted by this Local Union clearly indicate that in the first year, or the 1976 calendar year, effective July 1, 1976, we are approximately \$2,300 below average. This of course would make it impossible for us to settle for \$1,500 for the year 1976. The Union believes that such amounts needed are for the purpose of "catching up". It is mostly considered to be owed based on the fact that we are so far below the average. It is difficult for us to project what contract rates will be for the year 1978. There seems to be no completed agreements or known wage settlements for the year 1978. That of course was a problem raised by this Local Union.

In any event, the record and the overwhelming evidence submitted, clearly support the Union's position. The employees in the Department clearly are grossly underpaid. The Union's position and evidence is more supportive and more competent to the Union's position than that evidence submitted by the City for the City's position.

Inasmuch as this is a multi-year contract and inasmuch as the panel has the right to choose the last and best offer based on the competent evidence submitted for each year, the Union proposes the following as its last and best offer:

Effective July 1, 1976 an additional \$750 across the board pay increase for all members of the Bargaining Unit.

WAGES

Effective January 1, 1977 an additional \$750 across the board on all members of the Bargaining Unit.

Effective July 1, 1977 an additional \$750 across the board on all members of the Bargaining Unit.

Effective January 1, 1978 an additional \$750 across the board for all members of the Bargaining Unit.

Effective July 1, 1978 an additional \$750 across the board for all members of the Bargaining Unit.

Effective January 1, 1979 an additional \$750 across the board for all members of the Bargaining Unit.

Such money's adjustments are to be made retroactive where there is a demand for retroactive pay on all hours worked, including overtime hours and premium hours.

RECEIVED

AUG 2 1977

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

CITY OF MUSKEGON HEIGHTS,

-and-

TEAMSTERS LOCAL 214, LAW ENFORCEMENT  
DIVISION.

BRIEF AND LAST BEST OFFERS  
ON ECONOMIC ISSUES

Now Comes the City of Muskegon Heights, by its attorneys, Balgooyen, Daniels & Balgooyen, P.C., and does present this brief and last best offers in connection with economic issues before the arbitration panel. The format of this brief is to follow the hearing as it occurs in the transcript with the issues to be taken in the order they were presented and those economic issues requiring a last best offer to have the last best offer stated first followed then by employer's argument in connection with the offer in addition to the Brief. City has submitted its proposed contract language which contains the last best offer issues and any proposed changes on non-economic issues.

ISSUE ONE - WAGES.

The City makes the following last best offer.

BALGOOYEN,

DANIELS

& BALGOOYEN, P. C.

ATTORNEYS AT LAW

3318 GLADE STREET

MUSKEGON HEIGHTS,

MICHIGAN

Patrolman	July 1, 1976 - \$12,300.00 - \$12,900.00	January 1, 1977 - \$13,050.00 - \$13,650.00
	July 1, 1977 - \$13,800.00 - \$14,400.00	January 1, 1978 - \$14,550.00 - \$15,150.00
	July 1, 1978 - \$15,300.00 - \$15,900.00	January 1, 1979 - \$16,050.00 - \$16,650.00

The rank of corporal was abolished in 1975.

Patrolmen assigned to the Detective Bureau will be designated as investigators.

While a patrolman is assigned to the Detective Bureau as an investigator, his annual salary rate shall be increased by \$300.00 and he shall receive this increase while he serves as an investigator.

While a patrolman is assigned to the Detective Bureau he shall receive any balance remaining as a credit in his uniform allowance in the form of a cash uniform allowance payable monthly and divided in equal payments over the remainder of the fiscal year.

When an investigator is reassigned to be a patrolman, if he has any amount remaining in the uniform allowance after deduction of the amounts paid to him when assigned to the Detective Bureau this amount may be used as it was prior to the assignment to the Detective Bureau.

The above proposal is the City's offer in connection with wages. In considering the offer of wages there are several factors to take into account. The panel has been furnished with material from the cities of Roosevelt Park, Norton Shores, Grand Haven, North Muskegon and the City of Muskegon. Each of these contracts

contain a wage schedule which can be compared, and, in addition to that, contained on Page 25 of Exhibit 3, is the Police Command Officers Compensation Plan which is currently in effect. Panel must consider the wage schedule and level of the command officers in establishing a compensation plan for patrolmen. It would be ill-advised, detrimental to the operation of the department and poor management procedure to establish a wage schedule for patrolmen which would exceed the schedule of the command officers. This offer provides an increase of \$4500.00 over a three year period, which is extremely liberal and in line with the rest of the surrounding community. This is contained in City's Exhibit Four.

ISSUE TWO - COST OF LIVING.

The City's last best offer with regard to cost of living is they do not offer a cost of living increase or adjustment. The present contract does not contain cost of living. This position is maintained as the present position.

The City has made a generous offer contained in Issue One, with regard to wages, which as indicated would cost \$4500.00 over a three year contract for patrolmen. To add to this, the cost of living increase which is only contained in two of the eight communities selected in the Union Exhibit Six would result in fiscal chaos in the City of Muskegon Heights. Increases which are paid under the wage proposal do in fact reflect the cost of living and are offered to compensate for changes in inflation. City is not willing to accept a cost of living allowance which would be indefinite and an unknown amount. The City has no flexibility as

to increasing taxes and incomes as would be required under a cost of living clause. The tax base in which the City has is relatively fixed and therefore the income is relatively fixed.

### ISSUE THREE - LIFE INSURANCE.

The City's last and best offer with regard to life insurance is \$10,000.00 base amount of term insurance.

The City's proposal is to increase the term insurance to \$10,000.00, a \$2,000.00 increase with regard to patrolmen. The Union's Exhibit Eleven is in error in that it describes the City of Norton Shores with a base amount equal to wages, which the panel can see by City's Exhibit Four is incorrect and by City's Exhibit Twelve. Also in error, the City of Muskegon is described as \$6,000.00 whereas by the City's Exhibit Four the same amount as salary, and is also shown by City's Exhibit Ten. Two Thousand Dollars increase to \$8,000.00 occurred during the last contract term, not through negotiation.

### ISSUE FOUR - MINIMUM COURT TIME PAY.

The City's last and best offer for minimum court time pay is \$12.00 for half-day and \$24.00 for full day, with the officer turning into the City any subpoena fees he may receive.

The present system provides for a payment of \$6.00 per half-day plus mileage and \$12.00 for full day plus mileage. The command officers have agreed to \$12.00 per half-day and \$24.00 per full day. This offer therefore represents approximately double what is presently being received by the officers. On many

occasions the half-day payment would represent a fifteen minute to half-an-hour appearance in Court for one trial. On a few occasions it may represent an actual half-day in Court. Appearing in Court is part of a policemen's duty and it cannot be made excessively financially rewarding or this would encourage contested matters and perhaps would lead to quarterline tickets and arrest. The offer of \$12.00 per half-day and \$24.00 per full day is generous and adequate for time spent.

ISSUE FIVE - HOLIDAY PAY.

The City's last and best offer is that employees who work on holidays will be paid double time for hours actually worked, regardless of when they should begin.

This represents an increase from the current contract of twelve hours pay if eight hours are worked during a holiday. It is apparent, even by the Union's Exhibit Thirteen, that this offer represents a generous offer both by population and immediate area. This also reflects the present contract language in Exhibit Three of the Police Command Officers.

ISSUE SIX - UNIFORM ALLOWANCE AND CLEANING ALLOWANCE.

City's last and best offer is that clothing allowance for new employees hired after July 1, 1977, is \$250.00 during the first twelve months of employment. Of this amount City pays 100%. After the first twelve months of employment and for all present employees beginning July 1, 1977, City shall pay three-quarters of up to \$200.00 annually of \$150.00, which amount may be used for clothing purchases or dry cleaning of uniforms. After July 1, 1978, City

shall pay \$200.00 annually to be used for clothing purchases and/or dry cleaning. City in addition shall furnish handcuffs, flashlights, clip boards or other leather folders, badge, night-stick and holder, ammunition, safety helmet, identification cards, photo, police manual, shoulder pads, insignia, training literature, flashlight bulbs, and batteries. All items of uniform must be approved by the Department Head. The City's regular purchasing procedure will be followed.

City will pay for repairs to clothing damaged in line of duty if claims are reasonable.

The patrolmen must furnish at 100% cost to himself his weapon in the caliber and type approved by the Department Head.

This last and best offer represents a sizeable increase in the payments by the City in connection with uniform and equipment. The patrolman in the past was required to purchase the items listed on Page Twenty-One in Article Twenty of the present contract, which under this offer are now paid for by the City except his weapon, which he still must provide and furnish and which remains his particular property. The initial clothing allowance is increased from two-thirds ( $2/3$ ) of \$250.00 for new employees to 100% of \$250.00 for new employees. The annual clothing allowance is increased from two-thirds ( $2/3$ ) of \$200.00 or \$133.00 to three-quarters ( $3/4$ ) of \$200.00 for 1977 to be increased to 100% of \$200.00 in 1978. The annual clothing allowance is allowed to be used for either clothing replacement or dry cleaning or a combination of both. These changes and adjustments bring the City of Muskegon Heights in line with the surrounding communities and

represent an increase over the uniform allowance agreed to by the Police Command Officers in Exhibit Three, Article Twenty on page twenty. In City's Exhibit Twelve, panel can see that Section 27-4, Norton Shores agreement requires that the officers provide their own service revolver and in City's Exhibit Thirteen, likewise the City of Roosevelt Park, requires each officer to provide his own weapon, found in Article Nineteen on Page Twenty-Two their agreement, in City's Exhibit Fourteen the contract agreement with the City of Grand Haven, referring to Article Eighteen on Page twenty and Exhibit A, on page A-1, and the costs in connection thereto are listed.

ISSUE SEVEN - SICK LEAVE.

The City's last best offer is that up to four days general leave be granted under the Section Seven, Article Thirteen of the present contract, with three days being designated as funeral leave and one day chargeable to accumulated sick leave. The three day funeral leave is not charged to sick leave.

Union's Exhibit Seventeen shows that out of eleven units cited only two grant more than three days. This represents an increase in time off granted to the employee of the City since at the present time all funeral leave is charged to sick leave. This is the only unit in the City which has been granted this funeral leave.

ISSUE EIGHT - HOSPITALIZATION RIDERS.

City's last best offer is that the current insurance program as contained in the present contract on Page Eighteen and as

Article Seventeen is adequate and does conform with units cited by the Union in their Exhibit Eighteen. Out of the thirteen units cited in the Union's Exhibit only three have a dental plan and four have a prescription drug plan. Both of these riders are very expensive and the cost is not justified due to the benefits provided. Even the proposed teamster eye and dental program would add an additional annual cost of \$156.00 per year and this would not include prescription drugs.

ISSUE NINE - CALLBACK AND PAY.

The City's last and best offer is if an employee is called back to work he shall receive a minimum of two hours at time and one-half even though he worked less than two hours.

The present Article Eleven found on Page Nine of the present contract provides for a payment of time and one-half for one and one-half hours minimum when called back for emergency service. This offer of the City represents an increase to two hours instead of an hour and one-half and eliminates the requirement that it be for emergency services. Examination of union's Exhibit Nineteen shows that this provision is identical with all in the immediate area and is the same as or more than four of the seven cities cited in the immediate population by the Union. I would like to point out to the panel that the computation of an average of 2.99 hours as contained on the Union Exhibit Nineteen is a gross error since the average for the reported cities actually would be 2.09 hours.

ISSUE TEN - DISCHARGE AND DISCIPLINE.

This is a non-economic issue and therefore there is no last best offer. The Union has demanded changes in the present discharge and discipline provision and in the grievance and appeal procedure. The discharge and suspension provision is found on Page Seven of the current contract, Article Nine. The grievance and appeal procedure is found on Page Four, Article Six of the current contract. The Union's main argument for change is that other cities have this procedure and that some officers are unhappy with the findings of the cities' personnel boards. A basic proposition the panel should consider for causing a change in the labor contract agreement is the need for change. According to the testimony of Officer Morris and the statements made on the transcript, the grievance and appeal position has not been needed very often. The findings on the cases which Officer Morris recalled represented three appeal cases in which one suspension was reversed and two suspensions were upheld. In the case of Officer Scott the suspension was taken further under an unfair labor practice. The law judge reviewing the unfair labor practice upheld the personnel board and its findings.

To institute a new requirement of finding a compulsory arbitration of grievances beyond the personnel board would cause additional expense to both parties and under the facts and circumstances as stated and shown would not enhance or improve the grievance and appeal procedure appreciably. The appeal to

the personnel board is so infrequent that the facts are not justified for this additional step. However, in interest of trying to adjust and adspt the procedure of the City, the City does propose and is willing to add a step similar to the step which is contained in City's Exhibit Three, under the heading of Step Four at Page Five of the agreement in which the matter could be appealed to the Michigan Local Municipal League and the league report in writing its findings and recommendations. This step could be in lieu of the personnel board or it could be a step after the personnel board in the event parties feel further steps should be taken. This step would be at little or no expense to the parties and would offer an outside view of the matter in which the Union is apparently seeking. The City is willing to pose that the statement contained on Page Four, Article Six of this current contract, in the first paragraph be amended to read as follows:

The following current procedures to apply to disputes concerning suspensions of under fourteen days and disputes.

This represents a change which will permit the grievance procedures to be used for suspensions and discharges. The current contract does not permit grievance procedures to be used in matters of suspensions and discharges. The City is willing to permit these to come under the grievance procedure.

#### ISSUE ELEVEN - TWO MAN CAR ASSIGNMENTS.

The arbitrator has deemed this to be an economic issue, therefore, the City must put for h its last best offer. The last

best offer is that the two-man car assignments remain as is, an unwritten policy and not being a part of the agreement.

The Union has presented arguments and recited Norton Shores as having an unwritten policy, Muskegon as having a written policy and the Sheriff Department as having a written policy. Nowhere is it alleged that the one-man, two-man car assignments are a part of any contract agreement. This type of issue must remain flexible and must remain subject to assignment and reflect current trends and knowledge with regard to police procedure. To lock this matter into contract language would be unwise and not in the best interests of the department or the patrolmen. Once again, no situation is cited where current policy has created any problems. So following the basic proposition that in order to have change you must show a need for change, the Union has failed to show a need. I have not as yet obtained a copy of the newspaper article which I referred to in the transcript, however, I will do so promptly and submit copies to the panel.

#### ISSUE TWELVE - PROMOTION.

This has been determined to be a non-economic issue and therefore does not require a last best offer. The Union in its position referred to promotional language, and submits and substitutes a proposal for promotions. The promotional language is found in Article Sixteen of the agreement, which is under position classification plan and compensation plan with regard to the promotions contained within the article. These are increments for the person within his classification. The patrolmen have no promotions which can be made within their bargaining unit. Section

BALGOOYEN,

CHIEF

3 BALGOOYEN, P. C.

ATTORNEYS AT LAW

3318 GLADE STREET

MUSKEGON HEIGHTS,

MICHIGAN

Two found on page eighteen of Article Sixteen does indicate that the increments are not automatic, but are based on merit and require recommendation of the Department Head and the approval of the City Manager. The other reference to promotions not made by the Union, however, is contained in Article Five, Management Rights, in paragraph i. The Union refers to the City of Norton Shores as having a promotion policy by written examination. In examining the contract which is City Exhibit 12, the only reference to promotions which I find is in Article Twenty-Three on Page Fifty. This article makes no reference to any written examination, it provides for step increase, partially based upon merit and requiring the approval of the Chief of Police and the City Administrator.

The Union in its exhibit states that the City of Roosevelt Park promotes by seniority. In examining the Roosevelt Park contract which is the City's Exhibit Thirteen, I find no provision for promotion based upon seniority. The only article I find related is Article Twenty, which is found on Page Twenty-Three, which provides that there shall be six month increments. There is no reference to seniority. The Muskegon contract which is the City's Exhibit Ten has a comparable provision to the City of Muskegon Heights contract, which occurs in Section Twenty-Six at Page Twenty-Eight. This provides a pay increase as provided within the Schedule and shall be received upon recommendation from the Chief of Police. There is no provision in the contract with regard to other promotion. There is a general reference on Page Thirteen, Section Nine, indicating that civil service has

jurisdiction over matters over matters over which it has jurisdiction. The Union has not submitted or provided a copy of the Muskegon Sheriff Department contract although it has been referred to on numerous occasions and purports to have different provisions. There is no authority for these statement since a copy of the contract has never been furnished or introduced by my knowledge.

The testimony given by Captain Thompson concerning promotions indicates that there is a policy for promotions and it does exist in the policy as follows: No agreements that have been submitted provide that the promotion policy be contained within the contract language. One page 109 of the transcript volume three, I was asked if I had an objection to having the promotional policy made part of the agreement. I answered that I had no objection. However, I do not feel that the proper place for the policy is within the agreement. It should be written and made a portion of the police manual. Reference can be made in the agreement I believe to state that the promotion shall be in accordance with the written policy contained in the police manual. I have no objection to such a statement, writing down the existing policy and fully containing it within the police manual.

ISSUE THIRTEEN - MANAGEMENT RIGHTS CLAUSE.

This is determined to be a non-economic item, therefore, it does not require last best offer. The management rights clause is found in Article Five, beginning on Page two of the current agreement. This clause or a substantially identical clause is also

found in City's Exhibit Ten, Section Seven, beginning on page six, which is the City of Muskegon contract; likewise in City's Exhibit Thirteen City of Roosevelt Park's contract, Article Three, b beginning on page 3; and likewise, City's Exhibit Twelve, Article Two, beginning on page two of the Norton Shores Contract. It is also found in City's Exhibit Three, Command Officers contract, Article Five, beginning on page two. The Union has introduced Exhibit Twenty-Six, which purports to be a portion of the Management Prerogative. As indicated earlier, the entire contract with the Sheriff Department has not been introduced and therefore excerpts would have to be considered as selective and perhaps not representing the entire position. The language found within the current contract, management rights, is important to the City, and is found in each agreement that it has with organized groups within the City. Once again, the Union has burden to establish the need for change. There is no tangible or specific problem spelled out in the Union's presentation except they would like to change to their approved language. Panel should be reluctant to make this change without any basis provided. City has submitted Exhibit Nine, which excerpts from the City of Muskegon contract, and Exhibit Eleven, which excerpts from the City of Norton Shores agreement, covering management rights and several other. However, the panel does have before it the entire contract and therefore has a choice.

The Union in most of its positions has indicated that they would like specific rights spelled out so they can be assured they know where they stand. This management rights clause does spell

out specific rights which should please the Union. However, in this case, their offer of language is most general and leaves specifics which would force interpretation and possible grievance and if arbitration were involved an expensive practice. Once again, this management rights clause has worked and does worked. The Union has established no need for change.

ISSUE FOURTEEN - NO STRIKES - NO LOCKOUTS.

This is determined to be non-economic, therefore requires no last best offer. The City's position is that the current Article Eight, found in our agreement, on Page Six, Exhibit Thirteen, is adequate and proper, and the Union, in its presentation, has presented no specific for change or particular problem under the current agreement. It once again speculates as to things that may happen. This article is basically the same as Article Eight, beginning on Page Eighteen, in City's Exhibit Twelve, and Article Five, beginning on Page Six of City's Exhibit Thirteen, and Section Twenty-Eight, beginning on Page Thirty of City's Exhibit Ten; and Article Eight, beginning on Page Six of City's Exhibit Three. These other contracts all contain the same language and the department operates correctly and efficiently under this article, without the problems presented by the Union. Their proposed amendment which would do two things; it would change the responsibilities for wildcat strikes from the Union itself, to a steward and alternate. The responsibility for any wildcat strikes must be placed upon the Union itself, just as the responsibility for lock-outs must be placed upon the employer. Union arguments as to the right to picket and the right to free speech was

indicated in the dialogue with the arbitrator, does not have merit in this particular case, since to picket is to interfere with and interrupt activities of the City.

ISSUE FIFTEEN - STEWARD.

This is determined to be an economic issue and therefore the City's last and best offer is as follows. The addition of Section Three to read, "Steward or alternate shall be permitted during working hours to perform the duties listed in Section One, without loss of pay. "

The Union's proposal would also include steward or alternate being allowed time off to perform the duties in both Sections One and Two. This indicates that the time can be spent during working hours discussing Union business. This includes notices, messages and information whether or not they have been reduced to writing and this is not a function of the City's time. The notices in writing can be posted upon the bulletin board which has been provided for the Union. This can be done at shift change or before. The Union's argument is that the officers are out of town and they have a difficult time communicating with the men, except on duty. This of course is their choice as to their officers reflections, and should not be imposed upon the City as an additional expense for time lost, while Union business is being handled by a steward during working hours.

ISSUE SIXTEEN - GENERAL MEETINGS/SPECIAL CONFERENCES

The changes in Section One are agreed upon. The second paragraph of Article Twenty-Four, Page 23, is omitted since it

does not refer to the Teamsters Local, put the previous F.O.P. The changes proposed in Section Three, are not acceptable to the City since to allow all police officers on duty to attend Union meetings, and be paid for attending Union Meetings is not a proper function of the City. Union meetings are strictly an internal matter and subject to call of the Union. The City could not possibly agree to permit policemen on duty to attend these meetings. The proposed amendment has not shown to be needed and on the contrary, in this case, a request for the City to pay policeman to attend union meetings, which is unheard of. The proposed Section Four has set another meeting to be arranged on request of the Union, which once again requires representatives of the employer and two representatives of the local union. These meetings are to be held during working hours for one hour. Once, again, these meetings would require that members of the Union would be paid for attending these meetings. These are outside the control or call of the City, and cannot be approved by the City. There is nothing to prevent Union officials from discussing by telephone or otherwise matters which could be taken up in a special conference, and there is no need or requirement for a special conference, which would only result in extra expense for the City. In effect this proposal would add an additional step to the grievance procedure. The Union has indicated the purpose is to discuss grievances.

ISSUE 17 - WORK PERIODS.

This being a non-economic item, there is no last best offer. However, the City's position is that language which is proposed in

Article Nine of the new agreement is the proper language, since it incorporates that portion of the Union proposal beginning with "all members shall be allowed to select their shifts . . .", as added onto the present Article Ten which becomes Article Nine of the new proposed agreement. This allows a selection of shifts based upon seniority and provides that police chief shall use this as a criteria in assigning shifts.

ISSUE 18 - WORKMANS' COMPENSATION.

This issue having been determined to be an economic issue, the City has a last best offer. The City's last best offer is that the current language contained in Section Eight be continued without change. This language is found on Page Fourteen of the current agreement, City's Exhibit Thirteen. The current provision is a liberal provision by the City which allows the City Manager if he wishes to authorize additional salary payments while the worker is disabled and charging one-half to his sick leave. It also gives the employee the election whether or not to receive the supplemental salary payment and whether or not the one-half day sick time is charged to his accumulated time. One of the City's concerns, of course, is whether or not the mandatory requirement of payment and using sick time would disqualify the party for workmans' compensation under their separate rules. By making it optional on the part of the City Manager, this can be taken into account and applied if it is beneficial to the employee and not applied if it is not.

ISSUE 19 - UNION SECURITY AND CHECKOFF AND PROBATIONARY PERIOD.

This is a non-economic issue, therefore there is no last best offer. City's position as to the initiation fee not being included in the checkoff is as stated in the transcript. The City does not wish to have additional bookkeeping required for initiation fees and does not wish to be in the position of automatically deducting this amount from the employees since this constitutes a larger amount. This a fee which should be collected by the Union on whatever terms they wish, but should not be the responsibility of the City.

As to the proposal concerning the probationary employees, City's position is that until he is admitted to the police force as a regular member, and not as a probationary employee, he should not pay Union dues and he should not be included in the bargaining agreement. The probationary period is found in Article Twenty-One at Page Twenty-One in the current agreement and the City is willing to make a change that in the event of satisfactory completion of the probationary period by an employee, a letter shall be written by the Department Head. Likewise, the City is willing to add a sentence indicating that the seniority for the probationary employee is his date of hire after he satisfactorily completes his probationary period.

ISSUE 20 -LAYOFF.

This is determined to be a non-economic item, therefore, there is no last best offer. The language in the current contract is found on Page Twenty-Two in Article Twenty-Two. The language

suggested by the Union contained in its Exhibit Thirty-Four would place unreasonable requirements upon the City. The fourteen day notice in writing required before layoff is untenable since there are times when work is not available and layoff must occur. When City has advance notice concerning layoff or any other action to be taken, then this information will be given to the employee as known. To propose this as a mandatory requirement is unreasonable. Likewise the requirement set forth in Number Five of their proposed addition requiring written notice of recall by certified mail and allowing them fourteen days to report back to work is likewise unreasonable. The current language contained, layoff, has been in use since the concept of the contract. The only situation cited by the Union in which there had been a problem was in connection with layoff, which previously took place when C.E.T.A. employees were still employed. C.E.T.A. employees as you may or may not know is a federal program which is federally funded and does not come from the general budget. The C.E.T.A. employees who are temporary employees can be continued at no expense to the City. However, they have a limitation of a one year maximum employment. When this action took place, the courts had not decided the seniority of C.E.T.A. employees. Therefore, this was a specialized case.

Language suggested by the Union would impose conditions of notice, and callback, and delays in time which do not exist in any contract that the City is aware of, and the Union has not documented the proposals by and reference to any other contract. As was pointed out in the transcript, the seniority list is posted, and therefore, any layoffs, of persons with greater seniority then

those not laid off, the problem would be known immediately and an objection would be raised with no need for the fourteen days. The reference to the Veterans' Preference Act has no bearing on this situation since if a Veterans' Preference hearing is held and successfully concluded, the veteran is reinstated and reimbursed for time off. The reference on behalf of the Union to the fourteen days notice to terminate your employment with the City being required is reasonable since this is a voluntary option on the part of the employee.

The layoffs that we are talking about are not a firing or terminating of employment. It is a hopefully temporary matter and the provisions are listed allowing him or her to be recalled for reemployment. Requirement Number Four of the Union's proposal is unnecessary, since the duties of the City in connection with unemployment compensation is spelled out by statute. No need to institute another possible interpretation which could lead to a grievance. For the City to agree to Number Two of the Union's proposal they would have to indicate that the deduction in work force could not be filled in by command officers who would likewise reduce. This is untenable and would in effect indicate that there would be no one performing necessary or emergency functions.

#### ISSUE 21 - RESIDENCY

The City's position on residency is that the Ordinance Number 359, which was adopted the Muskegon Heights City Council at its regular meeting October 11, 1976, is valid and enforceable in this contract. This residency provision is contained in every contract agreement which has been negotiated and completed with the various

City bargaining committess, such as the Fire Department, which is found in City Exhibit Two, with the clerk, the D.P.W., which is represented by the teamsters local. The history of the residency requirement is as follows. As is shown by City Exhibit Eight, on April 12, 1976, the City Council adopted a residency requirement which would require all new employees to live within the City and all current employees to move into the City within one year. It also had further provisions which are spelled out in City's Exhibit Eight. The teamsters union was certified as a bargaining agent according to their statement sometime in March. April 20, 1976, as shown in City Exhibit Eight notice was given to all Muskegon Heights employees of the residency requirement. The teamsters union by telegram, July 8, as shown by City's Exhibit Seven, indicated that if the Muskegon Heights Council had any changes in residency, Union would file unfair labor practices.

At the time of the telegram, there was in effect a residency requirement on the book and notice was given to all employees. The Union could have at that time filed unfair practices. October 11, 1976, the City Council passed the Residency Ordinance which was Number 359, which was a modification and a no mandatory move into the City required, unless change of residence was made. The teamsters union was aware of this ordinance but at no time has the teamsters union filed any unfair labor practice as was threatened in City's Exhibit Seven, in telegram. No unfair labor practice was filed either on the earlier residency requirement or upon the October 11, 1976, ordinance which was passed. Enclosed is a copy

BALGOOYEN,

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M.S.A. 17.458 (7) which is also known as Section Seven of Michigan Compiled Laws, Section 423.304 A. As is indicated in this portion of the statute, the individual or union may file a complaint within ninety days after the alleged act which claims to be unfair. Therefore a ninety day Statute of Limitation applied to any unfair labor practice and a complaint must be brought within that time. The Union failed to bring an unfair labor practice and has lost its right to do so. The unfair labor practice is a proper manner to bring this issue before the judicial process. The case cited by the Union, The Police Officers Association vs. City of Pontiac, 397M 674, is cited a case dealing with the issue on residency that is incorporated by this ordinance. This is not correct. Since the panel does not have a law library available to it, I have copied this case and as the panel can see the case deals with a conflict between the City's charter and the Public Employees' Relation act. The Public Employees' Relation act has the provision for unfair labor practice and provides a remedy for those parties who agreed. By failing to act within the proper time, the Union is in the position of all parties who let the Statute of Limitations Run; they have in effect waived a right which they previously had. They cannot now come and ask the arbitrator to make up for their failure to act within the proper time. The other case which was referred to D.P.O.A. vs. City of Detroit; I have never been furnished with a copy and therefore cannot comment and do not feel it can properly be submitted to the panel.

The City's position is that the residency requirement is valid and the proper function of the City Council is to remedy that the Union had to file an unfair labor practice and has expired because of their lack of action. The Exhibit Thirty-Five which lists residency required with cities selected by the Union, we find that out of eight cities listed, six of them have residency requirements, with only one of them having regional residency requirements.

There is reference made also to a decision made by Keith Davis concerning the City of Inkster, which I was not furnished with and therefore cannot comment and I do not feel can be properly considered by the panel.

The Union indicates that on Page 184 of the transcript that at the outset of the contract negotiations they were not satisfied with the issue of residency when in truth, the residency requirement was passed April 12, 1976. No requests to bargain concerning residency was made by the Union, until July 8, 1976, which was after expiration of the old contract.

During this time the Union did in fact file an unfair labor practice charge concerning grievance matters involving Officer Scott. They cite in their arguments that the reason they did not file for any unfair labor practice was because they did not want to wait for the decision. The unfair labor practice filed by Officer Scott, was filed by the teamsters during this period of time and the decision was made quite some time ago.

The argument that the Union made that must go back to status quo at the beginning of the period for which this bargaining takes place would put them in a position of accepting the earlier residency requirement which was dated April 12, 1977, which remained in effect until the new ordinance was passed in October 1976.

The arguments on both sides of the question of residency can be made for some time. In fact, by the testimony taken, we saw different opinions between Captain Thompson and Chief Howell concerning residency. Each party is entitled to his particular opinion and he is free to voice it. However, the City of Muskegon Heights is governed by the City Council which in its judgment as a political body sees fit to pass the residency ordinance and the teamsters in their capacity as a bargaining agent of the patrolmen did decide not to file the unfair labor practice which was threatened July 8, 1976. Now, one year later, the Union wants the arbitrator to set aside the legal decision made by the Council for the City of Muskegon Heights when they have not seen fit to use the legal remedies which were available to them and known to them.

Residency ordinances have been upheld by the courts and I do not believe this issue is being disputed by the teamsters. Therefore, it is not necessary to cite cases, however, if requested decisions can be cited. Mr. Allen indicates that he had made a request of Mr. Montgomery in connection with negotiations and specifically concerning residency. On page 205, Mr. Allen states the negotiations happened the first time on July 2, 1976.

The City, of course, was negotiating with other units and did modify the earlier residency requirements by not requiring everyone to move into the City within one year. This was agreeable with all the other units of the City, and the ordinance was incorporated into the agreement. Another reason it was put into the agreement was in the event Council would make a change that they would be guaranteed that this ordinance would be in effect since they now would have contract rights because of being incorporated into the agreement.

The residency ordinance should be and left a part of this agreement as it is in all other City agreements, including the Command Officers.

ISSUE 22 - RECOGNITION PROBATIONARY EMPLOYEE/SERVICE RECORDS.

It was stipulated that probationary employees can be recruited in the agreement but only to the extent that the Union represents them only in connection with discharge for Union activity. The Union may represent probationary employees who are discharged for Union activities..

Records of service will be kept in the employee's personal file and citations will be awarded in instances of meritorious performance, above and beyond the call of duty. Employees shall, upon request, have access to their personal file.

ISSUE 23 - SAVING CLAUSE.

This is found in the current agreement as validity clause, Article Twenty-Eight on Page Twenty Five and this is stipulated and agreed to as it appears in the old agreement.

ISSUE 24 - ENTIRE AGREEMENT.

Article Twenty-Six of the current agreement is found on Page Twenty-Four, as the Entire Agreement Clause. This clause is contained verbatim in City Exhibit Ten, which is Section Thirty-One on page thirty-two. It is also contained in City agreements with the various unions. In fact, this agreement is contained in most agreements and once again, there is no reason shown why it should not continue to be contained in this agreement.

ISSUE 25 - WAIVER CLAUSE.

This clause is found on Page Twenty-Four of the current agreement, Article Twenty-Seven. The Union's argument that this is not necessary is not correct, since this clause by its language says that each party shall have an opportunity to negotiate and unlimited right and opportunity to make demands. The purpose of this clause is to have the matters closed as to negotiations and discussion, so that any after-thoughts may not be renegotiated. The Union once again has not shown any problems with it, therefore, the current language in the contract should be retained.

ISSUE 26 - MAINTENANCE OF STANDARDS CLAUSE.

The panel has determined that this is an economic issue, therefore, the City's last best offer is that the Maintenance of Standards Clause not be included in the agreement.

There is no present Maintenance of Standards Clause in the agreement. The Union has not shown any specific instance where

maintenance standards caused a problem or cited any problems under the existing contract without a Maintenance of Standards Clause. None of the other agreements with the City bargaining agents have Maintenance of Standards Clause. The City of Roosevelt Park, the City of Norton Shores, likewise do not have a Maintenance of Standards Clause in their contracts, which are City's Exhibit Twelve and Thirteen.

ISSUE 27 - INJURY.

There is no article under which the injury provision now exists. I would therefore suggest that it be added to Article Fourteen, titled Sick Leave, Section One, and it be amended to read, "An Employee who is injured on the job and is required to leave the job by medical authority will be paid for the whole day."

ISSUE 28 - SHIFT PREFERENCE.

An issue concerning shift preference was agreed upon, and the agreed upon language was added to former Article Ten, on Page Nine of the old agreement. It is contained in the proposed language of the contract.

ISSUE 29 - SAFETY AND EQUIPMENT.

City's position as to paragraph A of the Union proposal fifteen is no objection. This proposal can be added by separate article as stated. Paragraph B would constitute an economic issue and therefore requires last best offer. City's position is that the employer shall supply necessary equipment as determined by the Chief of Police so that the employee may perform his job as a law enforcement officer. Such equipment shall not include a service revolver, but shall include, fresh ammunition, handcuffs,

all leather goods, flashlights, clipboards, badges, and other equipment listed under the clothing allowance. Second-chance vests shotguns, shotgun racks, shall be purchased by the department in such quantities as determined by the Chief of Police. The issuance of second-chance vests, shotguns, and shotgun racks shall be at the discretion of and according to the policy of the Chief of Police.

The equipment listed, above to be supplied, the City would take care of the equipment needed for each patrolman. Any additional equipment which will be purchased by the City, such as vest, shotguns and racks can best be determined as the quantity initiated by the Chief of Police according to his policies and procedures.

The present policy of the Chief of Police is to have shotguns available in the command officers car and at the police station. The testimony is that upon receiving a call, the patrolmen shall proceed to the scene but shall not exit the car without having a backup command car, if necessary. The policy of the current police chief is that for each patrol officer to have a shotgun is both dangerous due to possible theft and also exhibits an offensive weapon which creates problems with the members of the community. His philosophy is in line with schools and training which he indicates he has attended.

To incorporate language requiring issuance of shotguns and other policy decisions would incertify the management rights clause contained in the agreement. It would once again free this policy decision for the term of the contract, whether or not it is

actually supportable.

Shotguns do constitute a more lethal weapon in that the area covered is greater and at close range almost always fatal.

The patrolmen have stated various situations in which they would have liked to have shotguns available, however, the cited case of the death of Officer Harris would not have been effected by a shotgun, since he was ambushed.

The bigger issue is that if Crissman was selected as chief he should dictate and enforce his policy as to this type matter.

#### ISSUE 30 - UNION REPRESENTATION.

This would mean that it is the City's function to provide a meeting place and pay stewards and other employees for talking to their Union representative. This is not a function of the City and should not be contained within any language in the contract.

#### ISSUE 31 - HOSPITALIZATION/RETIREES

This being determined to be an economic issue, the City's position is that there shall be no payment of full premiums for hospitalization coverage for retirees and their spouses, immediately upon retirement from the City. The current provision for full premium costs for retirees obtaining 65 is sufficient.

The costs of this proposal would be approximately ten years premium since due to the retirement system, the retiree is eligible for retirement at age 55. According to the City's Exhibit Four, the average premium for month for married persons where listed, shows City of Muskegon, \$69.55; City of North Muskegon, \$75.06;

and the City of Roosevelt Park. \$132,99. The costs of such a proposal for the ten year period would be a minimum of \$8,400.00 and a maximum of approximately \$15,000.00. This kind of economic payment is not feasible. The earlier retirement provision does allow and in practice most officers do obtain second employment. In this second employment, the officer is usually covered by health insurance so this would constitute double coverage, and this is a voluntary choice made by the officers. If he maintains employment with the City of Muskegon Heights, his hospitalization which is contained in the contract continues. No other contract or unit is cited as an example where this practice proposed is carried out.

ISSUE 32 - TARGET RANGE.

The parties have agreed to the language contained in the Union's proposal fifty-three; an article titled Target Range will be added to the proposed contract.

ISSUE 33 - TRANSPORTATION.

This being determined to be an economic issue, the City presents a last best offer. The employer shall pay the tuition expenses and provide proper transportation for any schooling which is required or approved by the Chief of Police. Employees will receive mileage of fifteen cents per mile round trip if class is held outside of Muskegon County and transportation is not otherwise available. Whenever an employee is requested by the employer to use his own personal vehicle in the line of duty and

on the business of the employer, he shall be accorded the mileage of fifteen cents per mile.

The City is willing to pay the tuition expenses and transportation of any schooling required by the Chief of Police. The City is not willing to pay tuition expenses and transportation for schooling which strictly be a betterment to the individual police officer and would not necessarily relate to police work, or the City of Muskegon Heights. The provision which requires the approval of the Chief of Police would allow sufficient flexibility to take care of any necessary schooling. The other language submitted by the Union would give free latitude to the employee since all education would improve the person himself. for both the department and the community. As an example, the officer could take premedical training and then become a doctor and of course this would improve himself and the community. However, this would not be a type of benefit which should be paid for by the employer. The present contract already provides in Article Twenty-Five on Page Twenty-Three that officers that do obtain a social degree in police administration will obtain an additional \$250.00 annually and for a B.S. degree in police administration the officer receives an additional \$500.00.

ISSUE 34 - NONPOLICE FUNCTION.

The proposed language by the Union would once again restrict and limit management rights. City's position is that the department has the right to expect the officers to perform as directed by the command officers. In the event the command officer is

requiring unreasonable services the matter of grievance is available to the officer for a proper ruling to be had. In the event an officer continues to make unreasonable requests, the Chief of Police can review it. To have contract language that would indicate that the police officer would not be required to perform any nonpolice functions would lend itself to many grievance procedures and requiring the determination of what is a non-police function. To require an officer to go to the postoffice bring in newspapers and occasionally bring in a cup of coffee is not unreasonable, and is not the type of conduct which requires this drastic change proposed in the language of this contract.

ISSUE 35 - COMPENSATION PLAN.

This is determined to be a matter which has been covered under wages. City's proposed compensation plan has been included in the proposed language of the proposed contract and is therefore adopted as the last best offer.

ISSUE 36 - CHECK-OFF AUTHORIZATION FORM.

The City's position is that as stated in earlier sections is that the check-off should not include the initiation fee. This has previously been argued. The form submitted otherwise is acceptable.

ISSUE 37 - APPENDIX "C" POSITION CLASSIFICATION.

An unbiased reading of Appendix "C" as found on Pages 29, 30, 31 and 32 of the present agreement can only conclude that these rules and regulations are proper and are capable of being carried

out by the patrolmen without any difficulty as argued by the Union. These rules and regulations have been in effect since the contract has been in effect and the Union cannot justify any change based upon particular instances or application of rules. Once again, the Union is taking theoretical approach and trying to create a problem which does not currently exist. As was stated by the arbitrator in this question, we think perhaps the Union is seeing bogymen in the closet.

ISSUE 38 - LEAVE OF ABSENCE.

The language of the Union's proposal is found on page thirteen and fourteen of the Union proposal for changes in the contract effective July 1. The language contained in Section Six-A gives the employees absolute right to a leave of absence after one year of service with the employer. This leave of absence would be for any reason or no reason. It would require the employer to state in writing the reasons why the employee cannot have the leave of absence. It would shift the burden from the employee to justify his leave to the employer to justify the denial. This is unreasonable. As to paragraph Six-b of the proposal regarding maternity leave, this language is acceptable and agreeable except the provision for adoption which was agreed to be stricken by both Union and City.

ISSUE 39 -DOCUMENTS.

On Page 121 of Volume Four of the transcript the Union introduced the City of Traverse City contract and Hamtramck

award appearing in Number 75C-1119. Union previously had introduced another arbitration award, the City of Inkster. At the time of the hearing I had requested copies and it had been indicated I would receive copies. I do not find that I have received copies, therefore the City's presentation has been hampered by this failure to have all the documents being considered by the arbitrator.

ISSUE 40 - ENTIRE CONTRACT.

Although the arbitration panel is required to make awards or determine awards on an issue by issue basis in connection with economics, the arbitration panel cannot overlook and ignore the basic responsibility that the contract which is awarded in this instance must be taken in its entirety. The contract must be judged on an overall basis as to economic feasibility and desirability. As is the knowledge of the panel, the City retains its revenue basically by taxes and basically from a relatively fixed taxed base. Therefore, increase in expenditures if not balanced by traditional income must be balanced by reduction of work force or elimination of services where possible. The panel must also understand and realize that the City of Muskegon Heights has five other bargaining units which in part are governed by some of the same provisions contained in the contract before the panel. Therefore, there must be some uniformity in provision and application.

ISSUE 41 - RETROACTIVITY.

As has been stated in the presentation, before the arbitration panel, the matter of retroactivity as to economic benefit is a matter to be determined by the arbitration panel. In order that the Union be entitled to retroactivity as to economic issues they must meet the requirements of the act. Section 423.240 of the Public Acts of 1969, provides that an increase in reates of compensation awarded by the arbitration panel under Section Ten may be effective only at the start of the fiscal year, next commencing after date of arbitration award. The new fiscal year has commenced since the initiation of arbitration procedure under this act, the foregoing limitations shall be inapplicable and such award increase may be retro-active to the commencement of such fiscal year, any other statute or charter provisions to the contrary not withstanding. The Union by its statements in the transcript admits that no proposals were submitted to the City of Muskegon Heights or contract demands until July 2, 1976. This statement is found on page 205 of Volume Three of the transcript and is made by Mr. Allen. He therefore admits that no demands or requests had been submitted and no meetings were held. Section 423.233, ground for initiation of arbitration proceedings that "whenever in the course of mediation of public police or fire department employees dispute, the dispute has not been resolved to the agreement of both parties within thirty days after the commission of the dispute to mediation and fact finding, or within such further additional

periods to which the parties may agree, employees or employer may initiate binding arbitration proceeding by prompt request thereof in writing together with a copy to the labor mediation board.

The Union has submitted documents which indicate that they request binding arbitration. However, the documents were submitted at a time when no negotiations had taken place and no demands had even been submitted by the policy officers. No meeting with any mediation employed was held prior to the beginning of the fiscal year for Muskegon Heights, which begins July 1, 1976 and July 1 of each year. Therefore, the request for arbitration is meaningless since the basic propositions contained in the acts have not been complied with. This does not mean City takes the position that the arbitration panel has not jurisdiction as to determining issues before it. City's position is that since by Union documents which have been submitted and are part of the record, the Union has not complied with the act in holding meaningful negotiations, requesting mediation and thereby upon reaching a pass, requesting compulsory arbitration. There is language in Union letters as late as May 12, 1977 that the Union has not reached impasse in contract negotiations.

City's position is that the increases in rates of compensation awarded by the panel may be only effective prospectively, not retroactively as provided in Section 423.240 of the act 312.

Respectfully submitted,

CITY OF MUSKEGON HEIGHTS

By 

R. Max Daniels