

638

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

CITY OF PONTIAC,

Employer,

vs.

MICHIGAN ASSOCIATION OF POLICE
(PPOA),

Union.

Case No. D88 G-17⁶85

Arising pursuant to
Act 312, Public Acts
of 1969, as amended

FINDINGS, OPINION, AWARD AND ORDER OF
THE COMPULSORY ARBITRATION PANEL:

APPEARANCES:

For the Compulsory Arbitration Panel

Robert F. Browning, Chairperson and Impartial Arbitrator
John C. Claya, Employer Delegate
Fred Timpner, Union Delegate

Representing the Employer: Dennis B. Dubay, Attorney

Representing the Union: Daniel J. Hokenga, Attorney

I. STATEMENT OF PROCEEDINGS

On January 19, 1990, after reaching an impasse in contract negotiations with the city of Pontiac, Michigan (hereinafter referred to as the "City"), the Michigan Association of Police (hereinafter referred to as the "Union") filed a Petition for Arbitration, pursuant to 1969 Public Act 312 as amended (MCLA 423.231 et seq), and after 16 full days of mediation beginning August 17, 1988. On January 31, 1990, the City filed an Answer to

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the Union's Petition for Arbitration. The City also on February 27, 1990, filed a Petition for Arbitration with the Michigan Employment Relations Commission (MERC) on the issue of Affirmative Action. These matters were consolidated by MERC. On June 4, 1990, MERC Commission Member Thomas Roumell appointed Robert F. Browning as the impartial arbitrator and chairperson of the Panel in this matter. The Union selected Mr. Fred Timpner as its representative and the City selected Mr. John Claya as its representative.

The Chairperson then contacted the parties to schedule a Pre-Hearing Conference. The parties agreed to hold a Pre-Hearing Conference on August 24, 1990, at Pontiac. The Chairperson was advised by the parties there were some thirty (30) issues unresolved. The Chairperson remanded the dispute to the parties for further collective bargaining in accordance with MCLA 423.237a, Sec. 7a of Act 312. A second Pre-Hearing Conference was held on September 21, 1990 with the parties who reported they were unsuccessful in their remanded several collective bargaining meetings and the issues remained in dispute between the parties. Formal hearings were conducted on thirty-two days between November 13, 1990 and August 9, 1991. The Last Best Offers of Settlement were received by the Chairperson and exchanged with both parties by letter mailed on August 22, 1991. The post-hearing briefs of both parties were received in the office of the Chairperson on November 12, 1991. The Panel, after receiving the hundreds of exhibits and the hearing transcripts met in Executive Session on December 12, 14 and 30, 1991. The Panel further met in Lansing at the

Chairperson's office on January 11, 18 and 21, 1992, prior to the writing of this Decision and Award.

II. THE STANDARDS FOR THE ARBITRATION PANEL'S DECISION

The pertinent part, Section 9 of Section 312 sets forth the following factors upon which the Panel's decision must rest:

"[T]he arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other executed time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

III. INITIAL HEARING

At the initial hearing the parties recognized that this Panel has jurisdiction and is properly constituted. The Chairperson was sworn and took the oath of office. The parties mutually waived all the time limits set forth in Act 312.

IV. ISSUES

The parties initial list of issues are as set forth in the Union's Petition (Jt. Ex. 30), the City's Answer thereto (C. Ex. 1) and the City's Petition (C. Ex. 2). During the course of these proceedings both parties formally withdrew certain issues and the parties resolved certain other issues (Residency, Reserves and Holidays). At the request of the Panel, on July 12, 1991, the parties submitted an amended list of their respective issues. The remaining issues (17 presented by the Union and 11 presented by the City) are those on which the parties submitted Final Offers of Settlement.

At the final hearing on October 21, 1991, the Panel identified the issues of the parties as being economic (E) or non-economic (N.E.).

The Union issues, 17 in number, are as follows:

<u>No.</u>	<u>Union Issues</u>	<u>E - Economic</u> <u>NE - Non Economic</u>
1	Wages - 1988	E
2	Wages - 1989	E
3	Wages - 1990	E
4	Reprimands	NE
5	Annuity Withdrawal	E
6	Pension Retirement (Escalator)	E
7	Final Average Salary	E
8	Pension Retirement (Age, Service & Multiplier)	E

9	Sick Leave	E
10	Dental Insurance	E
11	Life Insurance	E
12	Detective Rate of Pay	E
13	Plain clothes Allowance	E
14	Cleaning Allowance	E
15	Shift Differential	E
16	Grievance Procedure (Automatic Granting)	E
17	Grievance Procedure (Loser Pays)	E

the City issues, 11 in number, are as follows:

<u>No.</u>	<u>City Issues</u>	<u>E - Economic</u> <u>NE - Non Economic</u>
1	Grievance Procedure	NE
2	Seniority (Probationary Period)	E
3	Internal Investigations	NE
4	General Conditions (DPR)	E
5	Leaves of Absence	NE
6	Reprimands	NE
7	Drug Testing	E
* 8	Dental Insurance Deductible	E
* 9	Pension Retirement (Employee Contribution)	E
*10	Work Schedule (Overtime Distribution)	E
*11	Promotions (Affirmative Action)	E

The City issues that re designated by an asterisk (*) were objected to by the Union, as not being properly before this Panel and that the Panel should not consider them in the Award.

The Union argues that the issues were not the subject of mediation prior to the Act 312 Petition being filed. The Chairperson points out that the Chairman's remand was for the parties to engage in further collective bargaining efforts. The Panel did not remand the parties to further mediation after the Petition was filed.

The Chairperson addressed the parties attention to whether these issues were in the parties contract negotiations and/or

during the mediation sessions conducted by State Mediator Leon Cornfield.

City of Pontiac Labor Relations Director Anderson inquired of Mediator Cornfield whether the City issues with respect to the 5/8's work schedule and affirmative action had been presented by the City in mediation. Mediator Cornfield confirmed they had been. On July 3, 1991, Mediator Cornfield advised the 4/40's to 5/8's issue was made during joint session mediation between the City and Union. (C 207).

Mr. Timpner, Michigan Association of Police Business Agent and Panel Delegate, testified that the dental insurance had been presented in negotiations but that with regard to the City's 5% employee pension contribution that he did not recall it ever being an issue prior to mediation or at mediation. (Volume 29, pp 55-56).

The Panel has carefully reviewed the record and exhibits concerning these several disputed issues and the post-hearing brief arguments of both parties.

Section 8 of Act 312 provides in part: "The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive."

The panel determines that City Issue No. 9 Pension Retirement (Employee Contribution) is not an issue in dispute.

V. COMPARABLES.

The parties agreed that the following communities are external comparables to be used for comparison of wages, hours and working

conditions of the City's police officers with those police employees performing similar services in comparable communities.

The jointly agreed to list involves twenty communities comparable to the City of Pontiac for purposes of this Act 312 proceeding:

Bloomfield Township
Canton Township
Clinton Township
Dearborn
Dearborn Heights
Farmington Hills
Lincoln Park
Livonia
Redford Township
Roseville

Royal Oak
Shelby Township
Southfield
St. Clair Shores
Sterling Heights
Taylor
Troy
West Bloomfield
Waterford Township
Westland

Both parties introduced and placed in the record numerous external comparable exhibits and the collective bargaining contracts of the comparable communities.

In addition, the parties introduced into evidence the labor agreements of the internal City of Pontiac comparables and related exhibits.

The internal comparables are as follows to be compared with the Pontiac Police Officers Association (MAP) are as follows:

2002	American Federation of State, County and Municipal Employees.
PMEA	Pontiac Municipal Employees Association
SAEA	Supervisory and Administrative Employees Association
PPMA	Pontiac Professional Management Association
PFFV	Pontiac Fire Fighters Union
PPSA	Pontiac Police Supervisor's Association

VI. CITY OF PONTIAC

The City of Pontiac is located in Oakland County and has a current population of 70,207 residents per the preliminary 1990 U.S. Census Bureau population figures. In 1980, Pontiac had a

population of 76,715. The population decline is (-8.5%) (C. Ex. 9). Based on 1985 per capita income of \$9,432, Pontiac ranks last (21st) among the comparables. Pontiac ranks last in median family income (\$18,675) and 18% of Pontiac residents are below the poverty level. Pontiac's August 1990 unemployment rate was 11.90% the highest among the comparables.

While the City has 31.29 mills listed for 1989, only 12 of those mills are available for the general fund from which the Police Department expenses and salaries are paid. The Police Department has the largest budgeted item, about \$14 million for police operations.

The City of Pontiac is the only community among the comparables that has an income tax. In (1988, 1989, 1990) Pontiac averaged over ten million dollars in general fund revenue from its income tax collections. However, Pontiac ranks lowest total S.E.V. per capita for 1990 among the comparables.

Pontiac recently has experienced a lower bond rating by Moody's to a B-aa rating based in part upon the impact of General Motors idling two facilities and the City's financing position. (C. Ex. 76).

VII. THE PONTIAC POLICE DEPARTMENT

There are currently over 200 employees in the police department. The top administrative officers are the Police Chief and the Deputy Chief, who are not members of a union. The Supervisor's unit consists of four Captains, seven Lieutenants and 25 Sergeants who belong to the Police Supervisors Association Union

(MAP). The other sworn officers in the Department are in the bargaining unit of Pontiac Police Officers Association (MAP).

The number of sworn officers assigned to the patrol division shrank from 91 in 1984 to 67 able bodied offices per the Union testimony and with the DPR disabled officers the count would be 78 assigned to the Patrol Division per Captain Miles (Vol 11, p. 29).

The average seniority of the police officers is 12.25 years. The Department ranks first in the ration of sworn officers to citizens.

VIII. Ability to Pay

The City presented voluminous testimony and a large number of City Exhibits concerning "ability to pay" Sec. 9(c) of Act 312, "The interests and welfare of the public and the financial ability of the unit of government to meet these costs."

The City's principal witness on this matter was Mr. Wayne Belback, the City's Finance Director who explained the City's budgetary process which is subject to Public Act 621, PA 1978. Under this Act the City accounts for restricted revenues and related expenses using separate funds. All unrestricted funds are placed in a General Fund. Only the monies in the General Fund are available to the City to pay for police operations including labor costs.

The most recent audit report received by the Panel for the year ended June 30, 1990 (C. Ex. 113, p. B-1) shows the breakdown of the Fund balance and sets forth \$1,100,000 reserved for City contracts retroactive payments to a number of city employees,

including this PPOA units. There is an unreserved fund balance of \$697,194. However, \$600,000 has been designated, Mr. Belback testified, for the fiscal '91 budget (Vol. 12, 27-8). The City had an undesignated fund balance of \$97,194 as set forth in the City of Pontiac Annual Financial Report ended June 30, 1990. (C-113).

The City cannot raise its millage 31.29 mills without an additional vote of the people and the income tax is at limit. The state shared revenues will not increase due to a population decline.

There is much more in the record, exhibits and testimony, which makes it apparent to the Panel that the ability to pay factor must be weighed seriously for its impact upon the City in meeting any economic increases this Panel might award and order in this Arbitration.

IX. STIPULATIONS

The parties stipulated that the new collective bargaining agreement would consist of the parties prior agreement January 1, 1985 - December 31, 1987 contract (Jt. Ex. 10) as amended by the parties' agreements reached in the course of these proceedings (on Residency, Reserves and Holidays) and as amended by this Arbitration Panel's awards on the issues before this Panel. Both parties have waived all time limits.

X. FINDINGS AND AWARD

The City and Labor Delegates requested that they sign their concurrence or dissent to the awards hereinafter set forth on an individual issue by issue basis.

Accordingly, the signatures of the partisan panel members at the conclusion of this Award does not represent a concurrence with each and every element of the final award, but rather it does constitute a recognition that a majority of the arbitration panel did support each award and order upon the issues.

The Panel has reviewed the hearing transcripts, the exhibits and considered the arguments and briefs of the parties. The Award will in brief discuss the positions of the parties. The findings and awards have been reached after the Panel considered fully each of the factors enumerated in Section 9 of Act 312 and the evidence in the record.

The issues, economic and non-economic, will be dealt with in the same order as directed by the Panel for submission of the Last Best Offer.

UNION ISSUE NO. 1 - WAGES - 1988 - ECONOMIC

CURRENT CONTRACT LANGUAGE:

Revise the rates of pay set forth in the contract and Appendix A (Pay Plan):

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1998, a 3.5% increase in wages for all employees in the bargaining unit and at all steps of the wage scale.

CITY LAST BEST OFFER

January 1, 1988 - December 31, 1988 - Increase the salary schedule by three (3%) across-the-board.

Effective Date: As set forth above.

UNION ISSUE NO. 2 - WAGES - 1989 - ECONOMIC

CURRENT CONTRACT LANGUAGE:

Revise the rates of pay set forth in the contract and Appendix A (Pay Plan):

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1989, a 3.5% increase in wages for all employees in the bargaining unit and at all steps of the wage scale.

CITY LAST BEST OFFER

January 1, 1989 - December 31, 1989 - Increase the salary schedule by two (2%) percent across-the-board.

Effective Date: A set forth above.

UNION ISSUE NO. 3 - WAGES - 1990 - ECONOMIC

CURRENT CONTRACT LANGUAGE:

Revise the rates of pay set forth in the contract and Appendix A (Pay Plan):

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1990, a 3.5% increase in wages for all employees in the bargaining unit and at all steps of the wage scale.

CITY LAST BEST OFFER

Revise the rates of pay set forth in the contract and Appendix A (Pay Plan) as follows:

January 1, 1990 - December 31, 1990 - Increase the salary schedule by two (2%) percent across-the-board.

Effective Date: As set forth above.

The parties agreed that each year wage offer will be treated as a separate issue for purposes of this Award. The parties have, for the most part, respectively combined their positions and arguments on the three separate issues which do have a cumulative impact.

UNION POSITION

The Union sets a 3.5% wage increase for 1988 while the City offers 3%. The Union argues that the only justification for the City's offer in 1988 is the same as the City's 2% offer in 1989 and 1990 because it follows the police supervisor's award by Arbitrator Granadier's panel. The Union argues that the average wage increase that became effective on January 1, 1988 was 4.04% among the comparable communities. The Union points out that for 1989 the Union seeks a 3.5% wage increase and the City offers a 2% increase and that the City relies on the Granadier award in the supervisor's case and that there was a 7 point increase in the cost of living in 1989. In 1990 the Union claims the comparable communities granted increases in the neighborhood of 4% and that the Union should receive the 3.5%.

CITY POSITION

The City states that as of January 1, 1988 without a consideration of the higher pension contributions made in a number of the comparables that unit members currently receive a salary of \$32,441.00. The City's wage offer for the first year of 3%, the salary would increase to \$33,414.23 which ranks fourth among the comparables. The City argues that the City's offer of 3% - 2% - 2%

would provide unit members with salaries which exceed the average of the comparables for each of the contract years.

Insofar as internal comparables the City claims the Union's final offer for an across-the-board salary adjustment for 3.5% - 3.5% - 3.5% for three years is far above the 0 - 2% - 2% wage adjustments awarded to the Firefighters in a recent Act 312 arbitration proceeding and the 3% - 2% - 2% adjustments awarded to the Police Supervisors in Arbitrator Granadier's 312 Panel Decision as well as the recently settled P.M.E.A. and P.P.M.A. contracts which involved a pay freeze for the first two years.

AWARD

The Arbitrator is aware of the concerns of both parties herein, with respect to the issues of the wage increases for the years 1988, 1989 and 1990. The City of Pontiac's financial position and its ability to pay wage increases has been seriously considered as well as the PPOA members cost of living arguments. The relationship of the external comparables to this unit and the internal comparable settlements have been carefully considered including the focus on the Police Supervisors Act 312 Award and the instant 3% - 2% - 2% offer made by the City.

Accordingly, the Panel having given due consideration to the applicable Section 9 factors and all the competent, material and substantial evidence on the record makes the following awards.

AWARDS

UNION ISSUE NO. 1 - WAGES - 1988 - ECONOMIC

The Panel awards the Union's Last Best Offer.

Effective January 1, 1988, a 3.5% increase in wages for

all employees in the bargaining unit and at all steps of
the wage scale.

Claya Concurs 

Dissents 

Timpner Concurs 

Dissents

AWARD

UNION ISSUE NO. 2 - WAGES - 1989 - ECONOMIC

The Panel awards the City's Last Best Offer.

Effective January 1, 1989 - December 31, 1989, Increase

the salary schedule by two (2%) percent across-the-board.

Claya Concurs 

Dissents

Timpner Concurs

Dissents 

AWARD

UNION ISSUE NO. 3 - WAGES - 1990 - ECONOMIC

The Panel awards the City's Last Best Offer.

Effective January 1, 1990 - December 31, 1990 - Increase

the salary schedule by two (2%) percent across-the-board.

Claya Concurs 

Dissents

Timpner Concurs

Dissents 

UNION ISSUE NO. 4 - REPRIMAND 9 - NON-ECONOMIC

ARTICLE XII, SECTION 12.11

AND

CITY ISSUE NO. 6 - REPRIMANDS - NON-ECONOMIC

ARTICLE XII, SECTION 12.11

CURRENT CONTRACT LANGUAGE, Article XII, Section 12.11

Reprimands shall not be utilized for further discipline after two (2) years from the date of the most recently issued reprimand on record, and written disciplinary records shall not be given to promotional oral boards.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Reprimands shall be removed from all files after two (2) years from the date of issuance. Written disciplinary records shall not be given to promotional oral boards.

CITY LAST BEST OFFER:

Reprimands shall not be utilized for further disciplines after three (3) years from the date of the most recently issued reprimand on record, and written disciplinary records shall not be given to promotional oral boards.

Both parties presented an issue involving Article XII, Section 12.11 of the current contract.

The Union's offer seeks to eliminate the present provision that the time period is measured "from the date of the most recently issued reprimand on record." The Union wants the reprimand removed from all files after two years from the date of issuance. The City's offer would leave the present contract

language unchanged except to expand the two year period to three years.

UNION POSITION

The Union states its proposal will prevent reprimands from inadvertently being considered after two years from the date of issuance by removing it from the employees file. The Union observes that only four of the external comparables have periods as long as the City is requesting, with regard to removal of the reprimands from the personnel file, most of the internal comparables do not specifically address removal.

CITY POSITION

The City states the majority of comparable communities do not remove reprimands from a personnel file. Within the internal units the disciplinary records of the PMEA and the SAEA can only be removed within two years if they have achieved a satisfactory level of service. The City does not remove the disciplinary records of the Police Supervisors or Firefighters.

Under the current system an employee will have reprimands removed from his personal file after a two year period without a reprimand being issued. The City's proposed revision to three years per Mr. Anderson's testimony is insufficient under EEOC and MDCR regulations which provide a three year statute of limitations.

DISCUSSION

The Panel has considered the last offers of both sides and recognizes a reasonable need for the City's three year request, but at that point also favors, that after a three year period from date


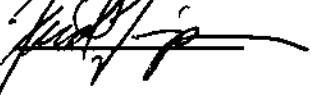
of issuance, the employee's reprimand should be removed from the files.

Based on the foregoing and the record evidence with respect to the Section 9 standards for decision and the concerns of the parties and this being a non-economic issue the Panel presents the following language as its award, prospectively.

AWARD: ARTICLE XII, SECTION 12.11

Reprimands shall be removed from all files after three (3) years from the date of the most recently issued reprimand on record. A reprimand shall be removed from all files after three (3) years from date of issuance. Written disciplinary records shall not be given to promotional oral boards.

Effective Date: Date of Award

Claya	Concurs 	Dissents _____
Timpner	Concurs 	Dissents _____

UNION ISSUE NO. 5 - ANNUITY WITHDRAWAL - ECONOMIC

CURRENT CONTRACT LANGUAGE - Article 27, Section 8:

Annuity Withdrawal. Effective October 1, 1984, employees may opt at the time of retirement (when monthly pension commences), to withdraw their contributions which will reduce the monthly pension based on the actuarial schedule.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Employee's contributions to the pension plan made before July 1, 1989 will be refunded at the time of retirement. An employee may withdraw his/her contributions, made after July 1, 1989 at the time of retirement with an equivalent actuarial reduction in the pension benefits to be received by the employee. The actuarial reduction will be computed by the actuary using the same formula utilized with respect to all other Unions in the same plan and approved by the Pension Board.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

The Union states this proposal is submitted to the Arbitration Panel by this unit in its effort to achieve parity on the issue with the PFFU. The Union proposal would permit withdrawal of employee contributions made prior to July 1, 1989 without actuarial reduction. The unit is concerned that firefighters receive better retirement benefits though both units pensions are administered and paid out of the same fund.

CITY POSITION

Except for the firefighters none of the other City internal units receive any free annuity withdrawal. The City points out that the City of Pontiac currently contributes 31.08% of payroll on annuity adopted actuarial assumption into the Police and Fire Pension System.

The City comments that 14 of the comparable communities allow annuity withdrawal by their unit members but there is an accompanying actuarial reduction in benefits.

AWARD

The Arbitrator is not convinced that because the Firefighters enjoyed this benefit, the police unit should likewise have it. None of the other internal units (except firefighters) have it and that has been sunsetted. No comparable community provides the benefit sought. Based on the foregoing and the record evidence

with respect to the Section 9 standards the Panel awards as follows:

AWARD: The City's final offer. Status Quo

Effective Date: January 1, 1988

Claya

Concurs 

Dissents

Timpner

Concurs

Dissents 

UNION ISSUE NO. 6 - PENSION RETIREMENT - ECONOMIC

CURRENT CONTRACT LANGUAGE - Article 27, Section 2A:

Effective July 1, 1983, provide bargaining unit members retiring on or after July 1, 1983, annually, with 2% of their Base Retirement Annuity. Such sum shall be cumulative for a maximum of twelve (12) years. The maximum cost of living total at the end of twelve (12) years shall be twenty four (24) percent of the retiree's original retirement annuity, and one percent additional for the thirteenth (13th) year of retirement, a maximum of twenty five (25) percent. Such sum shall be paid annually, (between December 1 and December 15 of each year).

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective January 1, 1988, employees retiring after January 1, 1988 shall receive annually, two (2) percent of their base retirement cumulative for twenty-five (25) years, for a maximum of fifty (50) percent.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

This issue deals with post-retirement increases in an individual base retirement annuity. Currently, the police officers have an escalator clause of two percent per year through the

twelfth year and one percent the thirteenth year for a maximum of 25 percent.

The Union proposes that effective January 1, 1988, shall receive annually, two (2) percent of their base retirement cumulative for twenty-five (25) years to a maximum of 50 percent.

This revision of the pension escalator clause is proposed for the police officers to equal that of the other members of the police and fire pension system. Both the PPSA and PFFU already enjoy this benefit.

This proposed change in the pension improvement factor would cost the City an additional 1.83 percent of payroll (City Ex. 42, p. 4). The Union maintains that given the established practice of the City with regard to this issue.

The Union believes that the proposal is made in accordance with apparently acceptable standards for the City, as exhibited by similar provisions for the police supervisors and firefighters and costs considerably less than the City saved when the Actuarial assumptions were changed as shown in Jt. Ex. 35.

CITY POSITION

The City states the Union's proposal would be costly to the City and exceeds any of the retirement escalators provided by the comparable communities. Specifically, as shown in C. Ex. 119, the most majority of comparable communities do not provide their employees with any retirement escalators. Of those that do, none provide a benefit equal to that provided by the City. Only the City provides a retirement escalator of twenty percent (20%) after

ten years of service.

Among the City's internal units C. Ex. 120 shows that as of the tenth years of retirement, an employee in each of the seven internal units receives a twenty (20%) retirement escalator.

The City points out that if granted the City will be forced to contribute another \$87,039 annually to fund the proposed benefit sought by the Union. (C. Ex. 42 p. 4). This would be in addition to the City's yearly contribution rate of \$1,478,232. This added contribution represents an increase in contributions of 1.83% of the PPOA payroll resulting in a contribution rate of 32.91% of the PPOA payroll to maintain appropriate funding.

If the Union's proposal is adopted by the Panel, the unfunded liability for the pension fund will increase by approximately \$837,000 and an additional rate of 1.76% of the PPOA payroll would be required to pay off the additional unfunded liability over the next 35 years.

AWARDS

When looking at the internals, the Union has a valid point that it is only seeking in this proposal a benefit that the other members of the police and fire pension system already have, namely the Police Supervisors Union and the Firefighters.

The Union would like this Panel to look at only the internal comparables. However, the Panel must consider the record evidence with the respect to the Section 9 standards for decision, and but not limited to, for example the external comparables and ability of the City to pay and based on the record and Section 9 standards,

the Panel is convinced that the City's final offer on the retirement escalator issue should be and is adopted.

AWARD: The City Last Offer of Settlement

Retain current contract language and add no additional contractual provision on this issue.

Claya

Concurs 

Dissents 

Timpner

Concurs 

Dissents 

UNION ISSUE NO. 7 - FINAL AVERAGE SALARY - ECONOMIC
CURRENT CONTRACT LANGUAGE - Article 27, Section 9:

Final average salary shall include: base salary, longevity
lump sum holiday pay, shift premiums, dispatcher bonus, patrol
officer's daily road pay and lump sum sick payment at time of
retirement.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1990 final average salary shall include: base salary, longevity, lump sum holiday pay, shift premium, dispatcher bonus, patrol officer daily road pay, lump sum sick and current vacation bank payments at time of retirement.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

Currently the components of the final average salary for unit members includes base salary, longevity, lump sum holiday pay, shift premium, dispatcher bonus, patrol officer daily road pay, and lump sum sick pay in the determination of final average salary.

The Union seeks to add current vacation bank payments at the time of retirement as a factor in determining final average salary. The Union shows that thirteen of the comparables include vacation bank payments in their final average salary (Union Ex. 95).

Currently within unionized employees in Pontiac, only the PFFU has vacation pay included in its final average salary.

The Union maintains that a primary motivation for this unit in seeking to revise its final average salary calculation is to place it on par with the City's fire unit.

Further, the Union points out Pontiac only ranks tenth among the comparables for final average compensation packages.

CITY POSITION

The City proposes no change in its last offer of settlement on this issue.

The City states while the individual components of final average salary are partially determinative of the pension benefit received by unit members, the years of service used in determining final average salary are crucial.

The City for these unit members uses the three highest consecutive years of compensation in a unit members last ten years of service. Of the comparable communities only "six" utilize the favorable "three highest consecutive of last ten years" in determining final average compensation.

City Exhibit 122 shows six of the seven internal units use the "3 consecutive of the last 10."

In particular, with regard to the Union's request for

including unused vacation time in final average compensation, only five of the twenty comparable communities currently provide such a benefit. None of the internal units, other than the firefighters, have unused vacation time included in their determination of their final average compensation.

As the Union pointed out of 20 comparable communities, unit members ranked tenth in total base pay plus final average compensation. When the multiplier factor is incorporated, the retirement benefit actually received by unit members ranks second among the comparable communities (C. Ex. 126). The multiplier at 25 years of service, for unit members, is the highest among the comparable communities.

In the recent MAP (PPOA) 312 Arbitration, the Panel denied a proposal to include vacation pay in the determination of final average compensation.

AWARD

The Arbitrator, while sympathetic to the PPOA'S concern that the PFFA receives vacation pay in the determination of final average compensation, is aware that none of the other internal city units have it nor do the vast majority of the comparables. The Panel is persuaded that the City's Last Best Offer to Maintain the status quo is supported by the record and further with respect to a consideration of the applicable Section 9 factors and the Panel so awards.

AWARD: City Last Offer of Settlement.

Retain contract language and add no current contractual provisions on this issue.

Effective Date: January 1, 1988.

Claya

Concurs 

Dissents

Timpner

Concurs 

Dissents 

UNION ISSUE NO. 8 - PENSION RETIREMENT - ECONOMIC
CURRENT CONTRACT LANGUAGE - Article 27, Section 3:

Effective January 1, 1990, upon retirement from service, each member shall receive an annuity calculated in the following manner: for the first twenty (20) years of service, three (3) percent of final average salary, for each year of service. For the next five (5) years of service, two (2) percent of final average salary, for each year of service. For the next five (5) years of service, one (1) percent of final average salary for each year of service. Subject to a maximum of seventy-five (75) percent of final average salary. A fractional period of service of less than a full year shall be considered in the calculation of the annuity.

- A. Effective July 1, 1984, any member of the bargaining unit having at least twenty-five (25) years of credited service may retire on a service retirement annuity, at the member's option, regardless of age.
- B. Effective July 1, 1984, any member of the bargaining unit having reached the age of fifty (50) and having at least twenty (20) years credited service may retire on a service retirement annuity at the member's option.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective January 1, 1988, upon retirement from service, member shall receive an annuity calculated in the following manner: For the first twenty (20) years of service, three point five (3.5) percent of final average salary, for each year of service. For the

next ten (10) years of service, one (1) percent of final average salary, for each year of service. Subject to a maximum of eight (80) percent of final average salary. A fractional period of service of less than a full year shall be considered in the calculation of the annuity.

A. Effective January 1, 1988, any member of the bargaining unit having at least twenty (20) years of credited service may retire on a service retirement annuity, at the member's option, regardless of age.

B. Delete.

Change other areas of Pension Article to reflect twenty (20) years retirement with no reduction of benefits.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

INTRODUCTION

Under the current collective bargaining agreement, unit members may retire with a full pension after 25 years of service regardless of age. Alternatively, the current collective bargaining agreement permits any member of the bargaining unit, having reached the age of 50, to retire with full pension if the member has 20 years of credited service. Consistent with the present age/service requirements, the pension multiplier under the current collective bargaining agreement is 3% of final average salary for the first 20 years of service, 2% of average salary for the subsequent 5 years of service, and 1% of final average salary for the next subsequent 5 years of service. Under the provision,

the maximum multiplier is 75% of final average salary.

The Union's Last Best Offer proposes that Article 27, Sec. 27.3 of the collective bargaining agreement be amended to permit a member of the bargaining unit to retire with a full pension, after 20 years of service, regardless of age.

The multiplier used to calculate pension benefits under the Union offer would be changed, under the proposed change, unit members would be entitled to a 3.5% of final average salary multiplier for the first 20 years of service, followed by a 1% multiplier for the next 10 years of service. Under this provision, the maximum multiplier would be 80% of final average salary.

UNION POSITION.

Presently the City has an age and service limit on retirement for members of the PPOA. An officer can retire after 20 years of service if he has reached the age of 50 and receive a reduced monthly benefit of 60% of that officers final average salary. Regular retirement is 25 years and 70%. Officers who work beyond 25 years will "max out" at 75% of their final average salary.

The Union proposes to eliminate the City's age requirement and improve the multiplier so that 20 years will serve as the regular retirement and receive 70% of their final average salary. An office retiring after 25 years would receive 75% and finally, officers would "max out" after 30 years of service at 80% of their final average salary.

The union maintains this proposal would encourage earlier retirements and would be beneficial to the City and the Union.

The Union states that nine external comparables have no minimum age requirement. (Union Exhibit 98). Another three external comparables have a minimum age requirement, but less than 20 years of service. Of the internal comparables, only the PFFU has no minimum age requirement.

The Union recognizes that none of the external comparables have a multiplier similar to Pontiac's (City Ex. 126A) but several have social security supplements. Actuary Sonnenschein indicated this proposal would cost the City an additional 12.5% in contributions to fund this proposal, however, Sonnenschein advised the cost with a proposal to reduce retirement eligibility age is highly dependent upon the assumed pattern of usage.

CITY POSITION

The City's Last Offer proposes no change in the present contract provisions on this issue.

The City asserts that the Union's Last Offer with regard to age and service requirements for a full pension, and the multiplier, are prohibitively expensive.

The City points out that the retirement benefit for unit members, without change, ranks second among the 20 comparable communities (City Exhibit 126 A).

The City states that only one of the comparable communities (Southfield) provides a higher multiplier. Two of the comparable communities (Dearborn Heights and Bloomfield Township) provide a multiplier which averages 2.5% over the 30 year period. All of the remaining comparable communities have average. The 3% multiplier

for the unit member's first 20 years of service is unparalleled among the comparable communities.

As shown in C.Ex. 126 A, at 25 years of service, the multiplier is 70%. Only Southfield has a higher multiplier, the rest of the external comparables are substantially below that level.

The City states, the multiplier requested by the Union, is not support in a comparison of comparable communities. The multiplier paid for this units members is superior to that received by employees in other units.

The City states the age and service requirements available under the current agreement compares very favorably, both the comparable communities and other City units.

Presently unit members may retire, regardless of age, after 25 years of service, or at age 50 after 20 years of service.

The Union seeks a provision that would allow unit members to retire, regardless of age, after 20 years of service. Of the 20 comparable communities, only Southfield has the provision. Of the remaining comparable communities only five, allow retirement, with a full pension benefit, regardless of age, after 25 years of service (these unit members have the same). All of the remaining communities also provide a minimum age requirement. The 50/20 age and service requirement also compares favorably with the comparables, none of them provide a requirement which includes a lower age and service requirement then Pontiac for this unit.

The internals show that his unit has the same age and service requirements as PPSA and PFUU - 50/20. The other units do not have as favorable an age and service requirements.

The City stresses that the Union's proposal on the age and service requirements and multiplier are prohibitively costly. An actuarial evaluation regarding the cost for the Union proposal, assuming the proposed change for age and service benefits only, would cost the employer 12.15% of payroll, including a first year contribution of \$577,880. The actuary, Mr. Sonnenschien, further evaluated the proposal would create an unfunded liability of \$5,563,223 (p. 6, C. Ex. 42). When death in service and disability benefits are considered under the revised formula sought by the Union, the Payroll cost would cost the City 12.65% of payroll annually, with a first year contribution of \$601,661 and an unfunded liability of \$5,929,241.

AWARD

The Panel while recognizing the unit members desire for an earlier and better retirement, is convinced that the unit members now have one of the best pension plans, when compared with the comparable communities and internal units, and further that the costs would place a costly burden on a City that has a somewhat limited financial ability to pay.

The Panel adopts the City's Last Best Offer based on the record evidence and a consideration of the Section 9 Standards.

AWARD: The Panel awards the City Last Best Offer.


Dissent

Retain current contract language and add no additional provisions on this issue.

Effective Date: January 1, 1988.

UNION ISSUE NO. 9 - SICK LEAVE - ECONOMIC

CURRENT CONTRACT LANGUAGE - Article 19, Section 7:

Employees retiring under the Pension System shall receive pay from the City for 50% of their accumulated sick leave in their primary banks as shown on the records in the Personnel Department. The monetary value of each sick leave day in the primary bank shall be equal to one-tenth (1/10th) of the bi-weekly pay. Effective for members retiring after October 1, 1984, this payment will be included in final average salary.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Employees retiring under the Pension System shall receive pay from the City for 62.5% of their accumulated sick leave in their primary banks as shown on the records in the Personnel Department. The monetary value of each sick leave day in the primary bank shall be equal to one-tenth (1/10th) of the biweekly pay. Effective for members retiring after January 1, 1988, this payment will be included in final average salary.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

Under the parties current collective bargaining agreement employees can accumulate a maximum 120 unused sick leave days. Upon retirement, employees receive 50% of their accumulated sick leave pay, a maximum payout of 60 days. The Union's Last Best Offer on this issue would, if granted, increase the payout to 62.5% of a maximum accumulation of 120 days.

The Union states the police officers have the lowest payout for accumulated sick leave of all the City units. (C. Ex. 130).

The Union claims the comparables are all over the Board on this issue, but Bloomfield Township, Clinton Township, Dearborn Heights, Livonia, Redford Township, Southfield, St. Clair Shores and Waterford Township receive in excess of 60 days for sick leave payout. (Union Ex. 102; compare City Ex. 129).

The Union points out that a valuation of the Union's proposal was performed by Actuary Sonnenschein, a City witness. He indicated that at a payoff rate of 100% would cost the City 3.22% of payroll. The proposed payoff rate increase of 12.5% would reduce this estimate considerably, but would bring the members of this unit more nearly in line with other City employees, particularly those in the same pension system (PPSA and PFFU).

The Union states the City raised concerns about this proposal because it would also affect an individual member's average salary. The Union states that assumption was included in the Sonnenschien valuation. The Union argues that the internal comparables demonstrates that his unit is clearly under compensated by the City on this issue.

CITY POSITION

The City states the Union provision is prohibitively costly and out of proportion in comparison to the external and internal comparables. The City argues that based on the formulas in C. Ex. 131, the total increased cost for the Union's revised proposal based solely on the current number of patrol officers and detectives

is estimated to be \$239,415.60. This increased cost is due in part to the fact that not only would unit members receive an additional check reflecting the 12.5% increase plus the additional sick time pay would be included in their final average salary and the Union's revised proposal rate would increase the employer contribution rate to the pension in order to compensate for the additional unfunded liability.

The City already makes the highest pension contribution of any of the comparables (C. Ex. 66(9)).

The City notes that a majority of the comparable communities provide a percentage payout equal to or less than the 50% provided by the City. Six of the comparable communities do not provide sick leave payout to Union members. The City is the only community among the comparables which includes the sick leave payout in the unit member's final average salary (XVI-68).

All of the City's internal comparable units (except SAEA) receive a 50% payout of their maximum accumulated sick pay upon retirement (C. Ex. 130).

AWARD

The Panel finds that the City's last Best Offer on this issue, to retain the current contract language and add no additional contractual provision on this issue is supported by the evidence on the record and having given due consideration to the applicable Section 9 factors adopts the City's proposal.

AWARD: City's last Best Offer.
Retain current contract language and
add no additional contractual
provisions on this issue.

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 10 - DENTAL INSURANCE - ECONOMIC

CURRENT CONTRACT LANGUAGE - Section 24.3:

Dental Insurance. The City shall provide a dental insurance program to all bargaining unit employees and family based on a 50-50% service co-payment, with a \$600 maximum per person per year. The above dental coverage will be improved July 1, 1983 to provide 100% of preventative and diagnostic dental care and 70% of Class I and Class II types of dental care, with a maximum payment of \$800 per family member per year.

- A. Effective October 1, 1984, the City will pay full dental premiums to cover employee and their spouse at time of retirement for employees who retire on or after October 1, 1984.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Dental Insurance. The City shall provide a dental insurance program to all bargaining unit employees and family based on a 50-50% service co-payment, with a \$600 maximum per person per year. The above dental coverage will be improved July 1, 1983, to provide 100% of preventative and diagnostic dental care and 70% of Class I and Class II types of dental care, with a maximum payment of \$800 per family member per year.

- A. Effective October 1, 1984, the City will pay full dental premiums to cover employee and their spouse at time of retirement for employees who retire on or after October 1, 1984.
- B. Effective December 31 1990, or as soon thereafter as the carrier can implement the changes, the dental insurance program shall be amended to include an orthodontics rider with a maximum lifetime benefit of \$1,000 per family member.

CITY LAST BEST OFFER

Retain current contract language and add no additional contractual provisions in this issue.

UNION POSITION

The Union recognizes that the current dental coverage provides 100% of preventative and diagnostic dental care and 70% of Class I and Class II types of dental care with a maximum payout of \$800.00 per family member per year. The City also provides retiree coverage and coverage for the retirees spouse.

The Union's Last Best Offer seeks to add an orthodontics rider with a maximum lifetime benefit of \$1,000 per family member.

The City's Last Offer is status quo, that the current contract language remain in effect.

The Union observes that fifteen of the external comparables have an orthodontic rider. Ten of those comparables have a limit of at least \$1,000. (C.Ex. 132). The Union maintains the cost is minimal and should be granted since so many comparables have it.

CITY POSITION

The City maintains that the Union's proposal to add an orthodontic rider which would provide a \$1,000 lifetime limit per family member without a co-pay provision is completely unjustified when compared to the comparable communities.

As shown by C. Ex. 132, only one other comparable (Southfield) provides a \$1,000 lifetime orthodontic rider without a co-pay provision. The only other comparable communities which provide an orthodontic rider without a co-pay provision are West Bloomfield Township and Farmington Hills, and the lifetime limit is \$500.

Five of the comparable communities do not provide an orthodontic rider. Another five communities which do provide an orthodontic rider provide a per person lifetime limit of \$650.00 or lower, while including a 50/50 co-pay provision.

The Union's proposed \$1,000 lifetime limit without a co-pay provision is in excess of the three city units which have an orthodontic rider (2002, PMEA and PPMA) each contains provision for 70/30 co-pay.

The comparables do not support the Union's demand and the City requests the Panel to reject the Union's Last Best Offer on dental insurance and adopt the position of the City of no change.

AWARD

The Panel is not convinced that the Union's Last Best Offer should be granted. The lack of co-pay provision is detrimental when coupled with the record evidence upon the comparables and having given due to the applicable Section 9 factors the Panel wards the City's Last Best Offer.

AWARD: The City's Last Best Offer.

Retain current contract language and
add no additional contractual
provisions on this issue.

Effective Date: January 1, 1988

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 11 - LIFE INSURANCE - ECONOMIC
CURRENT CONTRACT LANGUAGE - Article 24, Section 2:

Life Insurance. The City shall provide all bargaining under employees with full paid double indemnity Aetna Life Insurance coverage or comparable coverage, the amount of which will be forty

thousand (\$40,000) dollars effective January, 1985. For employees retiring after October 1, 1984, the life insurance will be \$20,000.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Life Insurance. The City shall provide all bargaining unit employees with full paid double indemnity Aetna Life Insurance coverage, or comparable coverage, the amount of which will be fifty thousand (\$50,000) dollars effective December 31, 1990, or as soon thereafter as can be implemented by the carrier. For employees retiring after January 1, 1989 the life insurance will be \$25,000.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

Currently, active unit members are provided with \$40,000 life insurance coverage. Employees who retired after October 1, 1984, are provided with a \$20,000 life insurance coverage.

The Union seeks to increase the amount of life insurance for active unit members to \$50,000 effective December 31, 1990 or as soon thereafter as can be implemented by the carrier. For employees retiring after January 1, 1989, the life insurance would be \$25,000.

The Union argues that this additional life insurance would be minimal and that the City would drive a benefit from improved morale. The parties agree that the proposed cost would be \$14.50 per active unit member (127 members) or \$1,841.50 per year annually starting in 1991 after the award. The Union states that six of the comparables have life insurance of \$50,000 or more. The internal

comparables show that PPSA has \$45,000 life insurance; PFFU has \$40,000 and three other units have 2 times annual salary which in most cases will equal an amount equal to or greater than fifty thousand dollars.

CITY POSITION

The City proposes the status quo. City Exhibit 135 shows that of the 20 comparable communities only six provide its active members a higher coverage level. Five of those six have \$50,000 and Waterford Township has \$55,000.

The City states the current life insurance ranks well when compared to the City's other internal units. The PPSA receives \$45,000.

AWARD

The external comparables demonstrate that the current life insurance program for Pontiac ranks favorably among the comparable communities and is at a commensurate level with the internals. Therefore the Panel based on the record evidence and the Section 9 standards for decision adopts the City's Last Best Offer of status quo.

AWARD: The Panel awards the City's Last Best Offer of status quo. Retain current contract language.

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 12 - DETECTIVE RATE OF PAY - ECONOMIC

CURRENT CONTRACT LANGUAGE:

None.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1989. Notwithstanding any other pay provisions that may be awarded in these proceedings, the base pay rate for detectives shall be increased by an additional \$600.00.

Effective January 1, 1990. Notwithstanding any other pay provisions that may be awarded in these proceedings, the base pay rate for detectives shall be increased by an additional \$600.00.

CITY LAST BEST OFFER

The Detective Rate of pay to be increased as set forth in the City's Last Offers of Settlement on the Wage Issues (Union Issues 1-2-3); otherwise retain current contract language and add no additional contractual provisions on this issue.

POSITION OF THE PARTIES

The Union's Last Offer of Settlement proposes that the Detectives base rate pay be increased by an additional \$600 effective January 1, 1989, with an additional \$600 increase effective January 1, 1990. These increases are sought above and beyond any wage increases granted unit members. The City's Last offer of Settlement proposes that the current contractual language remain in effect. Under the City's offer, Detectives will receive the same across-the-board increases as all other unit members.

UNION POSITION

This proposal has been submitted by the Union to acknowledge the heavy workload and responsibilities of the detectives. The advanced responsibilities, training and general heavy workload have

not generated commensurate pay for the Detectives. The work performed by these officers is done by sergeants in many, if not most of the comparables. (Union Ex. 115, City Ex. 141).

The position of detective is a promotion from police/patrol officer. Promotions require oral and written exams, performance evaluation and supervisory recommendation. An officer needs to be employed four years before he can be eligible to take the detective exam (Vol. 17, p. 113).

Detective Gary Kraft indicated that in those jurisdictions where he has an opportunity to work with its law enforcement personnel, Sergeants performed the work he was required to do for this City. (Vol 17, pp. 51-56). Detective McLaurin testified regarding the work load and responsibilities (Vol 18, pp 4-8).

Unlike other departments on the list of comparables, that utilize non-supervisory sergeants to do investigate work (Union Ex. 115; City Ex. 141) sergeants in Pontiac Detective Bureau's primary responsibility is to supervise the detectives in their unit (Vol 17, p. 120).

The detectives have a large case load and in terms of compensation currently only make 5% more than 9 senior patrol officers. The difference between a senior patrol officer and a sergeant is 18%.

The Union's request of an additional \$600 for 1989 and another \$600 for 1990 is to slightly broaden the gap between Patrol and the Detectives and to bring the Detectives wages more in line with

persons performing comparable functions in other communities.
(City Ex. 142, 143, 144 and 145).

CITY POSITION

The City points out that detectives do not have any supervisory authority and as a result they are in the same bargaining unit with the police officers. Further, the supervisors, Sergeants have the supervision and disciplinary authority.

The City contends the Detectives do not have a heavy workload and that a Detective having a backlog of cases have several options; request overtime; assign cases.

The City points out that the Detectives already have a higher salary and work the day shifts. Captain Hitchuk testified in his 19 years with the Pontiac Police Department is aware of no Detective who has chosen to return to a patrol officer.

Pontiac detectives rank tenth among the 21 comparable communities in annualized base salary (C. Ex. 145).

Assuming there are 19 detectives, the additional cost to the City in base wages only would be \$11,400 for 1989 and \$22,800 for each year thereafter.

AWARD

The Panel upon considering the record and the Section 9 Standards adopts the Union's Last Best Offer.

AWARD: The Panel awards the Union's Last Best Offer.

Effective January 1, 1989.
Notwithstanding any other pay provisions that may be awarded in

these proceedings, the base pay rate for detectives shall be increased by an additional \$600.00.

Effective January 1, 1990. Notwithstanding any other pay provisions that may be awarded in these proceedings, the base pay rate for detectives shall be increased by an additional \$600.00.

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 13 - PLAINCLOTHES ALLOWANCE - ECONOMIC

CURRENT CONTRACT LANGUAGE - Article 26, Section 1:

The City will provide any Police Officer in the unit, who has a regularly scheduled assignment which requires the wearing of plainclothes rather than uniform, a plainclothes allowance for Four Hundred Dollars (\$400) annually.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective January 1, 1990 the City will provide any Police Officer in the Unit, who has a regularly scheduled assignment which requires the wearing of plainclothes rather than uniform, a plainclothes allowance for Five Hundred Dollars (\$500) annually.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

The Union seeks to increase its members plainclothes allowance by One Hundred Dollars, effective January 1, 1990 to \$500 annually. The City wants the status quo, \$400 annually. The Union states a

review of the comparables indicates the Union's proposal falls somewhere in the upper middle of the spectrum.

CITY POSITION

City Exhibit 147 shows 13 of the 20 comparable communities do not provide their plainclothes allowance. The proposed \$100.00 increase for the 43 plainclothes officers would cost the City an annual increased cost of \$4,300.

The Panel in reviewing the comparables does find that maintaining the status quo of \$400 is not unrealistic or unfair when compared to the comparables. Based on the record evidence with respect to the Section 9 standards for decision the Panel adopts the City's Final Offer.

AWARD: City's Last Offer of Status Quo.
Retain current contract language and
add no additional contract
provisions on this issue.

Effective Date: January 1, 1988

Claya

Concurs 

Dissents _____

Timpner

Concurs _____

Dissents 

UNION ISSUE NO. 14 - CLEANING ALLOWANCE - ECONOMIC

CURRENT CONTRACT LANGUAGE:

None.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective January 1, 1990 all employees in the bargaining unit shall receive on the first pay in January, a Three Hundred Fifty (\$350) dollars cleaning allowance.

CITY LAST BEST OFFER:

Effective January 1, 1990, all employees in the bargaining unit will receive in the first payroll period of January an annual cleaning allowance of Two Hundred and Fifty (\$250) dollars for full-time active service for the full prior twelve (12) months. A pro rata payment will be made to a unit member in the event of less than the full twelve (12) months of full-time active service.

UNION POSITION

The PPOA currently does not receive a cleaning allowance. The Union proposes an annual cleaning allowance of \$350 payable on the first pay in January effective January 1, 1990. The amount sought is the same as that received by the PPSA and the firefighters. The Union believes the \$250 cleaning allowance proposed by the City is inadequate.

CITY POSITION

The City has offered a new provision of \$250 annual cleaning allowance effective on January 1, 1990 for full time active service for the full prior twelve months. It would be pro-rated to a unit member in the event of less than the full twelve months.

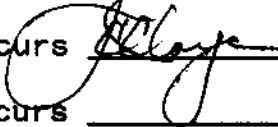

The costs of the new benefit for the Union proposal would be \$44,450 each year (\$350 x 127 unit members). The City's proposal would cost \$31,750 each year. The City points out that in the Union's proposal full payment must be made even if the person only served one day in the unit in the year. Of the 20 comparable external communities, thirteen provide a monetary payment for a cleaning allowance. The City states the average is \$268.75.

AWARD

The pro rata qualification in the City's offer makes sense to this Panel. It is missing from the Union's proposal. This is a first breakthrough in the contract to establish a cleaning allowance. Both parties recognize the need. Based on the Section 9 standards for decision the Panel adopts the Last Best Offer of the City on the cleaning allowance.

AWARD: The last Best offer of the City is adopted by the Panel.

Effective Date: January 1, 1990

Claya	Concurs <u></u>	Dissents _____
Timpner	Concurs _____	Dissents <u></u>

UNION ISSUE NO. 15 - SHIFT DIFFERENTIAL - ECONOMIC

CURRENT CONTRACT LANGUAGE

An afternoon shift differential of twenty (20) cent per hour will be applied to all regularly assigned shifts beginning at and after 12 o'clock noon; and a night shift differential of thirty (30) cents per hour will be applied in all regularly assigned shifts beginning at and after 4 o'clock p.m. Shift premiums will not be applied to regularly assigned "day shift" tour of duty.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER

Effective January 1, 1988 an afternoon shift differential of twenty five (25) cents per hour will be applied to all regularly assigned shifts beginning at and after 12 o'clock noon; and night shift differential of thirty five (35) cent per hour will be applied in all regularly assigned shifts beginning at and after 4 o'clock p.m. Shift premiums will not be applied to regularly assigned "day shift" tour of duty.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

The present contract provides for an afternoon shift differential of .20 per hour and a midnight shift differential of .30 per hour. The Union seeks to increase the shift differential by five cents per hour for the afternoon and midnight shifts.

The Union says this increase is sought to compensate those officers who are away from their families during what is considered the normal "prime time". (Vol 18, p. 120) and may give an incentive to higher seniority employees to choose a shift other than the day shift.

It appears that a little more than half of the external comparables have some form of shift differential. Sterling Heights pays .50 per hour for a shift differential; Roseville calculates the shift premium as 5% of the officers rates of pay and Westland provides a lump sum premium of \$395 a year for officers on the afternoon shift.

The proposed rates in the shift premium would not put the PPOA at a compensation level any higher than the internal comparables. The increase would put the PPOA on line with the premiums offered for the afternoon shift for Local 2002, SAEA and the PMEA. The PPSA has 20 cents for the afternoon shift.

CITY POSITION

The City opposes the shift premium increase, stating that unit

members overall compensation is already above any of the comparables. Two of the City units PPMA and PFFU do not have a shift differential. The City indicates the initial increased cost for patrol officers would be \$2,704 and for the midnight shift a total annual increased costs of \$3,536.00.

AWARD:

The Panel is convinced this proposal would not place an undue financial burden on the City and may improve the deniability of the late afternoon and midnight shift and the patrolman's morale. The Panel based upon the record and the Section 9 factors adopts the Union's Last Best Offer.

AWARD: The Panel awards the Union's Last Best Offer.

Effective Date: January 1, 1988.

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 16 - GRIEVANCE PROCEDURE - ECONOMIC

CURRENT CONTRACT LANGUAGE, Article VI, Section 6.4

Failure by the City to answer a grievance within the time limits specified, shall allow the grievance to be processed to the next step in the grievance procedure at the option of the Association.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective December 31, 1990 failure by the City to answer a grievance within the time limits specified, shall automatically grant the grievance and the relief requested.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

Under the current contract, the City's failure to answer a grievance within the time limit specified allows the grievance to be processed to the next step in the grievance procedure at the option of the Union (Article VI, Sec. 6.4 of Jt. Ex. 10). The Union seeks to amend the current language to become effective December 31, 1990 that if the City fails to answer a grievance within the time limits specified, shall automatically grant the grievance and relief requested.

UNION POSITION

The Union seeks to revise the current provision because the Union states the City has developed a pattern and practice of failing to respond to grievances within the time limits.

The Union states the City has in some instances not bothered to answer the grievance or request an extension of time limit, which the Union indicates it would grant. The Union has a responsibility to its membership to pursue grievances with due diligence. The Union believes if the Panel would accept its proposal it would cause the City to answer grievances in a timely fashion. The Union admits that only two external and one internal comparable contain such a similar provision as the Union proposes which it believes is necessary because of the City's labor relations atmosphere. The Union states it is willing to work with

the City on this issue; but the City remains negative on timely answers to grievance.

CITY POSITION

The Union's proposal to have a grievance and the accompanying relief requested be automatically granted is unreasonable. If the Union's proposal were adopted there would be no limitation as to what the relief requested in the grievance would be nor would there be any control on punitive damages requested, if the City failed to timely answer.

The Union stated the reason for its proposal was that its members were frustrated with untimely responses by the City. But, under the current contract provision, the Union has the option to proceed to the next step in the grievance procedure when the City does not provide a timely response. The City is concerned that if the employer representative fails to provide a timely response at any step of the grievance procedure, the grievance is granted. The first step of the grievance procedure requires a response from either a Sergeant or a Lieutenant who is a fellow MAP member as is the Union MAP grievant.

Of the 20 comparable communities 18 do not provide for a grievance to be granted if the employer fails to answer in a timely fashion. Of the City's internal units only the Firefighters Union has a provision similar to the Union's Proposal.

AWARD

It would appear that the City could become more cooperative in answering grievances. The Union proposal the Arbitrator believes

is too drastic and is unsupported by the Section 9 standards. The Panel adopts the City's Last Offer of Settlement.

AWARD: City Last Offer of Settlement

Retain current contract language and add no additional contractual provisions on this issue.

Effective Date: January 1, 1988

Claya

Concurs Claya

Dissents

Timpner

Concurs

Dissents

UNION ISSUE NO. 17 - GRIEVANCE PROCEDURE - ECONOMIC

CURRENT CONTRACT LANGUAGE, Article VI, Section 6.5H:

The expenses of the Arbitrator shall be shared equally by the parties. Each party shall make arrangements for, and pay the expenses of, witnesses who are called by them. On duty employees may be called as witnesses without loss of pay.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Effective December 31, 1990 the expenses of the Arbitrator shall be born by the losing party. Each party shall make arrangements for, and pay the expenses of, witnesses who are called by them. On duty employees may be called as witnesses without loss of pay.

CITY LAST BEST OFFER:

Retain current contract language and add no additional contractual provisions on this issue.

UNION POSITION

The Union seeks to change the current procedure of splitting the cost of arbitration because it feels the City has on numerous occasions caused certain issues and matters resolved by arbitration to be re-arbitrated. The Union states this proposal is submitted

in an effort to rectify a current problem of the City's negative attitude in dealing with the Union and its members.

CITY POSITION

The City wants the status quo of the expenses of the Arbitrator being born equally by the parties.

Among the comparables only give communities have a loser pay system. Fourteen of the comparables have a shared equally arbitration provision (C. Ex. 157) of the City's 7 Union bargaining units only PPMA has a loser pay provision.

AWARD

Based on the evidence, the Panel believes in considering the Section 9 factors that the City's offer should be adopted.

AWARD: The City's Last Best Offer is awarded.



Retain contract language and add no additional contractual provisions on this issue.



Effective Date: January 1, 1988.

CITY ISSUES

CITY ISSUE NO. 1 - GRIEVANCE PROCEDURE - NON-ECONOMIC

CURRENT CONTRACT LANGUAGE - Section 6.5, Subsection A and Subsection J (new):

Any unresolved grievance having been processed through the last step of the grievance procedure, may be submitted to arbitration by the Association.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Maintain status quo.

CITY LAST BEST OFFER:

Any unresolved grievance which involves an alleged violation of any specific article or section of this Agreement and which has been fully processed to Step 4 of this grievance procedure, may be submitted to arbitration in strict accordance with the following: (This paragraph replaces existing A). Subsections 1, 2, and 3 under A to remain as current language.

Subsection J (New):

The arbitrator shall have no authority to retain jurisdiction once an arbitration award is issued without the consent of both parties. All claims for back wages shall be limited to the amount the member otherwise should have earned less any compensation received for employment or unemployment compensation obtained subsequent to his/her removal from the City payroll if not returned by the member.

Effective Date: Date of the Arbitration Award.

CITY POSITION

The City proposes to revise Sub-Section A to require the Union to cite the specific clauses in the contract which are alleged to have been restated by the City. The purpose for this revision, as explained by Labor Relations Director Anderson during the hearing, is to make clear what issue is being addressed within the grievance.

The City also proposes to add a new Sub-Section J which would provide that the arbitrator will not have the authority to retain jurisdiction once a decision is awarded without the consent of both parties, and that all claims for back wages will be limited to the amount the member otherwise would have earned less any compensation received for employment or unemployment compensation obtained since the employee's removal from the City payroll. The City explains

the intent of the proposal to limit arbitrator's authority to retain jurisdiction is to ensure that arbitrators render a decision in the first instance.

The City admits that the internal unit City contracts are silent on the retention of jurisdiction and back-pay off sets. The PPSA is the only City internal unit of the 7 that has a contract provision which limits grievances to an alleged violation of a specific article and section of the agreement.

UNION POSITION

The Union states that Mr. Benjamin Anderson, the Director of Labor Relations, could not cite an instance where the grievance issue was not identified.

Mr. Fred Timpner, Business Agent for MAP and this PPOA unit, testified the Union always provided the specific provision of the contract, past practice or memorandum of understanding that the Union or individual was grieving. The Union maintains that the City has never indicated it was confused or unsure of the issue addressed by a particular grievance. Mr. Timpner testified (Vol. 20, p 29-30) the change sought by the City in Section 6.5 is to prohibit grievances that arise pursuant to a past practice, from a memorandum of understanding or from a previously settled grievance.

The Union states that the external comparables only West Bloomfield has a provision whereby the Arbitrator shall not have authority to retain jurisdiction.

Only four external comparables specifically require that back pay be offset by earnings and unemployment compensation. Mr.

Timpner testified that with the awards of back pay, the practice of the parties that back wages is offset by earnings and unemployment compensation.

AWARD

The Panel is not persuaded that there is a necessity or need for change regarding this issue and that based on the record evidence and with respect to the Section 9 Standards for Decisions, the Panel adopts and awards the Union's proposal of status quo.

AWARD: The Union Last Best Offer of status quo is awarded by the Panel.

Effective Date: January 1, 1988.

Claya	Concurs 	Dissents 
Timpner	Concurs 	Dissents 

CITY ISSUE NO. 2 - SENIORITY - ECONOMIC

CURRENT CONTRACT LANGUAGE - Article VII, Section 7.1:

Seniority of a new officer shall, except as otherwise provided in this Article, commence after the officer has completed a probationary period of twelve (12) months and shall be retroactive from the date of last employment as an officer in the Department. The probationary period may be extended up to an additional six (6) months. The probationary employee shall receive advance notice of such extension and the reasons therefore. The Association shall receive advance written notice of the extension of probation.

- A. Any employee who fails to successfully complete the probationary period may be terminated at the sole discretion of the Chief of Police, without recourse to the grievance procedure.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Maintain status quo.

CITY LAST BEST OFFER:

Seniority of a new officer shall, except as otherwise provided in this Article, commence after the officer has completed a probationary period of twelve (12) months after the date the officer has achieved MLEOTC (Michigan Law Enforcement Officers Training Council) certification and has been duly sworn by the Department/City. Seniority shall be retroactive to the hiring date upon successful completion of the probationary period. The probationary period may be extended up to an additional six (6) months. The probationary employee shall receive advance notice of such extension and the reasons therefore. The Association shall receive advance written notice of the extension of probation.

A. Any employee who fails to successfully complete the probationary period may be terminated at the sole discretion of the Chief of Police, without recourse to the grievance procedure.

Effective Date: Date of Arbitration Award.

CITY POSITION

The City proposes to revise Section 7.1 of Article VII to provide that the probationary period shall commence after the officer has achieved his/her MLEOTC certification and has been duly sworn by the Department. The current contract provides that the probationary period shall end 12 months from the date an officer is hired. Captain Michael Miles explained at the hearing that once an officer is hired, the officer is required to attend a three month Michigan Law Enforcement Officers Training Council program. During this three month period, the officer has no relationship with the Department or his/her supervisor. Consequently, the Department has only nine months to place the officer in several different division in order to determine his/her capabilities.

UNION POSITION

The Union states the City's expressed basis for extending the probationary period are without foundation. Captain Michael Miles testified that under the current system most of the persons that have been hired have done an exceptionally good job and have been accepted as sworn officers (Vol. 20, p. 69).

Under the current contract language the City has the option to extend an individual's probationary period for an additional six months if it feels there is a problem (a total of 18 months).

AWARD

The Panel in reviewing (C-163) finds of the 20 comparables there is only one external comparable, Farmington Hills, has a eighteen month probationary period and it begins from the date of hire. Seventeen of the external comparables have a one year (12 month period). The majority do not have an extension period beyond the probationary period. None of the internal comparable have such a lengthy probation period as now proposed by the City. The Panel is not convinced that an extension of the probation period is necessary. The Panel adopts the Union's Last Best Offer of status quo.

AWARD: The Union's Last Best Offer to maintain the status quo.

Effective Date: January 1, 1988

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

CITY ISSUE NO. 3 - EMPLOYEE RIGHTS - NON-ECONOMIC

CURRENT CONTRACT LANGUAGE - Section 12.6, Internal Investigation, Subsection A:

Internal Investigation. The following procedures shall be followed in all internal investigations conducted by the Pontiac Police Department.

- A. The employees shall be notified, in writing or orally, prior to giving any statement of the acts, either of commission or omission, which he/she is alleged to have committed by the complainant and the date and time of such acts.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Maintain status quo.

CITY LAST BEST OFFER:

The officer shall be notified, in writing or orally, prior to giving any statement of the acts, either of commission or omission, which he/she is alleged to have committed by the complainant and the date of time such acts. The supervisor who makes the notification shall be authorized to make a preliminary inquiry into the facts of incidents relating to police performance in order to determine appropriate administrative recommendations.

Effective Date: Date of Arbitration Award.

CITY POSITION

Under the current procedure, when the Department receives a complaint against an officer, the Supervisor notifies the officer of the complaint. This is as set forth in the current Section 12.6, Subsection A.

Under Department practice, if the incident arose during the same shift in which the complaint was filed, the Supervisor makes

a preliminary inquiry into the facts of the incident to determine appropriate administrative recommendations.

If, however, the complaint is filed the next day the Supervisor under the current practice, may not make any preliminary inquiry; the Supervisor has to request an internal investigation which can become prolonged and a time consuming process.

Captain Miles testified that with respect to those matters in which the Supervisor makes the preliminary inquiry, many matters are immediately resolved. For example, many citizen complaints are not well founded and upon preliminary inquiry of the officer and the officer's explanation of the facts, may be resolved with the citizen by the supervisor in a timely manner.

This initial screening process is not available where the complaint is filed the next day. Rather, the supervisor is forced to request an internal investigation from the Professional Standards Office. Captain Wayne Walli, Commander of the Professional Standards Division for the Pontiac Police Department testified that it can take weeks to address minor concerns, simply because the front line supervisor was not informed of the incident on the day it occurred.

The City believes the proposed additional language to Section 12.6 will be beneficial by allowing the Department to handle many of the citizen complaints quickly and will also allow the officer to speak with his front line supervisor informally which opportunity is not afforded to the officer unless the complaint is filed on the same day. Both Captain Miles and Captain Walli

testified that the proposed revision of Section 12.6 would not affect an officer's Miranda or Garrity rights.

UNION POSITION

The objection the Union has to this additional language is the fact that the present language was put in the contract in response to specific problems with the manner in which internal investigations were conducted by some supervisors. The Union believes the present language in the contract has assisted in remedying that problem, but the City's proposal would cause confusion.

AWARD

The Panel is in favor of resolving citizen complaints in a quicker and simpler fashion without unduly triggering an internal affairs investigation because under the present practice and language, a front line supervisor cannot inquire of an officer simply because the supervisor was not informed of the incident on the day it occurred. The Panel is of the opinion the additional language offered by the City should be adopted but with an additional assurance to the officer of his rights. The Panel based on the foregoing record evidence with respect to the Section 9 Standards for Decision makes the following award.

AWARD: The City Last Best Offer plus the additional Panel Language since this is a Non-Economic matter which shall read as follows:

The officer shall be notified, in writing or orally, prior to giving any statement of the acts, either of commission or omission, which he/she is alleged to have committed by the

complainant and the date and time of such acts. The supervisor who makes the notification shall be authorized to make a preliminary inquiry into the facts of incidents relating to police performance in order to determine appropriate administrative recommendations.

Notwithstanding the foregoing, nothing contained herein shall impede any rights that the officer has under Weingarten. (underscoring denotes Panel language)

Effective Date: Date of Arbitration Award

Claya Concurs  Dissents _____

Timpner Concurs  Dissents _____

CITY ISSUE NO. 4 - GENERAL CONDITIONS - ECONOMIC

CURRENT CONTRACT LANGUAGE - Add new Section 29.9, to Article XXIX:

None.

A. POSITION OF THE PARTIES

CITY LAST BEST OFFER:

Officers who require a light duty assignment will waive their normal seniority-chosen shift assignment and work schedule. The Chief of Police will have the right to approve the request on a case-by-case basis, using sound medical advise as recommended by a City designated physician. The officer will then be assigned a work schedule that will best meet the needs of the Department. Proper notification will be given to the employee and PPOA representative stating to the employee and PPOA representative stating reason for the change of work assignment and schedule.

UNION LAST BEST OFFER

Officers who temporarily require a light duty assignment because of on-duty injury shall not by such assignment lose their regular shift or benefits. Officers who temporarily request light duty assignments because of non-jury shall be assigned a work schedule that will

best meet the needs of the Department. Proper notification will be given to the employee and PPOA stating the reason for the change of work assignments and schedule.

CITY POSITION

The City's Last Offer of Settlement is to add a new Section to Article 29 - General Conditions, which would codify a Department practice which has been in effect for the past year. Officers who have sustained either an on-duty or off-duty injury, have been assigned, after medical approval, to a Differential Police Response Unit (DPR).

The City recognizes that the Union did not contest the value of the DPR. The Union's Last Best Offer, however, would change the current practice to have the unit staffed by officers who had sustained "off-duty" injuries.

Captain Miles testified that the program was implemented to more effectively address the uneven flow of citizen complaints, received over the phone and from walk-ins, presented to the Police Department each year.

When a complainant approaches the Department, the dispatcher determines whether a uniformed officer will make a difference at the scene and, if not, the dispatcher directs the citizen to the DPR. Under the Department's present practice the officers in DPR, who work on a day schedule either 8:00 a.m. to 4:00 p.m. or a 9:00 a.m. to 5:00 p.m. schedule, speak with the citizen regarding the crime which occurred and then prepare an Incident Report. The DPR handles a wide variety of complaints, including assault and battery, malicious destruction of property, and larcenies (XXI 77,

78). Captain Miles testified that the purposes of the DPR program, to establish preventive patrol and to decrease the high call behind figures have been met (XXI 86, 87). The units work during normal daytime business hours in order to accommodate the businesses which only operate during the day. Minor calls that arise during the evening are referred to the next day (XXI 78-79, 84).

To date, 15 officers have gone through the DPR unit (XXI 88). Presently, officers who participate in the program are those who have received an off-duty or on-duty injury and have been determined to be physically able to perform light duty work. This determination is made by the employee's physician and the City's physician. Once the physicians determine that the employee is capable of performing his regular duties full time, he/she is released for normal duties.

The officers who work in the DPR program wear plainclothes and receive the hourly rate plus a plainclothes allowance. An officer who suffers an on-duty injury also receives the shift differential, if applicable (i.e. if the employee normally works the afternoon or midnight shifts) and, if applicable, also receives Road Patrol pay. All DPR members who are required to appear in court, are released to attend the hearing. The City states that no employee loses any money or benefits. Importantly, the officers who are in this light duty position would otherwise be home either getting some pay or not being paid at all (XXI 107).

The Union expressed a concern at the hearing with respect to calling back permanently disabled employees (e.g. Officer Joel

Felt) who are on duty disability pension or retirement, to return to work in this light duty capacity, Captain Miles testified, this provision is not an attempt to cover the employees who have been determined to be permanently disabled and retired by the Pension Board. (XXII 20). Moreover, once employees are medically able to return to their normal work, they can utilize their seniority to get back on the shift which they desire.

C.Ex. 169 reveals that the vast majority of comparable communities allow for light duty work by their police officers and also allow the Department to set the work hours for light duty employees. Among the City's internal units the contracts are silent on light duty work except for 2002 which contract permits light duty work and the setting of the hours.

UNION POSITION

The City proposal proposes to treat officers the same whether the injury occurred on-duty or off-duty.

The Union counters with support for the City's program for light duty assignments for officers. However, the Union's proposal creates a distinction between officers injuries incurred on-duty, and those whose injuries occurred off-duty.

The Union particularly objects in the City's proposal that requires officers injured "on-duty" to waive their shift assignment. The City's current practice of requiring temporarily duty-disabled officers to work on the City imposed day shift is presently the subject of numerous grievances, (Vol 22, p. 36).

The program upon which the City's program is patterned

(Toledo) does not require the duty-disabled officers to work on a shift other than their regularly scheduled shift and there are a sufficient number of calls to keep them busy on their normal shifts. (Vol 22, p. 37).

The basic premise of the Union's objection is that officers who are injured in their capacity as an officer for the Cit of Pontiac should not be punished for having been hurt on the job. The Union states the result of the officer being returned to work on the day shift when he/she has used his/her seniority to obtain a shift other than the day shift is essentially punishment. The Union is concerned also that the City may use this provision to attempt to force officers who are on duty disability pension or retirement to return to work in this light duty capacity. (Vol. 22, pp 50-53).

The external comparables indicate that light duty is permitted in most municipalities. (C. Ex. 169).

The City's exhibit attempts to illustrate that most Departments set the work hours for light duty.

However, the Union exhibit demonstrates that the specific issue raised by the City's proposal waiver of shift assignment and work schedule rights is not the practice of these municipalities for an officer on light duty because of a duty connected injury.

The Union states the Union proposal appropriately balances the City's operational needs and the rights of duty-injury officers.

AWARD

The Panel is persuaded that based on the record and the Section 9 Standards for decision that the Union's Last Best Offer should be adopted.

AWARD: The Union's Last Best Offer is adopted.

Effective Date: Date of the Arbitration Award.

Claya

Concurs

Dissents

Timpner

Concurs

Dissents

CITY ISSUE NO. 5 - GENERAL LEAVE OF ABSENCE - NON-ECONOMIC

CURRENT CONTRACT LANGUAGE - Section 16.1:

How obtained. The City may, for good cause shown, grant an officer a leave of absence without pay for an period not to exceed one (1) year. No leave of absence without pay may be granted except upon the written request of the officer and notice from the City to the Association. Permission for such leave shall be set forth in writing and signed by the Chief of Police, and a copy of same shall be filed with the Personnel Department. Upon expiration of a regularly approved leave of absence without pay, the officer shall be reinstated and placed in the same numerical position on the seniority list which he/she held at the commandment of such leave.

Leaves for Association Officials. (President, Vice President, Secretary, Treasurer of P.P.O.A.). Leaves of absence without pay, of union business, of periods of more than two (2) weeks but not exceeding two (2) years will be granted without loss of seniority for employees holding an elected Association office.

A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Maintain status quo.

CITY LAST BEST OFFER.

The City may, for good cause shown, grant an officer a leave of absence without pay for a

period not to exceed six months. No absence without pay may be granted except upon the written request of the officer and notice from the city to the Association. Leaves of absence will not be granted more frequently than once during any eighteen months. Permission for such leave shall be set forth in writing and signed by the Chief of Police, and a copy of same shall be filed with the Personnel Department.

Ten days prior to expiration of a regularly approved leave of absence without pay, the officer shall request to be reinstated and shall be placed in a numerical posting on the seniority list which reflects the period of lost seniority during said unpaid leave of absence. Failure to promptly return from approved leaves of absence shall be deemed as voluntary resignation of the member after three (3) calendar days. Notice of such termination shall not be required.

Delete Section 16.2 and renumber the remaining provisions in the Article accordingly.

CITY POSITION

The City's Last offer is to modify several portions of Sec. 16.1, General Leave of Absence, and to delete Section 16.2. Currently, an officer may be granted a leave of absence without pay for a period not to exceed one year. The City's proposed revision of Section 16.1 would allow an officer to take a leave of absence without pay for a period not to exceed six months and would also provide that leaves of absence will not be granted more frequently than once during any eighteen month period.

The City is also proposing a requirement that an officer shall request in writing (within ten days prior to expiration of the approved leave of absence) to be reinstated and will not obtain any seniority while he/she is on the unpaid leave of absence. The City

also proposes to delete Section 16.2 which provides that certain Union officials would be allowed to take unpaid leaves of absence for Union business for periods of more than two weeks, but not exceeding two years without a loss of seniority.

UNION POSITION

The Union's position with respect to the City's proposed revisions of Article 16, Section 16.1 and 16.2 is to maintain the status quo. The Union states the City did not cite any abuses of the current policy or that any problems had arisen. Further, the City claims the City's proposal does not provide for contingencies which may arise where the use of leave of absence without pay might be warranted.

AWARDS

Four of the six internal units have a six month unpaid leave of absence provision. None of the internal unit contracts have a provision regarding notice prior to return. Five of the seven internal units have association leave. With regard to leaves for Association officers, it is an issue that is not specifically addressed by the majority of the external comparables. The exhibits do not address seniority while on leave.

The Panel having carefully considered the record, exhibits and Section 9 factors believe that the status quo offer of the Union is acceptable with one modification which the panel prospectively adopts for award prospectively 16.1 of the existing contract shall be changed for a period not to exceed six months.

AWARD: Status Quo for 16.2 and 16.1 except
that the first sentence of 16.1 is

modified by the Panel to read as the City requested in its Last Best Offer, namely:

The City may, for good cause shown, grant an office a leave of absence without pay for a period not to exceed six months.

Effective Date: Date of Arbitration Award

Claya	Concurs 	Dissents _____
Timpner	Concurs 	Dissents _____

CITY ISSUE NO. 7 - DRUG TESTING - ECONOMIC

CURRENT CONTRACT LANGUAGE:

None.

A. POSITION OF THE PARTIES

City Last Offer of Settlement.

See Attachment #1. Add a new Appendix B entitled Drug Policy to the contract as set forth on the attached thirteen (13) pages.

UNION LAST BEST OFFER

See Attachment #2.

BACKGROUND

The City states that in recent contract negotiations with the Police Supervisor's Unit (PPSA) the City and MAP (the same Union that represents this PPOA Unit) negotiated a detailed drug testing program. The agreement was finalized on May 8, 1991, (C. Ex. 180). the City's proposal here (Attachment #1) is identical to the MAP agreement with the city covering the Police Supervisors (PPSA) Unit.

The Union is not opposed to a drug testing program but the

Union proposes modifications to the drug testing program as contained in the current City of Pontiac-MAP (PPSA) Drug Screen Policy.

For purpose of discussion the Union's proposed objections to the City of Pontiac-PPSA Drug Screen Policy Agreement.

UNION POSITION

The Union is not opposed to a drug testing program but is opposed to the manner in which the City seeks to conduct the drug tests.

Fist of all, the Union objects to the use of the blood test in the program in that it believes it too invasive where the same result can be accomplished with a urinalysis or a breathalyzer test.

Provisions in the City's proposal which would permit access to personal information unrelated to an officer's job performance or drug screening have been deleted by the Union in its proposed drug screen policy. Additional changes were made to prevent searches and inspections of an officer's person or personal property which do not comport with due process of law. (Vol. 26, pp 78-79). Language has been changed to deal with the provisions in the City's proposal which the Union maintains would result in a circumvention of the grievance procedure if an individual happens to test positive. The Union is concerned and has proposed procedures whereby an officer may be permitted to acknowledge that he has a drug problem, without the fear of being terminated.

The Union proposal also sets forth language which requires

that, in the event that the City offers an Employee Assistance Program that the Union is permitted to review and approve the program.

CITY POSITION

The City states that the current agreement with the MAP, Police Supervisor's (PPSA) unit is a very detailed and carefully regulated drug testing policy and that procedural safeguards, testing and accuracy and appropriate testing cut-off levels are all assured.

The PPOA proposal is limited to the use of urinalysis or a breathalyzer test and would eliminate and blood tests. During the hearing, Dr. George Fischer, Toxicology Manager and Smithkline Beecham Clinical Laboratories, Inc., who will perform all of the laboratory testing services for the unit, testified that blood testing is more accurate in determining the drug and alcohol impairment of an individual. Dr. Fischer also testified blood tests are more accurate than breathalyzer tests (XXVII-12).

The record shows that the MAP, Police Supervisors Drug Policy provides that the employer may determine whether to utilize a urinalysis or blood testing procedure.

The City states the PPOA'S concern that a blood tests is "invasive" and may insulate the constitutional rights of a police officer are unfounded. In the City-PPOA drug screening policy it provides that drug tests will be based upon a "reasonable suspicion". In its post-hearing brief the City cited several U.S. Supreme Court cases that held suspicion less blood and urinalysis

testing of governmental employees who are employed in positions which could lead to injury to the public or involve the use of firearms do not violate an employee's Fourth Amendment right to be free from an unreasonable search and seizure. Testimony at the hearing established there are ways of defeating a urinalysis test and Captain Walli testified at the hearing, that police officers through their experience are aware that there are a number of ways to defeat a breathalyzer tests. The blood tests proposed by the City for alcohol testing has been medically proven to be the most effective of the three tests.

The City's proposed plan prohibits an employee's illegal use of prescription drugs. The Unions proposed policy deleted this provision. This City stresses that a prescription drug can affect a unit member's ability to effectively and safely perform his duties and therefore it is necessary to include prescription drugs within the reasonable testing procedure.

Under the City's proposed plan (which is identical with the MAP, PPOA Agreement) an officer who refuses to take the drug test would be subject to suspension (Sec. VII). The City maintains without this provision, which is absent from the Union's proposal, the drug testing policy would be pointless.

The City's drug policy testing will cover any temporary or permanent employee within the bargaining unit. This would apply to temporary officer assignments and new unit members, who have not yet been sworn. The Union's proposal would only permit drug testing policy of sworn members of the unit.

The Union's proposal has added a clause which states that the "personal lockes" and all personal effects therein of the employees are not subject to inspection for controlled substances. The City points out that these are owned by the City and located on Cit premises in the basement of the police department. Captain Walli testified the Department presently has the ability to search these lockers (XXVII-37).

The Union has proposed that if testing results are positive, an employee provided an additional interview with a laboratory doctor to confirm the patients medical history Dr. Fischer testified, under the PPOA plan and the City's proposed (identical for this unit) an employee who is about to undergo a drug test is questioned prior to the test regarding to any prescription drugs which the person is using at that time (XXVIII-8). The answers provided are placed on the chain of custody document (Id.). The information must e placed on the record "ahead of time".

There are other distinctions in the two proposed plans, which highlights an additional major concern for the Department. The adoption of the Union's proposed plan would require the Department to administer two different drug testing policies at the same time.

Chief Ellsworth and Captain Walli expressed the best procedure is one drug policy not two and that everyone be subject to the same policy.

AWARD

The Arbitrator is impressed that both parties see the need and are in favor of a drug testing program. The Arbitrator from the

record is not convinced there need be two drug policies for one Department and that based upon the record and with respect to the Section 9 Standard this Panel adopts the City's Final Offer of Settlement.

AWARD: The Panel awards the City Last Offer of Settlement New Appendix to be added to the contract.

Add a new Appendix B entitled "Drug Screen Policy to the contract as set forth on the attached thirteen (13) pages.

NOTE: Attachment 1 Appendix B Drug Screen Policy is attached to the Award.

Effective Date: Date of Arbitration Award.

Claya

Concurs 

Dissents

Timpner

Concurs _____

Dissents 

CITY ISSUE NO. 8 - INSURANCE - ECONOMIC

CURRENT CONTRACT LANGUAGE - Section 24.3:

Dental Insurance. The City shall provide a dental insurance program to all bargaining unit employees and family based on a 50-50% service co-payment, with a \$600 maximum per person per year. The above dental coverage will be improved July 1, 1983 to provide 100% to preventative and diagnostic dental care and 70% of Class I and Class II types of dental care, with maximum payment of \$800 per family member per year.

- A. Effective October 1, 1984, the City will pay full dental premiums to cover employee and their spouse at time of retirement for employees who retire on or after October 1, 1984.

- A. CITY LAST BEST OFFER:

Revise the above-referenced (Article XXIV - Insurance, Section 24.3) provision by adding a new Sub-section B to provide as follows:

B. The above dental insurance shall be subject to a one hundred (4100.00) dollar deductible per family each year.

B. UNION LAST BEST OFFER:

No deductible - maintain the status quo.

Effective Date: Date of Arbitration Award.

CITY POSITION

In 1981, the City of Pontiac became self insured with respect to dental insurance. The City provides unit members with both Class I coverage, preventative care, and Class II coverage, which covers dental problems such as extractions and minor surgery. Both are based on a 70/30 co-pay.

The City's proposal would add a one hundred (\$100) dollar deductible per family, per year for only the Class II dental coverage.

The City claims it needs some financial sharing by the employees for increasing costs of medical and dental insurance. The City argues in view of the fact that the City's current dental insurance program unit members affords them a lower co-pay provision and a higher dollar limit than most comparable communities, the \$100 deductible would be helpful.

UNION POSITION

The Union's Last Best Offer is no deductible -- maintain the status quo. The Union points out that the proposed \$100, deductible would be in addition to the employee's co-pay. The Union states this proposal should be rejected. First, none of the comparables have a deductible and co-pay. None of the internal

comparables are required to pay a deductible, in addition to the respective co-pays.

AWARD

Based on the record evidence and the applicable Section 9 factors the Panel is convinced the Union's Last Best Offer of Status Quo should be adopted.

 AWARD: The Union's Last Best Offer of Status Quo. 

Effective Date: January 1, 1988

CITY ISSUE NO. 9 - PENSION-RETIREMENT - ECONOMIC

CURRENT CONTRACT LANGUAGE - Revise Section 27.5:

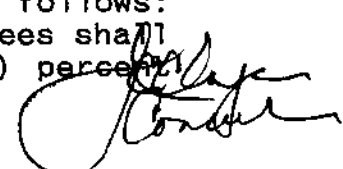
Pension Contribution. Beginning July 1, 1984, employees shall contribute 2.5% towards pension costs.


A. POSITION OF THE PARTIES

UNION LAST BEST OFFER:

Maintain status quo.

CITY LAST BEST OFFER:

Add a new Section 27.10 to Article XXVII - Pension - Retirement to provide as follows:
27.10 Effective July 1, 1990, employees shall contribute three and one-half (3.5%) percent toward pension costs. 

Effective Date: July 1, 1990. 

The Panel has determined this issue is not to be considered.

CITY ISSUE NO. 10 - OVERTIME DISTRIBUTION, SECTION 14.8 - ECONOMIC

CURRENT CONTRACT LANGUAGE - None.

A. POSITION OF THE PARTIES

CITY LAST BEST OFFER

Add the following new Section 14.8 to Article XIV - Overtime Distribution to provide as follows:

14.8 Notwithstanding any other provisions of this Agreement, the Department shall have the right to establish, schedule and operate a standard work week for all bargaining unit employees of five (5) duty days consisting of eight (8) consecutive hours. In the event the Department exercises its right under this provision to eliminate the 10 hour work day and the 4/40 work schedule, the affected employees shall work the five (5) day, eight (8) hour work schedule and receive overtime for authorized time worked in excess of eight (8) hours a day or forty (40) hours a week.

UNION LAST BEST OFFER

Add the following new Section 14.8 to Article XIV.

The Uniformed Services/Patrol Division work schedule shall continue to be a 4/40 schedule as established since 1971 with starting and ending times and overlap to be determined to best serve the needs of the Department. Notwithstanding any other provision of this Agreement, employees shall earn and use sick time on the basis of the schedule worked, (i.e. earned 8 hours per month for 8 hours employees and 10 hours per month for 10 hour employees).

Effective Date: Date of the Arbitration Award.

CITY POSITION

Under the current contract, some unit members work 4/40 schedule (i.e. four - ten hour days) while others work on a 5/8 schedule (i.e. five - eight hour days). Currently, 51 of the 122 members of the unit work a 5/8 work schedule (XXIX 95). This issue deals with the balance of the unit currently (71) able-bodied patrolmen who work on a 4/40 work schedule.

The 4/40 system was originally adopted in 1971 with a number of goals in mind; allow greater concentration of manpower during certain periods of the day; improve morale; reduce sick time use.

At the time of its adoption the City was in a strong financial position and was able to hire the additional personnel which were necessary to make the 4/40 schedule work (XXX 4). The number of personnel is down. In 1986, when Captain Miles assumed command of the Uniform Services Division, he had 90 officers - today he has 75 (XXX 5).

Captain Miles testified, not only the original goals of the 4/40 system have not been met. After analyzing the proficiency of the 4/40 system, Captain Miles (who has spent his entire career in the involved Uniformed Services Division (XXX 5) prepared a report to then Chief Reginald Turner on December 14, 1989, regarding the 4/40 system (C. Ex. 201). In part, Captain Miles' report concluded that:

1. The number of personnel has been reduced significantly.
2. The use of sick time had actually increased since the adoption of the 4/40 work schedule.
3. Productivity over the ten hours versus eight hours had not increased; and
4. Supervision has lost the ability to really observe the work of all the personnel under their command.

Captain Miles testified that each year, through the budgetary process, the Department has proposed to the City the addition of more personnel, but the City with its financial condition is not hiring additional police personnel.

Captain Miles testified that the Department took a number of steps to increase efficiency. The Department restructured the platoons, eliminated needless paper work performed by patrol

officers (DPR program is part of that effort) and tried to attack the attendance problem (inordinate sick leave use) administratively (XXX 6).

Captain Miles commented that the 4/40 work schedule reduces a Departments scheduling flexibility, creates a needless and wasteful overlap of shifts and inhibits the Departments ability to schedule personnel during peak work load times.

Under either work schedule, an officer will work 2,080 hours per year. C. Ex. 201, Exhibit C demonstrates the 5/8's schedule produces 52 additional assignment days each year and permits a greater number of police officers on duty per day.

Captain Miles testified that under the 4/40 system there are difficulties in scheduling overtime. (XXX 61, 62). An additional concern with the 4/40 system is that it affects the officer's relationship with the Police Department because unit members working on the 4/40 system are off three days a week instead of two. Captain Miles testified there is a loss of Department contract and continuity between the officer and the Department.

Another problem with the 4/40 system is the effect on sick time usage. Captain Miles testified that in 1989, the 4/40 schedule officers averages 12.43 sick days; on the 5/8 schedule it was 3.69 sick days and those who worked on both schedules averaged 8.88 days (C. Ex. 202, p 2 and 3; XXX 25). In 1990, unit members on the 4/40 schedule averaged 11.08 sick days and on the 5/8's schedule 5.10 sick days in 1990 (XXX 27).

Captain Miles testified that the 4/40 system has contributed

to the cost and deterioration of the Department's equipment and vehicles (XXX 63). Under the 4/40 system Captain Miles stated there is often a five hour overlap during which two shifts are operating at one time (XXX 50) and requires both platoons being supplied with equipment and vehicles. Under the 5/8 system unnecessary overlap between shifts would be eliminated.

This same issue occurred in the City of Pontiac and Police Supervisors Association wherein the Panel awarded the City's position.

C. Ex. 199 shows that of the 20 comparable communities, the vast majority operate under the 5/8 system. Only three other communities work in part on a 4/40 schedule. Only three other communities work in part on a 4/40 schedule.

With regard to the internal units, the firefighters work the traditional 24 hour schedule. All of the other City units work on the 5/8's schedule, in the case of PPSA, the City may place unit members on a 5/8's schedule.

UNION POSITION

The Union points out that the Patrol Division on 4/10 has consistently been under budget while the Detective Bureau on 5/8 has been over budget.

The City claims it wants to go to the 5/8 schedule because of its belief that the work schedule is more efficient (Vol 30, p 6) and results in less sick time usage. (Vol 30, p. 19). The Union with regard to the City's sick time usage study pointed out a number of basic problems with comparing Patrol Officers, 13 of whom

were absent from work with on-the-job injuries (Vol 30, pp. 82-84) against the Detectives, none of whom received any on the job injuries during the time of the study, because of the basic differences in function and responsibilities that are not dependent on whether the shift was 5/8 or 4/10 between the Patrol and Detective Divisions.

Of all the sworn personnel in the Patrol Division, only Captain Miles and PPOA President Carie were members of the department prior to the 1971 change over to the 4/10 schedule (Vol 30, p. 98).

The promise of working on a 4/10 schedule was used as a recruitment incentive (Vol. 30, p. 101) as attested to by Officer Joel Felt, who was first hired in 1976 (Vol 30, p. 111), but also that the morale of the Patrol Division would be severely impacted by a forced change, as the vast majority of the Patrol Division want to continue on the 4/10 schedule. (Vol 30, p. 101; President Caries' testimony Vol. 31, pp. 123-129).

The Union presented MAP'S Lt. Gudenburr as its witness who had been 30 years with the Southfield Police Department and in his 23 years as supervisor worked with a number of different configurations of both the 5/8 ad 4/10 schedules in the patrol division (Vol. 31, p. 3-4).

Mr. Gudenburr testified the patrol division in Southfield comprise of 90 offices was exactly 50% on 4/10 and 50% on 5/8. He testified that the day watch and midnight are on ten hour shifts, afternoon tactical and support units are on eight hour shifts. He

testified the sick time utilization over a three year period in Southfield showed virtually no difference between eight and ten hours use of sick time in the patrol division (Vol. 31, p. 7).

The union contends that sick time is more related to function and whether or not the employees work shifts at all, then it is to whether the schedule of work is a 5/8 or 4/10.

The Union states the reason there is sick time usage in Pontiac in the Patrol Division is because it is understaffed and people cannot get vacation or other leave time approved. (Vol. 30, pp. 104, 107, 109, 122).

Lt. Gudenburr went through the basis of City Exhibit 201 and 202 and it was his opinion that there is some increase in availability to work (productively) resulting in "increased manpower" switching from 4/10 to 5/8 schedule is not true.

Mr. Gudenburr states as acknowledged by Captain Miles, that any system involves a roll call, a one hour lunch (on average) and two breaks of up to 30 minutes each shift and that this will not change on a 4/10 or 5/8.

The Union's witness pointed out that going to a 5/8 system will cost more money.

AWARD

Both parties in the Hearing identified this as a vital issue. The Arbitrator recognizes the Union's equitable argument that the patrol officer has had the 4/10's since 1971 and was a part of the hiring inducement. A change from 4 working days to five will disrupt the patrolmen and families established patterns but the

Panel is convinced after full study and deliberation of the record and expert testimony offered by both sides on this issue, and consideration of the applicable Section 9 factors, that the City's Last Offer of Settlement should be adopted.

AWARD: The Panel awards the City's Last Offer of Settlement.

Add the following new Section 14.8 to Article XIV - Overtime Distribution to provide as follows:

14.8 Notwithstanding any other provisions of this Agreement, the Department shall have the right to establish, schedule and operate a standard work week for all bargaining unit employees of five (5) duty days consisting of eight (8) consecutive hours. In the event the Department exercises its right under this provision to eliminate the 10 hour work day and the 4/40 work schedule, the affected employees shall work the five (5) day, eight (8) hour work schedule and receive overtime for authorized time worked in excess of eight (8) hours a day or forty (40) hours a week.

Effective Date: Date of the Arbitration Award.

Claya

Concurs 

Dissents

Timpner

Concurs _____

Dissents 

CITY ISSUE NO. 11 - PROMOTIONS - ECONOMIC (Add Section 11.8 to Contract

CURRENT CONTRACT LANGUAGE

None.

A. POSITION OF THE PARTIES

CITY LAST BEST OFFER:

See Attachment E.

UNION LAST BEST OFFER:

No extension of the Memorandum of Understanding which expired on October 17, 1990. Maintain status quo.

CITY POSITION

In its last offer of settlement the City has proposed a new Section 11.8 to be added to Article XI - Promotions, which would incorporate the Department's affirmative action program into the contract. The City proposes to continue a Memorandum of Understanding previously negotiated between the parties.

Under the affirmative action Plan two promotional lists would be maintained. One list will contain the names of all unit members eligible by examination for promotion while the second list would contain only the name of minorities eligible for promotion. The promotional procedures would culminate in a one-for-one promotion/assignment to sergeant and detective once the percentage of minorities within the bargaining unit to above 33 1/3%.

The expired Memorandum of Understanding was entered into by the City and MAP dated November 30, 1984, which established an affirmative action program. The City proposes this in its last offer.

The August 22, 1986, Consent Judgment required the City to continue to develop and reassess its Affirmative Action Program and to emphasize recruitment from and among qualified minorities. The Consent Judgment established a procedure which included the method of promotions based on dual eligibility tests.

The Consent Judgment, by its own terms, was set to terminate either upon showing that the percentage of minorities within the Police Department equalled 42% (the minority population of the City of Pontiac at the time), or on October 17, 1989 whichever occurred first. Since the 42% goal had not been satisfied by October 17, 1989, the Consent Judgment terminated on that date.

In order to meet the City's attempt to have its total work force become racially balanced, the City seeks to attain the goal of a 45% minority within the Department.

Among the comparable communities Southfield has a 12% minority composition; the remaining 19 comparables, each has less than 6.3%.

Dr. Bendick, testified in the PPSA 312 Hearing and this testimony was admitted in this record. Dr. Bendick had testified that the Department has made progress (V-38). Twenty-two of the thirty-five employees who have less than ten years of service are minorities (V-84), Dr. Bendick testified that as an operational need, it is important for public service agencies to have a very substantial representation of the various racial and ethnic groups that then are serving.

The City states that in the other six units, five have either an affirmative action plan or non-discrimination clause.

UNION POSITION

The expired Memorandum of Understanding (expired October 17, 1989) was the product of collective bargaining between the City and MAP at a time when such agreements were thought to be legal (City Ex. 2099). The subsequently entered into Consent Judgment was

predicated entirely and only on the Memorandum of Understanding and expired with it on October 17, 1989.

The Union points out that in the PPSA case the Arbitrator Mr. Cranadier rejected the City's request to reinstitute the promotion "quotas" provided under the expired Affirmative Action Memorandum (City Ex 87, p. 89). The Union states there is no support for the City's position among any of the comparable communities.

The Union states that an attempt to create an employment ratio reflective of the community majority to minority ratio was expressly rejected as being a sufficient bases for plan in *Wyan v Jackson Board of Education*, FEP Cases 1321, 1324 (1986).

The Union argues that the City's comparables, which fail to take into account women as a minority, do not support the implementation of plan requested by the City. Rather a non-discrimination provision is most appropriate. The Union urges status quo.

AWARD.

The Panel is not persuaded that the expired Memorandum of Understanding (October 17, 1989) should against become part of the Contract, as a new Section 11.81. The Panel believes that the City ca hire minority officers and is not award that there is discrimination in the hiring of minorities to become officers. This affirmative action can be accomplished by the City and the Union cooperatively in future negotiations.

The Panel having considered the Section 9 factors and the record adopts the Union's Last Best Offer on this issue.

AWARD: The Panel awards the Last Best Offer of the Union.

No extensions of the Memorandum of Understanding which expired on October 17, 1990. Maintain status quo.

Claya

Concurs

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Concurs

Dissents

AWARD

The Agreement between the parties shall be for a term of three (3) years, January 1, 1988 through December 31, 1990. The parties stipulated that the new collective bargaining agreement shall consist of the parties prior agreement January 1, 1985 through December 31, 1987 contract (It. Ex 10) as amended by the parties agreements reached in the course of these procedures (on Residency, Reserves, and Holidays) and as amended by this Arbitration Panels awards on the issues before the Panel.

Union Issues

Award

E- 1.	Wages 1988	Union's Last Best Offer
E- 2.	Wages 1989	City's Last Offer of Settlement
E- 3.	Wages 1990	City's Last Offer of Settlement
NE-4.	Reprimands	Language Adopted by the Panel
E- 5.	Annuity Withdrawal	City's Last Offer
E- 6.	Pension Retirement (Pension Escalator)	City's Last Offer
E- 7.	Final Average Salary	City's Last Offer
E- 8.	Pension Retirement (Age, Service & Multiplier)	City's Last Offer
E- 9.	Sick Leave	City's Last Offer
E-10.	Dental Insurance	City's Last Offer
E-11.	Life Insurance	City's Last Offer
E-12.	Detective Rate of Pay	Union's Last Offer
E-13.	Plainclothes Allowance	City's Last Offer
E-14.	Cleaning Allowance	City's Last Offer
E-15.	Shift Differential	Union's Last Offer
E-16.	Grievance Procedure (Automatic Granting)	City's Last Offer
E-17.	Grievance Procedure (Loser Pays)	City's Last Offer

City Issues

Award

NE-1.	Grievance Procedure (Identification of Provisions)	Union's Last Offer
E- 2.	Seniority (Probationary Period)	Union's Last Offer
NE-3.	Internal Investigations	City's Last Best Offer Plus Panel Language
E- 4.	General Conditions	Union's Last Offer

City Issues

NE-5. Leaves of Absence
NE-6. Reprimands
E- 7. Drug Testing
E- 8. Dental Insurance Deductible
E- 9. Pension Retirement
(Employee Contribution)
E-10. Work Schedule
(Overtime Distribution)
E-11. Promotions
(Affirmative Action)

Award

Language Adopted by the Panel
Resolved in Union Issue 4 (same)
City's Last Offer
Union's Last Offer
Not an Issue before the Panel

City's Last Best Offer

Union's Last Best Offer

DATED: February 17, 1992

PANEL OF ARBITRATORS



ROBERT F. BROWNING
Impertial Arbritator and Chairperson



JOHN C. CLAYA
City Delegate



FRED TIMPNER
Union Delegate

ATTACHMENT #1

City Last Offer of Settlement on City Issue #7 - Drug Testing -
New Appendix B to be added to the contract - Economic

City Last Offer of Settlement:

Add a new Appendix B entitled Drug Screen Policy to the contract
as set forth on the attached thirteen (13) pages.

ATTACHMENT #1

APPENDIX B

Drug Screen Policy

I. PURPOSE

- A. There is sufficient evidence to conclude that use of illegal drugs, drug dependence and drug abuse seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs and narcotics by police employees is a crime in this jurisdiction, and clearly unacceptable. There are unique corruption hazards associated with drug possession and use by the police.
- B. The Police Department and the PPOA have adopted this written policy to ensure the PPOA member's fitness for duty as a condition of employment; to ensure drug tests are ordered based on reasonable and objective basis, following an established written policy and procedure; and where the employee knows testing is a requirement of employment.
- C. Purposes of this policy are as follows:
 - 1. To establish and maintain a safe, healthy working environment for PPOA members;
 - 2. To reduce the incidence of accidental injury to person or property;
 - 3. To reduce absenteeism, tardiness and poor job performance;
 - 4. To ensure the credible reputation of the City and its Police Department in its mission to serve the citizens and to protect the public; and
 - 5. To prevent liability against both the City and the PPOA members by ensuring that PPOA members can perform their duties without endangering themselves or the public.
- D. Provisions of this policy shall not necessarily supplant the disciplinary procedures as set forth in the Department's policies, procedures, Rules and Regulations.

II. DEFINITIONS

- A. Employee. All members of the Pontiac Police Officers' Association -- permanent and/or temporary.
- B. Drug Test. A urinalysis/blood test administered under approved conditions and procedures to detect drugs.
- C. Alcohol Test. Withdrawal of blood under approved conditions and procedures to detect alcohol.
- D. Reasonable Suspicion. An articulable belief that an employee uses illegal drugs drawn from specific and particularized facts and reasonable inferences drawn from those facts.

III. GENERAL RULES

- A. Department employees shall not possess any narcotic or dangerous chemical substance except in the lawful course of duty or unless prescribed by a person licensed to practice medicine.
- B. Employees who are required to take prescription medicine shall notify their immediate supervisors of the medication prescribed and the nature of the illness or injury. Any statutory defined illegal use of drugs by an employee, whether at or outside police employment, will not be tolerated.
- C. All property, owned and/or controlled by the Department is subject to inspection at any time in the presence of a Union representative and without notice as there is no expectation of privacy.
- D. Use, Possession or Sale of Illegal Drugs or Controlled Substances. The use, possession or sale of illegal drugs or controlled substances as defined in Michigan Compiled Laws Annotated 333.7212 and 333.7214, by PPOA members, when not prescribed by a licensed medical practitioner, is strictly forbidden and such use, possession or sale will subject an employee to discharge.
- E. Use or Possession of Prescription Drugs. No prescription drug shall be brought upon City controlled property by any person other than the person for whom the drug is prescribed by a licensed medical practitioner and shall be used only in the manner, combination and quantity prescribed. Any employee whose abuse of prescription drugs results in a pattern of abnormal conduct or erratic behavior including but not limited to excessive absenteeism, tardiness, indifferent job performance, poor work or is the cause of accidents to

his/her person or other persons will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, the employee will be subject to discipline up to and including discharge.

F. Use and/or Possession of Intoxicants. A member shall not purchase or consume intoxicating beverage on duty except in the performance of duty and while acting under proper and specific orders from a supervisor and not to the extent as to render the member unfit for proper and efficient duty.

1. Members while off duty shall refrain from consuming intoxicating beverages to the extent that it results in public intoxication, obnoxious or offensive behavior, which discredits them or the Department or renders the member unfit to report for his next scheduled tour of duty.
2. Any member whose abuse of intoxicants results in a pattern of abnormal conduct or erratic behavior including, but not limited to, excessive absenteeism, tardiness, indifferent job performance, poor work, or is the cause of accidents to his/her person or other persons, will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, the employee will be subject to discipline, up to and including discharge.

IV. REASONABLE SUSPICION TESTING STANDARDS

- A. The Chief, or his designee, is authorized to cause a test of an employee when there is a reasonable suspicion that the employee uses illegal drugs, prescription drugs or alcohol in violation of this policy.
- B. Reasonable suspicion that an employee uses illegal drugs, prescription drugs or alcohol in violation of this policy may be based upon among other things:
 1. Observable phenomena such as direct observation of drug use and/or the physical symptoms of being under the influence of drugs. Physical symptoms include, but are not limited to the following:
 - a. Dilated pupils, disorientation, hallucinations, prolonged lethargy, slurred speech, incoordination, unsteady gait and excessive anxiety.

2. A pattern of abnormal conduct or erratic behavior including, but not limited to excessive absenteeism, tardiness, indifferent job performance, poor work and on the job injuries or accidents.
 3. Indictment for a drug-related offense.
 4. Newly-discovered evidence that the employee has tampered with a previous urine sample and/or drug test.
- C. Drug Use Determination. The determination that an employee uses illegal drugs may be made on the basis of direct observation, confirmed results of the Department's drug testing program, the employee's own admission or other appropriate basis.

V. RECORDS REGARDING REASONABLE SUSPICION TESTING

- A. Where testing is conducted based on reasonable suspicion, the Police Chief or his designee will detail in writing the circumstances which formed the basis of the determination that reasonable suspicion exists to warrant the testing.
1. Such writing will be prepared within twenty-four (24) hours of the circumstances giving rise to reasonable suspicion.
 2. Such documentation will be retained by the Professional Standards Division in a locked, confidential file.
- B. All relevant records, documents and communications shall be prepared, transmitted and maintained in a confidential manner.

VI. SPECIFIC CONDITION TESTING

- A. The Chief of Police or his designee is authorized to cause a test of an employee for illegal drug use following an accident or unsafe practice if there is reasonable suspicion to support such testing.
- B. Employees assigned to the Crime Control Section (Drug/Narcotic Enforcement Unit or Vice Unit) shall be required to submit to a drug test at the time of appointment to the Unit and upon completion of duty assignment with the Unit.

1. Prior to accepting a special assignment (as described in VI-B above), an employee shall execute a written agreement and release stating that he/she fully consents to the drug test (as defined in VI-B above).
- C. Employees assigned to the Crime Control Section (Drug/Narcotic Enforcement Unit or Vice Unit) shall be required to submit to a drug test once every six (6) month period (March-August and September-February). All employees shall be tested at the same time.

VII. CONSEQUENCES OF REFUSAL TO PARTICIPATE IN A REQUIRED DRUG TEST

- A. To maintain the integrity of the testing program, the Police Chief, or his designee, must take disciplinary action to deal with employees who refuse to be tested. Employees who refuse to be tested shall immediately be suspended without pay pending discharge.

VIII. TESTING PROCEDURES

A. Reasonable Suspicion Testing Procedure.

1. In cases in which the Police Chief or his designee has reasonable suspicion to believe that an employee is under the influence of controlled substances or intoxicants the employee will be conveyed by the Chief of Police or his designee to a medical clinic for the collection of a urine/blood sample for testing. If possible, the employee will be accompanied by his/her Union representative.

B. Obtaining Urine/Blood Samples

1. The employee designated to give a sample must be positively identified prior to any sample being obtained.
2. The room where the sample is obtained must be private and secure with documentation maintained that the area has been searched and free of any foreign substance. An observer of the appropriate sex shall be present for direct observation to ensure the sample is from the employee and was actually passed at the time noted on the record. Specimen collection will occur in a medical setting and the procedures should not demean, embarrass or cause physical discomfort to the employee.

a. The Department may:

- 1) Control the test area to ensure that samples have not been hidden for substitution;
 - 2) Prohibit the carrying of purses, bags, luggage, briefcases or other containers into the test area;
 - 3) Prohibit the wearing of coats and/or jackets into the test area; and
 - 4) Examine the sample after it is provided for abnormalities in color, temperature or other evidence of tampering that may have occurred.
3. An interview with the employee prior to the test will serve to establish use of drugs currently taken under medical supervision.
4. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure the results match the testee. Samples shall be stored in a secured and refrigerated atmosphere until tested or delivered to the testing lab representative within forty-eight (48) hours.

C. Processing Urine/Blood Samples

1. The testing or processing phase shall consist of a two-step procedure:
 - a. Initial Screening Step, and
 - b. Confirmation Step.
2. The urine/blood sample will first be tested using a screening procedure. A specimen testing positive will undergo an additional confirmatory test. An initial positive report should not be considered positive; rather, it should be classified as a confirmation pending.
3. The confirmation procedure will be technologically different than the initial screening test. Notification of test results to the Chief of Police or his designee will be held until the confirmation test results are obtained. In those cases where the second test confirms the presence of drug or

drugs in the sample, the sample will be retained for six (6) months to allow further testing in case of dispute.

D. Chain of Possession Procedures

1. Upon arrival at the collection site, a person at the collection site shall request the individual to present some type of photographic identification.
2. Both the individual being tested and the person at the collection site will keep the specimen in view at all times prior to its being sealed and labeled.
3. The identification label will contain the date, individual's specimen control number and any other identifying information required by the laboratory. The name of the submitting party shall not be affixed to the label. The individual submitting the sample shall initial the label on the specimen bottle once it is sealed.
4. The person at the collection site will enter the identifying information on the Chain of Custody form. Both the person at the collection site and the individual being tested shall sign the Chain of Custody form.
5. The person at the collection site shall complete the appropriate chain of custody form.
6. With each transfer of possession, the chain of custody form shall be dated, signed by the individual releasing the specimen, signed by the individual accepting the specimen and the purpose for transferring possession noted. Every effort shall be made to minimize the number of persons handling specimens.
7. A person at the collection site shall arrange to ship specimens to the drug testing laboratory. The specimen(s) shall be placed in appropriate containers that are securely sealed to eliminate the possibility of tampering. Collection site personnel shall sign and date across the tape sealing the container and ensure that the chain of custody documentation is attached to each sealed container.

IX. MANDATORY DISCIPLINARY ACTION PROCEDURES.

- A. Once confirmed positive test results are received, disciplinary action shall be initiated against the affected employee. Prompt notice of impending discipline shall be given to said employee and representative(s) of the PPOA by the charging party.
- B. Negative Test Results
 1. Records of unconfirmed positive test results and negative test results will be destroyed by the testing laboratory.

X. LABORATORY ANALYSES PROCEDURES

- A. Receiving/Preparation
 1. The laboratory must be secure at all times. No unauthorized personnel shall be permitted. Upon receipt of specimens, accession personnel shall inspect packages for evidence of possible tampering and compare information on specimen bottles with that on chain of custody forms. Any direct evidence of tampering shall be reported immediately to the Professional Standards Office and shall also be noted on the chain of custody form, which must accompany all specimens during laboratory possession.
- B. Initial Test Standards
 1. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether negative or positive for these classes of drugs:

<u>Analyte</u>	SKBL Initial Test Level (ng/ml)
a. Cannabinoids	100
b. Cocaine	300
c. Opiates	300
d. Phencyclidine	25
e. Amphetamines	1000
f. Barbiturates	300/3000
g. Benzodiazepines	300
h. Methaqualone	300

i. Methadone	300
j. Propoxyphere	300
k. Alcohol	.04 mg%

2. Some specimens may be subjected to initial testing by methods other than immunoassays, where the latter are unavailable for detection of specific drugs of special concern.

C. Confirmatory Test Standards

1. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) technique. Quantitative GC/MS confirmation procedures at the following cutoff values shall be used for the following drugs:

<u>Analyte</u>	SKBL Confirmation Test Level (ng/ml)
a. Marijuana metabolite	15
b. Cocaine metabolite	150
c. Opiates	300
d. Phencyclidine	25
e. Amphetamines	500
f. Barbituates	200
g. Benzodiazepines	200
h. Methadone	200
i. Methaqualone	200
j. Propoxyphere	200
k. Alcohol	.04 mg%

2. These test levels are subject to change as advances in technology or other considerations may permit identification and quantification of these substances at lower concentrations. In the absence of an accepted quantitative GC/MS assay procedure, preference will be given to a confirmation of qualitative identification by means of full-scan GC/MS analysis and quantification by an alternate chromatographic method. All methods shall meet commonly accepted analytical standards.
3. Proper chain of custody controls shall always be enforced during confirmation testing. Authorized confirmation technicians shall sign the chain of custody forms and be responsible for each specimen to be tested. The laboratory shall include

sufficient safeguards to ensure that unauthorized personnel are prevented from gaining access to the confirmation laboratory.

XI. REPORTING RESULTS

- A. Test results shall be reported to the Chief of Police and the Professional Standards Division within five (5) working days of receipt of the specimens. These test results shall be delivered in separate envelopes.
- B. The report should contain the specimen number assigned by the submitting agency, the drug testing laboratory accession number and results of the drug tests.
 - 1. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative.
 - 2. Only specimens confirmed positive shall be reported positive for a specific drug. Results may be transmitted by various electronic means (eg teleprinters, facsimile or computer) in a manner consistent with confidentiality. It is not permitted to provide results verbally by telephone.
- C. A certified copy of the original chain of custody form signed by the laboratory director or laboratory certifying official shall be sent to the Chief of Police and the Professional Standards Division. Certified copies of all analytical results shall be available from the laboratory when requested by the Professional Standards Division.
- D. All laboratory records pertaining to a given confirmed positive urine/blood specimens shall be retained by the drug testing laboratory for a minimum of two (2) years.

XII. LONG TERM STORAGE

- A. Specimens confirmed positive shall be retained and placed in properly secured long-term frozen storage for at least 180 days. Within this 180-day period, the Department may request the laboratory to retain the specimen for an additional period of time.
 - 1. This ensures that the urine/blood specimens will be available for a possible re-test during any administrative or disciplinary proceeding. If the laboratory does not receive a request to retain

the specimen during the initial 180-day period, the specimen may be discarded.

B. Retesting Specimens

1. Should specimen reanalysis be required, the quantification of a drug or metabolite in a specimen may not be subject to the same testing level criteria that were used during the original analysis. Some analytes deteriorate or are lost during the freezing and/or storage.

C. Security

1. The laboratory facilities shall use appropriate security measures to ensure limited and/or controlled access.

XIII. SUBCONTRACTING

- A. The drug testing laboratory shall perform all work with its own personnel and equipment.

XIV. STANDARDS

A. Laboratory Facilities

1. Laboratories must comply with applicable provisions of any state licensure requirements. Accredited laboratories must have the facility and capability at the same laboratory of performing screening and confirmation tests for each drug or metabolite for which service is offered.

B. Laboratory Personnel Standards

1. The scientific director of the drug testing laboratory shall meet three (3) criteria. He/she must:
 - a. Be:
 - (1) Certified as a Laboratory Director by the state in forensic/toxicologic analysis; or
 - (2) Hold a PhD in Pharmacology, Toxicology or Analytical Chemistry.
 - b. Have at least two (2) years experience in analytic toxicology (the analysis of

biological materials for drugs of abuse) and appropriate training and/or forensic application of analytic toxicology (court testimony, research and publications in analytic toxicology of drugs of abuse, etc.).

- c. Have documented scientific qualifications comparable to those of a person certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry. The director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory.
- C. A key individual in the laboratory is the certifying scientist (who may be the Laboratory Scientific Director); this individual reviews the standards, controls specimens and quality control data together with the screening and confirmation test results. After having assured that all results are acceptable, this individual certifies the test result. The certifying scientist must have sound training in the sciences, specific training in the theory and practice of the procedures used, including the recognition of aberrant results and familiarity with quality control procedures.
- D. Supervisors of analysts must possess a BS Degree in Chemistry or at least the education and experience comparable to a Medical Technologist certified by the American Society of Clinical Pathologists, MT (ASCP), or its equivalent. These individuals also must have training in the theory and practice of the procedures used, and understanding of quality control concepts. Periodic verification of their skills must be documented.
- E. Other technicians or non-technical staff must possess the necessary training and skills for the tasks assigned. Inservice continuing education programs to meet the needs of all laboratory personnel are desirable. Personnel files must include: resume of training and experience, certification or license, if any, references, job descriptions, health records, records of performance evaluation and advancement, incident reports and results of tests for color blindness.

XV. QUALITY ASSURANCE AND QUALITY CONTROL

- A. Urine/blood drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process:
 - 1. Specimen acquisition, chain of custody, security, and reporting of results, in addition to the screening and confirmation of analytical procedures.
- B. Quality control procedures will be designed, implemented and audited to monitor the conduct of each step of the process.

XVI. DOCUMENTATION

- A. Documentation of all aspects of the testing process must be available. This documentation shall be maintained for at least two (2) years and shall include:
 - 1. Personnel files on analysts; supervisors, directors and all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; all confirmed positive test data, reports; performance records on proficiency testing; performance on accreditation inspections; and hard copies of computer-generated data.

XVII. REPORTS

- A. All test results, including screening, confirmation and quality control data must be reviewed by the certifying scientist or laboratory director before a test result is certified as accurate. The report shall identify the drugs, metabolites tested for, whether positive or negative, and the threshold concentration for each.

XVIII. INSPECTIONS

- A. The Department shall reserve the right to inspect the laboratory at any time. Contracts with laboratories, as well as for collection site services, shall permit unannounced inspections.

XIX. JUDICIAL PROCEEDINGS

- A. The laboratory must have qualified personnel available to testify in an administrative, judicial or disciplinary proceeding against a PPOA member that is based on a positive urinalysis/blood result reported by its laboratory.

ATTACHMENT #2

City Last Offer of Settlement on City Issue #11 - Article XI - Promotions - new Section 11.8 to be added to the contract

City Last Offer of Settlement:

Add the following new Section 11.8 to Article XI - Promotions to provide as follows:

11.8 In the spirit of cooperation and having a desire to bring about a police department that is truly balanced and representative of the City of Pontiac, the parties mutually agree to the following:

A. Two promotional lists may be maintained:

- i. Regular list -- This list shall include all employees who had a passing score as outlined in the collective bargaining agreement and their names shall appear in order of their total score; highest score first, next highest score following. Promotions from this list shall be made in order of placement on the list; starting at the top and going toward the bottom.
- ii. Special list -- Minorities who had a passing score as outlined in the collective bargaining agreement shall be placed on this list in addition to the regular list. They shall be placed in order of their total score; highest total score first, next highest total score following. Promotions from this lists shall be made in order of placement on the list; starting at the top and going toward the bottom.

B. Use and conditions of the two lists:

- i. While the percentage of minorities within the bargaining unit is 20% or less, the following shall apply:
 - a. Promotions to Sergeant
For each four (4) promotions from the regular list, one (1) promotion shall be made from the special list.
 - b. Promotions to Detective
For each four (4) promotions from the regular list, one (1) promotion shall be made from the special list.

- ii. While the percentage of minorities within the bargaining unit is 25% or less, but over 20%, the following shall apply:
 - a. Promotions to Sergeant
For every three (3) promotions made from the regular list, one (1) promotion shall be made from the special list.
 - b. Promotions to Detective
For every three (3) promotions made from the regular list, one (1) promotion shall be made from the special list.
- iii. While the percentage of minorities within the bargaining unit is 33 1/3% or less, but over 25%, the following shall apply:
 - a. Promotions to Sergeant
For every two (2) promotions made from the regular list, one (1) promotion shall be made from the special list.
 - b. Promotions to Detective
For every two (2) promotions made from the regular list, one (1) promotion shall be made from the special list.
- iv. While the percentage of minorities within the bargaining unit is above 33 1/3%, the following shall apply:
 - a. Promotions to Sergeant
For every one (1) promotion made from the regular list, one (1) promotion shall be made from the special list.
 - b. Promotions to Detective
For every one (1) promotion made from the regular list, one (1) promotion shall be made from the special list.
- v. All percentages are to be figured on October 17th of each year and all promotions for the following year shall be made as outlined above.
- vi. Dual lists
 - a. Notwithstanding any of the above, if any person who is on both the regular and special list is promoted from the regular list, that person shall count as a minority promotion and

shall cancel the need to promote anyone from the special list during that cycle. Example: If paragraph "B" is in effect for that year (25% or less, but over 20%) and the City decides to promote three persons and one of the top three (3) on the regular list is a minority, then no one will be promoted from the special list during this cycle of three (3).

- C. The parties agree that the definition of minorities is to include those persons who identify themselves as: Black, Spanish American, American Indian, and Oriental. Included in this definition is "Women".

Effective Date: Date of the Arbitration Award.