12/3/90

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

ARBITRATION UNDER ACT 312
(Public Act of 1969 As Amended)

In the Matter of

City of Pontiac, Employer

and

Police Supervisors Association,
Union

Pontiac, City of

MERC CASE NO. D87 L-2575

Arbitration Panel Members:

Gerald E. Granadier, Arbitration Panel Chairperson
John Claya, Employer Delegate
John Wargel, Union Delegate

AWARD OF THE ACT 312 ARBITRATION PANEL

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State of Michigan
Department of Labor
Michigan Employment Relations Commission

Act 312 Compulsory Arbitration Panel

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Pontiac Police Supervisors
Association

Labor Organization

Panel:

Gerald E. Granadier, Chairman of the Panel
John Claya, City Delegate
John Wargel, Labor Delegate

PRELIMINARY STATEMENT

These proceedings were commenced pursuant to the provisions of the Act entitled "Compulsory Arbitration of Labor Disputes, Policemen and Firemen" being Act 312 of the Public Acts of 1969, as amended, of the State of Michigan. This decision and award is made and entered pursuant to the provisions of said Act 312, as amended.

This decision and award is adopted as the decision and award of the arbitration panel hearing this matter as indicated by those members of the panel whose signatures appear after each award, issue by issue.

It appears from the record that the parties commenced bargaining, proceeded to mediation which was unsuccessful in resolving the outstanding issues, and thereafter the Pontiac

Police Supervisors Association requested Arbitration pursuant to Act 312. The City of Pontiac responded to the PPSA's Petition for Arbitration. Thereafter the PPSA, by letter, advised MERC that certain issues had not been raised by the City during negotiations or mediation and that it would place it's objections to such matters before the Arbitration Panel.

Notice of appointment as Chairman of the Panel of Arbitrators was made by letter dated, August 28, 1989. The Chairman then contacted the parties to schedule a Pre-Hearing Conference. The parties agreed to hold the conference on October 5, 1989 to set the parameters of the issues in dispute, schedule formal arbitration hearings, agendas, rules of proceedure and other matters. At this meeting the Chairman was advised by the parties that there were fifty two (52) issues unresolved. The PPSA raised it's objection to certain of the City's submitted issues in it's written answer to the petition, which the PPSA claimed had not been previously negotiated or presented to mediation. The Chairman advised the parties that because of the great number of unresolved issues that he would remand the matter to MERC for additional mediation. He so advised the Commission and pursuant thereto an additional mediation was scheduled and held. The Chairman was subsequently advised that the additional mediation was unsuccessful in resolving issues and accordingly another Pre-Hearing Conference was held on November 1, 1989. THE PPSA again renewed its

objection to certain of the City Issues as having not been part of the original negotiations or mediation. The Chairman was advised that the City had presented those issues at the second mediation and that it had reserved the right to present all its unresolved issues to arbitration. The Chairman ruled that all the City issues could be presented by the City, if it so desired, at the arbitration hearings. The PPSA objected. The Chairman advised the PPSA that it could renew its objection at the time of the hearings and that he would again rule upon its objection. (Be it noted; that the PPSA did so renew its objection and that the Chairman ruled that the City issues objected to were able to be presented and be the subject of this award).

At the Pre-Hearing Conference, held on November 1, 1989, it was determined that the issues which were unresolved in bargaining and mediation, and which the parties intended to submit to arbitration, were as follows:

THE PSSA ISSUES:

1. Non-economic

   a. Proposal #5 - Article IV Section 5
   b. Proposal #6 - Article X Sections 2 & 3
   c. Proposal #7 - Article X Delete section and number
   d. Proposal #8 - Article VI Section 1 Paragraph 1
   e. Proposal #9 - Article XI Section 8
   f. Proposal #11 - (as modified, Article X Section 3
   g. Proposal #14 - Article III Section 4
   h. Proposal #15 (Economic 5-Article VIII Section 2
   i. Proposal #16 (Economic 8-Article VIII Section 3
   j. Proposal #20 - Article VI Section 1

2. Economic

a. Proposal #2 - Article V Section 2 as amended
b. Proposal #3 - Article V Section 4 as amended
c. Proposal #5 - Article VIII Section 2 Paragraph B (See Proposal 15 - Non-Economic)
d. Proposal #6 - Article VIII Section 2 Paragraph B Sub-Paragraph 1 (b)
e. Proposal #7 - Article VIII Section 2 Paragraph H, Sub-Paragraph 1
f. Proposal #8 - Article VIII Section 3 (See Proposal #16 - Non-Economic)
g. Proposal #11 - Article VIII Section 8
h. Proposal #13 - Article VIII Section 10
i. Proposal #14 - Article VIII Section 11
j. Proposal #15, as amended - Article VIII Section 12
k. Proposal #17 - Article VIII Section 14
l. Proposal #18, as amended - Article IX - Add Paragraph C
m. Proposal #22 - Article IX Section 4 - New Paragraph A
n. Proposal #23 - Article IX Section 4 - New Paragraph on vesting (This agreed to but not off/on)
o. Proposal #24 - Article IX Section 4 - Retirement

p. Proposal #24 - Article IX - Wage Benefits - Eliminate Schedule for Sergeants Placed Immediately at "Top" Sergeants Pay
q. Proposal #26 - Article IX - Wage Increase in Each of Three Years, Each to be separate Issue - (i) 1/1/88; (ii) 1/1/89; (iii) 1/1/90
r. Proposal #27 - Article IX - Formula Improvement
s. Proposal #29 - Article VIII - New Section 12 (Cleaning Allowance)

THE CITY ISSUES:

Non-Economic:

a. Article III Grievance Procedure, Step 5 Arbitration
b. Article III Disciplinary Grievances
c. Article III Union Time Off
d. Article IV Seniority
e. Article V Special Events
f. Article V Indemnification
g. Article VI Promotions
h. Article VII Leaves of Absence
i. Article X Maintenance of Conditions
j. Article X Situations not covered

k. Article X Severability
l. Article X Adoption by Reference
m. Article X Residency
n. (New) Substance Abuse
o. (New) Entire Agreement
p. Duration Clause
q. Memorandums of Understanding

Economic:

r. 5 day - 40 hour work week (Department right to schedule)
s. Holidays
t. Cap on accrued overtime/comp time
u. Dental - $100 deductible
v. Health - $100 deductible
w. Retirement - 5% employee contribution

The parties agreed at the Pre-Hearing Conference that formal arbitration hearings would be held in the City of Pontiac on January 29, 1990 through February 2, 1990 and that exhibits would be exchanged prior to the beginning of hearings. Based upon the original estimate of formal hearing days required the parties agreed to submit their last best offers on February 10, 1990, with post hearing briefs being submitted 30 days after receipt of last transcript. The parties waived the time requirements for issuance of the award. The formal hearings were held on the above dates and on March 8, March 20, April 10, April 11, May 8, May 10, May 25 (cancelled), June 13, June 14 and June 19. Dates for submission of last best offers, submission of post hearing briefs and award were, as a result, extended. During the last few days of formal hearings it became apparent to the Panel that in order for the parties to properly respond in each of their Last Best Offers that it would be necessary for the Panel to direct each party to prepare a list of their issues. This was

done on June 19 and the following is the full and complete list of issues upon which this Panel shall issue it's award.

PONTIAC POLICE SUPERVISORS ASSOCIATION (PPSA):

Non-economic:

1. Article X - Delete Section 7 and re-number (adoption by reference)
2. Article VI entitled "Promotions" - Section 1, paragraph D, Sub-paragraph 3
3. Article X - Section 8
4. Article X - Section 3
5. Article VI - Section 1 "Promotions," paragraph E

Economic:

6. Article VIII - Section 2 - paragraph B
7. Article VIII - Section 2 - paragraph B - sub-paragraph 1 (b) - delete sub-paragraph c and d of sub-paragraph 1
8. Article VIII - Section 2 - paragraph H - sub-paragraph 1
9. Article VIII - Section 3
10. Article VIII - Section 8
11. Article VIII - Section 10
12. Article VIII - Section 12 - none now - add new language
13. Article IX - Section 4
14. Article IX - Section 4 - add new paragraph D -
15. Article IX - Wage benefits - eliminate schedule for Sergeants. Sergeants to go immediately to "Top" Sergeants pay.
16. Article IX - divide wage increase in each of three years;

    Each a separate issue:

    (i) 1/1/88 - (U13a)
    (ii) 1/1/89 - (U13b)
    (iii) 1/1/90 - (U13c)

17. Article IX - Section 2 - Amending paragraph 2 and adding new paragraph H.
18. Article VIII - adding language regarding cleaning allowance

CITY OF PONTIAC

Non-economic:

1. Article III - Grievance Procedure, Step 5, Arbitration, Subsection (a)
2. Article IV - Seniority, Section 1, Definition of Seniority, Subsection A
3. Article IV - Seniority, Section 4, Shift Assignments and Furloughs
4. Article V - Condition of Work, Section 7, Indemnification for Judgments in Civil Court Lawsuits
5. Article VI - Promotions, Section 1, Promotions and Section 2 Temporary Promotions and Memorandum of Understanding dated 2-25-85.
6. Article X - General Provisions, Section 3, Maintenance of Conditions
7. Article X - General Provisions, Section 4, Situations Not Covered by Agreement
8. Article X - General Provisions, Section 8, Residency add a new sub-section 8 to the existing section
9. Article X - General Provisions, new section to be added entitled "Entire Agreement".
10. Article X - General Provisions, Section 10, Duration and Automatic Renewal

Economic:

11. Article V - Conditions of work, Section 1, Hours and Section 2, Overtime
12. Article VIII - Fringe Benefits, Section 6, Holidays, Sub-section A
13. Article VIII - Fringe Benefits, Section 10, Dental Insurance
14. Article VIII - Fringe Benefits, Section 8, Health Insurance
15. Article IX - Wage Benefits, Section 2, Retirement Annuity Adjustment, Section 4 Retirement

STATUTORY MANDATE

Section 8 of Act 312 Provides, in part:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the

parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in Section 9..."

Section 9 of Act 312 provides:

"Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the 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 those 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 excused 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."

Section 10 of Act 312 provides:

> "A majority decision of the arbitration panel, if supported by a competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute moot, or otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute of charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration."

CASE LAW

Act 312 was before the Michigan Supreme Court in City of Detroit v. Detroit Police Officers Association, 408 Mich 10,

294 NW2d 68 (1980). An examination of that ruling makes it clear that the Court's decision was based, in large measure, on the key role which the S9 factors play in determining both: (a) the evidence to be presented and relied upon at arbitration hearings, and (b) the nature and scope of judicial review of arbitration awards.

In his opinion in the City of Detroit case, Justice Williams quoted S9 of the Act in its entirety, stating:

> "[T]he panel's decisional authority has been significantly channeled by S9 . . . that section trenchantly circumscribes the arbitral tribunal's inquiry only to those disputes including wage rates or other conditions of employment embraced by a newly proposed or amended labor agreement, and commands the panel to base its findings, opinions and order relative to these narrow disputes on the eight listed factors as applicable . . ."

On this basis, the Court held that Act 312 satisfied the "reasonably precise standards" test set forth in Osius v. St. Clair Shores, 344 Mich 693 (1956). Act 312 does not constitute an unconstitutional delegation of authority because:

> ". . . the eight factors expressly listed in S9 of the Act provide standards at least as, if not more than as, 'reasonably precise as the subject matter requires or permits' in effectuating the Act's stated purpose 'to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes.' MCL SS423.231; MSA S17.455(31). These standards must be considered by the panel in its review of both economic and non-economic issues. In its resolution on non-economic issues, the panel 'shall base its findings, opinions and order upon the following factors, as applicable, MCL S423.239; MSA S17.45(39) (Emphasis

> supplied). See MCL S423.238; MSA S17.455(38). The findings, opinions and order as to all other issues (i.e., non-economic issues) 'shall be based upon the applicable factors prescribed in S9.' (Emphasis supplied). When these eight specific S9 factors are coupled with the S8 mandate that '[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in S9, MCL S423.238; MSA S17.455(38) (Emphasis supplied)', the sufficiency of these standards is even more patent."

After ruling that Act 312 is constitutional, Justice Williams then considered the second major issue in the City of Detroit case; that is, whether the arbitration award issued therein should be enforced. In this discussion, the critical importance of the S9 factors, as well as the interdependence of S8, 9 and 12 of the Act was again stressed:

> "[A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed S9 factors, as applicable.
>
> . . . Construing SS9 and 12 together then, our review must find that the arbitration panel did indeed base its findings, opinion or order upon competent, material and substantial evidence relating to the applicable S9 factors. Cf Caso v. Coffey, 41 NY2d 153, 158, 391 NW2d 88, 91, 359 NE2d 683, 686 (1976). In other words, the order of the panel must reflect the applicable factors and the evidence establishing those factors must be competent, material and substantial evidence on the whole record. It is only through this judicial inquiry into a panel's adherence to the applicable S9 factors in fashioning its award that effectuation can be given to the legislative directive that such awards be

> substantiated by evidence of, and emanate from consideration of, the applicable S9 factors."

Justice Williams did not hold that the Arbitration Panel must give all of the S9 factors equal weight. Rather, it is for the Arbitration Panel to decide the relative importance "under the singular facts of a case although, of course, all 'applicable' factors must be considered."

> "[T]he Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in SS8 and 9. In effect then, the S9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in S9."

In the City of Detroit case, the Court found that the Arbitration Panel's economic award was supported by competent, material and substantial evidence on the whole record relating to the factors set forth in S9 of the Act. On the other hand, in the Court's view, the non-economic award was defective because the Arbitration Panel "did not consider all the applicable S9 factors in making its award, as Act 312 mandates."

> ". . . pro forma deference to the requirements of SS8 and 9 of the Act will not do. These sections, by their terms, require rigid adherence . . . "

The City of Detroit decision mandates that the focus of the decision-making process in an Act 312 proceeding must be the factors enumerated in Section 9 thereof, and the decision of this arbitration Panel must be based upon

competent, material and substantial evidence on the record considered as a whole.

DECISION

During these proceedings considerable testimony (fourteen volumes of transcripts of approximately 2,000 pages), numerous exhibits, totaling several thousand pages, and able arguments were presented on the many issues before the panel. In addition the panel was presented prior arbitration awards which the parties believed would impact upon the issues. We have considered the mandate of the statute and the case law precedent, and base our decision on the applicable factors set forth in Section 9 of Act 312, as amended, and upon all competent, material, and substantial evidence on the whole record.

The parties jointly submitted to the panel evidence of comparable communities which they believed were to be appropriately considered in determining similar and dissimilar relationships to the City of Pontiac. Those joint comparables are as follows:

Bloomfield Twp.	Royal Oak
Canton Twp.	Shelby Township
Clinton Twp.	Southfield
Dearborn	St. Clair Shores
Dearborn Hts.	Sterling Hgts.
Farmington Hills	Taylor
Lincoln Park	Troy
Livonia	W. Bloomfield
Redford Twp.	Waterford Twp.
Roseville	Westland

In addition the parties introduced into evidence the labor agreements of internal (City of Pontiac) comparables

as follows:

Pontiac Professional Management Association
Local 2002
Supervisory & Administration Employees Association
Pontiac Fire Fighters Association
Pontiac Municipal Employees Association
Michigan Association of Police

The parties compared wages, hours, conditions of employment, population, land area, department composition, officers per square mile, officers per capita, state equalized valuation, per capita state equalized valuation, crime statistics, offenses per officer, taxes, per capita income, housing (median home value and households per square mile) and median household income, pension contributions and withdrawals by employers and employees, final average salary inclusions and multipliers, residency, departmental racial composition, promotions, grievance matters, sick leave and bank and payout, funeral leave, insurance, both health and dental, preparation time, arbitration proceedure, cleaning allowance, seniority, affirmative action program, holiday time off and duration and automatic renewal of contracts, in addition numerous other important and relevant matters were likewise presented to the Panel. The panel gave consideration to this voluminous matter.

Testimony and evidence was introduced relative to the current economic climate, and the City of Pontiac's ability to pay the requested economic increases, actuarial and other general matters relating to the economics and history, both past, present and future of the City of Pontiac and its

command officers and other employees.

Subsequent to the formal hearings and generally within the time constraints set by the Panel and the parties, the transcripts were received, the last best offers were submitted and the briefs were submitted. The Panel studied all the material submitted and held executive sessions on October 12, 23 and 24, and November 2, 1990 to review and discuss its positions and prepare to draft this decision and award.

AWARD

At the first session of the formal arbitration hearings the parties stipulated that the new collective bargaining agreement would consist of the prior agreement as modified by the tentative agreements previously entered into and the modifications as set forth hereinafter in this arbitration award.

The Employer and Labor Delegates requested that they be permitted to accept or reject the awards hereinafter set forth on an individual issue by issue basis. The Arbitration Panel determined that the members may do so by affixing their signature after the award on each issue and indicating the acceptance or rejection of each issue.

It would be redundant to set forth the arguments and evidence in detail introduced by the parties on each of the issues hereinafter set forth. The parties brilliantly propounded their positions in great detail at the hearings

and in their briefs. The Panel in each and every instance carefully, judiciously and conscientiously studied and reviewed all the materials produced and presented. The award will in brief discuss the positions of the parties. Accordingly the following constitutes it Award on each issue:

Union Issues - Non - Economic

1. "Adoption by Reference" Article X - Section 7 of current collective bargaining agreement. (See page 39)

The Union Last Best Offer proposed as follows:

> "Delete Section 7 from Article X p.39 of the collective bargaining agreement. Renumber the rest of the contract provisions as follows:
> Section 8 becomes Section 7
> Section 9 becomes Section 8
> Section 10 becomes Section 9"

The City Last Best Offer proposed as follows:

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

Union Position -

The Union proposes to have this section of the collective bargaining agreement deleted to prevent the City from incorporating provisions or new language into the contract that they otherwise would not be able to include in the contract. The adoption by reference clause permits legislating by the city council of provisions into the collective bargaining agreement without any bargaining between the parties. Such a clause would result in unilateral actions by the City with regard to the working

conditions and compensation of the officers affected by the agreement.

City Position -

The City's position is consistant with the agreements between the City and other City bargaining units. Of the six other City units, four have "adoption by reference" provisions which are similar or identical to the provision at issue. There are many matters set forth in the City's Charter, Ordinances and Resolutions. The City's rebuttal to the Union position is that the Union seeks the elimination of City-wide policies and procedures which have been in place for many years. The Union, instead of suggesting any particular problem, simply demands the wholesale elimination of all such matters. The failure to identify (and submit any evidence in support of its position) any legitimate concern, underscores the invalidity of such a proposal.

AWARD

The Panel having given due consideration to the parties concerns as set forth in their briefs, testimony and exhibits and all the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record makes the following award on this issue:

Article X, Section 7 shall provide: The parties further agree that all provisions of the City Charter, Ordinances and Resolutions of the City Council, as amended from time to time, relating to the working conditions and

compensation of officers are incorporated herein by reference and made a part hereof the same extent as if they were specifically set forth, provided, however, that any provision amending the City Charter or Ordinance or Resolution of the City Council affecting working conditions and/or compensation of officers shall be grievable as provided herein, and no effect shall be given to such Amendment to the City Charter or Ordinance or Resolution until the grievance is resolved.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT _____

2. "Promotions" Article VI - Section 1 - Sub-section D3 of current collective bargaining agreement (see pgs. 21-22)

The Union Last Best Offer proposed as follows:

> "Promotions from the eligible list shall be made in order to placement on the list: starting at the top and going toward the bottom in descending order. Each eligible list shall remain in effect for a period of two (2) years unless sooner exhausted. An eligible list for each rank shall be maintained on a continuous basis so that any existing vacancy may be filled without any undue delay. (Except as otherwise amended, modified, or changed by a Memorandum of Understanding)."

The City Last Best Offer proposed as follows:

> "Maintain the status quo." The City issue relating to Affirmative Action (Non-Economic #5) shall be discussed and determined separately under the general heading of City Issues.

Union Position -

Under the current promotion system, promotions from the eligibility list are made subject to the Chief of Police's discretion and potential arbitrary selection from the top three persons on the list. It is possible under the current system, that a person could rank in the top three on the eligibility list for several two year periods and never be selected for promotion.

Union's proposal would give the officers more faith in the City and its management policies by eliminating the politics and favoritism that results when placing unbridled discretion in one individual and would promote a stable and harmonious relationship between the City and its supervisory personnel.

City Position -

The City maintains that the Union proposal is without support among the comparable communities. That of those communities which maintain a promotion list i.e. Canton Township, Dearborn, Farmington Hills, Lincoln Park, St. Clair Shores, Taylor and Troy, only two, Canton Township and Lincoln Park, require that the top person on the promotion list be selected when a promotion is made. Both Taylor and Waterford Township allow the Department to select from three

choices on the list. With regard to the internal comparables, examination reveals that they are consistant with the procedure presently used for PPSA members. In all the other City units, promotions are based on a promotion list. Currently, both the PPSA, and the PPMA allow the City to choose among the top three candidates on the promotion list.

AWARD

The Panel is persuaded that the City's proposal to maintain the status quo is supported by the competent, material and substantial evidence on the whole record and that with the deletion of the bracketed sentence "Except as otherwise amended, modified or changed by a Memorandum of Understanding" and having given due consideration to the applicable Section 9 Factors, the Panel awards the City's proposal to maintain the status quo on this issue.

EFFECTIVE DATE: Date of this award

ACCEPT _____

ACCEPT _____

REJECT _____

3. "Residency" Article X - Section 8 of current collective bargaining agreement (See pgs 39-41).

This is also the City of Pontiac non-economic issue number 8 - this award shall decide both the Union issue

number 3 and the City issue number 8.

The Union Last Best Offer on the issue of Residency proposed as follows:

"Delete current language Article X, Section 8, Pages 39, 40 and 41. Add new Article X, Section 8:

> Employees covered by this Agreement who were hired by the City prior to November 30, 1984 may reside anywhere within the County of Oakland.
>
> Employees covered by this Agreement who were hired by the City of Pontiac on or after November 30, 1984 must, as a condition of continued employment, maintain residency within the City of Pontiac."

The City Last Best Offer on the issue of Residency proposed as follows:

"Add a new paragraph 8 as follows:

> 8. Once a member establishes residence within the City of Pontiac, he/she must remain a resident of the City of Pontiac."

Union Position -

The Union explains that only persons in the rank of officer or detective for a period of 4 years are eligible to seek promotion into the ranks of the PPSA. The PPOA (the unit from which those officers or detectives come) contract contains a residency provision which states:

> As of November 30, 1984, all new employees hired must become residents within twelve (12) months from the date of hire and remain residents thereafter. Upon a specific finding that the interests of the City and its residents would be best served in a given case by granting relief from this section, 5 members of the City

> Council, subject to the Mayoral veto contained in Section 3.112(f), may grant appropriate relief.

In 1986, the City took the position that once an officer hired before November 30, 1984 moved into the City of Pontiac he/she had to thereafter remain a resident of Pontiac. The Union maintains that this interpretation was soundly rejected by Arbitrator George Roumell, Jr. in the so-called Napier Residency arbitration. Rather, Arbitrator Roumell decided that any officer hired before November 30, 1984 was exempt from the city residency requirement.

Paragraph 7 of the expired collective bargaining agreement between the PPSA and the City provides that new members of the bargaining unit must satisfy the residency requirement, unless the collective bargaining agreement of the unit from which they were promoted provides an exception. As Arbitrator Roumell held, the PPOA contract does indeed provide such an exception. However, the City's refusal to accept this provision has resulted in grievances and litigation.

This set of circumstances led to the proposals presented by the parties in this arbitration. The Union maintains it's proposal is consistent with the original intent of the parties when they negotiated the expired contract and with the Roumell arbitration award.

The PPSA proposal provides consistency to officers as they are promoted through the ranks. Any officer employed before November 30, 1984 knows and can expect that they can

live anywhere in Oakland County throughout their Pontiac police career. Conversely, any officer hired after November 30, 1984 knows and can expect that they must live in the City in order to enjoy continued employment in the Pontiac Police Department.

The Union further states that consistency is essential to maintaining the police corp. Testimony before the Panel reflected that, since implementation of the residency requirements, five of seven officers who have resigned, resigned expressly because of the requirements. Of those seven officers who resigned, four were minority group members.

With respect to the comparables the Union indicates that of the twenty comparables only two have a requirement of residency within the municipalities limits. Those two, consistent with the PPSA proposal, provide exceptions for long term employees. The other collective bargaining units in the City, specifically including the firefighters which recently ratified a new agreement with the City, have residency provisions similar to that proposed by the PPSA.

City Position -

The City responds to the Union proposal maintaining that the evidence does not support the Union's position. Stating that the comparable communities, reveal that nine of the comparable communities currently have residency clauses within their collective bargaining agreements. Of those nine, only Roseville allows for a geographic limit on

residency nearly as broad as that requested by the Union in this case. The agreements of the other eight comparable communities, with residency clauses, reveal that the City of Dearborn Heights requires residency within that City, Livonia requires residency within the City limits, the Township of Redford requires residency within Township borders, Shelby Township likewise requires residency for a limited period of time within Township borders, while West Bloomfield Township, St. Clair Shores, and Farmington Hills all require residency within a specified radius of that community's police headquarters or Township center. None of these geographical limits are near the size of Oakland County.

Each of the other City units have a residency clause which requires residency within the City of Pontiac. The Union's proposal would vastly deviate from the practice currently in place within the City.

Examination of the Union Last Best Offer reveals that it ignores the "equities" involved in residency clauses. These equities were discussed by Arbitrator George Roumell in an arbitration case between the City of Pontiac and the Michigan Association of Police. In his decision, Arbitrator Roumell recognized the "equities" which the Act 312 Arbitration Panel was faced with in promulgating the residency provisions currently in effect between the parties. In discussing the Act 312 Panel's duties, Arbitrator Roumell explained "the task of the Panel in that

case as to the residency issue was to construct a provision within the new agreement that took into consideration the fact that the citizens of Pontiac had "spoken," clearly coming out in favor of requiring City employees to be City residents. At the same time, the Panel had to be concerned with the "equities" involved, particularly the hardships that would work on those officers who at the time of the adoption of the Charter lived outside the City limits."

In this case, the Union's proposal ignores the inequities of an arbitrary grandfather clause. Specifically, the Union's proposal does not take into consideration those officers who are homeowners currently residing outside the City limits. Unlike the Union's proposal, the current contractual provision protects such employees, up to the time when they choose to relocate. Consequently, the current contractual provision protects the City's interest in maintaining residency, while recognizing the hardship on unit employees which would result in requiring unit members to sell their current homes and move within City limits. The City further states that the communities of Farmington Hills and West Bloomfield Township recognize such hardships, while the City of Livonia also grants a waiver for particular hardships.

The current contractual language also recognized that hardship involved when an employee's spouse is subject to a mandatory residence clause, and the possible hardship for an officer who intends to retire. Both the communities and

Dearborn Heights and Livonia have collective bargaining agreements which accommodate a unit member anticipating retirement.

Finally, the current language recognizes that the pool of potential unit members (i.e., Pontiac Police Officers) may be subject to different residency requirements than command unit members. In its' brief the City cites and quotes various renowned experts who propound the opinion that police departments cannot function effectively in today's society unless their members are totally involved in the community's life, participate intimately in the community's activities and, hence, are thoroughly and completely interwoven into the community fabric.

Clearly, having police officers live in the City effectively increases the City's law enforcement ability. This is true whether the residency requirement is imposed on patrol officers or command unit employees. Certainly, the loyalty to the City of command developed by a residency requirement is extremely important for command unit members. Since patrol officers follow the orders of command unit members, it is necessary that this sense of loyalty be imparted to patrol officers by their supervisors. Additionally, the deterrent effect is equally as effective whether the officer is a supervisor or patrol officer. Consequently, since the Union's proposal would severly dilute the advantageous benefits of the current residency clause, the Union's proposal must be rejected.

The City Last Best Offer on the residency issue seeks to maintain the current contractual language, and to clarify that language with an additional paragraph stating that once a member establishes residence within the City of Pontiac, he/she must remain a resident of the City of Pontiac. While it is the City's position that the proposed new language is already implicitly stated within the terms of the City's Charter provision and the current collective bargaining agreement, the Union's disagreement with this position mandates a clarification.

Once an otherwise exempt officer has chosen to reside within the City of Pontiac, it is clearly a benefit to the City and its residents that the officer remain in the City. Although most communities have not specifically addressed this particular issue in their collective bargaining agreements, West Bloomfield Township has recognized the need for such a clause.

Of the six other City units, four require its members to maintain residence within the City once they are residing within City limits, regardless of a prior exemption.

The City states that its position is supported by an Arbitration decision involving the interpretation of the residency clause in the PMEA contract. The specific clause interpreted provides that:

> Within the spirt of the City Charter, it is understood that any employee appointed or hired on or before May 2, 1982, who is a resident on the date of approval of this agreement by both parties, or who becomes a

> resident on or after said date, must comply with the residency requirement of the City Charter.

Interpreting this provision, which is similar to the provisions of the current agreement with the command unit, in light of the City Charter's residency provision which was incorporated into the agreement, the Arbitrator found that the agreement required that those employees who were hired on or before May 2, 1982 "who were residents of the City at that time" or became a resident on or after said date must be a resident in order to continue employment with the City of Pontiac."

In his decision the Arbitrator discussed the history of the City's Charter provision on residency, the Act 312 opinion discussed earlier, as well as the bargaining history on this issue involving other City bargaining units, including the command unit. In this regard the Arbitrator noted that in October 1985, a petition signed by representatives of four of the City's unions was submitted to the City Council. The petition discussed the Union's belief that the provisions of paragraph 3 of the PMEA provision was unfair. After discussing the specific contentions of the petition the Arbitrator concluded:

> This (i.e., the petition) suggests that the Union leadership of the various unions, including the PMEA, concluded that the City's interpretation of Paragraph 3, that employees on or before May 2, 1982, could not move in and out of the City without losing their job, was correct. Id. at 24.

It is clear, therefore, that even the City's Unions believe

that the current contractual language mandates the position sought to be clarified by the City.

The City further discussed in its brief the Union's attempts to rebut the City's position with several unsubstantiated and irrelevant claims. First, the Union argues that the Arbitration Award issued by the Arbitrator discussed above, between the City of Pontiac and the Michigan Association of Police, somehow establishes that there had been a prior ruling holding that command unit members, once in the City of Pontiac, are not required to stay there. Examination of the Arbitrator's decision indicates that the Union's position is baseless. The Arbitration Award involved Officer Napier, an officer who was a resident of the City of Pontiac at the time the City adopted its Charter provision as well as at the time the Michigan Association of Police negotiated a residency clause within their collective bargaining agreement. Sometime after adoption of the Charter provision and collective bargaining agreement, Officer Napier sought to move outside of the City's borders. At arbitration, the Union argued that the Charter provision did not apply to employees hired before its effective date, and that the collective bargaining agreement provided an exception for employees hired before November 30, 1984. The relevant provision in the Michigan Association of Police collective bargaining agreement provides:

As of November 30, 1984, all new employees

> hired must become and be residents within 12 months from the date of hire and remain residents thereafter. Upon a specific finding that the interests of the City and its residents would be best served in a given case by granting relief from this section, five members of the City Council, subject to the Mayoral veto contained in Section 3.112(f) may grant appropriate relief (U.Ex.79,p.17).

Although the Arbitrator upheld Officer Napier's grievance, he did so distinguishing the terms of the MAP's collective bargaining agreement with those contained in the current collective bargaining agreement for unit members. Specifically, the Arbitrator referring to the Act 312 Award upon which the current residency provisions are based, explained:

> The Panel did, however, explicitly address the subject with which this Arbitrator is now concerned, namely, the residency requirement for existing employees who are already City residents. The Panel stated:
>
> > Within the spirit of this opinion, it must be made clear that any command officer who as of the date of this award lives in Pontiac, must comply with the Charter effective May 3, 1982.
>
> That statement reflects the conclusion by the Panel that the "equities" behind the exemption from the residency requirement for those who had established residency outside the City, did not apply to those officers who were already residents. The Panel's Award stated that at paragraph 4, "any officer presently residing within the City must comply with the Charter."

Moreover, it is undisputed that the provision in the MAP contract did not incorporate the Charter provision. The

language covering the instant unit members does incorporate that provision.

AWARD

This Arbitrator is convinced that the City's interpretation of the prior arbitration awards, hereinabove cited and the relevant portions thereof set forth, is correct. The Panel is convinced that language is required to be added to the existing contract provisions which shall, in the future, resolve the previously litigated and grieved provisions. Accordingly, having given due consideration to the applicable section 9 factors, to the parties positions and having examined all the testimony, exhibits and briefs and all the competent, material and substantial evidence on the whole record the Panel makes the following award on this issue (being Union Issue No. 3 and City Issue No. 8).

Article X, Section 8, Sub-section 8 shall be added to the existing contract and shall provide as follows:

> 8. Except for the exemptions provided above, once an employee, covered by this agreement, establishes residence within the City of Pontiac, he/she must, as a condition of continued employment, remain a resident of the City of Pontiac.

EFFECTIVE DATE: Date of this award

ACCEPT _____

ACCEPT _____

REJECT _____

4. "Maintenance of Conditions" Article X, Section 3 of current Collective Bargaining Agreement (see pg. 38).

The Union in its Last Best Offer withdrew its demand for any modification or amendment to the current contract on this issue.

AWARD

Accordingly, the Panel makes no award on this withdrawn issue and the status quo remains in effect.

EFFECTIVE DATE: Date of this award

ACCEPT _____

ACCEPT _____

ACCEPT _____

5. "Promotions" Article VI - Section 1, Sub-Paragraph F, of current collective bargaining agreement (See pg. 22)

The Union in its Last Best Offer withdrew its demand for any modification or amendment to the current contract on this issue.

AWARD

Accordingly, the Panel makes no award on this withdrawn issue and the status quo remains in effect.

EFFECTIVE DATE: Date of this award

ACCEPT _____

ACCEPT _____

ACCEPT _____

Union Issues - Economic

6. "Sick Leave Accumulation" - Article VIII, Section 2, Sub-paragraph 13 of current collective bargaining agreement (See pg. 26)

The Union Last Best Offer proposed as follows:

> "Effective Date of Award
> B. Employees may accumulate two hundred (200) days of sick leave in their primary bank. Rest of Section and Article VIII to remain unchanged."

The City Last Best Offer proposed that the current contract language be retained and that no modification be made in the number of accumulated days in the primary sick bank.

Union Position -

The Union contends that sick leave accumulation provides an incentive for employees to minimize time taken off due to illness, and provides uniformity of compensation among employees by ultimately paying those who could have taken time off, but worked instead.

The Union's proposal to increase its primary bank sick leave accumulation from 150 days to 200 days, it states will bring the PPSA in line with other unions within the City. The Union indicates it chose the primary sick leave bank to equalize this unit with the other city units because some of the other city units, the Pontiac Firefighters, for example, include overtime in their final average compensation, whereas the PPSA does not. Since all of the members of PPSA do not have an equal opportunity to earn

overtime, but all have an equal opportunity to accrue the same amount of sick time, the manner chosen to remain on par with other units was the most logical.

The Union maintains that the City did not present any evidence to refute the feasibility or underlying reasons for the Union's proposal, excepting, however, that the increase in the number of days in the primary bank will result in extra costs which it cannot afford, which the Union states are misleading. It further contends that the City's own exhibit shows that eleven of the comparable cities have either at least 200 days of accumulated sick time or no cap at all. Two other comparable cities have a system of accumulation which either permits 200 days of accumulated sick time for long term employees or a bonus for accumulations in excess of 200 days.

City Position-

The City maintains that there is no support in the record for the Union's proposed increase in the number of days accumulated in the primary sick leave bank from 150 days to 200 days. The City states that the current cap on sick leave accumulation in the primary bank of 150 days is completely consistent with the practice within the comparable communities. Nine of the comparable communities either do not accumulate sick leave days at all, or have a maximum sick leave accumulation less than the 150 days provided to unit members. Moreover, of those comparable communities who provide sick leave accumulation in excess of

150 days, many have a percentage payout of sick leave upon retirement which is less than that provided to unit members. Thus, for example, while Dearborn has a maximum sick leave accumulation of 250 days, the percentage payout of sick leave accumulated at the time of retirement is 50% of the accumulated days up to a maximum of 60 days. Similarly, while Livonia does not have a cap on the maximum number of sick leave days which may be accumulated, for unit members hired after December 1, 1983, the percentage payout on sick leave at retirement is 100 days of sick leave at 60% of pay. Likewise, while St. Clair Shores does not have a cap on maximum sick leave accumulation, it does have a limit on the percentage paid out upon retirement. Only four with a specified sick leave cap actually compensate their command officers for a greater number of days than the City of Pontiac. Consequently, it is clear that the current practice is consistent with that available in the comparable communities.

The 150 day limit on sick leave accumulation in the primary bank is also consistent with the practice in other City units. Of the six other City units, four have a cap on the maximum sick leave accumulation of 150 days or less. Three of the other City units have maximum days sick leave payout at retirement of 75 days or less.

The City further contends that an analysis of the cost of the Union's offer on this issue indicates that it is prohibitive. The cost of increasing the number of sick

leave days a unit member may accumulate in the primary bank from 150 to 200 days will cost the City $138,549. This increased cost represents the actual cost to the City in paying out the compensation for the additional 50 days of sick leave accumulated.

Additional significant costs would also be incurred since the sick leave payouts are included in an employee's final average compensation for purposes of determining the retirement benefit. The increased cost to the City for increasing the maximum number of days in the primary sick leave bank, which are then considered in final average compensation, would cost the City an additional 1.84% of payroll, and create an unfunded liability of $308,312. This figure assumes no change in the valuation of the primary sick bank and no monetary value placed on accumulated sick leave in the secondary sick leave bank.

Similarly, there is no justification for the Union's last offer of placing a monetary value of 25% on the accrued sick leave in the secondary sick leave bank for unit members.

AWARD

The Panel is persuaded that the City's proposal to retain the current contractual language is supported by the competent material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors, the Panel awards the City's proposal to retain the current contractual language on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT

ACCEPT

REJECT

7. "Secondary Sick Bank" - Article VII, Section 2, Paragraph B, Sub-paragraph 1 (b)(c)(d) of current collective bargaining agreement (See pg 27)

> The Union Last Best Offer proposed as follows: "Effective date 01/01/88 (b) Sick leave accrual in the secondary bank will have a monetary value at twenty-five (25%) percent as shown on the records of the Personnel Department. The monetary value will be figured the same as the Primary Sick Bank. Delete: Sub-paragraphs (c) and (d)."

The City Last Best Offer proposed that the current contract language be retained and neither add nor substract any contractual provisions on this issue.

Union Position -

The Union position states that it has presented this proposal to remain on parity with other unions within the City, which receive a monetary value for their sick leave secondary bank. The Union is seeking to have the sick leave secondary bank given a monetary value of 25%. The Union contends that the City did not present any evidence to rebut the Union's proposal, except its claim of inability to pay. The Union points to the current Firefighters contract as

having the same provision as herein sought.

City Position -

The City maintains that the Union's offer with regard to the secondary leave bank is without support among either the comparable communities or other City units.

Under the Union's proposal, unit members would be entitled to an uncapped source of compensation. Under both the current agreement and the Union's proposal, there is no cap on the amount of sick leave bank which may be accumulated under the secondary bank. Additionally, under the agreement sick leave days are accrued on the basis of one work day for each completed month of service.

The "uncapped" method of sick day compensation is without support in the comparable communities. Five of the 20 comparable communities do not have a cap on the number of sick leave days which may be accumulated, all but two of those communities, Bloomfield Twp. and Clinton Twp, place a limit on the number of days or hours for which compensation may be received. The 15 remaining comparable communities all place a limit on the number of sick leave days which may be accumulated. Compensating unit members based on the number of days in the secondary leave bank is a benefit virtually unknown among the comparable communities.

With the exception of Bloomfield Twp. and Clinton Twp. all of the comparable communities have a limit on the number of sick leave days for which payout is available at retirement. The City of Pontiac's 75 day limit on payout at

retirement is greater or equal to the maximum number of days for sick leave payout at retirement provided by 12 of the 18 comparable communities providing such a benefit.

The Union's offer is without support in the other City units, only one allows for a percentage paid of sick leave accumulation in a secondary sick leave bank. The actual maximum number of days of sick leave payout available at retirement for unit members is equal to or greater than that available to members of three of the other City units.

The cost of the Union's proposal on the secondary sick leave bank is also extremely high. Based on the 25% payout now proposed, the City would incur an additional liability of $26,222.04 each year that the secondary bank is awarded a monetary value of 25%.

AWARD

The Panel is persuaded that the City's proposal to retain the current contract language and neither add nor subtract any contractual provisions is supported by the competent, material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors the Panel awards the City's proposal to retain the current and the contractual language on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT John Wargel

8. "Sick Bank Payout" - Article VIII - Section 2, Paragraph H, Sub-paragraph 1, of current collective bargaining agreement (See pg. 28).

The Union Last Best Offer proposes as follows:

> "Effective 01/01/88:
> 1. An employee retiring under the Pension System shall receive pay from the City for seventy (70%) percent of their accumulated sick leave in their primary bank as shown on the records in the Personnel Department and it is to be figured in the employee's final average salary. The monetary value of each sick leave day in the primary bank shall be equal to one-tenth (1/10) of the bi-weekly pay."

The City Last Best Offer proposes that the current contract language be retained and add no additional contractual provisions.

Union Position -

The Union contends that the sick leave payout proposal herein serves the same two purposes as the sick leave accumulation in the primary bank proposal (See Union Issue No. 6) plus the secondary bank proposal (See Union Issue No. 7) were intended to provide the PPSA with a final average salary comparable to that of the Pontiac Firefighters. The Union maintains that the City's projected cost of this proposal is based upon assumptions which would almost definitely make the cost appear higher than actual cost. These assumptions, which are unrealistic, have inflated the City's required contribution. The Union further contends

that even if the city projections are correct, the increase is not so significant so as to deny the PPSA members the opportunity to have their final average salary comparable to the Pontiac Firefighters.

The comparables that permit sick leave accumulation allow for at least 50% payout. However, some of the comparables, permit accumulation of days in excess of 200 and different types of payout plans, accordingly, they do not serve as good comparisons on this issue. In addition, since each city's retirement plan and final average salary are computed based upon different items, the actual payout, if any, will almost undoubtedly vary.

City Position -

The City maintains that there is no support for the Union's offer of increasing the monetary value placed on the accumulated sick leave in the primary bank from 50% to 70% and that there is no support among the comparable communities. Of those communities with a percentage payout of sick leave accumulation at retirement (i.e., 12 communities), six have a percentage payout of 50% and only three have a payout of 70% or more. Moreover, four of the comparable communities have no payout of sick leave upon retirement at all. The City contends it compares very favorably with the comparable communities in the total amount of leave payout available to unit members at retirement. Of the six other City units, five have a 50% payout of sick leave accumulation at retirement. PPSA

members enjoy a maximum sick leave payout at retirement which is comparable among the other City units. Increasing the monetary value of the accumulated sick leave in the primary bank would be extremely costly. Since the value of the primary sick leave bank is figured into the employee's final average salary for purposes of determining a retirement benefit, the City would also incur an increased cost to finance its pension fund. Given the City's dire financial condition, such a proposal is beyond reason.

AWARD

The Panel is convinced that the City's proposal to retain the current contract language and add no additional contractual provisions is supported by the competent, material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors the Panel awards the City's proposal to retain the current contractual language on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT _____

9. "Funeral Leave" - Article VIII - Section 3 of current collective bargaining agreement (See pg 28)

The Union Last Best Offer proposes as follows:

> "Effective date of the issuance of the Act 312 Award: At the employee's discretion, up to five (5) days funeral leave shall be granted a supervisor for the following members of his/her family: wife, husband, daughter, son, mother, father, mother-in-law, father-in-law, sister, brother, grandmother, grandfather, spouse's grandmother, spouse's grandfather and employee's natural grandchildren."

The City Last Best Offer proposes to retain the current contract language and add no additional contractual provisions on this issue.

Union Position -

The Union seeks to add to the current agreement up to five (5) days leave for funerals of spouse's grandmother, and spouse's grandfather and an additional two (2) days for natural grandchildren. The Union maintains it is requesting days off for persons who their members may have to be involved in making arrangements for the funeral or whose death would require more private time to come to grips with their loss before returning to work.

The Union contends that the additional costs, if any, would be minimal. The comparables indicate a trend towards the inclusion of grandparents-in-law and natural grandchildren. The comparables have varying numbers of days allowed, but at least nine of the comparables permit four days or more off for funeral leave.

City Position -

The City maintains that the Union's offer of settlement on the funeral leave issue is not consistent with what is

currently provided in the comparable communities, only allow five days of funeral leave for the death of a spouse's grandfather or grandmother. Several, including Clinton Twp., Farmington Hills, Lincoln Park, Royal Oak, and Sterling Heights have no contract provision for funeral leave for a spouse's grandfather or grandmother.

One of the comparable communities allows for funeral leave of five or more days for the death of a natural grandchild, six do not even address that issue. Of the five communities that do provide for funeral leave for their natural grandchildren, all but one provide for three or four days of funeral leave.

The City further contends that no other City unit members receive funeral leave days for the death of a spouse's grandfather, grandmother, or for the death of a natural grandchild. The three funeral days granted to unit members for the death of a natural grandchild is a benefit this unit's members receive exclusively in the City.

AWARD

While it is not maintained by the Union nor does the record reflect that the City's other bargaining units have the additional funeral leave time in their agreements herein proposed, it does however appear that the external comparables, in a majority of the agreements, reflect an attempt to grant leave time within broad parameters similar to that proposed by the Union. Accordingly, the Panel, having given due consideration to the parties concerns as

set forth in their briefs, testimony and exhibits and all the competent, material and substantial evidence, on the whole record, and to the applicable Section 9 Factors, is convinced the Union's proposal is appropriate. The Panel therefore awards the Union's proposal on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT

ACCEPT

REJECT

10. "Health Insurance"- Article VIII - Section 8 of current collective bargaining agreement (See pg 31)

The Union Last Best Offer proposes as follows:

> "Effective 30 days from date of Award the City shall provide all bargaining unit employees, spouses and department children (up to age 25 years), retirees, spouses, and dependent children (up to age 25 years) with full paid Blue Cross/Blue Shield MVF1, Master Medical Health Insurance with a two ($2) dollar deductible prescription rider, or carrier with comparable coverage. Any dispute on comparability of benefits shall be submitted to binding arbitration with an insurance actuary, mutually selected, as the arbitrator."

The City Last Best Offer proposes to retain the current contract language and add no additional contractual provisions on this issue. Additionally the City withdrew its proposal for a $100.00 deductible for health insurance - said proposal being City Economic issue numbered 14; the

withdrawal of this City issue being contained in its Post Hearing Brief on page 90.

Union Position -

The Union's proposal to include insurance coverage for dependents up to age 25 is borne out of a concern for the health of family members still under PPSA members' care who have reached the age of majority. The Union maintains that it is unlikely that a great number of the members' children at one time will be on this rider for 18 to 25 year old persons.

The City has hired Blue Cross/Blue Shield as a service administrator. The insurance company accordingly makes payouts, but the City reimburses it for all expenditures. The City's payments are calculated on the basis of an illustrative rate. This rate reflects an estimate of the costs as if the insured group had a traditional policy. It is not a premium or actual cost; the rate is typically adjusted at the end of the appropriate period to account for the insured group's actual experience.

The Union contends that the costs projected by the City are erroneous. The Premium quoted by the exhibit is $95.40 per employee that the City would have to pay to add that type of rider to their current policy. It does not reflect the true cost to the City because it does not indicate the cost for a group rate.

The Union acknowledges that while only three of the comparables and two of the unions within the City have such

a provision, however, it states that the merits of this proposal weigh heavily in favor of its approval.

City Position -

The City maintains that only two of the 20 comparable communities provide coverage for dependent children up to the age of 25. Seventeen communities, including the City of Pontiac, do not provide health insurance for dependent children up to the age of 25 under any condition.

Of the six other City units, only two provide health insurance for dependent children up to the age of 25. Unit members, like all other City units, do enjoy health insurance coverage for minor children.

The City contends that the cost of the Union's proposal militates against its adoption, stating that the monthly cost per employee for an insurance rider covering dependent children 18-25 years of age is $95.40, which computes to a yearly cost of $1,144.80 per employee, and a potential liability for the Union's offer of $41,212.80. This liability estimate was based upon the assumption that each unit member had one eligible dependent in the 18-25 year old range. Risk Managment records reveal the actual number of potential dependents to be covered is higher than estimated, resulting in an actual cost to the City of $73,565.

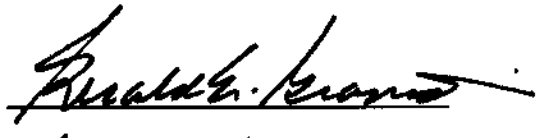
The Union attempted to rebut the City's cost analysis by conducting an informal poll of the membership to survey the actual number of dependents who would be covered under the 18-25 years of age clause. According to this "informal"

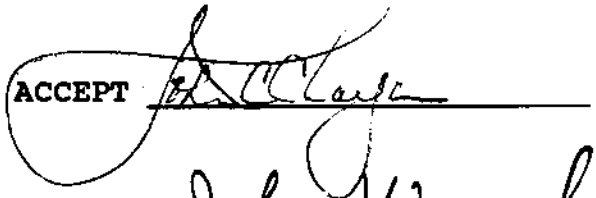
poll, the maximum number of dependents covered under the clause would be 21 dependents covered in the year 1989. Assuming that the Union's informal poll was accurate, and assuming that the cost of the insurance rider providing the additional coverage would not increase, the coverage for these 21 dependents alone would be $24,040.80. The City's figures were obtained from the City's Risk Management Department which is responsible for administering the insurance programs, and has records of the unit members' family size, as provided by the unit members.

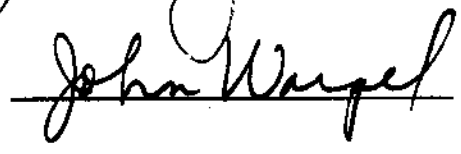
AWARD

The Panel is persuaded that the City's proposal to retain the current contract language is supported by the competent, material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors the Panel Awards the City's proposal to retain the current contractual language on this issue.

EFFECTIVE DATE: January 1, 1988.

ACCEPT 

ACCEPT 

REJECT 

11. "Dental Insurance" - Article VIII - Section 10 of current collective bargaining agreement (See pgs. 31 & 32)

The Union Last Best Offer proposes as follows:

"The dental coverage will be improved effective 30 days after issuance of Award to provide one hundred (100%) percent of the preventative and diagnostic dental care and one hundred (100%) percent of Class I and Class II types of dental care with a maximum payment of one thousand ($1,000) dollars per family member per year based on the number of family members with no individual maximum. Class III (Orthodontic Services) coverages shall be one hundred (100%) percent with a lifetime maximum payment of twenty-five hundred ($2,500) dollars per family member. Effective July 1, 1983 the City, in addition to present retirees coverage, will begin to pay the premium for the retirees' spouses for employees who retire after July 1, 1981."

The City Last Best Offer proposes to retain the language contained in the current collective bargaining agreement with regard to Dental Insurance; the City further proposes an addition to the language in the current collective bargaining agreement in its Economic Issue number 13, which shall be determined separately under the general heading of City Issues.

Union Position -

The Union maintains that its proposal relating to percentage of coverage of Class I and II would be in line with the coverage presently in the PPMA contract. It further states that the Class III orthodontic coverage it seeks appears to be the trend in which other negotiated contracts are headed. It contends that the orthodonic coverage would not be at great additional cost to the City in light of the manner in which the City's insurance program is run.

City Position -

The City maintains that the Union's request for an increase in Class I and Class II coverage from 70% to 100% is unsupported. Not a single comparable community provides 100% coverage for both Class I and Class II dental care. Moreover, the 70% coverage presently provided to unit members compares vary favorably with the coverage currently provided by the comparable communities. Of the 20 comparable communities, only six provide better coverage for either Class I or Class II coverage. Of the six other City units, only one provides for better Class I or Class II dental care coverage than that provided to unit members. The remaining City units provide the same dental coverage for Class I and Class II care as is currently provided to unit members.

There is a similar lack of support for the Union's proposal that the maximum payment per family member per year be increased from $800 to $1,000 for preventative, diagnostic, Class I and Class II dental care. While seven of the collective bargaining agreements did not identify the annual cap on this dental benefit, the City's current cap of $800 per family member is supported by the remaining communities. Sterling Heights, Canton Twp. and Redford Twp. provide a maximum payment less than the $800 currently received by unit members. Similarly, three of the six other City units currently have a maximum payment of $800 per family member per year for dental coverage.

With regard to the Union's offer requesting 100% coverage for orthodontic services with a lifetime maximum payment of $2,500, of the comparable communities, ten either do not address this issue in the collective bargaining agreement or do not provide for orthodontic care at all. Moreover, of those who provide orthodontic coverage, none provide 100% coverage as requested by the Union in this case. Nine of the comparable communities provide some kind of orthodontic coverage, however, none have a lifetime orthodontic limit of $2,500.

The City further maintains that there is no support for the Union's request for 100% orthodontic coverage, with a lifetime limit of $2,500.00, among the other City units. Three of the six other City units do not provide for orthodontic coverage. Of the remaining City units that do provide for orthodontic coverage, none provide 100% coverage and the lifetime limit on this benefit is $1,500, $1,000 and $1,000.

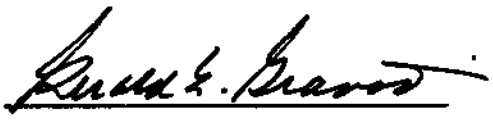
The City contends that the cost of the Union's proposal would cost the City an additional $132.24 per unit member for single person coverage; for two person coverage the annual cost increase per member would be $251.28; for family coverage, the cost per unit member increase would be $411.84. This increase calculates into an annual increased cost to the City of $14,826.24.

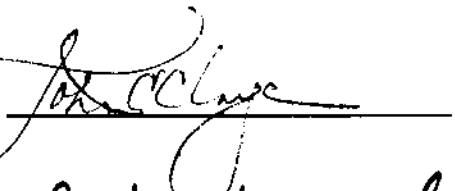
AWARD

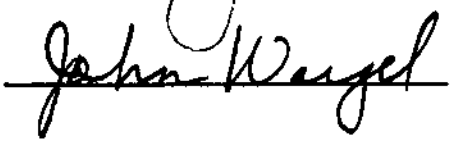
The Panel is persuaded that the City's proposal to

retain the current contractual language is supported by the competent, material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors the Panel awards the City's proposal to retain the current contractual language on this issue.

EFFECTIVE DATE: January 1, 1988.

ACCEPT 

ACCEPT 

REJECT 

12. "Preparation Time" - No provision in current collective bargaining agreement - add to Article VIII as Section 12.

The Union Last Best Offer proposes as follows:

> "Add New Section 12, 'Preparation Time' Effective 01/01/90: Preparation time shall be paid to each employee at a minimum of one-half (1/2) hour of straight time for each day worked. The time shall be credited as CTO time to each employee's account on the first pay period in January and July of each year."

The City Last Best offer proposes as follows:

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

Union Position -

The Union maintains it is seeking to include language in the contract of the actual practice and procedure that is presently in place for preparation time. It states that the

comparables which give compensatory time each day for preparation those receive more than fifteen minutes per day.

The Union seeks to have a past practice codified so that the City cannot arbitrarily change that practice. Including this provision would put both the City and the Union on sound footing on an issue which would prevent future disagreements.

City Position

The City compares the Union's position with the benefits received by employees in other City units, and maintains that the Union's position is without support. Among the other City units, no employees (including police officers) are given additional compensatory time each day for preparation.

The City contends that of the 20 comparable communities, 12 do not provide unit members with additional compensatory time each day to cover preparation, or do not address that issue in their collective bargaining agreement. Of those that do provide some form of compensation for preparation time, none have the uncapped provision sought by the Union. Each of the comparable communities which provide some sort of preparation time compensation, limit the amount awardable. Specifically, the City of Livonia caps the compensable amount of time for preparation at 48 hours per year, the Township of Redford's limit is 10 hours per year, the City of Royal Oak has a 40 hour per year limit, the Township of Shelby has a 15 minute per shift limit, the

Cities of Southfield and St. Clair Shores have limits of 24 minutes per day, the City of Sterling Heights has a 120 hour per year limit and the City of Troy has a limit of 30 minutes per day.

The City further maintains that the cost of the Union's proposal would be $41,552.68.

AWARD

Currently the unit members receive fifteen (15) minutes per day compensory time. The City has acknowledged by such action that the supervisory police officers are required to be at their posts to prepare for the days work prior to the beginning of their scheduled shift. No language currently exists in the collective bargaining agreement regarding this and the Arbitrator concurs that it would be appropriate to so do. The arbitrator is convinced that the unit members are required, in order to properly prepare for the days work assignments, to be at their posts thirty (30) minutes prior to their shift time. The internal City Comparables do not apply herein simply because none of those supervisory personnel have the same responsibilities as do these unit members. Of the external comparables which address this issue most do not treat the additional time as has the City of Pontiac. The external comparables which do not address this issue in their collective bargaining agreements may or may not provide compensated preparation time, the exhibits do not go beyond the contracts. Accordingly we do not learn whether such does or does not exist therein. The arbitrator

is persuaded that since the job requires the time the employees should be compensated.

Accordingly, the Panel, having given due consideration to the parties' concerns set forth in their briefs, testimony and exhibits and all the competent, material and substantial evidence on the whole record and to the applicable Section 9 Factors, is convinced the Union's proposal is appropriate. The Panel therefore awards the Union's proposal on this issue.

EFFECTIVE DATE: January 1, 1990

ACCEPT Edward G. Graves

ACCEPT John Wargel

REJECT

13. Annuity Withdrawal" - Article IX - Section 4 of current collective bargaining agreement (See pgs 36, 37 and 38)
The Union Last Best Offer proposes as follows:

(See attached, page 55 A)

A. It is agreed that, other than additional administrative and processing costs, the actions required by the City pursuant to this Section shall not result in additional cost to the employee or the Retirement System.

B. Effective January 1, 1988, employees may opt prior to separation from service to withdraw their contributions at the time of retirement, the calculation for monthly pension benefits should be made as if the defined contribution plan amounts, made prior to December 31, 1990, were not withdrawn. Defined contribution plan amounts which are withdrawn and were made on or after December 31, 1990 will reduce the monthly pension based upon the actuarial table.

C Non-Service Connected Death Benefit:

When an employee is eligible to retire, their spouse becomes eligible to collect benefits at whatever age upon member's death. Effective January 1, 1985, the Non-Service Death Benefit will be as follows:

Provided a member has acquired three (3) years of credited service, upon the death of a member resulting from any cause other than an act of duty (a) while a member is in service, (b) on sick leave with salary, (c) on an approved leave of absence extending not more than six (6) months continuously, (d) while in receipt of a service or non-service connected disability annuity, or (e) after withdrawal from service with at least ten (10) years of credited service, the member's surviving spouse shall be entitled to an annuity. The annuity shall be equal to thirty (30%) percent of final average salary, increased one (1) percentage point for each year of credited service above three (3) years, up to a maximum amount equal to fifty (50%) percent of the final average salary.

If minor children (as defined herein) under age of 18 survive the member, the spouse shall receive on account of each such minor child an additional ten (10%) percent of the member's final average salary. The combined payment to a spouse and children shall in no event exceed sixty (60%) percent of such final average salary. If no spouse survives, or if the spouse remarries before all eligible children have attained age 18, each minor child under age 18 shall be entitled to fifteen (15%) percent of such member's final average salary subject to a limitation for the combined payments to children equal to fifty (50%) percent of such final average salary. In the event the foregoing limitations are exceeded, payment to the spouse and children shall be prorated to conform to the applicable limitations.

The annuity to a spouse shall be payable until remarriage of the spouse. Minor children shall be eligible for annuity until their attainment of age 18, death or marriage, whichever occurs first.

Payment to a spouse under this section shall be subject to the following condition:

The spouse shall have been married to the member prior to the date of death of the member, or prior to the date of retirement annuity of non-service connected disability annuity, whichever occurs first and in any event while the member was in service.

In addition to the aforesaid annuities, if a member's death occurred while the member was engaged in active service with the City of Pontiac at the time of death, the spouse of the member, or his or her minor children if a spouse does not survive the member, shall be entitled to receive at the time of death of the member, a payment equal to the member's annual salary as the same shall be in effect at the date of death. Each such child shall be entitled to an equal part of this benefit, and the payment thereof on account of such minor children shall be made to their legally appointed guardian.

The City Last Best Offer proposes to "maintain the status quo on this issue, i.e. add no additional contractual provisions on this issue."

Union Position -

The Union's proposal is directed at the issue of whether a withdrawal of employee accumulated contributions to his/her pension may be withdrawn by the employee at the time of retirement without a reduction in his/her pension benefits received. The Union acknowledges that except for the Pontiac Firefighters no other City bargaining units have the option to withdraw. The Union likewise acknowledges that none of the external comparables have this option to withdraw. The Union contends that in order to maintain fairness between the PPSA and the PFFU that this proposal should be accepted by the Panel.

City Position -

The City maintains that 11 of the comparable communities allow annuity withdrawal by their unit members, but in all of those communities, there is an actuarial reduction in benefits in the event an annuity withdrawal is taken. The City states that of the six other City units, only two allow for an annuity withdrawal, and in both of these units there is an actuarial reduction for the annuity withdrawal. The recent Act 312 award involving the Firefighters specifically provides that, in the event of annuity withdrawal, there will be "an equivalent actuarial reduction."

Requiring the City to pay a retiree unit member the full pension benefit, the Union's proposal asks the City to make up for all of the employee's pension contributions. This benefit is not found in any comparable community or in any other City unit.

The Union's proposal would cost the City 4.9% of payroll and require the City to make a first year contribution of $79,638. The unfunded liability created by the Union's offer would be $1,005,987.

The Union's proposal also seeks to add a provision whereby the parties agree that the actions required by the City pursuant to Article IX, Section 4 shall not result in additional cost to the employee or the retirement system. The City states that of the 20 comparable communities, none have a collective bargaining agreement which contains a provision similar to the one requested by the Union here and no such clause exists in the contracts between the City and the other City units.

AWARD

The arbitrator finds no justification for the Union's proposal except that it would provide an extra financial payment to retiring employees. That, in the opinion of this arbitrator, is not sufficient, in light of the record evidence, to persuade an award for the Union. Accordingly, the Panel, having given due consideration to the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record, awards the City's

proposal to maintain the status quo on this issue, i.e. add no additional contractual provisions on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT _____

14. "Final Average Salary" - No provision in current collective bargaining agreement - add to Article IX - Section 4.

Union Last Best Offer proposes as follows:

"Add new paragraph D to Section 4:
D. The following shall be included to determine final average salary for both regular retirement and disability retirement.

1. Employees base pay
2. Shift differential
3. Seventy (70%) percent of the value of the primary sick bank
4. Lump sum holiday pay
5. Longevity pay
6. Final vacation time pay out
7. Retirement to be based on the best three (3) years out of the last ten (10) years"

The City Last Best Offer proposes to "maintain the status quo on this issue, i.e. add no additional contractual provisions on this issue."

Union Position -

The Union states that it has proposed that this language be included in the collective bargaining agreement

because currently the final average salary for the PPSA is not defined, and that the items requested by the Union to be included in the final average salary are similar or comparable to the items specifically outlined in the Pontiac Firefighters' contract. It further states that review of the comparables reveals that the items requested by the Union to be included in the final average salary are in line with the items used by almost all of the comparables in determining the final average salary.

The Union states that in arriving at the percentage of the City's contribution to fund the vacation payout (5.38%) and the increase to 70% payout of the sick leave bank (4.78%), the City placed a present value on the anticipated cost even though the payouts would not occur until sometime in the future and that the figures include the cost if every member had the maximum amount of vacation days accumulated and the maximum amount of sick days in the primary bank. The Union concludes that the costs projected are inflated in relation to what the actual costs would be to the City during the contract term with which this arbitration is concerned.

City Position -

The City contends that the Union seeks to increase the percentage value of the primary sick bank included in final average earnings from 50% to 70%. It states that of those comparable communities with a percentage payout of sick leave accumulation on retirement, i.e., 12 communities, six

have a percentage payout of 50% and only three have a payout of 70% or more, and four of the comparable communities have no payout of sick leave upon retirement at all. Of the six other City units, five have a 50% payout of sick leave accumulation at retirement, and unit members enjoy a maximum sick leave payout at retirement which is comparable among the other City units. Only the communities of Sterling Heights, Redford Township, Taylor and West Bloomfield include sick leave compensation in final average earnings.

The cost of the Union's request to increase the value of the primary sick bank from 50% to 70% for purposes of determining final average earnings would require a first year contribution from the City of $35,753, or 2.2% of payroll. The unfunded liability created by such proposal would be $369.976.

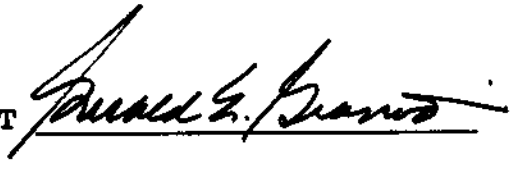
Of the other City units, only the Firefighters have vacation payout included in their final average earnings. The cost of including the lump sum payments for unused vacation time in computing final average earnings would be 5.38% of payroll, and require a first year contribution by the City of $87,431, and create an unfunded liability of $906,022.

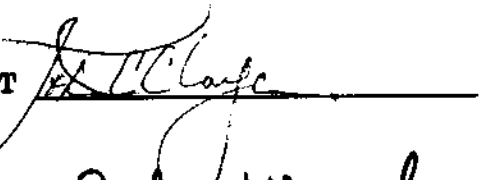
AWARD

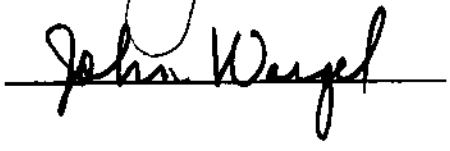
This Panel has previously made its award on the issue of increasing the percentage value of the sick bank from 50% to 70% in Union Issue Number 8, to award here what previously was not awarded would be inconsistent and

inappropriate. Adding the final vacation time payout is a bonus no other City unit except the PFFU currently has. Since the Firefighters 312 award was a stipulated award, and we are not privy to what went into that particular benefit being awarded, we find no compelling reasons for awarding same herein. Accordingly the Panel is persuaded that the City's proposal to maintain the status quo, i.e., add no additional contractual provisions on this issue is supported by the competent, material and substantial evidence on the whole record and having given due consideration to the applicable Section 9 Factors the Panel awards the City's proposal on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT 

ACCEPT 

REJECT 

15. "Sergeant Start Salary" - Article IX of current collective bargaining agreement - (See pg. 43)

Union Last Best Offer proposes as follows:

> "Effective date of award: Elimination of the 'start' salary for sergeant. All sergeants will be paid at the highest or one (1) year rate.".

City Last Best Offer proposes to "maintain status quo (salary schedule for sergeants) and add no additional contractual provisions on this issue."

Union Position -

The Union maintains that of the external comparable communities, thirteen (13) start the sergeants at the full sergeant pay rate and only seven have an initial salary step. It contends that this proposal attempts to make the City of Pontiac consistent with the majority of the comparable communities.

City Position -

The City contends that seven of the comparable communities maintain the sergeant salary step schedule in their wage structure, some of which have a three step schedule for their sergeants, as opposed to the City's two step procedure.

The City maintains that this procedure is also used in the other City units, even though there are no sergeants in any of the other bargaining units, there are supervisors in those units subject to a step salary schedule. There are supervisors employed in the PPMA, SEA and PFFU units, all of whom have salary step schedules. Consequently, there is support for the current practice of salary step schedule among both the comparable communities and other City units.

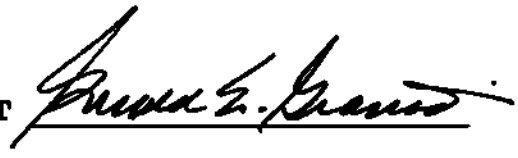
The City further contends that the Union's proposal would be costly. An increase in wages also affects the payment of overtime wages, longevity pay, holiday pay, employer pension contribution, as well as insurance costs.

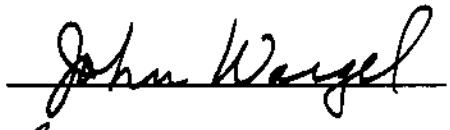
AWARD

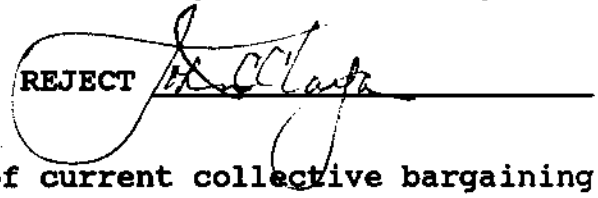
The Panel is convinced that the overwhelming majority

of external comparables do not have a step procedure for sergeants salaries. The Panel is further convinced that the cost, if any, to the City which it might currently incur is minimal. Accordingly, the Panel, having given due consideration to the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record awards the Union's proposal to eliminate the start salary for sergeants. All sergeants to be paid at the highest or one (1) year rate.

EFFECTIVE DATE: Date of Award

ACCEPT 

ACCEPT 

REJECT 

16. "Wages" - Article IX - of current collective bargaining agreement (see pg 42).

A. Union Last Best Offer - 1988 - proposes as follows:

> "Effective 01/01/88, 3% pay increase across the board for all classifications and all steps covered by the bargaining agreement."
>
> City Last Best Offer - 1988 - proposes as follows:
>
> "January 1, 1988 - December 31, 1988 - Maintain the current wage schedule and the status quo."

B. Union Last Best Offer - 1989 - proposes as follows:

> "Effective 01/01/89, 4% pay increase across the board for all classifications and all steps covered by the bargaining agreement."
> City Last Best Offer - 1989 - proposes as follows:

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

C. Union Last Best Offer - 1990 - proposes as follows:

"Effective 01/01/90, 5% pay increase across the board for all classifications and all steps covered by the bargaining agreement."

City Last Best Offer - 1990 - proposes as follows:

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

The parties agreed that the issue of "Wages" shall be treated as three separate matters for purposes of this Award. They have, for the most part, however, combined their positions and arguments on all three (3) separate matters, therefore, the Panel shall set forth their positions in a like manner. The Awards shall be made separately.

Union Position -

The Union maintains that the last best offer presented by the Union represents a fair and reasonable compromise between the City's 0-2-2 and the Union's previously requested 8-8-8. The increases are substantially less than the average percentage increases of the comparable communities. Moreover, all this proposal does is to provide the PPSA members some protection against the ravages of inflation.

The parties agreed when they negotiated the salaries set forth in the 1984-87 collective bargaining agreement. Based upon those salaries, the unit members attained a

corresponding standard of living. In order to maintain that standard of living they must be able to increase their wages in an amount which corresponds to the decrease in the value of the dollar. As the cost of products necessary to maintain the standard of living which they achieved under last agreement increase, they must receive corresponding wage increases to pay for those products or suffer a real loss in their standard of living. The Union maintains that the CPI is only relevant to the Panel as it relates to the period since the last mutually agreed upon salary was established.

The Union further contends that the wage increases proposed will be maintaining their status relative to the officers in the comparable communities. In 1987 Pontiac sergeants ranked second in wages among the comparables. If 1988 wages reflect a 3% increase they will maintain the second ranking. Similarly, Pontiac lieutenants who ranked forth in 1987, would in 1988 rank third.

City Position -

The City states that the record shows that unit members already enjoy a very high wage rate in comparison with the comparable communities.

When considering an employee's net pay, i.e., the stated salary less the employee's required pension contribution, the very favorable position of unit members becomes even more clear.

Under the City's wage proposal for the first year of

maintaining the status quo, unit members enjoy a position thousands of dollars ahead of those in the comparable communities.

The City points out that the statute directs this Panel to consider the overall compensation of the unit members, who receive the highest overall compensation of any community. Not only are the Sergeants, Lieutenants and Captains in first place, they are so far above all of the other communities (by a margin of $15,000 - $20,000) that, if wages were frozen for the next 7-8 years (assuming 5% raises in all other communities), Pontiac would still be at or above the average.

With regard to CPI, since 1967 it has risen 232%, while at the same time salaries have increased more than 330%. Had the parties relied upon the consumer price index in determining the salaries, they would currently be receiving $9,000 - $10,000 less. The Panel must consider the "internal" comparables, i.e., the other City units. The Act 312 Award with the Firefighters provides for salary adjustments of 0%-2%-2%. All other units, including AFSCME, are still in contract negotiations.

The City comparison to the fire personnel is based upon the historical comparison provided by Fire Chief Lampson that the Pontiac Fire ranks of Lieutenant, Captain and Assistant Chief are comparable to the Pontiac Police ranks of Sergeant, Lieutenant and Captain respectively. Each set of ranks represent the first three supervisory ranks, in

order, in the respective units. The City's approach is the only credible method of comparison. The Union has provided no explanation regarding why it does not include the Fire Lieutenant position in its comparison at all. What the Union cannot deny is that all members of the Fire unit received wage adjustments of 0%-2%-2%.

In determining the cost of the wage proposals, base salary is only the starting point. Command officers routinely receive substantially more than the stated base salary. The cost incurred by the City for a wage increase extends beyond the actual payment of wages. Salary-sensitive benefits such as longevity payments, pension contributions, holiday pay, etc. increase the cost to the City when wages are increased.

The City states it is verging on financial disaster, and still the Union wants more. The record shows that the City has not been reluctant to grant substantial increases when it had the resources. Now that times are difficult, the adjustments must be moderated.

AWARD

The Arbitrator is well 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 condition and its ability to pay such wage increases has been thoroughly reviewed, as has the PPSA members' cost of living (CPI) argument. The relationship of these unit members to supervisory personnel in external and

internal comparables has been given much thoughtful consideration. Likewise, the Arbitrator has carefully examined and considered the stipulated Firefighters Act 312 Award, wherein wage increases of 0-2-2 were awarded. We have previously stated and wish again to point out, that we do not have before us, nor are we privey to, the positioning or determinations that went into the making of that award, to blindly accept that as binding precedent would be in our judgment, totally erroneous. It is important to stress that what is awarded herein does not in any way bind the City nor any of its bargaining units in other negotiations. This award relates only to this bargaining unit as determined by the whole record before this Panel.

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

A. Wages: Effective January 1, 1988 - 3% pay increase across the board for all classifications and all steps covered by the bargaining agreement.

ACCEPT Ronald E. Brent

ACCEPT John Vargel

REJECT

B. Wages: Effective January 1, 1989 - 2% pay increase across the board for all classifications and all steps

covered by the bargaining agreement.

ACCEPT _____

ACCEPT _____

REJECT _____

C. Wages: Effective January 1, 1990, 2% pay increase across the board for all classifications and all steps covered by the bargaining agreement.

ACCEPT _____

ACCEPT _____

REJECT _____

17. "Pension Contribution" - Article IX - Section 2 - Paragraph G of current collective bargaining agreement (See pgs 35 & 36).

Union Last Best Offer proposes as follows:

" G. Effective Date of the Award, each employee's pension contribution will be three (3%) percent of base salary, longevity, lump sum holiday payment, bonus and shift differential into the Police-Fire Pension Fund.

H. Effective Date of the Award, each employee will be credited with three (3) full years of additional seniority for retirement purposes. Any new employee to the bargaining unit prior to the expiration date of this contract shall receive this same three (3) full year credit toward retirement."

City Last Best Offer proposes as follows:

"Maintain status quo on seniority credit, i.e., do not add a contractual provision adding any seniority credit for retirement purposes."

The City also has the issue of Pension Contribution before the Panel as set forth in its Issue number 15; the Panel will make its' award on that issue subsequent hereto.

Union Position

The Union seeks to increase their pension contribution from 2.5% to 3.0% and each member to be credited with three years seniority for retirement purposes.

The proposals by the Union were done in an attempt to put the PPSA members on par with the Pontiac Firefighters. At the present time, the employee contribution of the firefighters is 1%. In addition, the firefighters are permitted to be credited with three years of service for retirement purposes, firefighters can retire with 22 years of service.

The Union states that the City claims that if the PPSA members are permitted to be credited with three years service their additional contribution to fund that proposal would be 6.3% but the calculations did not indicate if they were based upon the increased contribution proposed by the members of 3.0% instead of 2.5%. In addition, when the PPSA presented this proposal to the actuary, he told them that the additional cost to the City would only be 2.13%.

Accordingly, the Union maintains that the figures put forth by the City are somewhat suspect, but that in any

event, the increase in cost to the City is minimal. The overall benefit if such a proposal were implemented far outweighs its costs. As a retirement incentive this three year credit would allow persons within the PPSA unit to retire earlier, thereby opening positions that will be available for promotion, including the promotion of qualified minorities. Since the promotion of more minorities is a program which the City claims it has committed itself to, this retirement incentive will end up benefitting the potential retirees and the City, as similar incentives did in 1982.

City Position -

The City maintains that because unit members are covered by a defined benefit plan, the City relies upon actuaries to determine the appropriate contributions to be made, to assure that the appropriate benefit will be available at the time of retirement and that there are three considerations in determining the contribution rate that must be paid by the City into a pension plan; i.e., the benefit formula, when a person is eligible to retire, what level of disability benefits or death benefits are available, and what happens to the benefit after a person retires, the membership data and financial data such as the ages of unit members, how much service they have already accumulated, their level of pay and what assets the plan has accumulated, and the "unknown," such as what is going to happen in the future with regard to salaries and employee

turnover, as well as the probabilities that employees will continue in employment to receive a benefit.

One of the features unique about the City of Pontiac's pension arrangement is that a unit member may retire after 25 years of service, regardless of age. The City's contribution rate of 55.56% is more than double that of any of the comparable communities. Averaging the employee contribution among the comparable communities reveals an average employee contribution of 4.15%, well above the 2.5% currently required of unit members.

The reason the City must make unusually high pension contributions is the unusually high pension multiplier (70%). The City is required to contribute between $27,000 and $33,000 per person each year based upon the old wage rates.

The City further maintains that among the comparable communities, there is not a single contract which gives employees additional service credits for retirement, and that there is no such contractual provision in the contracts with the other City units.

The City contends that the Union proposal to increase the pension contribution falls well short of financing its request for seniority credit. The actuary, in his January, 1988 evaluation, found that the cost of allowing an officer to purchase up to three years of additional service credit by December 31, 1990, would be 2.13% of payroll, requiring a yearly contribution of $35,333. The increase of .5% in the

employee pension contribution would reduce the cost of the Union's proposal to 1.63% of payroll.

The more recent evaluation by the Actuary reveals that the cost would actually be 6.31% of payroll, requiring an annual employer contribution of $102,545 and creating an unfunded liability of $2,617,493. The City states that the Actuary, in his record testimony, sufficiently explained the reasons for the two different evaluations and conclusions.

AWARD

The Panel finds no justification in any of the internal or external comparables for awarding the Union its proposal for a three (3) year retirement credit. While the other portion of the Union's proposal, i.e., increase employees pension contribution might be a responsible and appropriate proposal, the Panel must, under Act 312, accept the Last Best Offer in its entirety or reject it in its entirety. The Panel is convinced that the Union's proposal should be rejected after having given due consideration to the applicable Section 9 Factors and all the competent, material, and substantial evidence on the whole record and accordingly awards the City's proposal to maintain the status quo on this issue.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT John Weigel

18. "Cleaning Allowance - Article VIII - no provision in current collective bargaining agreement.

Union Last Best Offer proposes as follows:

"Effective 01/01/88, the City will provide all employees in the bargaining unit a cleaning allowance of Three Hundred Fifty ($350.00) dollars annually."

City Last Best Offer proposes as follows:

"Do not add any cleaning allowance provision to the contract."

Union Position -

The Union argues that the Pontiac Firefighters have a $350 cleaning allowance. The Union also seeks to have this provision included given the guidelines put out by the U. S. Department of Health and Human Services for law enforcement officer on the proper cleaning of their clothing. With the growing concern about handling persons with communicable diseases, most importantly AIDS, the Union seeks to comply with the guidelines set forth by the U. S. Health Department in disinfecting one's clothing and person should they come in contact with blood and/or other bodily fluids in the course of the performance of their duties.

The Union contends that the record reflects that several of the comparables have either a plain clothes or cleaning allowance included in their collective bargaining agreements.

City Position -

The City acknowledges that there is currently no provision in the collective bargaining agreement for a cleaning allowance, but states that this is consistent with the common practice among the comparable communities. Of the 20 comparable communities, only nine provide a cleaning allowance to command unit members. The average cleaning allowance provided in the comparables is $158.75, as opposed to the Union's demand of $350. With respect to other City units, only the Firefighters receive a cleaning allowance. Patrol officers currently do not receive such an allowance. The only Union evidence submitted in support of its proposal is the U. S. guidelines for law enforcement officers. Which is not relevant in this proceeding for several reasons.

First, this Panel has heard no testimony regarding the frequency with which members of this Command Officers unit are required to handle situations in which they come in contact with the AIDS virus or Hepatitis B. Second, this Panel has heard no testimony that the guideline established are new procedures which result in additional cleaning costs to unit members. Finally, to the extent that the duties outlined in the guidelines are primarily performed by Firefighters (who are Emergency Medical Technicians), it has little relevance to a benefit sought by members of the command unit.

AWARD

The Panel is persuaded that of those external comparables that have, in their collective

bargaining agreements, dealt with the issue of a cleaning allowance, same are not excessively greater or less than the demand herein proposed. The record does not reflect whether the other external comparables have such a benefit which is not reflected in their collective bargaining agreements. Awarding such a proposal does, however, place the unit members in a position to comply with the U. S. guidelines for law enforcement officers without great cost to the City. It is certainly to the City's benefit to have employees who are less able to claim job related illnesses. The Panel is persuaded that the Union's proposal should be Awarded. Accordingly, after giving due consideration to the applicable Section 9 Factors and all the competent, material, and substantial evidence on the whole record the Panel awards the Union's proposal to provide all unit members a $350.00 annual cleaning allowance.

EFFECTIVE DATE: January 1, 1988

ACCEPT _____

ACCEPT _____

REJECT _____

City Issues - Non-Economic

1. "Grievance Procedure" - Article III - Section 1, Step 5, Subsection (a) - of current collective bargaining agreement

(See pg. 6)

City Last Best Offer proposes as follows:

> "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."

Union Last Best Offer proposes "No change in current contract language"

City Position -

The City maintains that the terms of the collective bargaining agreement do not require an employee to identify the specific sections or articles alleged to have been violated, in any step of the grievance/arbitration process. Consequently, because the City has not been informed of the precise issues presented by a particular grievance, it never really knows what the issue is.

The City further maintains that the City's position is well supported among the comparable communities. Several of the comparable communities require a grievance to identify the specific article or section of the agreement alleged to have been violated at some point in the grievance/arbitration procedure. Dearborn, Farmington Hills, West Bloomfield Township and Waterford Township require a grievant to identify the specific article or section of the collective bargaining agreement alleged to have been violated, in Step 2 of the grievance procedure. Roseville, Southfield and Troy require the grievants to identify the specific article or section of the collective

bargaining agreement violated in Step 1 of the grievance/arbitration procedure. The Township of Shelby requires the article or section alleged to have been violated to be identified in Step 2 of the grievance procedure and goes on to limit the arbitration of grievances to those grievances which are covered exclusively by the collective bargaining agreement.

The City contends that its proposal is one which seeks to make the grievance and arbitration procedure more fair and open between the parties. In response to the Union's argument that the City is attempting to eliminate grievances which are based upon past practice the City states that it would be easy for a grievant to identify the provision of the collective bargaining agreement allegedly violated. Moreover, the current collective bargaining agreement specifically provides that an employee may file a grievance when he/she believes that any provision of this agreement has not been applied or interpreted properly. Thus, the contract already limits grievances, and consequently arbitration proceedings, to complaints regarding the collective bargaining agreement. The City is merely asking that the specific provisions allegedly violated be identified before arbitration, so that the parties may benefit from a more open and informed grievance/arbitration procedure.

Union Position -

The Union agrees that the main objective, of this City proposal, appears to be to eliminate the potential filing of grievances based upon past practices or previous arbitration awards which are not included in the contract.

The Union objects to this proposal because during negotiations, when the issue was originally raised, the City had agreed to withdraw this particular issue only to now raise it again.

The Union further argues that the City's proposal ought to be rejected because it is impossible to include all contingencies within a collective bargaining agreement. If this provision were accepted as the City proposes, all past practices, arbitration awards or memorandums of understanding that the Union has relied on would be, in essence, null and void.

AWARD

The arbitrator has previously ruled on the Union's objection to the raising of this issue by the City and has ruled that the issue is one with which this Panel will determine. The Panel has considered both parties concerns as thoughtfully presented and is convinced that language is required to be added to the existing contract provision which resolves any ambiguity which exists.

Accordingly, having given due consideration to the applicable Section 9 Factors, the parties positions, and having examined all the testimony, exhibits and briefs and all the competent, material and substantial evidence on the

whole record, the Panel makes the following award on this issue.

Article III - Section 1, Step 5, Sub-section (a) shall provide as follows:

> Step 5. (Arbitration)
>
> (a) Any unresolved grievance which involves an identified alleged violation of any specific article or section of this Agreement, past practice, memorandum of understanding, Federal, State or City Statute or Ordinance, arbitration award, or judicial finding and which has been fully processed to Step 4 of this grievance procedure, may be submitted to arbitration in strict accordance with the following:

EFFECTIVE DATE: Date of Award

ACCEPT _____

ACCEPT _____

~~ACCEPT~~ Reject _____

2. "Seniority" - Article IV, Section 1, Sub-section A, of current collective bargaining agreement (See pg 13).

City Last Best Offer proposes as follows:

> "A. Seniority is defined as the length of continued service or length of continued time in rank which accrues to bargaining unit members. A member promoted to the rank of sergeant shall be credited with seniority among those bargaining unit members holding said rank. Members promoted to the rank of lieutenant shall be credited with seniority among those bargaining unit members holding the same rank. Members promoted to the rank of Captain shall be credited with seniority among those bargaining unit members holding

the same rank."

Union Last Best Offer proposes "No change in present contract language."

City Position -

The City states that the purpose of the City's offer is to clarify that unit members who are suspended, with or without pay, do not accumulate seniority during the time of the suspension.

The City maintains that 13 of the 20 comparable communities provide a specific definition of seniority, including several communities which define seniority by rank (see Canton Twp., Clinton Twp., Dearborn, Dearborn Hgts., Redford Twp., St. Clair Shores, Sterling Heights, Troy, W. Bloomfield Twp. and Westland). Each of the other City units contains a definition of seniority. The City clarified its position that it does not seek to prevent a unit member from accumulating seniority if he is suspended and the suspension is subsequently overturned in an arbitration proceeding.

Union Position

The Union objects to the City's adding new language to the current definition of seniority because the new language is surplusage. The present definition covers everything that the new language addresses. The Union questions whether the proposed new definition of seniority is a way of trying to limit PPSA members ability to exercise their seniority rights. It further states that the delineation of what seniority is by rank, in the new language proposed by

the City, is totally unnecessary since the current language addresses the entire unit and how seniority is obtained.

AWARD

The Panel having considered both parties concerns is persuaded that language is required to be added to the existing contract provision which would resolve the question of accumulation of seniority when suspended. Accordingly, having given due consideration to the applicable Section 9 Factors, and having examined all the testimony, exhibits and briefs and all the competent, material and substantial evidence on the whole record the Panel makes the following award on this issue.

Article IV, Section 1, Sub-section A, shall provide as follows:

> A. Seniority is length of service or length of time in rank which assigns to permanent employees certain definite rights in the matter of reassignments, leave preference, and other considerations; provided, however, if an employee is suspended for a period of 80 consecutive work hours and the suspension is not overturned, that employee does not earn seniority credit during the period of suspension.

EFFECTIVE DATE: Date of Award

ACCEPT Richard L. Grant

ACCEPT

Reject John Wargel

3. Seniority" - (Shift Assignments and Furloughs) - Article IV, Section 4, of current collective bargaining agreement (pg. 14)

City Last Best Offer proposes as follows:

> "Shift assignments and furloughs shall be based upon seniority in rank and shall be determined by the Chief separately within each section of the Uniformed Services Division. Platoons shall be considered "sections." Leave days shall be determined on the basis of operational needs within each section of the Uniformed Services Division. Determinations regarding leave days within all other divisions shall be made by the division commander based upon operational needs and demand. Voluntary shift transfers shall be permitted at six-month intervals, on the basis of seniority within the Uniformed Services Division."

Union Last Best Offer proposes: "No change in current language."

City Position -

The City argues that the purpose of the City's proposal is to enhance operational flexibility in scheduling. Lieutenants currently enjoy the best options with regard to leave days and the City's proposal would more equitably allocate leave days among sergeants as well. The Department needs more operational flexibility which would make the Department more efficient, provide the best use of taxpayer dollars and contribute to maintaining the financial stability of the City. Providing the Chief and division commanders the authority to schedule leave days, the City will be assured of having a sufficient number of unit members, and the appropriate representation of

classifications on duty at all times.

By making the determination of eligibility for leave on a rank within division basis, rather than a rank-only basis, the City is again assured that each division will be adequately staffed at all times. A selection by seniority would be made insuring proper levels of supervision and reduce the need to call-in, at overtime rates, needed supervisors in a particular rank.

The City maintains that of the 20 comparable communities, only eight require shift assignments and furloughs to be based upon seniority within rank. The Union has not denied that the City proposal would enhance the operational flexibility of the Department.

Union Position -

The Union argues that the City is attempting to change seniority from being the factor, to a factor that governs shift assignments and furloughs.

Unit members recognize seniority as the most readily ascertainable and as the most fair and consistent criterion for the allocation of desired shifts and furloughs. Tying contract rights to seniority encourages sustained careers and promotes morale by treating all employees on the basis of a neutral factor. The City's proposal furnishes it with leverage against the unit, such a change would serve as discouragement and other members will see it as a disincentive to being a long-term employee.

The Union states that the comparables support its'

position, all of which have a provision on shift assignments and furloughs allowing employees to choose based upon seniority.

AWARD

The Panel has reviewed the concerns expressed by both parties. It fully understands and has considered the City's needs for proper staffing of its personnel, and likewise fully understands and has considered the Union's position with respect to the importance of seniority as the criterion for effectuating the employees' desires for shifts and furloughs. The Panel is convinced that Section 4 is required to be revised in order to resolve the problems herein reflected by the parties positions and opposing last offers. Accordingly, having given due consideration to the applicable Section 9 Factors, and having examined all the testimony, exhibits and briefs, and all the competent and substantial evidence on the whole record, the Panel makes the following Award on this issue.

Article IV - Section 4, shall provide as follows:

> Shift assignments and furloughs shall be based upon seniority in rank and shall be determined separately within each section of the Uniformed Services Division. Platoons shall be considered "sections." Leave days shall be determined on the basis of operational needs within each section of the Uniformed Services Division. Determinations regarding leave days within all divisions shall be made by the division commander based upon operational need and demand; provided, however, that all such determinations of shift assignments, furloughs and leave days shall be subject to review, and if necessary, in his sole

discretion, revision by the Chief of Police.

EFFECTIVE DATE: Date of Award

ACCEPT

ACCEPT

Reject ACCEPT

4. "Indemnification for Judgments in Civil Court Lawsuits", article V, Section 7, of current collective bargaining agreement (See pg. 19)

City Last Best Offer proposes as follows:

> "Article V, Section 6 of this Agreement provides for furnishing legal counsel to the members of the PPSA at the expense of the Employer in situations where civil court lawsuits growing out of authorized on-duty law enforcement activities have been brought against members of the PPSA on the complaint of one or more citizens; in the event that such civil court lawsuit results in a Court Judgment against such a sued member of the PPSA and such Court Judgment is not based upon an intentional tort or criminal misconduct of such sued member of the PPSA, the Employer will indemnify such sued member of the PPSA against whom such Judgment is rendered for payment of such Court Judgment."

Union Last Best Offer proposes: "No change in current contract language."

City Position -

The City's proposal is intended to provide the City with a defense in court in the event of blatant, unauthorized behavior by a unit member.

The City's original proposal on this issue sought to provide indemnification except in cases of criminal misconduct and gross violation of department policy. At the hearing, the Union objected that the use of the phrase "gross violation" could create confusion and "Monday-morning quarterbacking" with regard to what constitutes a gross violation of policy. The language was revised to provide indemnification except in cases of criminal misconduct or intentional torts and eliminated "gross violation."

The City maintains that it's position is squarely supported by the comparable communities, ten of the 20 comparable communities do not provide for indemnification in their collective bargaining agreements. Of those ten communities that provide for indemnification, nine do not indemnify their command officers in the case of a gross violation of department policy.

The City's position is also supported by an examination of the indemnification provisions with the other City units. Indemnification is included only in the collective bargaining agreement with the instant unit. No officer has the right to commit an intentional tort. The City cannot accept , and certainly does not endorse, such actions.

Union Position -

The Union objects to the revision proposed by the City because the language advanced is too ambiguous. The only change that the City made was to include the language "gross violation of department policy." The problem with that

language is that the City does not define what a "gross violation of department policy" is. The language in the present contract excludes actions by the police officer for criminal misconduct.

The Union states that a comparison of the comparables is difficult because their definitions of actions not covered and the scope of indemnification coverage vary. Most of the comparables that provided indemnification provided an explanation of what the scope of their indemnification coverage is. Adding the language the City proposes moves away from giving the Union a clear guideline of where the City stands on indemnification of its officers.

AWARD

The Arbitrator notes that the Union responded only to the City's original proposal to include the language "gross violation," the City removed that proposal in its Last Best Offer. The Arbitrator further notes that the parties, in prior collective bargaining agreements included the language "intentional tort." The City's revision in it's Last Best Offer seeks to include that previously agreed to language, along with the word "authorized" in line 4 of it's Last Best Offer. The Panel is persuaded that the language of the current contract provision must be modified to resolve the concerns of both parties. Accordingly, having given due consideration to the applicable Section 9 Factors, and having examined all the testimony, exhibits and briefs, and all the competent and substantial evidence on the whole

record the Panel makes the following award on this issue.

Article V, Section 7, shall provide as follows:

> Article V, Section 6 of this Agreement provides for furnishing legal counsel to the members of the PPSA at the expense of the Employer in situations where civil court lawsuits growing out of authorized law enforcement activities have been brought against members of the PPSA on the complaint of one or more citizens; in the event that such civil court lawsuit results in a Court Judgment against such a sued member of the PPSA, and such Court Judgment is not based upon an intentional tort or criminal misconduct of such sued member of the PPSA, the Employer will indemnify such sued member of the PPSA against whom such Judgment is rendered for payment of such Court Judgment.

EFFECTIVE DATE: Date of Award.

ACCEPT

ACCEPT

Reject ~~ACCEPT~~

5. "Promotions" - (Affirmative Action) - Article VI - Section 1, Sub-section D of current collective bargaining agreement (See pgs. 21 & 22)

City Last Best offer proposes as follows:

See pg. 89 A, B, and C.

City Last Offer of Settlement on City Issue #5 - Article VI, Section 1 - Promotions, Sub-section D.

Revise Article VI - Promotions, Section 1 Promotions, Sub-section D to provide as follows:

D. The names of employees who have qualified in a given promotional examination will be placed on an eligible list. An eligible list shall remain in force for two (2) years from the date of the last eligible list established or until the names on the list have been exhausted, whichever occurs first. At that time, the list will be discarded.

1. Qualifications: In order to participate in the promotional examination for lieutenants, the applicants shall have served seven (7) years as a member of the force, with at least one and one-half (1½) years in the rank of sergeant. To participate in the promotional examination for captain, the applicant must have served nine (9) years on the force, with at least one and one-half (1½) years in the rank of lieutenant. The applicant will be given credit for his/her seniority of time in rank as of the date of establishment of the promotional lists.

2. The names of qualifying employees will be placed on the lists in order of final scores. In the case of a tie, names will be ordered according to seniority in rank and then in service.

3. Notwithstanding any other provision set forth in this Article, an affirmative action promotion procedure may be utilized by the City, as set forth below:

A. Two (2) promotional lists may be maintained:

1. 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.

2. 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 list 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:

1. The following shall apply:

a. Promotions to Lieutenant

For each two (2) promotions from the regular list, one (1) promotion shall be made from the special list.

b. Promotions to Captain

For each two (2) promotions from the regular list, one (1) promotion shall be made from the special list.

2. Dual Lists

Notwithstanding any of the above, if any employee who is on both the regular and special list is promoted from the regular list, that employee shall count as a minority promotion and shall cancel the need to promote anyone from the special list during that cycle. If the City decides to promote two (2) employees and one of the top two (2) on the regular list is a minority, then no one will be promoted from the special list during this cycle of two (2).

C. The term minority is defined to include those persons who are identifiable as: Black, American Indian or Alaskan native, Asian or Pacific Islander Hispanic or female.

D. The affirmative action promotion procedure shall continue in effect for each rank until the percentage of minorities within the rank equals forty-two (42%) percent.

4. In the event the affirmative action promotion procedure set forth in sub-section 3 above is not utilized, a promotion may be made from any of the top three (3) names on the eligible list at the discretion of the Chief of Police. Each eligible list shall remain in effect for a period of two (2) years unless sooner exhausted. An eligible list for each rank shall be maintained on a continuous basis so that any existing vacancies may be filled without undue delay.

5. Upon failure to satisfactorily complete the promotional probationary period of one (1) year for an employee who has been promoted will be returned to his/her former rank.

Effective Date: Date of the Arbitration Award.

Union Last Best Offer proposes as follows:

> "No change in current contract language; no change in expired Memorandum of Understanding dated February 25, 1985; no change in expired Memorandum of Understanding dated July 26, 1988; no change in expired Memorandum of Understanding dated December 19, 1989."

City Position -

The City's Last Best Offer on the Union issue proposes to incorporate the affirmative action program into the contract and to define a minority and provide that the affirmative action promotion procedure is to continue in effect for each rank until the percentage of minorities within each rank equals 42%. In the event the affirmative action procedure is not utilized (i.e., once the percentage of minorities in each rank reaches 42%) any promotion may be made from any of the top three names on the eligibility list. The City, in its post hearing brief, fully discusses the historical perspective of the Memorandum of Understanding regarding affirmative action and it accordingly is not necessary to repeat same herein, the highlights, however, are set forth hereafter. In March of 1983, the Society of Afro-American police filed a class action lawsuit in Federal Court against the City of Pontiac for allegedly discriminatory employment practices, and resulted in a Consent Judgment including an affirmative action program for promotions. During the course of litigation, the City and the Pontiac Police Supervisors Association entered into a Memorandum of Understanding dated

February 25, 1985, which established an affirmative action program. This Memorandum of Understanding, which on its face was to expire at midnight on December 31, 1989, established the precise procedure for promotions which the City has presented in its Last Best Offer.

On December 19, 1989, the City and the Union entered into a Letter of Agreement which extended the Memorandum of Understanding concerning promotions and affirmative action entered into between the parties through January 31, 1990.

The City maintains that since the parties were already in Act 312 arbitration no extension was necessary. Section 13 of Act 312 specifically provides that the status quo remains in effect pending the outcome of the Act 312 proceeding. See: MCLA 423.243.

The City notes that at the hearing, the Panel heard testimony regarding individual incidents of discrimination. In 1984, the City implemented an affirmative action plan as a result of a proposal submitted by then Chief Hildebrand to Mayor Holland. Subsequently, a lawsuit was filed by the PPOA seeking to enjoin the adopted affirmative action plan.

One witness testified that he has had problems even with his own Union, when he was given retroactive seniority and promoted to Sergeant, the PPSA filed a grievance to deny him his Sergeant seniority. Additionally, he testified that the former Union President of the PPSA stated that those hired under the affirmative action portion of the contract would go no further "as long as he was there." He also

testified that there have been situations where the Department has been accused of mistreating members of the minority community. Prior to the implementation of the affirmative action plan there was only one minority command officer.

Another witness confirmed the difficulties facing a minority trying to enter employment in the police department, stating that is was hard to hire into the Police Department without knowing someone or being related to someone within the Department.

The City argues that another possible cause of the historical non-representation of minorities in the City of Pontiac Police Department are the written examinations formerly taken by prospective police officers.

The City maintains that an increase in minority representation within the command unit did not take place until voluntary adoption of an affirmative action plan in 1984. As the record indicates, some kind of affirmative action has been in place for unit members since that time. Currently, there are 33 unit members; three captains, six lieutenants and 24 sergeants. Presently, none of the captains are minorities, two of the lieutenants are minorities and eight of the 24 sergeants are minorities. To satisfy the 42% per classification goal of minority representation, one captain should be a minority, three lieutenants should be minorities and at least ten of the sergeants should be minorities. Even if females are counted

as minorities for purposes of achieving the 42% minority representation goal, there is a shortfall in the captain's rank of one minority, there is still a shortfall in the lieutenant's rank of one position, and a shortfall in the position of sergeant of two individuals.

In the absence of an affirmative action plan, less senior minority members would be lower on the eligibility list, particularly if the City is required to elect the top person on the seniority list. Once the seniority weight is taken into account in establishing the final order of priority on the eligibility list, frequently the seniority factor tips the balance away from a minority candidate. Consequently, a separate list for minorities is required.

The City contends that the Union's argument whether or not a particular officer has satisfied the college credit requirements to become an officer, has no bearing on whether or not a representative percentage of minority candidates are promoted from the ranks of police officers to the command officers ranks.

Minority representation in the command unit fosters a better internal operation, having a certain number of minorities in public administration management boosts the morale of those who are on the staff who are also minorities. When potential command officers know there is a reasonable opportunity for a minority to be promoted, loyalty among such employees is fostered. It is extremely important for public service agencies to have a very

substantial representation of the various racial and ethnic groups that they are serving. Such representation enhances the credibility of the agency and opens communications between the community and the agency. Consequently, insuring a fair representation of minorities within the command unit would not only correct the historic imbalance of minority representation within the unit but would also foster smoother internal operation of the department and better community relations.

It is clear that the City of Pontiac, among all the comparable cities, would have the greatest need to insure minority representation in its police department. In this regard, the non-discrimination clause in the current agreement provides that "the parties support appropriate affirmative action practices which are intended to overcome barriers to equality in employment opportunities. Affirmative action is recognized as a problem solving effort involving practices or procedures designed to negate or counteract barriers to equality in employment."

The City's position is also supported in the other City units. Of the six other units, four have either an affirmative action plan or non-discrimination clause.

The City states that it has come a long way in obtaining fair representation of minorities in its police department since 1984. Unfortunately, a representative complement of unit members has not yet been achieved. Such representation can best be achieved by the continuation of

the affirmative action program which has increased minority representation substantially since its adoption.

Union Position -

On February 25, 1985 the PPSA and City of Pontiac voluntarily entered into a Memorandum of Understanding to encourage the promotion of minority members. The memorandum applied to only the promotion of sergeant to lieutenant and lieutenant to captain, and was to expire on December 31, 1989, however, the parties by agreement extended the agreement to January 31, 1990.

On August 22, 1986, the City, certain police officers and the Michigan Association of Police on behalf of the PPOA, entered into a consent judgment. The purpose of which was to increase the number of minorities hired as patrol officers, and as the percentage of minority patrol officers increased, an increased percentage would be promoted to detective and sergeant. The judgment expired by its terms on October 17, 1989.

Prior to the implementation of the Memorandum of Understanding and consent judgment, the City had only one minority officer in the ranks included in the PPSA. In 1975 there were two minority sergeants, in 1984, before implementation of the affirmative action plan there was only one. Now as of December, 1989, there is a full 1/3 of the entire PPSA membership which are minority group members. The Union maintains that the City could have implemented additional minority promotions. When the parties agreed to

extend the plan by one month there was a captain's position available. Had the City been truly interested in minority promotions it could have promoted an eligible lieutenant to captain before the expiration of the plan. Rather, it waited until after the expiration and promoted the top scoring candidate, who was a majority lieutenant.

The City has failed and/or refused to fill vacant and budgeted lieutenant and sergeant positions during the life of expired memorandum, but filled them with white males after it expired.

The Union argues that arbitration Panel can only decide those issues which are mandatory subjects of bargaining. In addition, the Panel is limited to imposing actions which are within the lawful authority of the employer. Recently, the United States Supreme Court decided that individual white firefighters could challenge employment decisions made pursuant to an affirmative action plan adopted by the City of Birmingham. Martin V Wilks, ____ US ____; 49 FEP Cases 1641 (1989). Pursuant to an earlier consent decree, Birmingham had implemented an affirmative action program. After its implementation a group of white firefighters brought suit claiming that the program was racially discriminatory and resulted in them being denied positions in favor of less qualified minorities. The Supreme Court concluded that the white firefighters were entitled to bring the action because to hold otherwise would "contravene [ ] the general rule that a person cannot be deprived of his

legal rights in a proceeding to which he is not a party."

The Union further argues that the law of collective bargaining in Michigan is clear that an employer and employees representative cannot bargain away, or attempt to bargain away, an employee's individual rights. A voluntary affirmative action program, un-filed and unapproved by the Civil Rights Commission will severly impact on an individual command officer's rights to validly earn promotions and his/her right to challenge the promotional scheme. Thus, as the parties cannot abrogate these individual rights, so too the arbitration Panel is not empowered to act in derogation of those rights.

Moreover, once challenged a municipality must prove that its affirmative action program was adopted after a thorough self-analysis which demonstrated that it had engaged in past discrimination, that discrimination still existed and that the program was narrowly tailored to prevent discrimination against majority group members. Richmond V Croson Company, 488 US 469; 52 FEP Cases 197 (1989). An attempt to create an employment ratio reflective of the community majority to minority ratio was expressly rejected as being a sufficient basis for a plan in Wygant V Jackson Board of Education, ____ US ____; FEP Cases 1321, 1324 (1986). In addition, when, as in the case of sworn police officers, special expertise is involved in performing a job any comparison of percentages must be made with those in the community who possess the job skills. Johnson V

Transportation Agency, ____ US ____; 43 FEP Cases 411, 418 (1987):

> Where a job requires special training, however, the comparison should be with those in the labor force who possess the relevant qualifications. See Hazelwood School District v. United States, 433 U.S. 299, 15 FEP Cases 1 (1977) (must compare percentage of qualified black teachers in area labor force in determining under-representation in teaching positions).

AWARD

The Panel is not persuaded by the Union's argument that it does not have the authority nor jurisdiction to award an affirmative action program. It believes it does have such authority and jurisdiction. Certainly such a program if negotiated voluntarily, through collective bargaining, would be a favored resolution, however, this Act 312 Arbitration is an extention and part of the collective bargaining process, as mandated by the legislature and affirmed by the courts. However, the Panel is likewise not persuaded by the City's arguments that it is unable to promote minority officers into command positions, and command officers into upper ranks without an affirmative action program. Good faith and equitable procedures implemented by the Chief and his office could accomplish that end result. There is no reason to believe, from the record, that the discrimination previously encountered by minority candidates presently exists. Accordingly, having given due consideration to the parties positions, and having

examined all the testimony, exhibits and briefs, the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record, the Panel awards the Union Last Best Offer on this issue.

EFFECTIVE DATE: Date of Award

ACCEPT _____

ACCEPT _____

REJECT _____

6. "Maintenance of Conditions" - Article X, Section 3 of current collective bargaining agreement (See pg 38)

City Last Best Offer proposes as follows:

"Revise the above-referenced provision to provide as follows:

Section 3. Maintenance of Conditions
Wages, hours and conditions of employment in effect at the execution of this Agreement shall, except as modified herein, be maintained during the term of this Agreement.

The Chief of Police shall have the right, as set forth in the City Charter, to adopt reasonable rules and regulations for the operation of the Department, though this Agreement shall supersede such rules and regulations inconsistent herewith. Before implementing any changes in such existing rules, the Chief shall notify the Association and discuss the changes with the Association. The Association shall be notified in advance of anticipated major changes in working conditions, and conferences in good faith shall be held thereon before they are placed in effect. Emergency situations shall be excepted from this provision."

Union Last Best Offer proposes:

"No change in current contract language"

City Position -

The City maintains that the purpose of its offer on this issue is to enhance the smooth operation of the police department, by recognizing the authority of the Chief of Police to issue reasonable rules and regulations regarding the day-to-day operations of the department.

It states that its proposal provides ample basis for the Union to challenge an inappropriate new rule. The City seeks to clarify the right of the Chief to act in the first instance - the Union is then free to react. Of the 20 comparable communities, 16 have contracts which reserve the right to make rules and/or regulations for the Police Department. Nor is there any inconsistency in the fact that a "maintenance of conditions" clause is also provided in the contract. Of the comparables, 12 have contracts which contain a maintenance of conditions clause.

All of the other City units have maintenance of conditions clauses within their collective bargaining agreements. Five of the other City units have contracts which reserve the City's right to make rules and regulations. Indeed, the provision offered by the city on this issue copies that provision presently in effect for the Patrol Officers of the City of Pontiac. The Award in the recent Firefighters Act 312 Arbitration proceeding adds the following new provision:

> The City and/or Department may adopt, amend and enforce reasonable rules and regulations not in conflict with this Agreement.

The City counters the Union argument that this provision would be contrary to the City's duty to bargain regarding mandatory subjects of bargaining by stating that the City's proposal specifies that the rules and regulations implemented by the Chief of Police would be superceded by any contrary provisions in the collective bargaining agreement. Consequently, if a regulation which is implemented is subsequently contradicted by a negotiated provision, the rule/regulation would be superceded.

Moreover, as recognized by the parties in virtually all of the comparables, there are two ways to handle the adoption of work rules issue. One method is to treat each work rule as a topic for separate negotiation and undertake the very lengthy process of negotiation, mediation and Act 312 Arbitration on the issue. The second method, which is in place in the Patrol Officers unit and virtually all of the comparables, is to provide that the employer may adopt the rule in the first instance subject to the Union's right to challenge the rule. Under the City's proposal the Department could act in the first instance (without waiting six months to one year for the negotiation process to be completed) and the rule, if disputed, would be submitted to a grievance arbitrator. What the Union really seeks here is a way to frustrate the adoption of any new rules.

Union Position -

The Union states that the purpose of the present clause is to contractually agree that neither party can unilaterally alter any wages, hours or conditions of employment existing at the time the contract is signed. Such a clause is necessary because it is virtually impossible for the parties to specify in writing in the contract all the conditions of employment. The City proposal would undermine the protection provided to those wages, hours or conditions of employment not specifically provided for in the contract. Any revision of the maintenance of conditions clause would tend to make hazy what is now clear and unambiguous.

In addition, the Union questions the language utilized in the City proposal as to the manner in which the City will act. For example, what do the words "the Association shall be notified in advance of anticipated 'major' changes in working conditions" mean in this context? Major, by whose terms? Then the City includes language that "emergency situations shall be exempted from this provision. What constitutes an emergency? And, finally what section of the provision shall be excepted. This revised maintenance of conditions is ambiguous and should not be thrust upon the Union.

All but six of the comparables have bona fide, effective maintenance of conditions clauses. All of the unions within the city have a provision for maintenance of

conditions.

AWARD

The Panel is not convinced that the Union's arguments negates the necessity for the City's proposal, however, it is aware of its concerns and will make its award hereinafter set forth in such a manner as to meet those concerns and the concerns of the City as set forth in their position statements. Accordingly, having given due consideration to the applicable Section 9 Factors and having examined all the testimony, exhibits and briefs and all the competent, material and substantial evidence on the whole record the Panel makes the following award on this issue:

Article X, Section 3 - Maintenance of Conditions shall provide as follows:

> Wages, hours and conditions of employment over which the City is legally required to bargain and which are legally in effect at the execution of this Agreement shall, except as modified herein, be maintained during the terms of this Agreement, and shall not be unilaterally changed, provided that this provision shall not affect the authority of the Trial Board as set forth in the City Charter. No employee shall suffer a reduction in such benefits as a consequence of the execution of this Agreement.
>
> The Chief of Police shall have the right, as set forth in the City Charter, to adopt reasonable rules and regulations for the operation of the Department, though this Agreement shall supersede such existing rules and regulations inconsistent herewith. Before implementing any changes in such existing rules, the Chief shall notify the Association and discuss the changes with the Association. The Association shall be notified in advance of

anticipated major changes in working conditions, and conferences in good faith shall be held thereon before they are placed in effect. Emergency situations shall be excepted from this provision. Provided, however, that the PPSA may grieve any change to which it objects as arbitrary, capricious or unreasonable, and no such change shall take effect until completion of the grievance process.

EFFECTIVE DATE: Date of Award

ACCEPT

ACCEPT

~~ACCEPT~~ Reject

7. Situations Not Covered by Agreement - Article X, Section 4 of current collective bargaining agreement (See Pg 38)

City Last Best Offer proposes as follows: "Delete the above-referenced provisions from the contract and renumber the remaining provisions."

Union Last Best Offer proposes as follows: "Maintain current contract language."

City Position -

The City acknowledges that there are mandatory bargaining subjects specified through PERA and enforced through MERC, and adds that if the current provision seeks to duplicate that law it is superfluous and superseded by PERA. If the provision seeks to add on to that law by requiring the employer to negotiate over non-mandatory subjects, it conficts with PERA. Since the existing

provision merely states that negotiations "may" occur under the stated conditions, there is no current existing requirement that such negotiations take place at all.

The City contends that the Union has taken the position that everything not set forth in the contract, is subject to negotiation during the term of the contract. In other words, the Department cannot do anything without going through a lengthy negotiation process. This is a very time consuming and wasteful exercise. Deletion of this provision would mean that the City could take action and the Union, in the event a dispute arose, could file a grievance under the grievance procedure or, in appropriate cases, pursue a remedy before the M.E.R.C.

The City maintains that there is no support among the comparable communities for maintaining the current provision. Of the 20 comparable communities, none have a collective bargaining agreement which requires future negotiations of situations not covered within the agreement. Of the six other City units, only one has a similar provision.

Union Position -

The Union maintains that the deletion of the current contract language promotes unilateral action on the part of the City. The Union is clearly opposed to such a proposition. This provision taken in conjuction with the City proposals for maintenance of conditions and the entire agreement clause are the City's attempt to usurp any

bargaining leverage or power that the PPSA may have.

The City claims that the provision is not necessary because it results in long and protracted negotiations on issues that "they" determine should not be discussed. This is not an adequate justification when there are two parties involved and those parties have acted in accordance with the present provisions in an attempt to come to mutually satisfactory agreements. For the City to decide that "they" no longer feel it necessary to even attempt to discuss issues which arise from problems not specifically covered is arbitrary and capricious.

Contrary to the City's exhibit which indicates that none of the comparables require future negotiations of situations not covered, several of the comparables do permit such negotiations and some of the others do not even address the issue. The City is attempting to eliminate any avenue that Union may have available to pursue the rights of its members. The Union contends that deletion of this provision, the acceptance of the City's maintenance of conditions and/or entire agreement provisions proposed by the City would leave the Union with reduced means to protect the benefits that it has worked so hard to gain for its members as well as causing problems in the potentially conflicting provisions.

AWARD

The Panel is not persuaded that deleting the current

contract provision would be in the best interests of the parties nor is it convinced, based on its consideration of the applicable Section 9 Factors and the competent, material and substantial evidence on the whole record that deleting the current provision is appropriate. Accordingly the Panel awards the Union position on this issue.

EFFECTIVE DATE: Date of Award

ACCEPT

ACCEPT

REJECT

8. Residency - Article X, Section 8 of current collective bargaining agreement (See pgs 39-41)

This issue has been previously made the subject of an award under Union Issue Number 3 herein and accordingly will not be further discussed.

9. Entire Agreement - General Provisions, new section to be added.

City Last Best Offer proposes as follows:

> "Add the following new provision entitled "Entire Agreement" to Article X - General Provisions:
>
> The parties agree that except as specifically provided herein, this Agreement represents the terms of their relationship for the duration thereof. No memoranda, awards/decisions nor past practices exist beyond the provisions of this Agreement, which might modify its

terms, nor, which bind the parties hereto."

Union Last Best Offer proposes as follows:

Maintain status quo. No new language.

City Position -

The City maintains that purpose of the City's proposal is to insure that the administration of labor relations for the command unit is conducted in a fair and informed manner, requiring the parties to engage in meaningful negotiations.

Canton Township, Dearborn Heights, Farmington Hills, West Bloomfield Township and Westland have collective bargaining agreements with clauses similar to that requested by the City in this case, the remaining comparable communities as well as the other City units have not addressed this issue in their collective bargaining agreements.

The City argues that the parties would be required to negotiate regarding any ambiguous contractual language, leaving the meaning of such language to be resolved at the bargaining table. Both the City and the Union would be fully aware of the then current terms and conditions of employment with neither party being able to rely upon unknown or outdated past practices or memorandums.

Union Position -

The Union objects to this provision because the City is attempting to severly restrict the ability of the Union to act on behalf of its members. The Union maintains that it

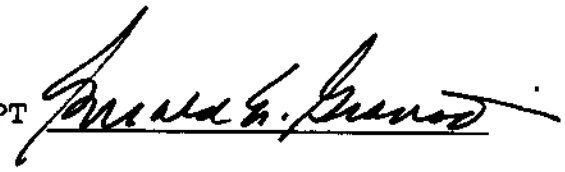
is virtually impossible to include every imaginable contingency in the collective bargaining agreement. This provision is an attempt to eliminate grievances on past practices, previous arbitration awards, memorandums or letters of understanding much to the detriment of the PPSA members.

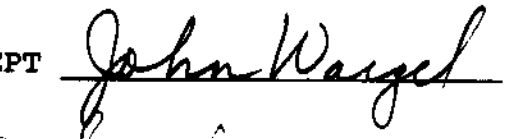
The Union contends that this provision gains little support upon review of the comparables, the majority of comparables do not address the issue, the contracts reveal that there is no such provision therein.

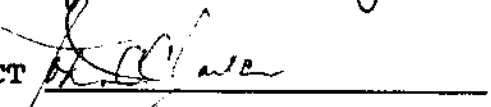
AWARD

The Arbitrator is convinced that awarding the City's proposal would diminish the employees position by eliminating all memoranda, awards and/or decisions and past practices beyond the actual provisions of the collective bargaining agreement. This arbitrator cannot and will not eliminate matters which may exist but which have not been placed before him. To place this burden upon him is inappropriate. The record does not reflect all those matters which the City wants eliminated. Accordingly, this Arbitrator and the Panel is convinced based upon the applicable Section 9 Factors and all the competent material and substantial evidence on the whole record, that the Union's Last Best Offer is appropriate and therefore the Award on this issue is to maintain the status quo and add no new language.

EFFECTIVE DATE: Date of Award

ACCEPT 

ACCEPT 

REJECT 

10. Duration and Automatic Renewal - Article X, Section 10 of current collective bargaining agreement (See pg 41)

City Last Best Offer proposes as follows:

> "This Agreement shall be effective January 1, 1988 and the terms and conditions shall remain in full force and effect through midnight December 31, 1990 and from year to year thereafter unless either party hereto shall notify the other in writing at least sixty (60) calendar days prior to the expiration date of this Agreement of its intention to amend, modify, or terminate this Agreement."

Union Last Best Offer proposes as follows:

> "This Agreement shall become effective January 1, 1988, and its terms and conditions shall remain in full force and effect until December 31, 1990, and from year to year thereafter unless either party hereto shall notify the other in writing at least sixty (60) days prior to the automatic renewal date of their intention to amend, modify or terminate this Agreement. In the event that negotiations extend beyond the sixty (60) day period referred to above, the terms and provisions of this Agreement shall remain in full force and effect pending completion of negotiations of this Agreement."

City Position -

The City would delete that part of the automatic renewal provision of the contract which indefinitely extends

its terms and provisions pending completion of negotiations. The parties would have sixty (60) days after notification of an intention to amend, modify or terminate the agreement, to complete negotiations. If negotiations are not complete within that sixty (60) day period, the terms and provisions of the agreement would not automatically remain in effect by operation of contract. As a matter of law, however, unit members would continue to receive all benefits of the contract pending the negotiations.

Among the comparable communities, Clinton Twp, Dearborn, Dearborn Hgts., Sterling Hgts., Troy, Waterford and Westland do not have collective bargaining agreements which provide that the contract remains in full force and effect pending the conclusion of negotiations, both Farmington Hills and Southfield only allow for such an extension upon mutual agreement and although West Bloomfield Twp. allows for the extension of the contract pending negotiations, it is subject to a provision allowing for notice of termination. Among the other City units, both Local 2002 and the Supervisory and Administrative Employees Association do not have clauses providing for the extension of their collective bargaining agreement pending the conclusion of negotiations.

The City maintains that the legal impact of its proposal under MERC precedent provides that wages, hours and conditions of employment for the unit members would continue

uninterrupted throughout negotiations. The City contends, however, that there is MERC precedent establishing that the collection of Union dues and the processing of arbitration proceedings not involving vested or accrued benefits, or not relating to an obligation arguably created by the expired contract, need not continue after the termination date of the agreement and during the course of negotiations.

Union Position -

The Union maintains that the City's proposal, that it would force the parties to bargain more effectively and quickly has no objective support.

The Union also objects to this proposal because it was not raised in earlier negotiations between the City and the Union. Such a proposal is not in line with the general practice of the majority of the comparables. 12 of the 20 comparables provide for the contract to remain in full force and effect pending the conclusion of negotiations and five of seven unions within the City have such a provision. In the remaining eight comparables, the contracts do not have a specific provision addressing the issue of duration and automatic renewal.

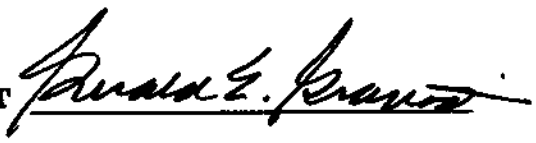
The Union contends that the City has not advanced any reasonable justification for this provision which is basically inconsistent with the statutory scheme established under Act 312 to continue the established terms and conditions pending resolution by the impartial tribunal.

AWARD

The Union statement that this issue was not previously raised by the City during negotiations has been responded to by the Arbitrator at the hearing and herein, we shall therefore not deal with such further.

The Panel has carefully examined the comparables, both external and internal, and has found no preponderence of evidence which would mandate a change of the "Automatic Renewal" provision of this Section of the current contract. The Panel has also fully examined the testimony and exhibit evidence submitted and is not convinced that the City's proposal would cause the parties to more diligently bargain. The Arbitrator is convinced that the state of the law provides that the contract provisions continue to be operative during negotiations, and that they continue to be operative during Act 312 Arbitration. Since this is the case the Arbitrator finds no overwhelming reason to delete that portion of the contract provision providing for "Automatic Renewal." Accordingly, the Panel is convinced based upon the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record that the Union's Last Best offer is appropriate and therefore the award on this issue is the adoption of the Union's Last Best Offer as set forth above.

EFFECTIVE DATE: Date of Award

ACCEPT 

ACCEPT John Wargel

REJECT

City Economic Issues

11. "Hours of Work" - Article V - Section 1 of current collective bargaining agreement (See pgs 15 & 16)

City Last Best Offer proposes to add a second paragraph to Article V - Section 1 as follows:

> "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 proposes: "No change in contract language; maintain status quo."

City Position -

Under the current contract, some unit members work a 4/40 schedule while others work a 5/40 schedule. The 23 unit members assigned to the Chief's Office, Investigational Services and the Administrative Support Division work five days a week, eight hours each day. The 11 unit members assigned to the Uniformed Services Division currently work four days a week, ten hours a day.

The 4/40 system was originally adopted in 1971. The system was adopted with the following goals in mind: (1) allow greater concentration of manpower during certain periods of the day; (2) improve morale; (3) reduce sick time use.

Unfortunately, not only have the original goals of the 4/40 system not been met, but numerous problems have arisen under that system. After investigating the proficiency of the 4/40 system, Captain Michael E. Miles prepared a report to then Chief Reginald M. Turner on December 14, 1989, regarding the 4/40 system. In part, Captain Miles' report concluded that: (1) the use of sick time had increased since the adoption of the 4/40 work schedule; (2) that productivity over the ten hours versus eight hours had not increased; and (3) supervision had lost the ability to really observe the work of all the personnel under their command. The current Police Chief testified that as a result of the 4/40 system, the Department is not as able to respond to the actual needs of the community, because of less flexibility in scheduling.

He also explained that the 4/40 system has contributed to the cost and deterioration of the Department's equipment and vehicles, because there is often a five hour overlap during which two shifts are operating at one time even though they are not needed. Consequently, during that time both platoons must be supplied with equipment and vehicles at the same time.

The Chief also indicated that there was an increase in officer fatigue as a result of the 4/40 system. An additional problem is the affect on sick leave time taken. When a unit member takes a sick leave day, his sick leave time is charged only eight hours, even though the Department loses that officer's services for a ten hour period of time. Only if a 4/40 officer uses four consecutive sick days is he charged for 40 hours of sick leave time.

The 4/40 system also detrimentally affects the officer's relationship with the Police Department, because unit members are off three days a week instead of four, there is a loss of Departmental contact, and continuity of the individual within the Department. It is more difficult to acquire an officer to work overtime, after the officer has already worked ten hours, not only in individualized overtime situations, but also in general mobilization situations. In emergency situations using the 5/40 system the Department could hold over an entire shift of unit members.

The Chief testified that the 5/40 system would give the Department the opportunity and ability to staff more individuals during peak periods of time, therefore there would be sufficient manpower to answer incoming service calls without delay. Additionally, there would be less wear and tear on the Department's motor vehicle fleet. Because an eight hour shift arrangement eliminates unnecessary overlap between shifts, motor vehicles will be on the road

less, and available for maintenance and repair more.

This issue has been presented in two prior Act 312 proceedings. In both cases, the Department scheduled officers on a 4/40 basis and, for reasons similar to those presented in this record, desired the right to return to the traditional 5/40 schedule. In both cases, the Arbitration Panel awarded the employer's position and awarded the employer's right to implement the 5/40 schedule. (See City of Ann Arbor and Ann Arbor Police Officers Association, [MERC Case No. D83 D-1376, January 29, 1985] and City of Southfield and Southfield Police Officers Association, [MERC Case No. D87 F-2123, January 16, 1986])

The majority of comparable communities operate under the 5/40 system. Only one (i.e., Troy) operates on the 4/40 system. Of the 20 comparable communities, 17 have contracts which give the employer the right to change the work schedule. The remaining three collective bargaining agreements do not address this particular issue. Among the six other City units, four operate under a 5/40 system and four have collective bargaining agreements which give the City the right to change the work schedule.

The City argues that the Union attempted to divert the Arbitration Panel's attention with two suspicious claims. First, the Union questioned whether there would be officers on the road under the 5/40 system during shift change. Virtually all of the comparables work on the 5/40 system and use a variety of methods, to cover shift changes. Second,

the Union attempted to suggest that there is no increased flexibility from the 5/40 system. The Union's argument that since an officer will work 2,080 hours each year under either system, it does not make any difference what schedule is used. The Union did not present any experienced police administrator to present such a wild claim. Union representative Timpner was the only Union witness to testify on this claim. The Union's lack of experience in scheduling a work force and lack of high level police administration experience shines through. The one person on the Union committee with such experience, Captain Michael Miles, who is in charge of the Uniformed Services Division, testified that the Department is absolutely correct in its assertions.

The Union's claim that the schedule makes no difference in terms of scheduling flexibility cannot be taken seriously. Individuals will work 2,080 hours per year but it is how those hours are scheduled that makes the critical difference. The longer the work day, the fewer the number of assignments may be scheduled, under the 5/40 schedule the individual will have 260 work day assignments while under the 4/40 system the individual will have 208 work day assignments. These additional 52 work day assignments, of course, create great scheduling flexibility.

Union Position -

The Union maintains that the City never presented a proposal on this issue prior to arbitration. The only time it was addressed by the City was when the City suggested

that a change from the present four days per week at ten hours per day ("4/40") work schedule for the patrol division supervisors, to a five days per week at eight hours per day ("5/8") be exchanged for a wage increase of three percent (3%) per year for three years.

The Union states that the Police Department engaged in considerable research before adopting the 4/40 system. The department wanted to change the then existing 5/8 schedule to adopt a system that would improve morale, would be more efficient for the department and allow for a greater concentration of staffing or manpower during certain periods of the day, the overlap.

It further states that the 4/40 schedule worked well until the City diminished the manning in the department and refused to fill vacancies. As manpower decreased the City found it necessary to reduce four platoons to three. The reduction in the number of platoons was not due to a problem with the way the 4/40 schedule functioned, or with a failure of the 4/40 to achieve the desired goals; rather the reduction was due solely to the refusal to fully staff the department.

The Union argues that the City erroneously claimed that a change to 5/8 from 4/10 would have the effect of adding 16 officers to the patrol contingent, thus increasing the coverage on calls, however, those imaginary 16 officers would be on a department-wide basis. The Chief of Police had no idea what the effect would be, if any, for the

supervisory staff which are represented by the PPSA. In addition, by returning to a 5/8 schedule, the department would lose the natural and necessary overlap of platoons which occurs with the 4/40 schedule.

Reduced to its simplest terms: The parties accepted and agreed that an officer would work 260 days per year under a 5/8 schedule resulting in 2080 hours of coverage by that officer. Similarly, the parties accepted and agreed that an officer would work 208 days per year under a 4/40 schedule, again resulting in 2080 hours of coverage by that officer. Thus, as long as the department had one officer, it could provide coverage to the community of only 2080 hours per year. The only way to increase the coverage to the City would be to increase the numbers of officers.

Presently, there are 12 PPSA members who work under the 4/40 schedule. The balance of the unit members are assigned to non-patrol division duties. The 12 supervisors translates into four per platoon, one lieutenant and three sergeants. The City claims that in order to increase morale and efficiency in the department it is necessary for the supervisors to have more contact with each other and their platoons. Though, as long as three platoons are maintained and the staff is not increased there will be no additional contact between lieutenants and their colleagues. As to the sergeants, assuming no increased staffing, the increased contact would be limited to one contact, two days per week.

The Union contends that the City's claim that return to

a 5/8 schedule would require less equipment is without merit. Apparently, this claim is based on the mistaken position that one eight hour platoon would come off the road and the new eight hour platoon would take the vehicles and other equipment that the first platoon was leaving. However, as conceded by the Chief on cross-examination, additional equipment would still be necessary because it is dangerous for the police and community alike for the patrol to function in strict eight hour shifts, there must be an overlap of platoons. Operating strictly under a 5/8 would only serve to hamper the response time to calls as it did prior to the institution of the 4/40 in 1971.

AWARD

The Arbitrator has ruled on the Union's contentions that this issue was not raised during negotiation and should therefore not be raised herein. Again, it is the ruling that this issue is properly before this Panel for consideration and award.

The Arbitrator is in complete agreement with the findings and awards made by the Arbitrators in the Ann Arbor and Southfield cases as cited above. The comparables, both external and internal are, almost without exception, in support of the City's position of having the ability to use the 5/40 work schedule rather than the 4/40 schedule. The evidence is convincing that the 4/40 schedule is more conducive to additional sick time off, difficulty in scheduling overtime, inability to staff sufficiently in peak

periods, more wear and tear on equipment and inability to observe the work of personnel under the command of unit members. The 4/40 work schedule reduces staffing flexibility and the City's manpower requirements. The Arbitrator is convinced that the 4/40 schedule provides less coverage during peak times. All the problems of the Department cannot, of course, be solved by 5/40 scheduling, but it can help the City meet it's required community responsibility. Accordingly, the Arbitrator and Panel is convinced, that based upon the applicable Section 9 Factors and all the competent, material and substantial evidence on the whole record, that the City's Last Best Offer is appropriate and therefore the award on this issue is to add the language proposed by the City to Article V, Section 1 as set forth above in it's Last Best Offer.

EFFECTIVE DATE: Date of Award

ACCEPT _____

ACCEPT _____

REJECT _____

12. "Holidays" - Article VIII, Section 6, Sub-section A of current collective bargaining agreement (See pgs. 29 & 30)

City Last Best Offer proposes as follows:

"A. The above is in addition to Lump Sum Holiday Pay. The following shall be paid holidays:

New Years Day

Martin Luther King Day
Presidents Day
Good Friday (1/2 Day)
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Eve
Christmas Day
New Years Eve

All National, State and City general election days excluding partisan caucuses, special elections and Presidential primaraies."

Union Last Best Offer proposes: "No change in contract language; maintain status quo."

City Position -

The primary focus of the City's proposal is on substituting Martin Luther King Day as a paid holiday in the place of Lincoln's Birthday. Lincoln's Birthday is already recognized on President's Day. Consequently, separately recognizing Lincoln's Birthday is a redundancy.

Currently, unit members have a paid day off in observance of Martin Luther King Day. However, unit members do not receive a cash payment at the end of the year as they do with the holdiays currently recognized under the collective bargaining agreement. By substituting Martin Luther King Day for Lincoln's Birthday, unit members would receive a cash payment at the end of the year for Martin Luther King Day, in addition to being allowed to have that day off if possible.

Command officers in the comparable communities receive as few as nine and as many as 15 holidays under their

respective collective bargaining agreements. Unit members in the City of Pontiac receive 12 paid holidays, nearly identical to the 12.3 holidays received on average in the comparable communities. None of the comparable communities include both Lincoln's Birthday and Presidents' Day as separately recognized holdiays. Among the other City units the Fire Fighters no longer recognize both Lincoln's Birthday and Presidents' Day.

The City Last Best Offer also adds City general election days as recognized paid holidays.

Union Position -

The City's proposal would require the reduction of the lump sum holiday payout from 11 1/2 days to 10 1/2 days. In addition, this proposal would eliminate days off or paid days for local elections and special elections. The Union opposes this proposal because (1) it reduces the number of paid holidays that the PPSA is permitted; and (2) all of the other unions within the City already receive more days than the PPSA at its current level of 11.5.

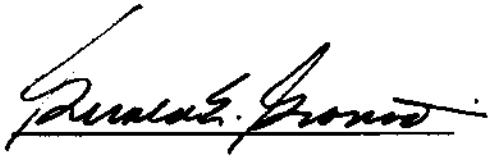
Under the present system there are only three comparables which have fewer holidays than the PPSA. The remaining 17 comparables all enjoy between 12 and 15 holidays - all greater in number than those received by the PPSA. The Union is not asking for more, it desires to maintain the status quo.

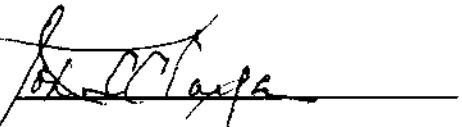
AWARD

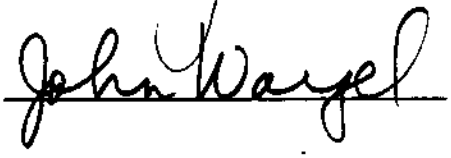
Martin Luther King Day is for all intents a National

holiday. This Arbitrator believes it is appropriate and necessary for the City of Pontiac to likewise celebrate this day. To fail to recognize the importance of this day in its collective bargaining agreements would, I believe, be an insult to the majority of the City populace. The Arbitrator agrees with the City's contention that Lincoln's Birthday has, on a National scale, been incorporated into Presidents' Day and is celebrated on that day. To have a separate day as a holiday in the collective bargaining agreement would be a duplication. Substitution of Martin Luther King Day for Lincoln's Birthday does not in the Arbitrators opinion diminish the number of paid holidays. Clarification of the paid double time days for elections is a resolution of an ambiguity that the Arbitrator believes is also needed, the City Last Best Offer does that. Accordingly, having given due consideration to the applicable Section 9 Factors and having examined all the testimony, exhibits and briefs and all the competent, material and substantial evidence on the whole record, the Panel awards the City Last Best Offer, as set forth above, on this issue.

EFFECTIVE DATE: Date of Award

ACCEPT 

ACCEPT 

REJECT 

13. "Dental Insurance" - Article VIII, Section 10 of current collective bargaining agreement (See pgs 31 & 32)

City Last Best Offer proposes as follows:

> "The dental coverage will be improved July 1, 1983 to provide 100% of preventative and diagnostic care with a $100.00 deductible per family and 70% of Class I and Class II types of dental care with a maximum payment of $800 per family members per year. Effective July 1, 1983, the City, in addition to present retirees coverage, will begin to pay the premium for the retirees' spouses for employees who retire after July 1, 1981.

Union Last Best Offer proposes: "No change; maintain the status quo."

City Position -

The City maintains that the increased costs of insurance justify its proposal of adding a $100.00 deductible provision to the Dental Insurance provision of the agreement. It contends that it is severely restricted in its ability to raise additional revenues to cover its increased costs of insurance and thus the employees who receive this benefit should share in the increased cost.

Union Position -

The Union objects to the City proposal because it was not a separate issue in negotiations prior to arbitration. It states that the majority of the comparables do not require a deductible for Dental Insurance. The City has not indicated that there would be any demonstrable cost savings. Although the dollar limits and types of coverage varied among the comparables, they support the rejection of the

City proposal.

AWARD

The Arbitrator, having previously ruled on the Union objection to the hearing of this issue, again finds that this matter is properly before the Panel for determination and award.

The Arbitrator is not convinced that the City proposal of a $100.00 deductible on Dental Insurance is supported by any of the comparable external communities, nor do I find any justification for same among the internal comparables. Testimony and evidence on this issue was sparce at best. Accordingly, having given due consideration to the parties positions and concerns, the applicable Section 9 Factors, and having examined all the testimony, exhibits and briefs, and all the competent, material and substantial evidence on the whole record the Panel awards the Union Last Best offer as set forth above.

EFFECTIVE DATE: Date of Award

ACCEPT Gerald E. Granda

ACCEPT John Wargel

REJECT

14. "Health Insurance" - Article VIII, Section 8 of current collective bargaining agreement (See pg 31)

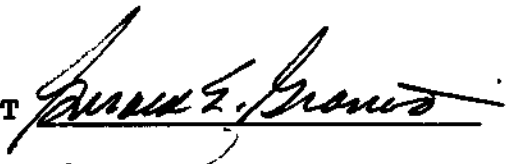
The City in its Last Best Offer withdrew its' demand for additional contract language and proposed to retain the

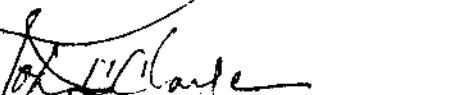
current contract language.

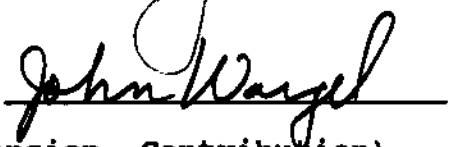
The Union in its Last Best Offer proposed "No change; maintain status quo."

Accordingly, the Panel makes no Award on this withdrawn issue and the status quo remains in effect

EFFECTIVE DATE: January 1, 1988

ACCEPT 

ACCEPT 

ACCEPT 

15. "Wage Benefits" (Employee Pension Contribution) - Article IX, Section 4 - (add new sub-section C) of current collective bargaining agreement (See pgs 36 - 38)

City Last Best Offer proposes as follows:

> Add a new sub-section C to Article IX - Wage Benefits, Section 4, Retirement, to provide as follows:
>
> C. Effective July 1, 1990, the employee's pension contribution shall be 3.5% of base salary, longevity, lump sum holiday payment, bonus and shift differential into the police and fire pension system.
>
> Effective Date: July 1, 1990

Union Last Best Offer with regard to Employee Pension Contribution was contained in Union Issue Number 17, as discussed hereinabove. It was, however, an Offer containing two (2) provisions, one regarding percentage of employee contribution to pension and the second regarding three (3) years retirement credit.

While the Union requested that its issue number 17 and City issue number 15 be considered together, the Panel has determined that these issues should be considered separately.

City Position -

The City argues that that record supports the City's proposal to increase the employee pension contribution to 3.5%. The average employee pension contribution rate in the comparables is 4.15%. Of the 20 comparables, only five presently require an employee pension contribution of less than 3.5%. None of those five communities, Bloomfield Twp., Redford Twp., Shelby Twp., Troy and West Bloomfield Twp. allow their unit members to retire after 25 years of service regardless of age or have as high a multiplier. Additionally, no comparable community provides the level of retirement benefits provided by Pontiac. Clearly, unit members enjoy a retirement plan superior among the comparable communities, without contribution at a rate even near the average of the comparable communities.

The City maintains that the only rebuttal presented by the Union on this issue is that in the last year the employer contribution to the pension fund slightly declined and that the pension fund is presently healthy. The reason the plan is healthy, the City states, is that it has been making the required tremendous contributions. Moreover, the City contends, it is undisputed that over the five prior years the pension contributions required from the City

increased, for the two years between 1987 and 1989, the cost of maintaining the pension plan increased 7.34%.

Union Position -

The Union maintains that the record is devoid of any compelling reason or evidence upon which the Panel might base an award of the City's Last Best Offer of increasing the employee contribution from 2.5% to 3.5% in light of its agreement with the firefighters union. The Union recognizes that these benefits cost and are willing to accept responsibility for some of the costs. However, the Union states that these situations must be approached cautiously. In light of the fact that the City only requires the firefighters to contribute 1% and allows them three years service credit for retirement, it should be more reasonable in reviewing and granting requests of its police supervisory personnel.

AWARD

The Arbitrator has carefully examined the external comparable communities' contracts and their respective employee contributions to the pension plans and finds that the employee contributions are in very little uniformity. They range all over the map. It is difficult, at best, to draw a firm conclusion because of all the differing plans and variables contained therein. True, one might be able to average the employee contributions but in this Arbitrators opinion that would not be accurately reflective. Examining the internal comparables reveals that the current employee

contribution is well within the range of the other units. The only outstanding argument in favor of awarding the City's proposal is revealed in examining and comparing the City's Pension Contribution. There is no doubt that the City contributes a considerably higher percentage than do the other comparables, however, that, standing alone, is not in the Arbitrator's opinion sufficient reason to award an increase from 2.5% to 3.5%. Accordingly, having given due consideration to the parties positions and concerns, the applicable Section 9 Factors, and having examined all the testimony, exhibits and briefs, and all the competent, material and substantial evidence on the whole record the Panel rejects the City Last Best Offer and awards the following for this issue:

No additional language shall be added to the contract reflecting an increase in employee pension contribution greater than the current 2.5%; i.e. the status quo shall be maintained.

EFFECTIVE DATE: Date of Award

ACCEPT

~~ACCEPT~~

~~REJECT~~

CONCLUSION

During these protracted and lengthy proceedings the Chairman was greatly aided by the advocacy and counsel of Mr. Dennis B. Dubay for the City of Pontiac and Mr. Daniel J. Hoekenga for the City of Pontiac Command Officers. Their excellent presentations at the hearings, cooperation in identifying the issues, submission of exhibits and well prepared Briefs greatly aided the Panel in its study, review and preparation of this award. The Panel thanks those persons and the Chairman thanks Panel delegates John Wargel and John Claya. It is sincerely hoped that this award leads to labor harmony and future successful collective bargaining.

Respectfully submitted:

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Dated: December 3, 1990