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**MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION**

CITY OF PORT HURON

and

MERC Case No. D91 D-0894

PORT HURON FIRE FIGHTERS
ASSOCIATION, LOCAL 345,
IAFF, AFL-CIO

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Panel of Arbitrators

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FINDINGS, OPINION AND AWARD

Dated: December 17, 1992

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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INTRODUCTION

A pre-hearing conference was conducted in Port Huron, Michigan on June 15, 1992. The hearing was held in Port Huron, Michigan on August 18 and September 14, 1992. The arbitration panel met in conference on December 1, 1992 in Bloomfield Hills, Michigan.

The parties' stipulations are summarized as follows:

- A. The statutory time limits are waived.
- B. The new contract will be for three years beginning July 1, 1991.
- C. All disputed issues are economic.
- D. There are 8 comparable communities: Bay City, East Lansing, Holland, Jackson, Kentwood, Midland, Muskegon, and Portage, Michigan.¹

There are five outstanding issues between the parties. These are the following:

- 1. Wages for the period July 1, 1991 through June 26, 1992.
- 2. Employee pension contributions.
- 3. Health insurance deductibles.

¹ At page 5 of its Brief, the Union states that it "does not concede that these communities are, in fact, comparables and has stipulated to them for expediency in this proceeding, without prejudice to its rights in future negotiations or arbitration hearings to challenge their appropriateness."

4. Eligibility for health care benefits for future retirees hired after January 1, 1993.
5. Disability plan in lieu of current sick leave plan for employees hired after January 1, 1993.

Because the outstanding issues are economic, the Panel is required to accept the last offer of settlement made by one or the other party for each issue. In deciding which offers to accept, the Panel has considered the factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

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 on the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest 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 in 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.

Factors (a) and (c) are not in issue.

1. WAGES

City's Final Offer: 4% raise to all classifications for the period July 1, 1991 through June 26, 1992.

Union's Final Offer: 5% raise to all classifications for the period July 1, 1991 through June 26, 1992.

The City is offering an across-the-board wage increase of 4% for all classifications at each step for the first year of the

contract beginning July 1, 1991; the Union is requesting a 5% wage increase for this period. At the first day of hearing, the parties stipulated that the Union had agreed not to ask for more than 5% for the first year of the contract and 4% for the second year of the contract in exchange for the City's agreement to pay 4% for the third year of the contract. (Transcript of August 18, 1992 hearing, p. 9, hereafter "Tr I, p. ____"). At the second day of hearing, the parties stipulated to a 4% raise for the second year of the contract (Transcript of September 14, 1992 hearing, p. 4, hereafter, "Tr II, p. ____"). Therefore, only the first year's increase is in dispute.

On this issue, the parties differ on the computation of salaries of comparable communities and the meaning and effect of the Act 312 Award and Addendum prepared and issued by Arbitrator Mark Glazer in 1987. On the first issue, the City explains that the only pay rates of comparable communities which the Panel should consider are pay rates in effect on the first day of the City's fiscal and contract year -- July 1. In other words, if a pay rate in effect on July 1, 1991 in a comparable community were \$30,000 and on January 1, 1992 it was increased to \$32,000, the latter increase should be disregarded in deciding the rate increase issue in the present case. In support of its position, the City argues that historically neither the parties nor Act 312 Arbitrators ever factored interim salary increases into the salaries paid by comparable communities, in determining salaries for the Port Huron fire fighters. The Glazer Award was based on salaries in effect on

July 1 only and did not look to actual or "annualized" salaries paid by comparable communities. No discussion of "annualized" pay rates occurred in any previous Act 312 proceedings between the parties.

The Union argues that 12 month pay rates reflect reality; and the record does not show with any certainty how past arbitrators measured pay rates or the extent to which interim pay rate increases occurred in comparable communities.

The parties are setting their three salary increases to be effective approximately at the beginning of each fiscal year (July 1, 1991, June 27, 1992, and June 26, 1993). In listing the salaries paid to fire fighters in comparable communities the Union has determined actual salaries in effect in those communities during the 12 month period beginning July 1. Some of these communities have salary increases within the 12 month periods. This may be illustrated as follows: Effective July 1, 1991, Bay City provided a base salary of \$31,741. Six months (or one-half year) later, Bay City raised its base salary to \$32,381, where it remained until July 1, 1992. Thus, Bay City's actual wage rates for the period July 1, 1991 to July 1, 1992 would be \$15,870.50 (\$31,741 multiplied by .5 year) plus \$16,190.50 (\$32,381 multiplied by .5 year) which equals \$32,061.

Section 9(d) of Act 312 refers to the "Comparison of the wages . . . of the employees involved in the arbitration proceeding with the wages . . . of other employees . . . in comparable communities." This language would appear to contemplate actual wage rates

in comparable communities, which would include interim salary increases. It does not appear that any previous Act 312 panel of the parties has explicitly ruled on this issue. Nor does the evidence show that this was ever previously a disputed issue between the parties (Tr. I, p. 94). Further, the record does not establish the extent of interim salary increases of comparable communities in past Act 312 Awards of the parties or in the parties' own negotiated settlements. In these circumstances, it seems more appropriate for the present Panel to use the actual pay rates of the comparable communities. Blended or "annualized" rates will be used.

The next issue is which final offer is to be adopted with blended or "annualized" rates as the bench mark. With "annualized" salary rates of the comparable communities and also the parties' assumption that two communities with unsettled contracts will increase their salary rates by 4% annually, the difference between the parties comes into clearer focus. The City argues at page 6 of its Brief that even when "annualized" earnings are used, its 4% offer for July 1, 1991 will place the fire fighters \$8 per year above the average:

The 4% wage increase proposed by the City for July 1, 1991 would result in a salary of \$32,898.00. As of that date, the average pay for fire fighters in comparable communities was \$32,554.00. See, City Exhibit 21. However, even if wage rates are "annualized" as the Union proposed, the average pay of the comparable communities for the year beginning July 1, 1991 was \$32,892.00. Clearly, even under the Union's Exhibit 15, which utilizes its flawed salary calculation formula, the City's

proposal leaves the members of this bargaining unit above the average of the comparables. Of course, the Union would like them to be even further above the average of the comparables, but there is no basis in the historical record or in the evidence presented in this case to justify such a further leap.

Therefore, the City's offer exceeds the average for the period July 1, 1991 through June 26, 1992. The City also argues that the parties' interim agreement dated March 30, 1989 to raise rates "to the average" on July 1, 1989 (City Ex. 26) shows the parties' own understanding that the fire fighters need not be paid above the average.

The Union agrees that the City's proposed 4% increase for July 1, 1991 will put the fire fighters \$8 per year above the average of the comparable communities in the first year. The Union argues, however, that by reason of the agreed upon 4% raises for the next two years and the parties' assumption of a 4% raise for two comparable communities without contracts, a 4% raise in the first year will have the effect of putting the fire fighters below the average beginning July 1, 1992. With a 5% salary increase the fire fighters will remain less than 1% above the average of the comparable communities for each of the three years. At pages 11 and 12 of its brief, the Union explains this as follows:

[A]cceptance of the Union's 5% offer for the first year would result in a Port Huron fire fighter being \$323, or .98%, above the average wage of \$32,892

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In the second year, effective July 1, 1992, . . . Union Exhibit 16 reviews only those salaries currently in effect for the 1992-93 contract year. A review of the full paid fire fighter salary in each of the comparables, assuming a 4% increase where no current wage exists in each year, 1991 through 1994, as was first done by the City in its exhibits (see C #21, Tr. Vol. 1, 44), demonstrates even more clearly that the Union's last offer should be awarded. In 1992-1993 two of the comparables have not yet reached an agreement. Both the City of Port Huron and Union have assumed an increase of 4% for each comparable with an expired rate. The resultant average of the comparables is then \$34,300. The Union's last offer is only \$243, .71%, above the average. The City's last offer is \$86 below the average.

In the third year, effective July 1, 1993, the parties have again stipulated to a 4% increase. Once again, the City's last offer in the first year would result in a base salary well below the average by the third year. Based upon the assumptions agreed to by the parties, the average of the comparables is \$35,673 for a full paid fire fighter in the third year. The last offer of the Union is only \$252, or .71% above the average. However, the city's last offer would yield a base salary of \$91 below the average.

The Union relies on the Glazer Award and Addendum for its position that the Port Huron fire fighters are entitled to be above the average. The Glazer Award and Addendum expresses the conviction that the fire fighters are entitled to salaries which exceed the average of the comparable communities. However, the award does not clearly explain how much the salaries are to exceed the average. Arbitrator Glazer wrote on this point:

It is my strongest intention that the fire fighters remain above the average for wages in

the second year of this contract. This does not mean at the average or close to the average, but requires that fire fighters' wages, exclusive of longevity pay or any other factor, exceed the average rate for the comparable communities in the second year.

The phrase "close to the average" is ambiguous. It may mean "slightly less than the average" or it may mean "slightly more than the average" or it may mean "slightly less or slightly more than the average." All that can be said with certainty is that Arbitrator Glazer wanted the fire fighters to be paid at least some amount in excess of the average.

The Union's point is that even if a trivial excess were all that the Glazer award meant (whereas it actually signified more) then, by the second year the fire fighters would be below the average with a 4% increase in the first year.

The Union adds that the parties' March 30, 1989 interim agreement to raise rates on July 1, 1989 "to the average" (City Ex. 26) is not fatal to its position. First, the ensuing increase on July 1, 1989 placed the fire fighters above the average (Union Ex. 20). Second, unless the Union's final offer of a 5% increase for the first year is accepted, the fire fighters will fall below the average beginning July 1, 1992.

The Panel accepts the Union's final offer of a 5% increase for the parties' first contract year. This increase will assure that the Port Huron fire fighters do not fall below the average of the comparable communities in the second and third years of the contract.

Section 9(f) of Act 312 refers to the "overall compensation" of the employees including their "medical and hospitalization benefits." And Section 9(h) of Act 312 refers to "other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." It is noted that later in this Opinion and Award the Panel adopts the City's final offer which introduces medical deductibles of \$275 and \$550 per year. The 1% which has divided the parties on wages equals an average of \$316 per employee. In addition to assuring that Port Huron fire fighter salaries will not fall below the average of comparable communities for all three years of the contract, the 1% will serve to lighten the burden fire fighters will experience in paying as much as the first \$550 of their medical expenses each year. In addition, later in this Opinion and Award, the Panel is retaining the 4% employee pension contribution. By reason of the parties' agreement to change pension plans, the City will enjoy a substantial reduction in its pension contributions for the Port Huron fire fighters.

Dated: Dec. 17, 1992

Thomas L. Gravelle
Thomas L. Gravelle, Chairman

Dated: 12/18/92

Douglas R. Alexander
Douglas Alexander, City Del.
~~Concurs~~/Dissents

Dated: 12-18-92

Robert B. Thompson
Robert Thompson, Union Del.
Concurs/Dissents

2. EMPLOYEE PENSION CONTRIBUTIONS

Union's Final Offer: Effective July 1, 1992, no employee pension contribution under MERS unless City contributions exceed 15.1%, in which event "employees shall contribute 50% of the contribution required by MERS beyond 15.01%, up to a maximum of a 4% employee contribution."

City's Final Offer: Pre-existing 4% annual employee pension contribution to continue under MERS.

The parties have agreed as of July 1, 1992 to switch pension coverage from the City of Port Huron Policemen and Firemen Retirement System (the charter system) to the state-run Municipal Employees Retirement System (MERS) (Joint Ex. 5).

The Union's major argument focuses on the City's reduced contributions to MERS. The Union explains that the City will enjoy substantially reduced contributions under MERS by reason of the transfer to it from the Charter Plan of employee or employer assets, from the City's recent 15.01% contribution to 11.8% without any employee contributions, and to 7.8% if employees contribute 4% to MERS. The City will save \$69,823 with no employee contributions or \$156,830 if employees contribute 4%. The Union states, "There is no justification for such a windfall to the City." To protect the City from future contribution increases the Union offers to split contributions over 15.1% up to a maximum employee contribution of 4%. The Union's review of the comparable communities shows "the diversity of options available for the financing of retirement

systems." The Union's favored comparable communities are the three which have no employee pension contributions.

The City argues that average employee pension contributions in the comparable communities is 4.9% (City Ex. 50). Even if Holland's employee contributions were reduced from 5% to 4%, as the Union is seeking there, the average contributions would be 4.2%. Further, Port Huron's police and police command officers contribute 4.8% and 4% for pensions. (In a recent settlement between Port Huron and its police command officers, it was agreed that the command officers will continue to make 4% pension contributions.) Although in the short term the City will enjoy reduced contributions, pension benefit levels are guaranteed by the City. As a result, it is possible that the City's pension contributions will rise in the future. With no employee contributions, the City would bear the sole risk of larger funding obligations in the future. The City has not demanded a wage freeze in return for the elimination of employee pension contributions. It would be unprecedented for employees to avoid pension contributions and also receive a raise.

The Panel believes that a comparison of both external and internal comparables supports the City's position. In addition, eliminating employee contributions would have a dramatic effect on their overall compensation. Here, the parties agree that the new pension plan improves retirement benefits. For the second and third years of the contract, the fire fighters will receive a 4% annual salary increase. Reducing their pension contribution from

4% to zero would have the effect of giving them an 8% annual compensation increase for the second and third contract years with no diminution of retirement benefits. This increase in overall compensation would be greater than that received to date by other Port Huron employees and would exceed the increase in the consumer price index in 1992. With the introduction in the second contract year of an out-of-pocket payment of \$550 for basic health coverage factored into overall compensation, the net effect of a zero pension contribution would be an increase in overall compensation in the second contract year of about 6.3% and in the third contract year of about 6.4%. These increases, too, would be greater than what it appears that most other Port Huron employees will receive. Finally, ability to pay is not in issue here. Therefore, the fact that the City's pension contributions will be reduced during the term of this contract is not controlling. Even at this most favorable time for fire fighter retirement funding, the Union's analysis shows that the City will make pension contributions of 7.8% if the fire fighters' 4% contribution rate is retained. 7.8% is more than one-half of what the City's pension contributions would have been if the parties had not changed plans (Union Ex. 34). The point is that the City is saving money; yet it still is making substantial retirement contributions in behalf of the fire fighters, and its contributions are likely to increase in the long run.

Because this is an economic issue, the Panel is required to choose between two final offers. It does not have the power to

make a compromise. Comparability, overall compensation, and the cost of living favor the City. For the reasons stated in this Decision, the City's final offer on pension contributions is accepted.

Dated: Dec. 17, 1992

Thomas L. Gravelle
Thomas L. Gravelle, Chairman

Dated: 12/18/92

Douglas H. Alexander
Douglas Alexander, City Del.
Concurs/~~Dissents~~

Dated: 12-18-92

Robert B. Thompson
Robert Thompson, Union Del.
Concurs/~~Dissents~~

3. HEALTH INSURANCE

City's Final Offer: Effective January 1, 1993 the current plan shall be modified to include deductible program DRI 275/550.

Union's Final Offer: Retain no deductible on basic coverage.

Both final offers agree on two changes from the most recent contract: Prescription Drug Benefit Program PD-MAC with a \$5.00 co-pay; and Waiver of Medical Coverage.

The issue to be decided, then, is the introduction of a deductible on basic coverage. Under the City's proposal, an individual employee would have a maximum annual deductible cost of

\$275 on basic coverage, and a family would have a maximum annual deductible cost of \$550 on basic coverage.

In support of this change, the City argues: It is inequitable for it alone to bear the cost of escalating medical costs. The City estimates that over the past 10 years, its health care expenditures have increased over 286.59% while its general fund budget has increased about 53.32% (City Ex. 38). The City has sought a less expensive alternative to its present health coverage and retained a consulting firm to advise it. The firm concluded (and the City agreed) that satisfactory HMO's or PPO's (which would have been less expensive) were unavailable in the Port Huron. Therefore, the City has retained its highly rated (and expensive) Blue Cross/Blue Shield coverage. The proposed deductible is already scheduled to go into effect on January 1, 1993 for all City non-Union employees (including department directors) and unionized employees in the DPW, housing and housing clerical bargaining units: These are about 2/3 of all City employees. Most of the stipulated comparable communities have begun to address the problem of escalating health care costs (City Ex. 42). Employers generally are seeking to switch some of the costs of health care to their employees.

In opposing this change, the Union argues: It has already made two concessions to the City on the City's last offer. The Union has agreed to the increase from \$3.00 to \$5.00 for medication prescriptions. The Union estimates that the city will save \$173.40 per year per fire fighter for this concession, or the sum of

\$9,363.60 for the 54 person bargaining unit. The Union has also agreed to the City's final offer which allows employees to waive health insurance coverage in exchange for a payment of \$100.00 each month. If exercised, this would give the City a net saving of more than \$4000 per year per waiver. The Union asks the Panel to take into account these two concessions in deciding to reject the \$275/\$550 annual deductible which the City seeks. The Union adds that only one stipulated comparable community, Midland, has a deductible on basic coverage; and its deductible is \$150/\$300. As to the other Port Huron employees who will be covered by the \$275/\$550 deductible, none had access to compulsory arbitration under Act 312.

It is difficult to calibrate health care plans. Douglas Alexander of the City testified that there "is a very, very complex combination of possible alternatives in health care coverage" (TR I, p. 149). But it is appropriate to have a sense of entire plans in deciding the issue before us. These include basic coverage and master medical coverage. All comparable communities provide basic coverage, and seven of the eight comparable communities provide master medical coverage. As to master medical deductibles (an issue not disputed by the parties), Midland is at \$150/\$300; East Lansing is at \$200/\$400; and the other comparable communities are at \$100/\$200. Port Huron's master medical deductible is the same as the latter, \$100 per individual and \$200 per family per year. As to master medical co-pay (also an issue not disputed by the parties), four comparable communities are at 80/20 and three

comparable communities are at 90/10. Port Huron's master medical co-pay is the same as the latter, a 10% co-pay for master medical services. Drug deductibles vary among the comparables. The parties' agreed upon \$5.00 per prescription deductible is at the high end among the comparable communities.

Among the comparable communities, Midland appears to be the closest analogue on the issue before us. Midland has a deductible from basic coverage of \$150 per year for individuals and \$300 per year for families; a master medical deductible of \$150/\$300; a master medical co-pay of 80/20; and a prescription drug deductible of \$5 (City Ex. 42; Union Ex. 44). Port Huron has a master medical deductible of \$100/\$200 and a master medical co-pay of 90/10, but is seeking a deductible from basic coverage of \$275 per year for individuals and \$550 per year for families. A \$5 deductible for prescriptions will apply to both Midland and Port Huron. Thus, except for the difference in the amount of the deductible for basic coverage (a difference of \$125 per year for an individual and \$250 per year for families), Port Huron's health coverage appears to compare favorably with Midland's. On overall compensation, Midland's fire fighter wages are somewhat higher than Port Huron's (\$340 per year as of July 1, 1992); but Midland's fire fighters make retirement contributions of 8% per year (Union Exs. 14, 29).

Among the comparables, only Bay City has not effected any additional actual or potential cost sharing for health care expenses. However, Bay City provides no master medical coverage. Further, Port Huron fire fighters are better paid than Bay City's

fire fighters. With a 5% raise for 1991-1992 the base salary rate for a Port Huron fire fighter will be \$33,215, whereas the "annualized" base rate for this period for a Bay City fire fighter was \$32,061, a difference of \$1,154 for the year. Bay City fire fighters also make retirement contributions of 8% per year (Union Ex. 29).

Internal comparables favor the City on the issue before us. At page 14 of its brief, the City explains:

On January 1, 1993, the DRI 275/550 Program is already scheduled to go into effect for all non-union employees of the City, including the City Manager, department heads, and unionized employees in the DPW, housing and housing clerical bargaining units. Thus, approximately two-thirds of all City employees are already covered under this Program. Moreover, the City is proposing the same change in coverage for police patrol and police command officers in the on-going Act 312 proceedings with those units. It should be emphasized that the City's Last Best Offer would apply only to active employees. There would be no change in the terms or scope of coverage for retirees.

If the Union's final offer were accepted, the fire fighters, unlike most of the City's employees (including the Chief of the Fire Department), would enjoy no deductible on their basic coverage. Employee sharing of the burden of escalating health care coverage is painful and frustrating. It serves to erode their income through no fault of their own. However, where sharing affects high and low alike, as here, this factor of internal comparability offers strong support for extension to this bargaining unit. Precisely because employee sharing of rising health care costs is

a "hot button" issue, comparable health care payments among all employees of a municipality has a special appeal.

The issue boils down to this: Are the Port Huron fire fighters to enjoy comparable coverage among comparable communities and to avoid a payment which most Port Huron employees, including the City's highest officers, are subject to? Or are the Port Huron fire fighters to pay what appears to be the highest out-of-pocket expense (aside from master medical deductibles) for comparable coverage among the comparable communities, where a majority of their fellow Port Huron employees are already bound to pay this same expense?

For the reasons given above, the Panel believes that the disposition of this troublesome issue tips in the City's favor. Therefore, the City's final offer of a \$275/\$550 annual deductible for basic health insurance coverage is accepted.

Dated: Dec. 17, 1992

Thomas L. Gravelle
Thomas L. Gravelle, Chairman

Dated: 12/16/92

Douglas H. Alexander
Douglas Alexander, City Del.
Concurs/~~Dissents~~

Dated: 12-18-92

Robert B. Thompson
Robert Thompson, Union Del.
Concurs/Dissents

4. 80 POINT PLAN

City's Final Offer: Employees hired after January 1, 1993 must have a combination of age and years of service that equals or exceeds 80 points in order to receive City paid medical benefits upon retirement.

Union's Final Offer: No change from present contract.

The City is seeking this change as "a modest step to control retirement health care costs for new employees hired after January 1, 1993." The 80 points refer to a combination of age and years of service.

Port Huron fire fighters are eligible to retire after age 50 with 25 years of service and to receive upon retirement full retiree health insurance coverage. There is no separate eligibility requirement for retiree health insurance. If the City's final offer were accepted, and an affected fire fighter retired before reaching 80 points, he would be forever barred from receiving retiree health insurance coverage. The Union explains that if this proposal were accepted its effect would be to delay eligibility for retirement: "In effect, the date on which an individual actually becomes eligible for normal retirement becomes meaningless and an individual only would retire once the "80 point" rule was met. (City Ex. 76)"

The Union also argues that none of the comparable communities requires "points" for eligibility for retiree health insurance. "In all of them, when an individual is eligible to retire, he is

also eligible for full retiree health insurance benefits (Union Ex. 77). The Union adds that although some other Port Huron employees will be brought under the 80 Point Plan, these employees already were ineligible to retire before attaining 25 years of experience and age 55, which equals 80 points anyway. The Union also objects to the introduction of a two-tier system, which this would be because it would only apply to fire fighters hired after January 1, 1993.

A review of the external and internal comparables support the Union's position. A two-tier system with the pension penalty involved here is unsupported by either type of comparable. Further, a two-tier system of this type in the long run would tend to promote a measure of disharmony between the existing fire fighters and the new fire fighters. In these circumstances, the Union's final offer is accepted.

Dated: Dec. 17, 1992

Thomas L. Gravelle
Thomas L. Gravelle, Chairman

Dated: 12/18/92

Douglas Alexander
Douglas Alexander, City Del.
Concurs/Dissents

Dated: 12-18-92

Robert B. Thompson
Robert Thompson, Union Del.
Concurs/Dissents

5. DISABILITY INCOME PLAN

City's Final Offer: Employees hired after January 1, 1993 shall be covered by the City's Disability Income Plan rather than under the traditional Sick Leave Policy available to current employees.

Union's Final Offer: No change from present contract, as expressed in Article III, Section 3-7, Sick Leave Accumulation.

The City argues: Its final offer will have no effect on current employees, who will have the option of not participating or of "freezing" their accumulated sick leave days and being covered by the Disability Income Plan. The change, then, would only be required of employees hired after January 1, 1993. The only disadvantage of this Plan over the Sick Leave Policy is that it would eliminate the sick leave payout now received by employees at retirement. This payout for retiring fire fighters is sometimes in the range of \$10,000 or \$11,000 (City Ex. 62). This amounts to a large retirement bonus under the guise of a sick leave payout.

The Union argues: In all comparable communities, sick leave is accrued and paid out at retirement in a manner similar to the way it is accrued and paid out in Port Huron. The two comparable communities with disability insurance provide it as a supplement to traditional sick leave. In many instances, the City's Disability Income Plan would be inferior to the present Sick Leave Policy. For example, it has waiting periods of one and two weeks and afterward pays only 67% of an employee's salary. This also could have an adverse effect on an employee's pension benefit if he were

often on disability in his last three years of employment. The Union also objects to the introduction of a mandatory two-tier system. This introduction could have been avoided by making the Disability Income Plan optional for all employees including those hired after January 1, 1993.

A review of the comparable communities clearly supports the Union's position (Union Exs. 63 - 73). As with the proposed 80 Point Plan for new fire fighters, a two-tier system of this type in the long run would tend to promote a measure of disharmony between the existing fire fighters and the new fire fighters. In these circumstances, the Union's final offer is accepted.

Dated: Dec 17, 1992

Thomas L. Gravelle
Thomas L. Gravelle, Chairman

Dated: 12/18/92

Douglas Alexander
Douglas Alexander, City Del.
~~Concurs~~/Dissents

Dated: 12-18-92

Robert Thompson
Robert Thompson, Union Del.
Concurs/Dissents

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION (MERC)

In the matter of the
Act 312 Arbitration between

CITY OF PORT HURON,

Employer,

MERC Case No. D91 D-0894

-vs-

PORT HURON FIRE FIGHTERS UNION,

Union.

BRIEF ON BEHALF OF
THE CITY OF PORT HURON

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I. INTRODUCTION

The parties in this matter, being unable to agree on all of the terms and conditions of a new three year collective bargaining agreement, have resorted to the Act 312 arbitration process. Five provisions of the collective bargaining agreement remain in dispute. In its Brief, the City of Port Huron will set forth its position regarding each unresolved issue in the order used by the parties in their Last Best Offers.

II. BACKGROUND

The normal complement of employees in the Port Huron Fire Department is fifty-five. The Department operates three fire stations. Other than occasional services under a mutual aid pact, fire fighters are not required to respond to calls or fires outside the boundaries of the City. In 1989, they responded to 826 calls. In 1990, this figure dropped to 734, and in 1991, there were only 661 calls. See, TR Vol. 1, p. 65. This averages out to less than one call per station per day. Of course, all "calls" are not actual fires. In addition to fires, there were five chemical emergency calls in the City in 1990, and two such calls in 1991.

The term of the contract before this Panel is three years, beginning July 1, 1991 and ending June 30, 1994. The parties were able to reach agreement on a number of issues prior to the commencement of the Act 312 hearing. The terms of those agreements are set forth in Joint Exhibits 4 and 5 submitted to

this Panel, and will be incorporated as part of the new collective bargaining agreement. In addition, during the hearing, the parties were able to stipulate on the wage increase to be awarded in the second and third years of the labor contract.

The parties were also able to agree on the comparable communities to be reviewed by the Arbitration Panel. They are the cities traditionally employed as comparables in contract negotiations and Act 312 proceedings between the City and its various labor unions. The agreed-upon comparables are: Bay City, East Lansing, Holland, Jackson, Kentwood, Midland, Muskegon, and Portage.

III. ARGUMENT

A. Wages

49-
57-
The only unresolved wage issue is the percentage increase to be awarded the members of this bargaining unit for the period from July 1, 1991 through June 26, 1992, the first year of the collective bargaining agreement. The parties have already agreed that 4% increases will be awarded on June 27, 1992 and June 26, 1993. The City proposes that a 4% increase also be awarded for the year beginning July 1, 1991. The Union has requested a 5% wage increase.

Douglas Alexander has served for twelve years as Assistant to the City Manager of the City of Port Huron. He was the only witness on the issue of wages who has been involved in previous negotiations between the City and this Union. Mr. Alexander has

also served as the City's delegate in the two prior most recent Act 312 proceedings involving this bargaining unit.

Mr. Alexander testified that, so long as it was within its financial means, the City historically has attempted to pay its fire fighters a base wage equal to the average wage in the comparable communities. This policy has been practiced both when the parties themselves negotiated labor agreements and when the parties resorted to the Act 312 arbitration process.

Mr. Alexander conceded that in the 1986 Act 312 arbitration award involving these parties, Arbitrator Glazer had ruled that the City's fire fighters should be above the average of the comparables on base wages. However, he noted that even the Union's own Exhibits established that in the two following years, 1987 and 1988, the base wages of the City's fire fighters were below the average of the comparables. See, Union Exhibit 20. Moreover, the Memorandum Of Understanding between the parties executed on March 30, 1989, after the Glazer award, reflects their agreement that fire fighters' salaries would be raised to, not above, the average of comparable communities. See, City Exhibit 26.

With the exception of the Glazer award, the Union submitted no evidence or testimony which challenged Mr. Alexander's testimony concerning the historical practice and understanding of the parties in this regard. Rather, the real dispute on this issue was over how the average wage of the comparable communities should be calculated. The Union asserted that the average should

be calculated by "annualizing" salaries. It first calculated an average salary for fire fighters in a particular community based on all wage rates in effect during a particular Port Huron contract year, then calculated the average of all of these averages to determine an overall average for the comparables.

As the evidence showed, this method of calculation is contrary to the long-established practice of the parties. Mr. Alexander testified that the parties have historically looked to only the pay rates in effect in the comparable communities on the first day of the City's fiscal and contract year - July 1. This practice was clearly followed in the March 30, 1989 Memorandum Of Understanding between the parties. See, City Exhibit 26. Mr. Alexander also testified that there had been no discussion of annualizing salaries in the previous Act 312 proceedings. See, TR Vol. I, pp. 71-74, 89-90, 94. The Union did not dispute these points. Moreover, even though the Union's argument that Port Huron's fire fighters should be paid above the average of a comparable community's was based entirely on Arbitrator Glazer's 1986 award, the Union's own witness conceded that there was no evidence that Arbitrator Glazer had "annualized" salaries in the manner proposed by the Union, even though there had been mid-year wage increases in at least some of the comparable communities. See, TR Vol. 1, p. 57.

In short, there is no doubt that the method used by the City in calculating the average rates of the comparable communities is consistent with the historic practice and expectations of these

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parties. Moreover, this method is neither unusual nor inherently unfair to either side on a long term basis. It is, therefore, the more appropriate formula to be used in this proceeding as well; especially since no strong reason for now abandoning the existing method has been advanced.

While the wages of the comparable communities are obviously the prime factor to be considered by the Panel with regard to this issue, several other pieces of evidence are also relevant.

During the period of the most recently expired three-year contract, Port Huron's fire fighters received a total wage increase of 12.6%, the largest increase for any group of City employees. All other employees, both unionized and non-unionized, received only a total of 12% in increases. The proposed 4% wage increase for the first year of the new contract is consistent with the position the City has taken in all other negotiations with City employees. Moreover, by stipulating to a 4% wage increase for the members of this unit for the 1992-93 contractual year, the City had already again agreed to a higher settlement with this unit than has been offered or agreed to by any City employees for the period in question. See, City Exhibit 24.

While it is true that Arbitrator Glazer felt that the wage issue should be addressed without consideration of other payments received by the fire fighters, this Panel is certainly not precluded from noting and weighing the fact that the City's fire fighters receive almost twice the average of the comparable communities in longevity pay, and that they have a lower than

average employee pension contribution. Both of these benefits provide substantial effective increases in their take-home pay in comparison to that of fire fighters in comparable communities.

In this case, all of these factors, while relevant, merely lend support to a conclusion which is evident from a cursory review of the figures provided by the parties. The 4% wage increase proposed by the City for July 1, 1991 would result in a salary of \$32,898.00. As of that date, the average pay for fire fighters in comparable communities was \$32,554.00. See, City Exhibit 21. However, even if wage rates are "annualized" as the Union proposed, the average pay of the comparable communities for the year beginning July 1, 1991 was \$32,892.00. Clearly, even under the Union's Exhibit 15, which utilizes its flawed salary calculation formula, the City's proposal leaves the members of this bargaining unit above the average of the comparables. Of course, the Union would like them to be even further above the average of the comparables, but there is no basis in the historical record or in the evidence presented in this case to justify such a further leap.]

Whether this Panel examines external or internal comparables, the City's proposal better satisfies the pay standards used by these parties. It is more than sufficient to keep the City's fire fighters at the average of the comparable communities, and it is as generous an offer as the City has proposed or given to any of its employees. The Union has failed to establish that the wage increase it seeks is justified.

For all of the reasons set forth above, the City of Port Huron asks this Panel to accept the City's Last Best Offer and award the City's fire fighters a wage increase of 4% for the twelve months beginning July 1, 1991.

B. Pension

Prior to the commencement of the Act 312 proceeding, the parties agreed to a change in the pension system which has already resulted in a substantial improvement for the members of this unit. The City agreed to convert the pension coverage for the fire fighters from the City's own Police & Fire Retirement System to the MERS System. This change went into effect as of July 1, 1992.

The most obvious benefits of this change were revisions in the employees' benefit calculations. A retiree is paid benefits equal to a percentage of his final average compensation. Under the previous system, the benefit level was equal to 2% final average compensation per year of service for the first twenty-five years of service, and 1.5% per year for all subsequent years of service. Under MERS, the pension multiplier has been increased to 2.25% per year for all years of service. In addition, the cap on a retiree's pension benefit has been increased from 65% to 80% of final average compensation. See, TR Vol. I, p. 26; Vol. II, pp. 30-31.

One member of the bargaining unit, Charles Rowse, had already retired under MERS at the time of this proceeding. His annual

retirement benefit had increased by over \$4,000.00 as a result of the upgrading to the MERS. Port Huron's retiring fire fighters are now likely to receive pension benefits above the average of retiring fire fighters in the comparable communities. See, City Exhibits 48 and 49.¹

The City did not require its fire fighters to forego or accept sharply reduced wage increases in exchange for this new benefit, nor did it obtain any substantial improvements in management rights or other areas of particular interest to the City. See, Joint Exhibits 4 and 5. However, the City does expect that, at the very least, fire fighters will continue as before to contribute 4% of their wages for their pension benefits. The Union objects to the City's proposal that the status quo be continued. It proposes that the employee contribution rate be eliminated entirely unless the City's contribution for future pension benefits exceeds 15.01% of employee wages, in which case employees would contribute one-half of the excess up to a maximum total of 4%.

The Union's proposal is unfair, inadequate and inconsistent with the practice of both internal and external comparables. Currently, the average employee pension contribution in the comparable communities is 4.9%. See, City Exhibit 50. In its Exhibit 29, the Union pointed out that it is currently seeking a

¹ Because various assumptions had to be made in calculating pension benefits, especially in comparable communities, the figures set forth in these exhibits are not exact. However, the substantial improvement shown in benefits for Port Huron fire fighters is clear and uncontested.

reduction in the employee pension contribution in the City of Holland from 5% to 4%. Even if the Union is successful in that case, the average employee pension contribution in the comparable communities will still be 4.2%, and therefore, above the contribution made by the City's fire fighters.

Internal comparables are no more favorable to the Union's position. The City's police officers contribute 4.8% of their wages for pension benefits, while police command officers contribute 4%. Those groups of City employees who are not required to make pension contributions gave up something for this benefit. None of those groups received any wage increases in the years in which the City assumed this burden. In effect, the employees traded a 5% wage increase for the elimination of the contribution requirement.² Of course, that is not the case here. The fire fighters are already guaranteed a 4% wage increase for the year in which they propose to go to a non-contributory pension system.

The Union will presumably argue that the reduction it seeks is warranted because the conversion to MERS has resulted in a decrease in the pension contribution required of the City in 1992. The City does not dispute that its contribution will be reduced in 1992. However, the City also recognizes that while benefit payments to employees are guaranteed, contribution levels are not. When benefits are increased, someone must eventually pay for the

² This amount was calculated on the basis of increases received by other employee groups during the years in question.

increased costs. Future contributions will vary from year-to-year and, under MERS, the City assumes all of the risk. When the higher benefits have to be funded, it is the City which will pay more. If investment decisions, a drop in the return on investment, or any other development creates a shortfall in the System's reserves, or requires a substantial increase in the amount of contributions needed to provide the benefits guaranteed to retirees, it is the City which will bear the burden.

The Union's final proposal, while a marginal improvement over its previous position of no employee contribution, remains a fundamentally inadequate response to this problem.³ Under the Union's proposal, at some future date under the worst of circumstances, an employee could be required to begin making the same contribution which the fire fighters have been making until now for a substantially lesser benefit. In the meantime, the City will continue to bear the entire risk of the System.

The record is devoid of any evidence that the City did not receive short-term reductions in required contributions similar to those experienced here when other employee groups joined MERS. However, no other employees received both the benefit of MERS and a non-contributory system without agreeing to what this Union will not accept - a wage freeze. The City has not demanded that the Union take any such freeze, but neither does the City believe that

³ The Union's proposal also presents an immediate problem. Deducted employee contributions and City contributions were forwarded to MERS on September 30. TR Vol. II, p. 46. If the Union's proposal is accepted, money already recorded and deposited in employee accounts would have to be withdrawn.

equity is done when a pension improvement is presented as the basis for the granting of an effective 8% wage increase.

In effect, the Union's proposal treats the City's 1991 fire pension contribution of 15.01% of pay as a permanent baseline or minimum for which the City would be solely responsible in perpetuity. However, as Bruce Seymore, Port Huron's Finance Director and the Chairman of the MERS Board, testified, the City's contribution has always varied from year-to-year based on the actuarial evaluations of the Plan. Moreover, the City has worked diligently for the past quarter century to improve the funding for the retirement system and thereby reduce its outstanding obligations for retirement benefits. See, TR Vol. II, pp. 28-30. The Union's proposal would thus effectively penalize the City for its hard work during this period.

In short, the Union's proposal is a prime example of over-reaching. Apparently, the Union somehow sees the granting of one pension improvement, which is likely to increase the retirement benefits of its members by several thousand dollars per year, merely as a base from which to wrest what amounts to yet another 4% wage increase for its members through elimination of the employee pension contribution. The Union's position cannot be based on any comparison to external comparables, whose employees already pay more than Port Huron's fire fighters, nor to any benefit provided other City employees. It would result in a system in which the City bears 100% of the risk, while the employees obtain 100% of an increased benefit. The City suggests

that implementation of a new pension system which improves annual pension payments to retirees by several thousand dollars, and leaves them above the average of the comparables in benefits while keeping them below the average with respect to required employee contributions is a sufficient change for one contract. The Union's proposal is unfair, unrealistic and unwarranted, and it should be rejected by this Panel.

For all the reasons established above, the City asks that this Panel accept the Last Best Offer of the City and continue employee pension contributions at the existing rate of 4% of wages.

C. Health Insurance

Port Huron has not escaped the national problem of runaway health insurance costs. Over the past ten years, the City's health insurance costs have increased at an average annual rate of 25%. See, City Exhibit 37. At this point, there is no relief in sight, and the City must assume that costs will continue to increase. Until now, the City has borne these ever-increasing costs alone, even as health care expenditures consume larger and larger portions of the City's funds. By the 1991-92 fiscal year, total health care expenditures accounted for more than 15% of the General Fund Budget. See, City Exhibit 38. Over a ten year period, health care expenditures had increased by over 286%, while the General Fund Budget had increased by about 53%.

The Union cannot and does not contest these facts. It merely prefers that the City continue to pay any price and bear any burden necessary to provide its membership with fundamentally unaltered health care coverage. Once again, its position is unrealistic and out of step with both internal and external comparables.

The City has already explored various options for a number of years in hopes of finding some way to control the increase in health care costs. The issue was raised at the bargaining table with all City unions during negotiations on their most recently expired contracts, but no progress was made. The City retained the Wyatt Company to study ways in which the City's health care costs could be reduced. Private insurance, self insurance, HMOs, PPOs, and other alternatives were explored. The Wyatt Company concluded that HMOs and PPOs were not viable alternatives in the Port Huron marketplace, and recommended that the City attempt to reduce its health care costs within the framework of traditional Blue Cross/Blue Shield coverage. See, TR Vol. I, pp. 122-123.

Following consultation with Blue Cross/Blue Shield representatives, the City proposed a co-pay of premium costs in negotiations with this Union. Because of resistance to that proposal, the City modified its proposal to that which it now seeks in this proceeding - the DRI 275/550 Program. The City asks that health insurance coverage for the members of this unit be converted from the existing coverage, which has no deductible, to the DRI Program effective January 1, 1993.

Under the DRI Program, an individual employee would have a maximum annual deductible cost of \$275.00, while a family would have a maximum \$550.00 deductible requirement. As the parties have proposed the same change in the prescription drug program, this is the only issue which remains to be resolved by this Panel.

[On January 1, 1993, the DRI 275/550 Program is already scheduled to go into effect for all non-union employees of the City, including the City Manager, department heads, and unionized employees in the DPW, housing & housing clerical bargaining units. Thus, approximately two-thirds of all City employees are already covered under this Program. Moreover, the City is proposing the same change in coverage for police patrol and police command officers in the on-going Act 312 proceedings with those units. It should be emphasized that the City's Last Best Offer would apply only to active employees. There would be no change in the terms or scope of coverage for retirees.]

The exact terms of coverage among the comparable communities vary widely, but it is clear that the City's efforts to obtain some relief in the area of health insurance costs are in line with actions taken by these communities in recent years. Of all of the comparable communities, only Bay City has not taken any steps in the past three years to reduce health insurance costs. A majority of the comparables instituted or increased employee deductibles. One city, Portage, capped premium increases with employees obligated to pick up any additional premium costs. See, City Exhibit 42.

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By taking these steps, the comparable communities are merely following in the footsteps of large and small employers across this country. Employees and employers everywhere have recognized that employers cannot continue to absorb brutal increases in health care costs without relief and assistance from covered employees.

Unlike Portage and many other employers, Port Huron is not attempting to shift portions of premium costs to employees, nor is it reducing the scope of coverage. Indeed, depending upon their medical needs, there will be many years in which employees will feel either no or only minimal effects if the change sought by the City is implemented. That change will maintain uniformity in health care benefits between these and other City employees, and it will still leave them in line with the external comparables. More fundamentally, it will provide the City with at least a brief respite from the ever-rising tide of health care costs without exposing the employees to risks of future premium increases or drastic reductions in coverage. The City's proposal is reasonable and appropriate in light of the financial history established by the evidence and the burdens the City now faces.

For these reasons, the City requests that this Panel accept its Last Best Offer and provide that beginning January 1, 1993, all members of this unit shall be covered by the DRI 275/550 Health Insurance Program.

D. 80-Point Plan

While the cost of health insurance benefits for active employees has increased dramatically, the increase in the cost of health care coverage for retirees has been even greater. Over a ten year period, expenditures for health care coverage for the City's retirees have increased by 435%. See, City Exhibit 38. The number of active City retirees has increased from 175 in 1985 to 209 by July, 1992 and, as the City looks towards the future, it sees the potential for greater problems ahead. Significant numbers of the City's employees can be expected to retire within the next few decades. See, City Exhibit 74. The effects this influx of new retirees will have on the City's health care costs is obvious.

The City is prepared to honor the obligations it has incurred through the implicit promise it has made to current retirees, and provide them with health insurance coverage. However, the City is also asking this Panel to allow it to take a modest step to control retirement health care costs for new employees hired after January 1, 1993. The only change the City requests is that new fire fighters hired after that date acquire a total of eighty "points" through a combination of age and years of service before becoming eligible for health care benefits upon retirement.

The proposed change would not affect an employee's retirement eligibility now or in the future. In fact, it would not affect any current employee in any way. New employees would be hired with the understanding that the 80-point prerequisite existed for

health care coverage at the time of retirement and, therefore, the proposed change would not reflect any reduction or adverse change in their expectations or entitlement to benefits. Once again, the proposed change would bring fire fighters into conformity with the terms already accepted by the City's maintenance, clerical, DPW and non-union employees.

Of course, this proposal will have an effect only over the long term, but the City must be concerned with the long term as much as with the three year term of this Agreement. Generous benefits provided when the City's coffers were fuller and the workforce was younger now burden the City. It is short-sighted and foolish to ignore these problems. The 80-Point Plan will allow the City to know that some safeguards are being put into place to control these costs in the future without causing the slightest harm to any current employee of the City.

For these reasons, the City asks that the Panel institute the 80-Point Plan for medical benefits upon retirement for all employees hired into this unit after January 1, 1993.

E. Disability Income Plan

As the terms of its Last Best Offer make clear, the City proposes that employees hired after January 1, 1993 be covered under the City's Disability Income Plan rather than under the traditional Sick Leave Policy available to current employees. As in the case of the proposed 80-Point Plan, this change would have absolutely no affect on current employees, except for those

employees who preferred the Disability Income Plan to the existing Sick Leave Plan. They would have the option of "freezing" their accumulated sick leave days and then opting for coverage under the Disability Income Plan, as a number of employees in other bargaining units have already done.

The City finds itself in the unusual position with respect to this proposal. It is advocating a policy change which, although opposed by the Union, would obviously be a benefit improvement for many employees in many situations. This fact was amply demonstrated by the testimony of the City's Personnel Director, John Berry.

Currently, fire fighters earn sick days gradually, taking twelve years to reach the maximum accumulation of 140 days, assuming no sick days have been taken during that twelve year period. Under the Disability Income Plan, employees are eligible for up to fifty-two weeks of coverage upon completion of probation. Presently, fire fighters who have used their available sick days can lose their City-provided benefits and stop accruing service credit for retirement purposes. See, TR Vol. II, p. 51. Upon their return to service, they slowly begin accumulating sick days again. Under the Disability Income Plan, an employee who exhausts his fifty-two weeks of benefits and then returns to work for a two week period regenerates an additional year's worth of sick leave benefits. See, TR Vol. II, p. 54.

The benefits of the Disability Income Plan are even more apparent when cases involving disabilities and medical problems

suffered by actual employees are reviewed. See, City Exhibits 61(a)-(e). All of these cases demonstrate how real employees have or would have benefitted by participation in the Disability Income Plan. The fact that the proposed Plan is not an onerous scheme is further demonstrated by the decision of various City department heads, including the Director of Finance who developed the Plan, to voluntarily become participants in the Plan. See, City Exhibits 59-60.

From the standpoint of the employees, the main, indeed virtually the only, drawback to the City's proposal is that it would eliminate the sick leave payout now received by employees at the time of retirement. However, as already mentioned, this would apply only to employees hired after January 1, 1993, and thus would not affect the payout to any current employee. There would be no change or diminution in benefits to anyone now employed by the City, nor any surprise or reduction of expected benefits to new hires.

The Disability Income Plan would return the use of sick or disability leave time to the purpose for which it is presumably intended - providing payments to employees who are medically unable to perform their duties for some period of time. It is hard to imagine that at the time the current sick leave policy was originally implemented, the participants expected payouts of \$10,000 or \$11,000 to fire fighters upon retirement as currently occurs. See, City Exhibit 62. As with medical benefits to retirees, the City will honor the obligation it has to all current

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employees, but it is difficult to see why the City should not be able to implement a change for the future which will enhance the benefits available to employees in cases of actual sickness, while eliminating the City's obligation to pay large retirement bonuses under the guise of sick leave payouts.

For these reasons, the City asks this Panel to accept the City's Last Best Offer and allow it to institute the Disability Income Plan for all new fire fighters hired after January 1, 1993.

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