

103

10/1/88
file

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

STATE OF MICHIGAN
DEPARTMENT OF LABOR
BUREAU OF EMPLOYMENT RELATIONS
DIVISION OF DISPUTE RESOLUTION

1988 APR 20 PM 3:19

FILED

In the Matter of the Arbitration Between:

THE CITY OF ROMULUS

Employer

-and-

Case No. L87-A-29

LABOR COUNCIL, MICHIGAN FRATERNAL ORDER
OF POLICE, ROMULUS COMMAND OFFICERS
ASSOCIATION

Association

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
Marilyn L. Radford, City Delegate
Richard Ziegler, Association Delegate

APPEARANCES:

City: Ronald E. Mack, Esq.
Association: Mitchell Ribitwer, Esq.

CHRONOLOGY:

The current collective bargaining agreement between the parties covers the period July 1, 1984, to June 30, 1987; negotiations and mediation (held on May 27, 1987) were unsuccessful and led to the filing of the Petition (on June 26, 1987) giving rise to this case; the Chairman was appointed by the Commission on July 16; a pre-hearing conference was held on August 25 and various arrangements, understandings, and stipulations were made, one of which was to dispose of the matter of comparable communities before hearing the substantive issues; comparable community data was submitted; the Panel met on September 22 at which time the Interim Award issued and was explained; hearings were held on December 1, 3, and 4; last offers of settlement were filed on January 11, 1988; the City's brief was filed on January 28 and the Association's on February 2; the Panel met in executive session on March 17; and this Opinion and Award issued April 19, 1988.

O P I N I O N

Introduction

The Association seeks improvements in wages, pensions, vacations, sick leave, holidays, clothing allowance, and shift premium. The City has offered improvements on some of these subjects and the status quo on others, but its proposals were unacceptable to the Association. The City too, wants changes in the Agreement; in language and in pensions, holiday pay, sick leave, job assignments, and service ratings. The Association finds these proposals unacceptable. About the only major subject on which the parties reached common ground was the term of the new collective bargaining agreement (Agreement). It will be for three years, from July 1, 1987, to June 30, 1990.¹

The issues generated by these various last offers will be discussed below. Letters have been used to begin headings where both parties have proposed changes in the Agreement. The Association's issues are identified in the headings that begin with arabic numbers and the City's issues begin with roman numerals. As is generally the case, this opinion has been

¹ Initially, there was a question as to whether the Agreement would be retroactive. The last offers of the parties have resolved this issue; unless otherwise noted, all terms are effective July 1, 1987.

written by the Chairman. The delegates have expressed their disagreement with the conclusions as noted in the Award.

Background

The City of Romulus in western Wayne County comprises an area of approximately 35 square miles, and straddles two major arteries; the east-west I-94 and the north-south I-275 freeways. A dominant feature of the landscape is Detroit Metropolitan Airport which is located entirely within the City's boundaries and takes up about 6.65 sq. mi. or 19 percent of its land mass. Unfortunately (for the City), the airport generates no direct tax income because it is owned by another municipal government (the County).

In the 1980 census, Romulus had a population of almost 25,000 with a slippage to 24,000 by 1984, the last year for which an estimate is available. At the same time, the City had 8160 housing units with a median value of \$39,400. The median household income was \$21,265. and the per capita income in 1983 was \$7700. The State Equalized Valuation--a measure of wealth--for 1987 was \$340,770,200 with the breakdown being as follows: Commercial - 46,201,640; Industrial - 98,967,120; Residential- 107,345,620; Personal - 88,255,820. The tax rate and relative tax effort on its citizenry was 11.60 and .72977, respectively.

Until 1981, police service for Romulus was provided by the Wayne County Sheriff's Department. In that year the City

established its own Department and now has a sworn force of 44 officers. There are two bureaus; a uniform division and a detective division. The structure is as follows: The uniform division has 1 lieutenant, 7 sergeants, 31 patrol officers (and 5 dispatchers); the detective division has 1 lieutenant, 2 sergeants, and 1 patrolman. In this case, only the 11 command officers, i.e., lieutenants and sergeants, are involved.

The Section 9 Standards

Section 9 of Act 312 establishes the standards for determining the Award and requires the Panel to "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 process.
- (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."

Comparable Communities

One of the factors that is customarily given substantial weight is (d) which requires the panel to compare the wages, hours and conditions of the employees involved in the arbitration proceeding with those of their peers in comparable communities. Ideally, a comparable community is one (within the State) that is the mirror image of the employer community in the arbitration case. As might be expected, communities are not alike! Therefore, improvisation (and creativity) must be used to compare one with another.

One problem in this area is that the panel must limit its consideration to communities proposed by the parties. Another is that the nominees are frequently dictated by self interest; the community is proposed because its wages, hours, and terms of employment are favorable to the position being taken on those subjects by the party. Since political subdivisions, unlike the fertility pill, seldom produce twins, yet alone identical ones, various criteria have been used to approximate common denominators and to arrive at what may be described as rough comparisons.

Here, the Association says Allen Park, Lincoln Park, Riverview, Southgate, Trenton, and Wyandotte are comparable to Romulus. The City nominates the Townships of Brownstown, Huron, Sumpter, Van Buren, and Canton as its twins. All of these communities are in the "down river" area. And all of the communities have some features that appear similar to corresponding features in Romulus.²

The Chairman believes that the relevant factors for comparison purposes can be divided into three principal groupings; physical characteristics, financial and personal characteristics, and departmental characteristics. On the chart following the Interim Award (attached hereto as Appendix "A") these features are compared for each of the communities with an "x" showing an affinity with Romulus and an "o" showing a disparity. The cities of Allen Park and Lincoln Park, and the townships of Huron and Sumpter have a substantial number of characteristics that are unlike those of Romulus and they were excluded from consideration.³ The Chairman reaffirms the Interim

² In cases where the parties have nominated some of the same communities, this Chairman has established a model against which the remaining nominees may be compared.

³ For example, Lincoln Park was excluded because the following factors did not compare favorably with Romulus (the first number applying to Linc. Park. and the second to Romulus: Population 45,105/24,857; Sq. Mi. 5.8/35; Housing Units 16,854/8,160; Units built before 1959 81/39 percent; Rel. Tax Effort 1.45/.72; City Taxes 7.4/3.7 million; Vacant Prop. 8/28 percent; SEV Indust. 8.7/99, Res. 240/107, Per. 23/88 (all in millions); Sworn Officers 61/36. Huron Twp. was excluded for the same reason: Pop. 9,849; SEV. 97/341, Comm. 6/46, Ind. 3.5, Per.6.8 (all in millions); Sworn Off. 15 (3 sgts., 3 cpls., 7 pt.

Award.⁴ Having again disposed of this matter, we turn to the issues in dispute.

A. WAGES (Economic)

The parties have an altogether different approach on the subject of wages. The Association's proposal is based on a percentage differential. It wants sergeants to be paid 8% over the rate for patrol officers (who are in a separate bargaining unit and represented by another union) and lieutenants to receive 6% more than sergeants. The principal (if not the only) rationale for this proposal is that for the 1986 fiscal year, sergeants were paid less than the patrol officers who they supervised.

The situation where employees earn a base salary higher than that of their supervisors is naturally of great concern to the Association as it turns the normal practice on its head. It came about because of the overlapping termination dates in the

time pat. and 2 dispatch); Officers per. cap. 1:984/1:690.

⁴ Although this bifurcated procedure of selecting the comparable communities before proceeding with the merits was agreed upon by the parties, the City, for some inexplicable reason has contested the findings (at some length I might add) in its brief. However, no persuasive reasons have been advanced to change either the agreed upon procedure or the conclusions concerning comparable communities. Indeed, if the City's was to prevail on this point, due process would require a new hearing to re-litigate virtually the entire case since neither of the parties used the excluded communities for making their comparisons. The Panel majority rejects the City's position on this matter.

respective collective bargaining agreements. The Association's prior agreement was for three years with the last year being July 1, 1986 to June 30, 1987. The prior contract for patrol officers expired on June 30, 1986, so that its new four year agreement (the result of a stipulated Act 312 Award) began with the year July 1, 1986 to June 30, 1987.⁵

Under the patrol contract, officers (at the top scale) received a wage rate of \$27,500 for July 1, 1986-June 30, 1987. This is \$270. more than the top paid sergeant received for the same period. The patrol contract also includes increases on July 1, 1987 and 1988, but the rate for July 1, 1989, is subject to negotiations. Inasmuch as the Agreement under consideration in this proceeding is for three years, the Association argues that the same situation can--unless remedied as it proposes--arise again for the 1989 fiscal year. This, it says, would be intolerable!

The City's proposal is along more traditional lines. It urges the adoption of specific dollar amounts for each of the three years, as follows:⁶

	<u>Sergeants</u>	<u>Lieutenants</u>
Current	27,230	28,530

⁵ The agreement was not finalized until mid 1987.

⁶ These are the rates for a top paid uniform sergeant. The City has proposed somewhat lower rates for detective sergeant as well as a progression system with a starting rate and increases after one and two years. This proposal will be considered anon.

July 1, 1987	31,500 (4270/15.68)	32,200 (3670/12.86)
July 1, 1988	33,000 (1500/4.76)	33,700 (1500/4.65)
July 1, 1989	34,500 (1500/4.54)	35,200 (1500/4.45)

The new money and the percentage increases those dollars represent are set forth in parenthesis above. As can be seen, the first year increases are substantial due, undoubtedly in part, to correct the inequity caused by the increase given to patrol officers for 1986. The City calls these increases "generous" while the Association dubs them as being "adequate."⁷ In the second and third years of the Agreement, the increases are \$1500.00--across the board.

Three of the Section 9 factors come into play in deciding this issue; (d) comparability (e) the cost of living, (h) other factors traditionally considered.⁸ Of the seven communities deemed comparable to Romulus, only Trenton has a percentage differential. It goes without saying that no other bargaining unit in the City has such a formulation for determining wages. The rationale of the Association will not support its last offer. It appears that patrol officers were paid more than sergeants

⁷ The Union says that of the 15%, 6.2% is needed just to offset the increase given to patrol officers. As to the balance, it argues that command officers would still be at the bottom of their peers in the comparable communities. It cannot really argue with the City's first year offer inasmuch as the proposal actually is \$180.00 higher for sergeants than its own proposal although the lieutenants would receive less money.

⁸ The City has not claimed an inability to meet the costs of any of the proposals advanced in this case. Therefore, standard (c) has no applicability

solely because of the timing of the contract terminations. Indeed, the differential--while maddening as a matter of principle--is not one that is likely to recur or of such magnitude as to warrant the approach called for by the Association.⁹

This does not mean that the City's proposal is the better one because it is not! The Chairman finds fault with its proposal too. For example, patrol officers will receive a \$2000. or 6.9% increase on July 1, 1988. The City's offer would give sergeants and lieutenants \$1500. or a 4.8% increase. No explanation has been given for either the percentage differential or the actual dollar disparity.

Both parties last offers for the first year are similar in total cost. The Association's offer is \$31,320 for sergeants and \$33,199 for lieutenants. The City's offer is slightly higher for sergeants--\$31,500 and lower for lieutenants--\$32,200.¹⁰ Among the comparable communities, the Association's offer will remedy the lower than average and median wage paid to lieutenants. For 1986, sergeants rank 5th, but lieutenants are 7th. For 1987, the

⁹ The Union might have proposed a two year contract or a three year contract with a reopener for the last year. This seemingly would have avoided the possibility of a recurrence of the problem. Another approach might have been a fixed dollar differential or a reopener if the patrol unit received a wage that intruded on the differential.

¹⁰ There are seven sergeants and two lieutenants. The increase for lieutenants is largely offset by the savings for sergeants.

Association's offer will place both grades on the same plane, and at the same time keep them essentially at the same rank (5th) among comparable communities. Therefore, for 1987/88, the Association's offer will be accepted.¹¹

For 1988/1989, the Association offer would give sergeants \$33,480 and the City offer would give them \$33,000. There is a greater difference in the offers for lieutenant. The Association would raise them to \$35,489 and the City to \$33,700. Considering the three comparable communities that have settled agreements for this period (Canton, Southgate, and Trenton), and assuming increases of 4.5%¹² for the remaining units, it appears likely that the Association's offer, rather than the City's will keep command officers at the same level as their counterparts. Therefore, the Association's offer will be accepted for 1988/1989.

The real problem area is the 1989/1990 fiscal year. Only two units have settled agreements for that year (Canton and Southgate). Regardless, the comparable communities standard does not support what amounts to a guaranteed increase for unit employees of almost 8%. Equitable considerations alone cannot justify the concept of an indexing system that would make it virtually unnecessary for the Association to further negotiate on

¹¹ The Panel majority is using the sums produced by the offer rather than the concept of a fixed differential.

¹² The average for all settlements over the three year period is 4.65%.

the subject of wages. Given the experience of 1986, I feel confident that in the future, if the City finds itself in a situation where command officers are to be paid less than patrol officers, it will quickly act to remedy the matter--regardless of the terminal date of the Agreement. Good personnel practice requires no less!

Neither of the offers for 1989/1990 is appealing. But, the Association's, for the reasons already noted, is less appealing than the City's. Accordingly, the City's offer for 1989/1990 will be adopted. This results in a reduction of \$289.00 for lieutenants.¹³ Nevertheless, these rates are within the range of increases granted to command officers in the comparable communities.

Before leaving the subject of wages, it is necessary to comment on two other related matters. In its last offer, the Association proposes a single rate for unit employees. The effect of this would be to discontinue the six month probationary rate currently in place. The City, too, wants to change this format. It proposes three steps for sergeants (a starting rate and increases after the first and second years) and two steps for lieutenants (a starting rate and an increase after one year).

A change in the steps was not identified as an issue in either the pre-hearing conference or the hearing itself. More

¹³ From a personnel standpoint, it may behoove the City to reconsider whether this reduction should be placed into effect.

importantly, no evidence was adduced on this subject during the hearing. Therefore, the Panel must reject the attempt to change the Agreement in this regard, and it will be left intact. The starting wage rate in the Agreement will correspond to the starting wage rates in the current agreement and will continue for the six month probationary period.

The second related matter concerns the City's proposal to establish separate rates for detective and uniform sergeants. It wants to pay detective sergeants \$500.00 per year less than uniform sergeants. The rationale for this change is that under the reorganization of the Department, uniform sergeants are line officers and detectives are staff officers. Line officers, we are told, supervise the patrol officers and are responsible for the day to day operation of the department. Staff officers, on the other hand, supervise case files rather than other personnel. Stated somewhat differently, the claim is that the department can operate without detective sergeants, but cannot do so without uniform sergeants.

The Association vigorously disputes the claim that persons in the one classification are more valuable than those in the other. To prove or disprove this assertion, substantial testimony was elicited by both parties about the duties, responsibilities, and authority of detective and uniform sergeants. Undercutting the City's position is its request (considered below) that it be permitted to treat detective and

uniform sergeants alike by giving it the authority to transfer employees between these two categories.

More importantly, the City has not explained how it determined the relative worth of these positions and translated this into dollars and cents. Why, one must ask, should detectives be paid \$9.61 per week less than uniformed officers? It would appear that the \$500.00 figure was simply a number plucked from thin air rather than being based on objective considerations! Support for this finding is that the City proposes no such differential for detective and uniform lieutenants although the same rationale would seemingly apply to them as well. For these reasons, the Association's last offer will be adopted and the single rate for detective and uniform sergeants will be continued.

1. SHIFT DIFFERENTIAL PREMIUM (Economic)

The current agreement (Article XXXVIII) states:

Shift differential shall be paid to all employees who begin work between 2:00 P.M. and 5:59 A.M. The hourly premium shall be thirty cents (\$.30) per hour. The shift premium is paid to a member in addition to his base rate of pay for actual hours worked.

The Association proposes that officers who work overtime during the aforementioned hours be paid time and one-half on the \$.30: bringing this premium to \$.45 per hour. The City opposes this change. The Association's rationale is threefold: It reduced its offer from what was on the table at the time of the hearing; the City has not asserted an inability to pay, and; the offer "will

place the unit within the mean of comparable cities." (Brief, 10th page).

It is immaterial that the Association reduced its demand from what it was previously. Since parties frequently make exaggerated demands during negotiations--posturing for an Act 312 proceeding--the fact that a last offer has been reduced carries no weight. To accept the Association's position on this point would lead parties to take even more extreme positions (than they now do) in negotiations hoping that a reduced last offer will stand them in good stead. Such a practice is inimical to the concept of bargaining in good faith and must be rejected.

It is also irrelevant that the City has not alleged an "inability to pay." While this argument may be a factor in determining the outcome of an issue, it may not be used, as the Association suggests, as the sole basis for granting a union's request. The proponent of change has the burden to prove--by objective criteria--that its offer should be accepted. The Association has not done so here.

Merely stating that the proposal is within the "mean" of comparable cities is, at best, disingenuous. The facts do not support the claim of comparability.¹⁴ Of the seven comparable communities, four do not even pay a differential! One city pays

¹⁴ The term "mean" as used here generally means: a. a quantity having a value intermediate between the values of other quantities; an average, esp. the arithmetic mean. b. either the second or third term in a proportion of four terms.

a flat bonus to officers who rotate shifts (for at least 10 months). And two cities pay overtime on the differential, but, unlike Romulus, they do so because the differential is considered a part of base pay. None of the Section 9 standards support the Association's offer. Accordingly, the City's offer will be accepted.

B. PENSIONS and HOLIDAYS (Economic)

Although pensions and holidays are not ordinarily related, they will, for convenience, be discussed jointly because the City's offer creates a linkage between them.

The City proposes changes in the pension program to correspond to the ones negotiated with its patrol officers. The salient provisions are: Vesting after 8 years; retirement at age 50 with 20 years of service; City payment of the employee's contribution of 5% (with the full City contribution forfeited for termination or discharge for cause prior to normal retirement); an option for employees to contribute up to 10% of wages, and; various annuity and death benefit selections. This proposal does not come without some restrictions. Indeed, the *quid pro quo* for the City's added contribution is the discontinuance of holiday pay (except that employees who work on such days will receive an additional four hours pay).

The Association proposes two changes in the existing pension program (a defined contribution plan). The first change gives up

to five years of past service credit--for retirement only--to officers who served in other police departments before joining the Romulus force. The argument is that the City received a valuable asset in hiring officers with experience when it started its department and it should now recognize this (by accepting the proposal). The second change would reduce eligibility for normal retirement from age 55 to 20 years of service without regard to age. No particular rationale is given for this request.

On the issue of holidays, the Association proposes to add one major holiday (Martin Luther King Day) to the 13 existing holidays (8 major and 5 minor) on the theory that it is "within the mean" of the comparable communities. The City argues that none of the Association's offers are supported by Act 312 standards. It claims, however, that its offer is supported by the concept of "internal equity," meaning an agreement on the same subject with another City unit (in this instance the patrol unit) and therefore should be adopted.¹⁵

Section 8 of Act 312 requires the panel to identify the economic issues in dispute and the parties to make their last offers of settlement thereon. This is what was done on pensions and holidays, at least technically. The parties stipulated that these issues are economic. The Association has made separate offers on the issues, but the City has compounded the puzzle by

¹⁵ Although not specifically articulated in the Statute, internal equity is usually referred to as "internal comparability" within the intendment of Sec. 9(d) or (h).

making a compound offer that ties the matter of pensions and holidays together.

In order to avoid the proverbial problem of comparing apples to oranges, the aforementioned offers have been reduced to a common denominator. Thus, the offers are considered as follows: The Association proposes (1) up to five years of past service credit; (2) "twenty and out," and; (3) the addition of one major holiday. The City opposes these changes and its offer on these specific points is the status quo. The City proposes to improve the pension program and to discontinue (for the most part) the current method of paying holiday pay. The Association opposes these changes and its offer thereto is to retain the status quo.

With regard to past service credit and twenty and out, the Panel will adopt the City's offer and leave matters unchanged. Command officers in the comparable communities do not have these benefits. Neither do employees in other City units! Past service credit has some (albeit limited) equitable appeal, but it is unclear whether officers have vested pensions in their former departments.¹⁶ If so, this offer would be tantamount to a duplication of credit. There is simply no probative evidence in the record to support the pension provisions sought by the Association and its request must be rejected.

¹⁶ The record shows that one officer "retired" from the State Police and presumably has a pension. One officer was not previously employed by a police department.

The City would significantly alter the pension and holiday provisions now in place. Its offer would eliminate the holiday pay concept and the money thus saved would be used by it to pay the increased pension contribution. The only rationale for the offer is that other City employees (most notably patrol officers) have accepted this pension plan. Offsetting this is the fact that each of the comparable communities maintains the traditional holiday designation and holiday pay format. The Section 9 standards do not support making the radical change proposed by the City. Accordingly, the Association's offer to continue the existing programs is adopted.

The Association proposes to add Martin Luther King's birthday as a major holiday. Its members receive their regular pay for all holidays on which they are not assigned to work. When they work on a holiday, they are paid time and one-half if it is a designated "major" holiday and straight time if it is a minor one. The City implies that the Association's request for this added day arises from a desire for the extra compensation rather than to honor the birth of a great American. This argument is immaterial.

The Federal Government and the State of Michigan have recognized the contribution of Dr. King to our society by proclaiming the 3rd Monday of January as his day. It is worthy of being a major holiday in Romulus too. Altruism aside, the test of comparability warrants the addition of a holiday in

Romulus. Four of the communities compensate command officers at premium rates for working on specified holidays. Two other communities pay what amounts to a premium although the holidays are not designated. More importantly, the average number of holidays on which an employee is eligible for premium pay is 12.5. Since Romulus has only 8 major dates, it is considerably below the comparable communities. To adjust this, the Association's offer will be adopted.

2. SICK LEAVE (Economic)

The Association proposes two changes in sick leave entitlement: One would permit leave to be taken in two hour increments (rather than four) and the other would require payment of accrued sick leave to an officer discharged for cause. The City opposes these changes.

In support of the two hour change, the Association argues that it is unfair to require an officer to take four hours off work when only two hours of leave is needed. The qualifying language of Article XX, Section 1 limits leave to situations involving actual sickness or disability of an employee, or illness in his/her immediate family. But there is a further qualification:

Sick leave may also be used to meet dental appointments, or to take physical examinations or other sickness prevention measures, provided that the employee receives advance approval from the platoon shift commander.

Since the agreement invites employees to use sick leave for preventative measures, logic dictates that they not be penalized for doing so. The Panel will adopt the Association's offer, but will limit its use to the types of leave quoted above.¹⁷

The only argument presented by the Association for removing the sick leave just cause disqualification is that it is unfair; the officer has worked to accrue the benefit and it should not be lost--regardless of the reason for termination. The contractual agreement is not unique; many employers and unions have chosen to treat discharged employees less kindly than those who leave under more favorable circumstances. For example, among the comparable communities, only Brownstown Township imposes no penalties. The Association's position is not supported by the comparable community standard. Under the circumstances, the City's offer of no change will be adopted.¹⁸

C. CLOTHING/CLEANING ALLOWANCE (Economic)5

The City provides officers with uniforms, replaces worn or damaged garments, and provides for the cleaning of uniforms once a month at an establishment of its choice. The Association

¹⁷ Although the parties stipulated that all of the Association issues were economic, this issue does not fall into that category and the Panel may therefore modify the offer as it has done here.

¹⁸ The Association's offer is not supported by the argument of consistency either! Article XXIV, Section 1 F disqualifies an employee discharged for cause from receiving accrued, but unpaid vacation time. No reasons have been given to warrant treating these items differently.

requests an annual uniform cleaning and maintenance allowance of \$500.00 per member plus an additional \$300.00 to be used by the member for replacement of uniforms with the unused balance reverting to the City. The unsubstantiated assertion is that there is a small shortfall in cleaning; one officer testified that he spends about \$15.00 per month for additional cleaning expenses. The Association's solution is not proportionate to the costs. It is tantamount to routing a flea with an elephant gun.

The City has countered with the following proposal:

Each employee shall be granted a yearly uniform voucher of \$300.00 (to be increased to \$350.00 on July 1, 1989) to be used for maintenance, cleaning and uniform purchasing.

The Uniform Voucher System shall be regulated by the procedures as outlined in the Chief's manual.

Employees may also purchase other police related equipment as approved by the Chief of Police.

Employees may submit cleaning bills to the City at the end of each fiscal year. These cleaning bills will be reimbursed to each employee up to the maximum amount remaining in their voucher.

No evidence was presented concerning the current cost of cleaning, maintaining, and purchasing uniforms. The proposed voucher system was not entered in evidence. Thus, this offer cannot be evaluated. Perhaps it is better than the one in place, but this is only speculation.

In view of the uncertainty surrounding this issue, the matter will be remanded to the parties for further negotiations. In the unlikely event they are unable to resolve the matter

themselves, they are to jointly contact Mediator, Edmund Phillips, who is assigned to this case. If the mediator cannot help the parties reach an accord, the matter will be the subject of another hearing at which each party may submit additional evidence in support of its respective offer and the Panel will thereafter issue a Supplemental Decision and Award.

D. VACATION SCHEDULE (Economic)

Under the current agreement, unit officers receive the following vacation entitlement:

<u>Years of Service</u>	<u>Days of Vacation</u>
1	6
2	13
5	15
7	17
10	17 + 1 for each year to 25

Each of the parties proposes slightly different amendments to this schedule. The Association wants to improve the situation for middle and longer seniority members, as follows:

<u>Years of Service</u>	<u>Days of Vacation</u>
5	18
7	20 + 1 for each year to 30

The City's offer would improve the benefit for starting employees and for all employees with five or more years of seniority, as follows:

<u>Years of Service</u>	<u>Days of Vacation</u>
1	10
5	20
10	+ 1 for each year to 25

The City's schedule rather than the Association's, more closely parallel--or exceed--the majority of the comparable communities¹⁹ and the internal comparability. All other factors being equal, the City's last offer benefits employees across the entire spectrum of their employment and it will be adopted.

3. USE OF VACATION (or PERSONAL) DAYS (Non-economic)

An officer who wishes to be off work on a holiday that he or she is scheduled to work must use vacation or personal leave time. The Association proposes that an officer whose request to be off on such a day is granted, not be required to use a vacation or personal leave day if the same does not create a disruption in the department or an overtime situation for other officers. The City does not seriously object to this offer if the determination is with the Chief and not the officers. The Association's offer seems to satisfy this concern. In view of the apparent agreement coupled with the savings of premium pay (major or minor holiday), the Association's offer--as set forth herein--will be accepted.²⁰

¹⁹ Southgate and Trenton (Lieutenants) have unusual provisions that exceed what either of the parties seek in this proceeding.

²⁰ The Detective Bureau already enjoys this benefit by virtue of a side letter. The Chief indicated that the service of a detective is not as critical on a holiday. Presumably employees--particularly those in the uniform division--are scheduled to work on holidays because their services are necessary. Why else would an employer pay them premium pay? Realistically then it is very likely that this provision will receive limited use.

I. CHANGE OF DEFINITIONS (Non-economic)

The second sentence of Article II of the current agreement defines the term "employee" as being, "all command officers below the ranks (sic) of inspector and above the rank of patrolman employed by the City of Romulus Police Department." The City wants the definition of employee to conform to the MERC certification of the Association as bargaining representative and proposes that it be changed to read, "all Sergeants and Lieutenants employed by the City of Romulus Police Department." The Association wants to maintain the status quo.

On March 20, 1984, MERC certified the Association as the bargaining representative of "All Lieutenants and Sergeants of the Romulus Police Department, excluding all other employees of the City of Romulus." (Case No. R84 A-2). When the parties negotiated their first agreement, the term employee, was, as set forth above, defined more broadly than the unit description. It should also be noted that the only command officers that have been employed by the City have been those in the classifications of Sergeants and Lieutenants.

Ordinarily, the recognition clause of an agreement is the critical one for describing the bargaining unit. Here, the clause is somewhat ambiguous in that the City recognizes the Association "as the sole representative of its unit members covered by this agreement..." This is not necessarily in conflict with the certification. Nevertheless both parties

appear to consider the definition and recognition clauses as one and the same thing.

This issue cannot be resolved in an Act 312 proceeding. I agree with Counsel for the City that the proposed change in language is not "a proper subject for bargaining." (Brief, p. 28, last sentence). A panel must limit its awards to "mandatory subjects" of bargaining. Local 1277, AFSCME v. City of Center Line, 414 Mich 642 (1982).

A mandatory subject is one that constitutes or vitally affects wages, hours, and other terms and conditions of employment. NLRB v. Borg Warner Corp., 356 U.S. 342 (1958). The change in the definition clause--limited as it is to tracking the MERC certification--does not affect the employees whom the Association represents, and therefore, settles no term or condition of their employment.

This being so, the proposed change in the unit description is not a mandatory subject of bargaining. Accordingly, the City may be able to make this change unilaterally. Allied Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). I emphasize "may" because the question is not entirely free from doubt. Therefore, it is recommended that the parties place this item on their agenda when they meet pursuant to the direction contained elsewhere herein.

Agreement on this issue, while not monumental, may be the first step in promoting a better relationship between the parties--a relationship that, from outward appearances, could use some bettering.

II. CHANGE IN REDUCTION IN WORK FORCE LANGUAGE (Non-economic)

Article VI, Section 5, reads as follows:

Seniority in rank shall be the determining factor in demotions * for reduction in the work force within the bargaining unit.

The City wants to insert the word "and" at the * above to "clean-up" the language. The use of the conjunctive, however, may change the meaning of the provision. As the sentence now reads, seniority is the determining factor in deciding demotions that are caused by a reduction in the force. The conjunctive makes this a compound phrase meaning that seniority will be used for all demotions and not simply those caused by a work reduction. This may be much ado about nothing if the only demotions possible are those caused by a reduction of staff. If this is so, there is really no need to change the sentence--as it does not require "cleaning up." The Association's offer of status quo will be adopted.²¹

²¹ This issue, too, should be discussed by the parties when they convene to negotiate on the matter of the clothing allowance.

III. CHANGE IN OVERTIME LANGUAGE (Non-economic)

The City proposes to revise Section 1 of Article XVII to replace what it terms ambiguous language caused by the differing shifts worked by sergeants. The Association does not oppose this change if it does not adversely affect the holiday or shift differential provisions of the Agreement. As the proposal is one of form rather than substance, the City's offer (with the Association's caveat) will be adopted.

IV. CHANGE IN PERSONAL LEAVE DAY LANGUAGE (Non-economic)

The City proposes to change the name of this leave from "personal leave" to "personal business leave," and to add at the end of Article XVII, Section 1 a phrase stating that such leave "shall be non-cumulative." The Association apparently does not object to the change in nomenclature, and because it is so minor a matter, further comment is unnecessary. It will be adopted.

In the Panel's executive session, the City Delegate stated that the limiting language simply clarified the practice; leave is not cumulative since any unused time is redeemed annually. The Association Delegate did not dispute this assertion. Based upon this representation, the City's offer to add the non-cumulative language will also be adopted.

V. NON-DUTY DISABILITY AND SICK LEAVE (Economic)

The City has linked the non-duty disability and sick leave provisions together. It proposes "a revolutionary sick leave policy and long term disability income plan" (Brief, p. 26) to replace the benefits now contained in Articles XX and XXVII. This is the identical plan that was negotiated with the patrol officers. The City's contention is bottomed on this argument: "What has been negotiated with the one police unit should be the same for the Sergeants and Lieutenants." (Brief, p. 27). The Association strenuously opposes these changes.

The Chairman believes that the City's proposal is in the long term interest of unit employees. For example, the current plan provides a non-duty disability of $66\frac{2}{3}$ of the employee's basic weekly earnings (up to \$150.00) for a maximum of fifty two weeks. Under the offer, a disabled employee would receive a benefit equal to $66\frac{2}{3}\%$ of his or her rate of pay for a period equal to his or her length of service or age sixty-five, whichever is greater. Two important differences, of course, are the removal of the earning's cap and the removal of the fifty-two week limitation.

The Association is, in essence, betting that its members will not suffer a non-duty disability, or, if they do, that it will extend for less than one year. Only hindsight will tell if this was a good bet. One indicator is past experience. In this regard, we know that two former sergeants would have benefited

from this program had it been in effect at the time of their disability; one died after an extended illness and the other was forced to go on relief when his benefits ended. (Transcript, December 3rd, pp. 118-119).

Notwithstanding the Chairman's preference for the City's proposal, it must regrettably be rejected. The Panel cannot, however appealing a proposal may be, ignore the Section 9 criteria and substitute its members' personal belief of what is in the best interest of the parties. As one distinguished Arbitrator (Theodore J. St. Antoine) has said, the goal of the Panel is to put into place the agreement the parties would have made had their negotiations borne fruit.

This "revolutionary" offer is not one that the parties would have reached. The comparable communities do not have this type of program and the City's claim that what is negotiated with one of its police units must be imposed on the other is repugnant to the concept of good faith bargaining. For these reasons, the Association's offer of the status quo is adopted.

VI. JOB ASSIGNMENTS (Non-economic)²²

The City has proposed that the matter of job assignments be handled through the use of a Policy Statement that will be

²² The City, contrary to the Association, contends that job assignments is non-economic. In view of the determination above that detective and uniform officers are to be paid at the same rate, it is concluded that this issue is non-economic.

contained in the Departmental Manual. Its offer contains the proposed statement. The Association objects to the part of the proposal that eliminates the restriction on transferring a detective only for good cause. It argues that this was a negotiated benefit that should not be removed.

It is not clear from the record why this restriction came into existence as no special qualifications are needed for the position and the Chief decides who will get the job. The anomaly is that the Chief may transfer a uniform sergeant to the detective bureau without restriction, but cannot do so the other way around!

The Policy Statement seeks to provide the department with a detailed selection procedure. To operate efficiently, a professional department requires such structure. This procedure will be to the advantage of the City, the Association, and, more importantly, to the officers. The Association's only concern is that this provision will be used indiscriminately: To reward those officers who win the Chief's favor and to punish those who do not. This position is based on unfounded and unwarranted speculation.

The Panel will exercise its authority to modify the offer by "grandfathering" incumbent officers. Art. XXXV, Sec. 2 of the current agreement will continue to be applied, but only to those officers who are presently assigned to the detective bureau. The enabling language of the Agreement shall also provide that the

procedure may be changed only upon mutual agreement of the parties. As amended, the City's offer will be adopted.

VII. PERFORMANCE EVALUATIONS (Non-economic)

The current agreement contains a provision entitled "Service Ratings." (Un-numbered Article or Section, p. 18). The City proposes to replace this section with a detailed procedure called "Performance Evaluations" that is to become a part of the Departmental Manual. It alleges that the procedure it has presented simply memorializes the practice that has been in effect since 1986. The Association did not present an offer on this subject and apparently does not seriously object to the City's proposal. The City offer will therefore be adopted.²³

A W A R D

A. WAGES (Economic)

Effective July 1, 1987, command officers (after six months) shall be paid as follows: Sergeants - \$31,320.00; Lieutenants- \$33,199.00.

²³ The Chief and a representative of the Association have been meeting on this subject, but lack of time apparently prevented their finalizing an agreement. The proposal submitted by the City in this proceeding is the one negotiated between the City and the representative of the patrol officers. That document needs to be tailored for command officers. The enabling language of the Agreement shall also provide that the procedure will be changed only by mutual agreement between the parties.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Richard Ziegler
Richard Ziegler, Association Delegate

Marilyn Radford
Marilyn Radford, City Delegate

Effective July 1, 1988, command officers (after six months) shall be paid as follows: Sergeants - \$33,480.00; Lieutenants- \$35,489.00.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Richard Ziegler
Richard Ziegler, Association Delegate

Marilyn Radford
Marilyn Radford, City Delegate

Effective July 1, 1989, command officers (after six months) shall be paid as follows: Sergeants - \$34,500.00; Lieutenants- \$35,200.00.

SEE STIPULATED AWARD

Donald F. Sugerman
Donald F. Sugerman, Chairman

Marilyn Radford
Marilyn Radford, City Delegate

Richard Ziegler
Richard Ziegler, Association Delegate

Neither party properly identified changes in the wage progression system as an issue in this proceeding. The matter is not properly before the Panel for determination. Accordingly, the six month probationary period in the current agreement will be continued unchanged.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Marilyn Radford
Marilyn Radford, City Delegate

Richard Ziegler
Richard Ziegler, Association Delegate

For the reasons set forth in the Opinion, separate rates will not be established for uniform and detective sergeants. The Association's offer of the status quo will be adopted.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Richard Ziegler
Richard Ziegler, Association Delegate

Marilyn L. Radford
Marilyn Radford, City Delegate *IN DISSENT*

1. SHIFT DIFFERENTIAL PREMIUM (Economic)

Article XXXVIII of the current agreement will continue in force. The City's offer of the status quo will be adopted.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Marilyn L. Radford
Marilyn Radford, City Delegate

Richard Ziegler
Richard Ziegler, Association Delegate

B. PENSIONS and HOLIDAYS (Economic)

Article XXX of the current agreement will continue in force. The Association's offer of status quo will be adopted.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Richard Ziegler
Richard Ziegler, Association Delegate

Marilyn L. Radford
Marilyn Radford, City Delegate *IN DISSENT*

Martin Luther King Day will be added to Article XXIII, Section 1 as a major holiday. The Association's offer will be adopted.

Donald F. Sugerman
Donald F. Sugerman, Chairman

Richard Ziegler
Richard Ziegler, Association Delegate

Marilyn L. Radford
Marilyn Radford, City Delegate *IN DISSENT*


2. SICK LEAVE (Economic)

The Association's offer, as modified, will be adopted.
Article XX, Section 2 shall be amended by adding the following sentence:

Provided, however, that approved leave for dental appointments, physical examinations, or other sickness prevention measures shall be charged against the employee's sick leave bank in amounts of not less than two (2) hours for any absence.

Section 3 of Article shall continue unchanged.

Donald F. Sugerman
Donald F. Sugerman, Chairman



Richard Ziegler, Association Delegate


Marilyn Radford, City Delegate *IN DISSENT*

C. CLOTHING/CLEANING ALLOWANCE (Economic)

SEE INSTEAD STIPULATED AWARD

Pursuant to the Opinion, this issue is remanded to the parties for further negotiations.

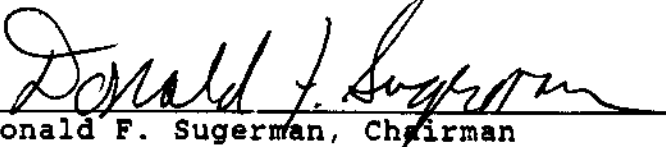

Donald F. Sugerman, Chairman


Richard Ziegler, Association Delegate

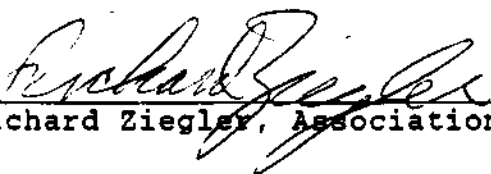
Marilyn Radford, City Delegate

D. VACATION SCHEDULE (Economic)

The City's offer will be adopted.

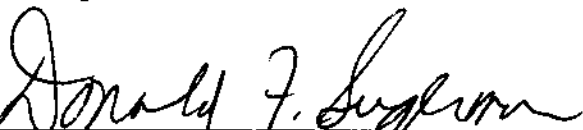

Donald F. Sugerman, Chairman


Marilyn Radford, City Delegate

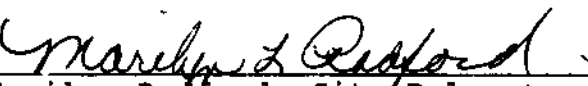

Richard Ziegler, Association Delegate

3. USE OF VACATION (or PERSONAL) DAYS (Non-economic)

The Association's offer, as clarified in the Opinion, will be adopted.

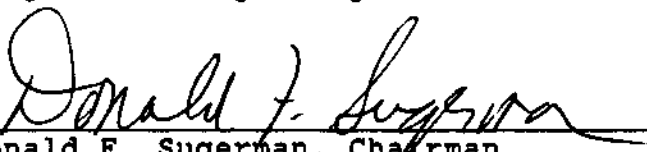

Donald F. Sugerman, Chairman


Richard Ziegler, Association Delegate


Marilyn Radford, City Delegate

I. CHANGE OF DEFINITIONS (Non-economic)

The change in the unit description is a non-mandatory subject of bargaining. The Panel cannot decide the issue.

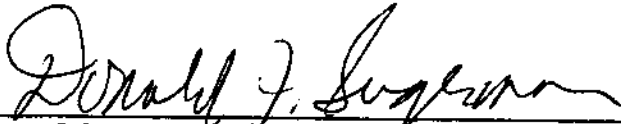

Donald F. Sugerman, Chairman


Richard Ziegler, Association Delegate


Marilyn Radford, City Delegate

II. CHANGE IN REDUCTION IN WORK FORCE LANGUAGE (Non-economic)

The proposed change will not be adopted.

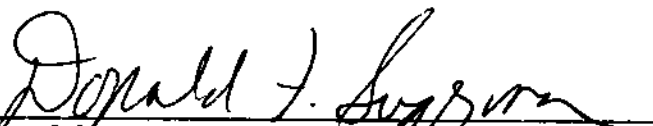

Donald F. Sugerman, Chairman

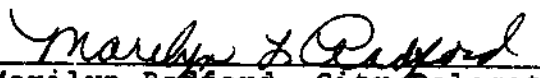

Richard Ziegler, Association Delegate


Marilyn Radford, City Delegate

III. CHANGE IN OVERTIME LANGUAGE (Non-economic)

The City offer, as modified by the Association, will be adopted.


Donald F. Sugerman, Chairman

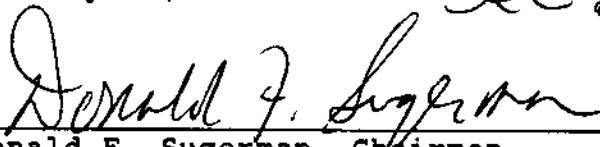

Marilyn Radford, City Delegate



Richard Ziegler, Association Delegate

IV. CHANGE IN PERSONAL LEAVE DAY LANGUAGE (Non-economic)

The City's offer, as explained forth in the Opinion, will
be adopted,

SEE! STIPULATED AWARD

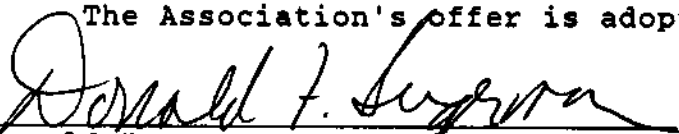

Donald F. Sugerman, Chairman

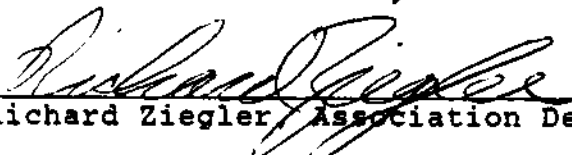

Marilyn Radford, City Delegate



Richard Ziegler, Association Delegate

V. NON-DUTY DISABILITY AND SICK LEAVE (Economic)

The Association's offer is adopted.

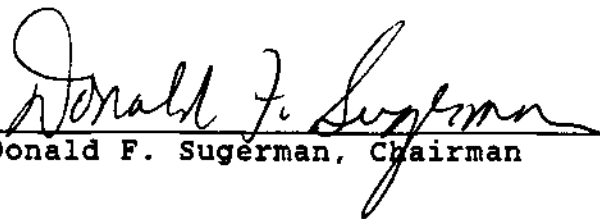

Donald F. Sugerman, Chairman


Richard Ziegler, Association Delegate


Marilyn Radford, City Delegate IN DISSENT

VI. JOB ASSIGNMENTS (Non-economic)

The City's offer (as modified in the Opinion) is adopted.

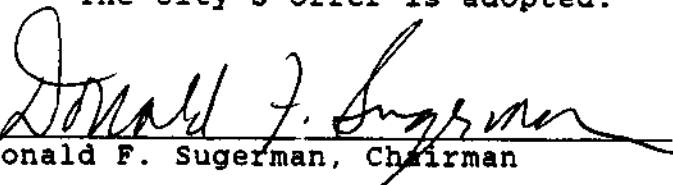

Donald F. Sugerman, Chairman


Marilyn Radford, City Delegate


Richard Ziegler, Association Delegate

VII. PERFORMANCE EVALUATIONS (Non-economic)

The City's offer is adopted.


Donald F. Sugerman, Chairman


Marilyn Radford, City Delegate


Richard Ziegler, Association Delegate

Romulus, Michigan
April 19, 1988

Following language will be adopted as
a Stipulated award for Clothing/
Cleaning allowance, ~~LEUTENANTS WAGES~~
FOR JULY 1, 1989 and PERSONAL BUSINESS DAYS

Each Employee shall be granted a yearly
Uniform Voucher of \$300.00 to be used
for maintenance, cleaning and uniform
purchasing

The Uniform Voucher System shall be regulated
by the procedures as outlined in the Chief's
Manual.

Employees may also purchase other
police related equipment as approved
by the Chief of Police.

Employees may submit cleaning bills to
the City at the end of each fiscal year.
These cleaning bills will be reimbursed
to each Employee up to the maximum amount
remaining in their voucher

Effective JULY 1, 1989
LEUTENANTS AFTER SIX MONTHS SHALL
RECEIVE THE SALARY OF 35,489.00.

PERSONAL BUSINESS DAYS

III. Each employee shall be granted two (2) PERSONAL BUSINESS LEAVE DAYS ON THEIR ANNIVERSARY DATE, WHICH SHALL NOT BE CHARGEABLE TO THE MEMBER'S SICK LEAVE BANK. PERSONAL BUSINESS LEAVE DAYS MUST BE APPROVED BY THE MEMBER'S IMMEDIATE SUPERVISOR AND SHALL BE NON-CUMULATIVE.

ADVANCE NOTICE OF SEVENTY-TWO (72) HOURS SHALL BE GIVEN TO THE IMMEDIATE SUPERVISOR BEFORE USE OF ANY PERSONAL BUSINESS LEAVE DAYS UNLESS EMERGENCY OTHERWISE INDICATES.

DATED 4/19/88

Donald F. Sugarman
DONALD SUGARMAN, CHAIRMAN

Marilyn S. Radford
MARILYN RADFORD, DELEG.

Richard Ziegler
RICHARD ZIEGLER, DELEG.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

CITY OF ROMULUS,

Employer

-and-

Case No. D87 A-47

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,

Labor Organization

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
Marilyn L. Radford, City Delegate
Richard Ziegler, Union Delegate

INTERIM AWARD ON COMPARABLE COMMUNITIES

Pursuant to arrangements made at the pre-hearing conference, the Union and the City submitted separate lists to the Chairman containing the names of the communities that each considers comparable to Romulus. The importance of selecting comparable communities finds its genesis in Section 9 of Act 312. That section requires the panel to base its findings, opinion, and order upon a set of factors that include a comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with that of employees similarly situated "In public employment in comparable

communities." (Subsection (d) (i)).

The City proposes that the following communities be considered comparable to Romulus: The Townships of Brownstown, Canton, Huron, Sumpter, and Van Buren. The Union has nominated as comparable communities the Cities of Allen Park, Lincoln Park, Riverview, Southgate, Trenton, and Wyandotte.

The parties also presented data in support of their respective selections. The criteria used by each party in formulating its proposal was substantially different (although a few of the factors were the same). Because of this disparity and lack of common data, the Chairman requested each side to provide him with corresponding information for all of the communities as well as other relevant information, e.g., the component parts of the State Equalized Values - commercial, industrial, residential, and personal. And they graciously did so!

The Chairman has evaluated this data, discussed the matter with representatives of the parties, and explained the rationale for his decision at a meeting with the parties on September 22, 1987, (which will be detailed in the Opinion and Award disposing of this case on its merits). The Chairman finds that the Cities of Allen Park and Lincoln Park and the Townships of Huron, and Sumpter are not sufficiently similar to Romulus in the three principal areas in which the data was grouped (Physical, Financial and Personal, and Departmental Characteristics) to warrant their inclusion as comparable communities. They will be

excluded from the equation.

The communities that are comparable to Romulus are: Riverview, Southgate, Trenton, Wyandotte, Brownstown, Canton, and Van Buren. Therefore, they will be used in the next phase of this case which is the preparation by the parties of their exhibits that are to be exchanged between them on November 5, 1987.

This Interim Award may, for convenience, be signed in counterpart.

/s/ Donald F. Sugerman

Donald F. Sugerman, Chairman

Marilyn L. Radford, Delegate (City)

/s/ Richard Ziegler

Richard Ziegler, Delegate (Union)

September 22, 1987

APPENDIX "A"

PHYSICAL CHARACTERISTICS

Population (24,857)	x	o	x	x	x	x	x	o	o	x	x
Square Miles (35)	o	o	o	o	o	o	x	x	x	x	x
Density (710)	x	o	x	x	x	o	x	x	x	x	x
Total Housing Units (8160)	x	o	x	x	x	x	x	o	x	x	x
Age of Units	o	o	x	x	x	o	x	o	x	x	x
Vacant Land	o	o	x	x	x	o	x	x	x	x	x

FINANCIAL AND PERSONAL CHARACTERISTICS

[illegible]

DEPARTMENT CHARACTERISTICS

[illegible]