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3/21/96
Sub.

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter between:

CITY OF SOUTHGATE,

Case No. D93 D-0623

-and-

SOUTHGATE FIRE FIGHTERS
ASSOCIATION, IAFF, LOCAL 1307

Chair: Elaine Frost
Issued: March 21, 1996

Panel: Elaine Frost, Impartial Chair
David Angileri, Employer Designee
Paul Diedrich, Union Designee

Appearances:

For the Employer: Angelo A. Plakas, Labor Attorney
For the Union: George H. Kruszewski, Attorney

Called by the Union: Paul Diedrich, 4th District Vice President
Tamara Smith, Legal Assistant
John Kremer, Fire Marshal

Called by the Employer: Terrence M. Jarvis, City Administrator
David Angileri, Finance Director
Stephen H. Ahles, Fire Chief
Andrew McCulloch, Law Clerk
Gordon E. Krater, CPA, Plante & Moran

INTRODUCTION

Hearings were conducted before the Arbitration Panel in the City of Southgate on August 14, 15, 18 and 23, 1995,¹ pursuant to Act 312, Public Acts of 1969, as amended by Act 127, Public Acts of 1972 (MCLA 423.231 et seq.) A verbatim transcription was taken.² The parties currently are operating under their 1990-1993 Agreement, as extended, and seek settlement of unresolved issues to complete their 1993-1996 contract.³ Absent from unresolved issues are wages which were settled

¹ The August 14th hearing was held at the Downriver Community Center, 15100 Northline Road, Southgate, Michigan. The other three hearing dates (and the pre-hearing on May 23, 1995) were held at the Southgate Municipal Offices, 14400 Dix-Toledo, Southgate, Michigan.

² Transcript references are to volumes I-IV, followed by a colon and page numbers.

³ The parties last utilized the Act 312 process to gain a contract back in 1970, with the proceeding before Chairman George T. Roumell, Jr., dated April 24, 1970. This resulted in their 1979-71 Agreement, and all contracts achieved in since that time have been secured through collective bargaining.

Southgate, City of

INDUSTRIAL

COLLECTION

after conclusion of the police contracts for 1993-1996. (Parity has existed between the Police and Fire Department since at least the 1960s, and a contract provision memorializing this relationship was first negotiated in the 1974-76 Agreement.⁴

Preceding and during the hearings several issues scheduled for 312 arbitration were resolved.⁵ The ten remaining issues are:⁶

1. Command Officers Bonus
2. Shift Differential
3. Fire Marshal Certification Bonus
4. Vacation Accumulation
5. Holiday Pay for 40-Hour Employees
6. Sick Leave Verification Form
7. Super Kelly Schedule
8. Sick Leave for Illness of Family Member
9. Sick Leave Accumulation
10. Probationary Employees/Minimum Manning

As to each economic issue, Section 8 of the Act (MCLA 423.238) directs that the 312 Panel "adopt the last offer of settlement ("Last Best Offer" or "LBO") which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section

⁴ Article VIII, Section 7 (Wages) provides: "In the event that there is established for any fiscal year by arbitration or negotiation or otherwise different compensation or cash benefits for employees or Officers of the Southgate Police Department than are herein provided, the compensation provided herein shall be adjusted to conform thereto so as to maintain a parity relationship for all corresponding ranks in the Police and Fire Department."

⁵ At the pre-Hearing held on May 23, 1995 21 issues remained in dispute between the parties. Through efforts to reach accord, all but ten of these were resolved. The Chair notes that in regards to narrowing the issues through agreement and/or withdrawal, and generally in regards to the conduct of the hearings, the parties and their representatives are to be commended for competence and professionalism.

⁶ The issues are basically set forth in the order of the proofs presented at the hearings.

9." (MCLA 423.239)⁷ Among the Section 9 factors,⁸ the following are pertinent to the ten issues before the Panel:⁹

- (b) Stipulations of the parties.
- (c) The interests and welfare of the public...
- (d) Comparison of the wages, hours and conditions of employment of the employees... performing similar services and with other employees generally: ... in comparable communities.

⁷ Section 9 in full 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 upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (f) 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. (MCLA 423.239).

⁸ In *City of Detroit v. DPOA*, 408 Mich 410; 294 NW2d 68, 97 (1980), the Michigan Supreme Court explained: "The legislature has neither expressly nor implicitly evidenced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in Section 8 and 9. In effect, then, the Sec. 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Sec. 9. Since Sec. 9 factors are not intrinsically weighted, they cannot of themselves provide the arbiters with an answer. It is the panel which must make the difficult decision of determining which particular factors are most important in resolving a contested issue under the singular facts of a case, although, of course, all 'applicable' factors must be considered."

⁹ Factors which were not pertinent to any of the ten issues included "(a) The lawful authority of the employer," since the parties raised no question as to that authority nor was any otherwise apparent. Further, the stipulated comparable communities all involve public employment, so 9(d)(ii) "In private employment in comparable communities" is not pertinent. "(e) The average consumer prices for goods and services, commonly known as the cost of living" was not the subject of any proofs (the parties had earlier reached accord, based on parity, on the issue of wages. There were no proofs on "(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings," and therefore none are addressed.

Section 9(c) includes the phrase "and the financial ability of the unit of government to meet those costs." In this case the City did not advance an ability to pay (more accurately "inability to pay") argument. Its arguments based on financial consideration were based on comparatives and arguments of fairness, i.e., that it should not be required to pay so great an amount for firefighter compensation and benefits. But these arguments do not amount to claiming inability to pay and so this part of Section 9(c) is not viewed as pertinent to the ten issues. (Even so, since the City argued future jeopardy to its budget and long-term liabilities from cost of sick leave accumulation (Issue #9), those financial considerations are reviewed on that Issue).

- (f) The overall... 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.
- (h) Such other factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining...

The parties entered into stipulations at the beginning of the Act 312 proceeding, which include certain tentative agreements,¹⁰ and the direction that the Panel consider Allen Park, East Pointe, Ferndale, Garden City, Lincoln Park, Madison Heights, Trenton, and Wyandotte as comparable communities.¹¹ An executive session was held on December 2, 1995.

BACKGROUND

The Southgate Fire Department is divided into the Fire Prevention Division (consisting of one 40-hour employee, the Fire Marshal) and the Fire Suppression Division (consisting of two Lieutenants, four Sergeants and 16 firefighters who work 24-hour shifts with an average of 50.4 hours a week).¹² The Union represents all Fire Department personnel except Stephen H. Ahles who has been the Fire Chief since June, 1992.¹³

The Fire Department has handled increasingly frequent fire and emergency runs in recent years, and 1994 the largest year to date, with 2256 total runs.¹⁴

¹⁰ The tentative agreements are set forth as Appendix A to this Act 312 Award.

¹¹ It was also stipulated that:

- 1) The parties waive strict compliance with the time limits set forth in Act 312,
- 2) The 312 Panel has jurisdiction to decide all issues placed before it,
- 3) Duration of the new contract is July 1, 1993 to June 30, 1996.
- 4) Upon resolution of the issues before the Panel, the 1993-1996 Agreement will consist of:
 - a) those decisions of the panel plus
 - b) the T/A's made part of this record (and attached as Exhibit A), plus
 - c) the otherwise unchanged provisions of the 1990-1993 Agreement.

¹² In recent years manpower in the fire fighting division was greater than 22. Thus, from 1977 through 1991 that level was 24; in 1992 it fell to 21, and since 1993 it has remained at the current 22. (U#13). (The Chief has asked that department size be brought back to 24 but that request has been turned down by City Council).

¹³ Chief Ahles has worked for the Department for 22 years.

¹⁴ Total runs for 1990-95:

	Rescues	Fires	Service Calls	False Alarms	Total Runs
1990	1515	131	139	92	1877
1991	1649	160	137	73	2019
1992	1505	126	144	46	1821
1993	1651	123	117	91	1982
1994	1829	156	169	102	2256
1995 (Jan to June only)	903	99	133	0	1135

Minimum manpower is set by contract (Article XXI, Section 1) and requires that at least six employees are working in fire suppression.¹⁵ To maintain that minimum with the current 22 firefighters,¹⁶ overtime has frequently been necessary.¹⁷ As to current staffing Chief Ahles said, "we are at a minimum that is just getting by. We need to look at improving our minimum manning because of the volume of runs we are experiencing.... That relates directly to services to the public and also to the safety of the fire fighters.... Our services have increased over the years, and to do that effectively, more people makes it much easier to do that job* * * * (IV:67-71).

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ISSUE 1. COMMAND OFFICERS BONUS

* * * * *

Current

Contract: No Command Officer (CO) bonus is now provided.

Union's

LBO: Add the following language as Article VIII, Section 9:

Commencing on July 1, 1994, all Command Officers in the Fire Suppression Division will receive an annual bonus of \$600, payable in the first pay of July.

For wage calculation purposes, the \$600 bonus shall be rolled into base wages on June 30, 1995 and June 30, 1996. The parties hereby agree that this procedure, in no way, shall set any precedent or practice for future collective bargaining.¹⁸

City's

LBO: All command officers in the Fire Suppression Division be paid a Six Hundred (\$600.00) Dollar yearly bonus, on June 30th, for the year prior, or pro rata for any part thereof, for reporting to the Fire Marshal on a

Totals:	9052	795	839	404	11090
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¹⁵ Before leave time is taken into account, with the current level of 22, seven persons are scheduled on four days out of six and eight people are scheduled on two days out of six. (III:65) In the past when the staffing level was 24 the Department could schedule eight persons per unit each day.

¹⁶ Ahles explained that on one recent Christmas and another time, in September, the Department was unable to staff the minimum six firefighters because no others were available for overtime. (Ahles said he was not Chief at the time).

¹⁷	<u>Year</u>	<u>Manpower</u>	<u>Overtime</u>	<u>Year</u>	<u>Manpower</u>	<u>Overtime</u>
	1986-87	24	\$129,157	1990-91	24	\$208,578
	1987-88	24	\$183,692	1991-92	24	\$214,817
	1988-89	24	\$183,015	1992-93	21	\$307,125
	1989-90	24	\$191,014	1993-94	22	\$301,939 (U#108)

¹⁸ The Union's LBO was underscored to indicate "new language." For ease of reading, this underscoring has been deleted.

departmental check-off list, limited/basic safety items, observed while in commercial buildings conducting pre-fire surveys.

Findings: The parties agree that a \$600 bonus should be paid to Fire COs, but disagree on specifics.

Under the 1993-1996 police command contract, command members in the Detective and Traffic Bureaus received a \$600 increase in their existing on-call allowances,¹⁹ and Shift Command Officers received an allowance of \$600 "for the purpose of performing duties as a Deputy Court Clerk."²⁰ Their contract states that the "\$600 allowance... shall be rolled into base wages at June 30, 1996,"²¹ and that "this procedure, in no way, shall set any precedent or practice for future collective bargaining."²²

Under the City's LBO, the \$600 bonus for Fire COs would require that they mark additional check-listed items when in commercial buildings conducting pre-fire surveys.²³ This information would assist the fire prevention efforts of the Fire Marshal who is unable to visit each commercial building each year.

City's

Position: When the Police Department went to permanent shifts, the Police COs agreed to perform additional duties of a Deputy Court Clerk and in exchange were granted a \$600 annual bonus.²⁴ The City maintains its LBO will pay this \$600 bonus to Fire COs in exchange for performing the reasonable function of reporting to the Fire Marshal on a department check-off list which can be easily completed during their pre-fire surveys. The City stresses that the information to be acquired from these additional duties is essential to public safety in the event of fire.

¹⁹ Article XVI, §4.

²⁰ Article XVI, §5.

²¹ It is undisputed that the \$600 was rolled into base on July 1, 1994, before the negotiated 4% increase, and the other bonus was rolled into base wage effective June 30, 1995, the last day of the police command contract.

²² Article XII, §1, Wages.

²³ Items suggested by the Department, and set forth in a proposed Pre-Fire Survey Form, are checks of exit doors, extinguisher types and tags, trash or stock around heating system or hot water system, temporary wiring, grease-laden cooking hoods, emergency lighting, exit signs, blocked exits or aisles, and accumulations of trash and clutter.

²⁴ City Administrator Terrence M. Jarvis testified that during negotiations this bonus for police COs was tied to the duties of Deputy Court Clerk and that the bonus would no longer be paid if the CO was transferred out of the Patrol Division. Jarvis also testified that having Police COs do this work reduced the Police Department's overtime expense.

Also, at the executive panel discussion on December 2, 1996, City Delegate David Angileri emphasized that the Employer's LBO rolls the \$600 bonus into the base wage.

Union's

Position:

No performance requirement should be added for the \$600 bonus because the City did not establish that Shift Commanders are doing anything different in preparation or review of court reports since their bonuses became effective. And, the seven Police COs in the Detective and Traffic Bureaus had no increase in duties, the \$600 bonus was simply added on to their on-call allowances.²⁵

Further, the information that Fire COs are asked to collect is the responsibility of the Fire Prevention Bureau, and is not pertinent to fire suppression duties. Article XVIII, Section 4(A) requires that members of the fire suppression division perform only duties directly related to fire fighting.²⁶

The City's LBO should also be rejected because it fails to roll the bonus amount into base wage, and this would distort parity with the Police CO. By the end of the 1993-96 contract, the City's LBO would place Fire Cos over \$1,000 behind the Police Cos -- even though the traditional relative position has been for the Fire Cos to enjoy \$350 to \$400 more in wages. And since the City's LBO ties the bonuses to performance there might only be part of one year's bonus payable under the City's offer, since all of the second contract year and much of the third have already elapsed. And this impact would further distort parity.

Analysis: The Chair finds it would not be onerous to require Fire COs to check-off added safety items for the Fire Marshal while they complete their Pre-Fire Survey Forms in commercial buildings. And the information thereby gathered would clearly, and perhaps critically, assist the Department's fire prevention mission. Therefore, were the two LBOs identical but for these additional duties, the Chair would favor the new duty requirement.

The Chair finds, however, that despite her views on the additional duties, the Union's LBO provides the better choice. This conclusion rests on the specifics of the Union's LBO to the effect that it will provide two \$600 bonuses, in each of the last two contract years, and that those amounts will be rolled into base wages. By contrast, the Employer's offer does not specify that the \$600 will be rolled into base, nor does it specify that bonuses for the second and third year will be paid in full despite lack of extra duties during some of that time. And if the Employer's LBO does not assure payment of two \$600

²⁵ There are 13 Police COs who received the \$600 bonus.

²⁶ The Union notes the exception in Article XVIII, Section 5 concerning duties during Fire Prevention week, and notes that the Union successfully arbitrated against the Chief's assignment, during Fire Prevention week, the same type of duties which the City's LBO now seeks to attach to the CO bonus.

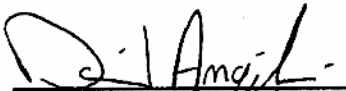
bonuses, in each of the last contract years,²⁷ then parity of total compensation between Police and Fire COs has not been followed.


The Chair also rejects the possibility of adopting the City's LBO, with its additional duties, and construing that LBO to provide \$600 bonuses in the last two contract years with those amounts rolled into base. Such construction is viewed as beyond the role and authority of the Panel.

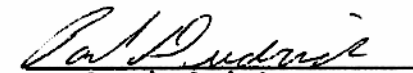
Award: The Panel finds the Union's LBO on Issue #1 (Command Officers Bonus) more nearly complies with applicable Section 9 factors.²⁸ The following will be added as Article VIII, Section 9:

Commencing on July 1, 1994, all Command Officers in the Fire Suppression Division will receive an annual bonus of \$600, payable in the first pay of July.

For wage calculation purposes, the \$600 bonus shall be rolled into base wages on June 30, 1995 and June 30, 1996. The parties hereby agree that this procedure, in no way, shall set any precedent or practice for future collective bargaining.


David Angileri
Employer Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

City Panel Member Dissenting Opinion Issue #1

It was never the intent of the City not to roll the bonus into base wage or for it to be any different than what the City did for the Police Command, for the extra duties they pick up. Now the Fire Command will get the bonus for no extra duties this is wrong.

David Angileri, City Panel Member

²⁷ The City's LBO might also be read to provide for three \$600 bonuses, one in each contract year.

²⁸ The Chair concludes that the most important Section 9 criterion for resolution of Issue #1 is Section 9(h) ("Such other factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining..."). Under these factors the Chair has found that continuation of parity with the Police Department and the clarity of contract language are decisive. Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

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ISSUE 2. SHIFT DIFFERENTIAL

* * * * *

Current

Contract: Article VIII, Wages, Section 8.A provides a differential of \$.15 between 4:00 pm and midnight and \$.25 between midnight and 8:00 am. Current practice, however, is to pay all hours between 4:00 pm and 8:00 am at the rate of \$.50.²⁹ Shift differential is also provided under Section 8.B for COs, and provision is made for overtime rates to include the shift differential (Section 8.C).

City's

LBO: Delete shift differential pay from the Contract.

Union's

LBO: Amend Section 8.A to increase to \$.50 the shift differential of firefighters between 4:00 pm and 8:00 am.³⁰

Findings: In 1970 Roumell Act 312 proceeding the Union sought a shift differential for midnight shift hours, pointing out that the 1968-69 and 1970-71 police contracts provided shift differential pay for those hours. The Panel rejected the Union demand, in part because only two of 33 communities in the Detroit metropolitan area then paid firefighters a shift differential.

Subsequently, shift differential was negotiated into the 1977-79 firefighter contract. Each contract since that time has continued this compensation and it has increased as a matter of parity with the police contract. (Through to the current 1990-93 Agreement, the amount of money payable for firefighter shift differential has increased five-fold). Shift differential for firefighters now costs the City between \$18,000 and \$20,000 a year.

Six of the comparable communities provide no shift differential pay while Allen Park and Lincoln Park do provide some form of this compensation. (Their rates are less than \$.50).

Union's

Position: The contract should reflect current practice which is to pay \$.50 shift differential. This compensation has existed since 1977 and its elimination to save the City \$18,000 to \$20,000 is totally unjustified. Shift differential averages over \$900 to

²⁹ This upward adjustment is based on parity with the 1991-93 Police Patrol contract. (This increase was effectuated for both police and firefighters in approximately December, 1992 and made retroactive to July 1, 1991, the beginning of the 1991-93 contract).

³⁰ For ease of reading, the paraphrase is set forth. The Union provided its LBO in contract language.

each firefighter, a significant part of their compensation.³¹ Its elimination would destroy parity with the police, violating the express requirements Article VIII, Section 7 by causing Fire personnel to receive \$900 per year less than their counterparts in the Police Department. Further, the Union argues that firefighters should not be penalized for working three eight-hour consecutive shifts since they are in fact working the same hours for which the police officers receive the premium pay.

While shift differential is received by only two comparable communities, the bargaining history and parity relationship of the police and fire units in Southgate are paramount. (Moreover, to be comparable, there would have to be evidence that firefighters in the six other communities had shift differential and then had it taken away).

The principle of continuing benefit should be followed in this case. So the City has the burden to convince the Panel that changes in circumstance have occurred since shift differential was negotiated which now justify its elimination. This, it argues, the City has not done and instead it has simply argued that it wants to save money.

City's

Position:

Shift differential should not be paid to 24-hour day employees who are required to perform less work, and may even be sleeping, during the "premium hours" of 4:00 pm and 8:00 am. Thus, firefighters do less routine work in the evening and late night hours than during the daytime hours, so no premium pay is justified. Moreover, shift differential was an issue in the earlier Act 312 proceeding, and it was determined that there was no place in this 24-hour scheduling system for a shift differential. (Shift differential has meaning only when applied to the permanent day, evening and midnight shifts that are worked by police officers).

Shift differential should also be deleted because it is not supported by reference to how firefighters are paid in comparable communities.³²

Further, the City maintains that paying firefighters shift differential is an unfair and undue expense for the City, both directly and indirectly when shift differential factors into overtime, costing the City \$18,000 to \$20,000 which should more appropriately be spent in other ways.

³¹ The Union argues that, by contrast, the City savings of \$18,000 to \$20,000 is relatively insignificant since it amounts to only 0.15% of the City's general fund expenditure for 1994-95.

³² City Exhibit 44 reveals that in Allen Park firefighters receive \$.25 per hour between 4:00 pm and midnight and \$.45 per hour between midnight and 8:00 am. In Lincoln Park, firefighter receive \$275.00 per year for shift differential.

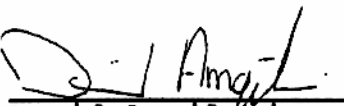
Analysis: This issue present a paradox between the overall rationale for paying shift differential to 24-hour firefighters, and the way shift differential has historically been paid in Southgate.


Justification for establishing a shift differential for 24-hour firefighters is weak since firefighters do not typically have routine, non-emergency duties, and may sleep, during the "premium hours" between 4:00 pm to 8:00 am. Unlike police counterparts for whom such compensation is common, there are no groups of firefighters who work only afternoon or midnight hours, while others enjoy the relative benefit of working only daytime hours. The Chair agrees, therefore, with the conclusion of the 1970 Act 312 Panel which declined to establish a shift differential benefit for this unit of firefighters.

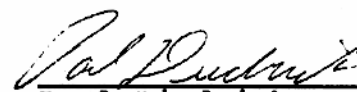
In Southgate, however, the parties negotiated a shift differential into the 1977 contract after that Act 312 award. It has remained in the contract since that time, with increases paid under parity. Now with amounts averaging \$900 per firefighter, shift differential has become an integral part of firefighter compensation. It is belated, in this Chair's view, for the City to now declare that it should no longer pay shift differential becomes it now costs too much money and there was never a valid reason for negotiating this benefit in the first instance. These complaints, given the number of years the benefit has been paid, the relatively great impact the change would work on the unit, and the lack of any significant changed circumstances favoring the City, are found insufficient to merit elimination of shift differential.

Award: The Panel finds the Union's LBO on Issue #2 (Shift Differential) more nearly complies with applicable Section 9 factors.³³ Article VIII, Wages, Section 8.A shall read:

Members of the bargaining unit covered by this Agreement holding the rank of Firefighter shall receive a shift differential in the amount hereinafter indicated for hours actually worked during a work shift as follows: 4:00 p.m. to 8:00 a.m. \$.50.


David Angileri
Employer Delegate
CONCUR/DISSENT
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

³³ The Chair concludes that the most important Section 9 criteria for resolution of Issue #2 are (f) concerning the "overall compensation" of firefighters and the way they have been compensated for a long time, and (h) "other factors... taken into consideration in... voluntary collective bargaining..." here being the long-standing existence of a negotiated benefit without any bargaining tradeoff, for a change in the forms compensation. Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

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ISSUE 3. FIRE MARSHAL CERTIFICATION BONUS

* * * * *

Current

Contract: No bonus is now provided the Fire Marshal for State Certification as a Fire Inspector.

Union's

LBO: Add a new Section to Article XXV (Education And Schooling):³⁴

Effective July 1, 1994, the Fire Marshal shall receive a bonus each year for attaining state certification as a Fire Inspector in an amount equal to the EMT bonus received by employees of the Fire Fighting Division. The payment shall be made in the first pay period after the beginning of the City's fiscal year for the following year. If the Fire Marshal receives state certification after the commencement of the fiscal year, the bonus will be paid on a prorated basis, based upon the date of issuance. If the Fire Marshal leaves City employment before the end of the fiscal year, he shall reimburse the City on a prorated basis for bonus monies received.

City's

LBO: Status quo.

Findings: The Fire Marshal has substantial and varied responsibilities for carrying out responsibilities under Michigan's Fire Prevention Code.³⁵ The current Fire Marshal, John Kremer, has been in that position for 3.5 years and became certified by the State as a Fire Inspector in March, 1993.³⁶ A lengthy and detailed course of training was required to earn this certification.³⁷ During that training on-duty class time involved and this and the tuition for the program were covered by the City.

Union's

Position: The Fire Marshal is entitled to an annual lump sum bonus of \$700 for achieving State Certification as a Fire Inspector. The Fire Marshal's job responsibilities are complex and extensive,

³⁴ The Union's LBO was underscored to indicate "new language." For ease of reading, this underscoring has been deleted.

³⁵ See, for example, Section 29.2b(1) of Michigan Fire Prevention Code, Act 207 of 1941, as amended.

³⁶ The Fire Marshal successfully recertified as a Fire Inspector (as required each two years), and he has also completed training in basic and advanced arson detection.

³⁷ Training covers an extensive variety of material, including training in building construction methods, labs and testing methods, sprinkler systems, electrical systems, blueprint reading and plan review, above and below ground storage facilities and other areas defined as confined spaces, and hazardous materials transport.

and the training required for State certification has benefited the City through increased abilities to carry out statutory and other duties. Moreover, it is clear from the City's subsidization of training that it recognized the benefit to the Department from the Fire Marshal's training.

Next, there is an annual \$700 EMT certification bonus paid to other bargaining unit members. While attending EMT training they suffered no loss of compensation nor expenses, the same as happened for the Fire Marshal. So, the EMT parallel supports payment of the certification bonus especially since the EMT bonus is lost when a firefighter becomes Fire Marshal.

Also, a bonus for attainment of state certification as a Fire Inspector is provided to Fire Marshals by the comparable communities of Garden City and Lincoln Park, and both of them provide benefits in excess of the \$700.³⁸

City's

Position: No certification bonus should be paid the Fire Marshal because he is already the highest paid of all the Fire Marshals in the comparable cities,³⁹ because his attendance at the school to become certified as a Fire Inspector is not required by the job, because his class work was subsidized by the City, and because certification permits the Fire Marshal to acquire employment as a fire investigator once he leaves employment with the City.

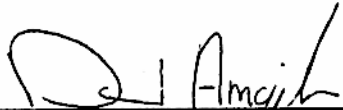
Analysis: Although the job of Fire Marshal is extremely responsible and the incumbent has carried out those duties with great care and expertise, the Chair finds insufficient justification to create a new form of compensation for this highly trained and dedicated employee. No pressing or changed circumstances are presented to create a new compensation structure. Moreover, the Southgate Fire Marshal is already the highest paid of the Fire Marshals in the comparable cities and is paid more than \$700 above that paid to the Lincoln Park Fire Marshal (the second highest paid of the comparables), whose also compensation reflects a certification bonus.

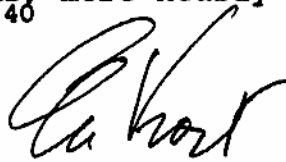
³⁸ The Union exhibits reveal that Garden City provides a bonus of \$1,000 and Lincoln Park a bonus equal to 3% of base salary, which amounts to much more than \$700.

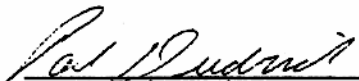
³⁹ City Exhibit 81 shows the following Maximum Fire Marshal compensation:

Southgate	\$54,554	Garden City	\$49,670
Lincoln Park	53,806	Allen Park	49,375
Madison Heights	52,536	East Pointe	48,050
Ferndale	52,434	Wyandotte	46,522
Trenton	51,467		

Award: The Panel finds the City's LBO on Issue #3 (Fire Marshal Certification Bonus) more nearly complies with applicable Section 9 factors.⁴⁰


David Angileri
Employer Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96

⁴⁰ The Chair concludes that the most important Section 9 criteria for resolution of Issue #3 are (d) "comparison of the wages... in comparable communities," which shows the Fire Marshal is already the highest paid of the Fire Marshals; Section 9 (f) concerning the "overall compensation" of the Fire Marshal, again reflecting high current compensation; and Section 9(h) "other factors... taken into consideration in... voluntary collective bargaining....," here the chair finds general reluctance to create an entirely new structure for compensation, absent compelling circumstances. Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

* * * * *

ISSUE 4. VACATION ACCUMULATION

* * * * *

Current

Contract: Article X (Vacations), Section 1 (Eligibility and Amount), Subsection A (Fire Fighting Division) provides in paragraph (3):

For each additional two (2) years of service: One additional vacation day, consisting of a scheduled 24-hour work day. Such additional vacation day may be added to employee's regular vacation at option of employee, provided that there is no interference with other employees' vacations. Maximum additional vacation days under subsection (A)(2) and (A)(3) shall not exceed 5 per year.

Union's

LBO: Delete the last sentence of Article X, Section 1(A)(3) thereby allowing unlimited accumulation beyond 18 years seniority, at the rate of one additional vacation day for each two years of service.⁴¹

City's

LBO: Status Quo.

Findings: Under current contract firefighters accrue ten regular vacation days plus seniority vacation days as charted:

1 Year10 Days
10 Years11 Days
12 Years12 Days
14 Years13 Days
16 Years14 Days
18 Years15 Days

At 18 years, a firefighter "maxes out" at 15 vacation days. At this level, a firefighter acquires 295 vacation days over a 25-year career, which places the Southgate firefighters fourth among the comparable communities.⁴²

⁴¹ For ease of reading, the paraphrase is set forth above. As required by the 312 process, the Union provided its LBO in contract language, which recites provision with the last sentence struck out to show deletion.

⁴² City Exhibit 91 reveals:

Eastpointe	1	348 Days Accumulated	Hired before 4/15/87
Wyandotte	2	330	
Allen Park	3	300	
Southgate	4	295 (Includes no Bonus Days)	
Eastpointe	5	285	Hired after 4/15/87
Lincoln Park	6	276	Hired after 1/1/92

At retirement firefighters can now be paid up to one year's accumulation of regular vacation days (10), one year's accumulation of seniority vacation days (now 5), and two year's accumulation of bonus vacation days (now 6). Thus, at retirement an employee can receive a maximum payment for 21^{45a} vacation days, and this accrued vacation at retirement is included in final average compensation (FAC) for purposes of pension calculation.

New language was added in the 1993-96 Police Command Officer Association Agreement to Article XIII, Section 1(C) which removed the cap from accrual of seniority vacation days.⁴³ No similar language was added to the 1993-96 Patrol contract.

Among the tentative agreements in the 1993-96 Firefighter Agreement, is addition of the same "an so on..." language added to the police command contract, to vacation day accrual Section covering the Fire Marshal, the 40-hour employee in the Fire Prevention Division.⁴⁴

Under Article XII, Section 5 of the firefighter contract employees who use five or fewer sick leave days in a calendar year earn three additional "bonus vacation days."

If the Union's LBO were adopted, these additional seniority vacation days would accrue:

20 Years16 Days
22 Years17 Days
24 Years18 Days

The Union's LBO would add a total of 12 vacation days over a 25-year career,⁴⁵ for a total of 307.

Lincoln Park	7	268	Hired before 1/1/92
Trenton	8	260	
Ferndale	9	256	
Garden City	9	256	
Madison Heights	10	240	

⁴³ The Article XIII, Section 1(C) was changed with the addition of the phrase "an so on..." to the listing which sets forth accrual of seniority vacation days. That listing provides:

10 Years 1 Days	19 Years10 Days
11 Years 2 Days	20 Years11 Days
12 Years 3 Days	21 Years12 Days
13 Years 4 Days	22 Years13 Days
14 Years 5 Days	23 Years14 Days
15 Years 6 Days	24 Years15 Days
16 Years 7 Days	25 Years16 Days
17 Years 8 Days	and so on...
18 Years 9 Days	

⁴⁴ Tentative Agreements are found in Appendix A.

⁴⁵ One each in years 20 & 21; two each years 22 & 23, and three each years 24 & 25.

^{45a} This award does not address the five-day winter carryover. If these days are considered the 21-day count above becomes a 26-day count.

Union's

Position: Removal of the vacation accumulation cap is required by parity with Article XIII, Section 1(C) of the 1993-96 Police Command contract. Parity requires this because firefighters with 18 years or more seniority (the only ones affected by removal of the cap), have attained the rank of sergeant or above, ranks equivalent with the police command unit. And recognition that firefighter COs are entitled to the removal of the cap is also supported by its removal from the Fire Marshal's vacation schedule.

Police Command accrue 20 regular vacation days, 16 seniority vacation days (at 25 years), and potentially 5 bonus vacation days a year. Thus at retirement a Police CO can receive payment for 46 vacation days at retirement at 25 years of service. These days translate to 368 hours or 18% of a Police CO work year of 2,080. For a Fire CO retiring after 25 years, the vacation pay translates comparably to 504 hours or 19% of that firefighter's 2,620.8 hour work year.

It also argues that removal of the vacation accumulation cap should not be offset because of potential bonus vacation days available to bargaining unit members. For employees should not be penalized for making use of this contractual reward system which was created for those who use little or no sick leave. And, those not eligible for bonus vacation days are nonetheless entitled to vacation days.

City's

Position: There is no reasonable basis for removing the cap on seniority vacation days. The system is already generous, granting one month's time off after one year (ie, ten 24-hour days for an employee with a work schedule of only 9 days a month). And, adding the 3 bonus vacation days, that amounts to 1.5 months off each year after one year of service. Then there are the increased number of vacation days through credits for seniority, up to 5, which means the current system allows a maximum of two months off for vacation each year. (ie, eighteen 24-hour days). This is more than generous, as reflected by comparison with the vacation time given firefighters in comparable communities. Here Southgate is the fourth highest among the comparable communities. And if the three bonus days are included, Southgate receives far more than any of the comparables.

Next it argues there is no basis for applying the Police Command vacation scale to rank and file firefighters because the Police patrol, not command, is the parallel rank, and because police receive 8-hour vacation days rather than 24-hour days which means that even under Article XIII, Section 1(C), police command get no where near two months vacation. Working 20 days a month with 8-hour days, a 25-year police officer receives less than one month off each year for vacation. So to equal the two months of vacation time off granted an 18-year firefighter, a Police command officer would have to work past

retirement eligibility to a point where he has 29 years of seniority.

Next it points out that without counting any bonus vacation days, a 25-year Southgate firefighter has received 295 vacation days, amounting to 2 years and eight months off work for vacations. This amount ranks fourth among eleven levels for the comparables and this total does not take into account any days off for personal business or sick days.

Finally the City stresses that at retirement firefighters are paid for up to 21 unused vacation days, and that this amount is rolled into their FAC and pension calculations. So no increases should be added which will further exaggerate the extremely generous and extremely costly retirement payments and benefits which now exist.

Analysis: The Union's LBO increases by twelve the total seniority vacation days a firefighter can earn over a 25-year career, and that increases the present 295 level to 307. This moves Southgate among the firefighters in comparable communities from 4th place to 3rd, supplanting Allen Park where the career total for vacation days totals 300.⁴⁶

The Chair is persuaded to grant the benefit improvement the Union seeks and, as a matter of comparables, finds that the upward movement among the comparables is not so extreme that it should cause rejection of that new benefit. The Chair also recognizes that removing the vacation cap will improve firefighters' retirement benefit in that they will be able, at maximum, to receive payment for 24 instead of 21 vacation days. Here the Chair views the impact of this added benefit in conjunction with resolution of Issue #9 (Sick Leave Accumulation) which substantially reduces the number of sick leave days firefighters will accrue.⁴⁷ And these sick leave reductions impact a benefit which is relatively more generous than the vacation benefit.⁴⁸

Other reasons for adopting the Union's LBO include the concept followed by the police contracts of providing increased vacations for the most senior personnel. Thus under the police contract accrual gradations are made for each year from 10 to 25 (and with removal of the cap, for each year worked after

⁴⁶ If one includes in this count the bonus vacation days, Southgate stays in first place (its current placement) and adds 12 days to that total (with adoption of the Union's LBO).

⁴⁷ The Chair recognizes that two Fire COs subject to this vacation improvement are eligible to retire in 1998 and that this additional vacation day will likely increase their payouts/pension levels and the City's correlated costs, without any "offset" due to the decreased number of accumulated sick days, but the Chair also views the long-term impact of the two decisions on these two issues as reasonable.

⁴⁸ Note, for example that the improved vacation benefit will place Southgate no higher than third among the comparable communities while the current sick leave benefit places Southgate in the first position well ahead of the firefighters in any of the other comparable communities.

25). By contrast the current firefighter contract provides no further gradation after the 18th year.

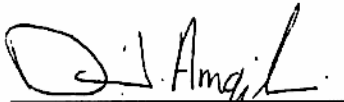
Next, the comparative with the police command officers contract supports adoption the Union's LBO. Although parity does not dictate removal of the cap on vacation accumulation, it clearly supports doing so in this contract, for firefighters with 20 or more years (the only ones affected by the cap removal) are Fire Sergeants or Fire Lieutenants.⁴⁹ And for police sergeants and lieutenants the cap on vacations was removed.

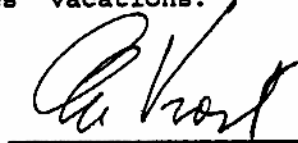
In deciding to adopt the Union's LBO the Chair has discounted the impact of bonus vacation days which are given for use of five or less sick days per year. This incentive program was separately negotiated and the fairness or generosity of its benefits depends solely on the negotiated levels of how few sick days are to be used to qualify, and how many bonus vacation days should be given as a result. These characteristics distinguish the nature of the bonus vacation days such that the Chair does not think they should be "added" on to the vacation totals in considering the outcome on Issue 4. (Also, unlike the use of vacation and sick days, the use of bonus vacation days is not a given: they may be unavailable to firefighters through no misuse or abuse of leave).

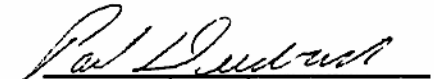
⁴⁹ Twenty years seniority has already been acquired by both Fire Lieutenants. Three of the four Fire Sergeants will reach that point in September, 1996 and the fourth in May, 1997. (U#9).

Award: The Panel finds the Union's LBO on Issue #4 (Vacation Accumulation) more nearly complies with applicable Section 9 factors.⁵⁰ Article X, Section 1 A(3) shall be amended to read:⁵¹

(3) For each additional two (2) years of service: One additional vacation day, consisting of a scheduled 24-hour work day. Such additional vacation day may be added to employee's regular vacation at option of employee, provided that there is no interference with other employees' vacations.


David Angileri
Employer Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

⁵⁰ The Chair concludes that the most important Section 9 criteria for resolution of Issue #4 are Section 9(d) comparison... with other employees generally... in comparable communities:" here the Chair view the comparison to be tolerable in that the movement from fourth to third among the comparables by the improved vacation benefit is acceptable. Also under comparison to the police command contract (a matter also relevant under Section 9(h)), the City provides its long-serving officers with removal of a vacation cap and only the firefighters affected by this improvement have 20 or more years service and are command officers. Granting of this new benefit also takes into account Section (f) "overall... wage compensation, vacations, holidays and other excused time," and Section (h) "other factors... taken into consideration in... voluntary collective bargaining..." because the Chair has taken into account the conclusion reached on Issue #9 (Sick Leave Accumulation) which substantially reduces the amount of sick leave which will be available for use and be available upon retirement). Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

⁵¹ As noted in the Chair's letter to Panel Delegates, dated March 8, 1996, "Issue #4 (Vacation Accumulation).... should take effect upon execution of the contract, rather than be retroactive to the July 1, 1996 start of contract."

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ISSUE 5. HOLIDAY PAY FOR 40-HOUR EMPLOYEES (FIRE PREVENTION DIVISION)

* * * * *

Current

Contract: Article VIII, Section 6 (Holiday Pay) provides:

- (B) (1) Holidays with pay at the regular rate for the Fire Prevention Division shall be as follows: New Years' Day, Good Friday, Washington's Birthday, Memorial Day, July 4, Labor Day, Veteran's Day, Thanksgiving Day, Christmas, and employee's birthday.
- (2) Should any of the above fall on an employee's off day he shall receive pay at the regular rate plus a regular day's pay.
- (5) It is the intent of the parties that contract holidays for the Fire Prevention Division be scheduled off.

Union's

LBO: Add Christmas Eve Day to Article VIII, Section 6(B)(1).⁵²

City's

LBO: Amend Article VIII, Section 6, Section B as follows:⁵³

- B. (1) Add Christmas Eve day as a holiday.
- (2) Change to read: Should any of the above fall on an employee's leave day, he receive a regular days pay.
- (5) Delete.

Findings: The parties seek to add the same eleventh holiday for the 40-hour Fire Marshal. (When one of those holidays falls on an employee's off day he now receives pay at the regular rate plus a regular day's pay). If all eleven holidays are paid under this language, the total for the Fire Marshal will be \$2,308. (The average paid by comparable communities to Fire Marshals for holidays is \$2,205). It is agreed that the Fire Marshal has been scheduled off on holidays.

City's

Position: Southgate's Fire Marshal is the highest paid of all the comparables,⁵⁴ with the average hourly pay of \$24.48, and with the additional holiday, the average holiday pay per year will become \$2,308.24. Since the Fire Marshal gets the day off, it is unfair and unreasonable to require the City to also pay him an additional regular day's pay. And doing so would provide a total holiday pay which is \$150 more than the average paid to Fire Marshals in comparable communities. To remain in the middle of the comparables, which is the current position,

⁵² For ease of reading, the paraphrase is set forth. The Union provided its LBO in contract form:

⁵³ Since no changes in the City's LBO are made to subsections (3) and (4), the Chair has deleted them from the above discussion as they are not relevant to amendments proposed by either party.

⁵⁴ See footnote 39.

Southgate agrees to provide the additional holiday. But it asserts that Section 2 should be amended so when the holiday falls on a leave day, the Fire Marshal will only receive a regular days pay.

Union's

Position: By agreeing to add Christmas Eve Day and bring the number of holidays to eleven, the City has recognized parity on this issue and been responsive to the external comparables, moving Southgate closer to what is received by the comparables.⁵⁵ But reduction in the holiday pay should not be permitted. Now the Fire Marshal is paid a day's pay for each recognized holiday, if the employee actually works, he gets 1.5 the regular rate. The City proposes that the Fire Marshal would only receive pay if he works a recognized holiday, and that contradicts the parity relationship. (Both police patrol and command contracts provide for the payments of a regular day's pay for each holiday that falls on an employee's regular leave day),⁵⁶ with the precise language now in the firefighters contract. No support in the comparables is provided to gut the previously negotiated contract provisions for the Fire Marshal.⁵⁷

Analysis: The parties agree to add Christmas Eve Day as a holiday to bring to eleven the number of holidays for the Fire Marshal. Beyond that, however, there is dispute about how the holiday will be paid when they fall on an employee's leave day. By current language he would receive pay at the regular rate plus a regular day's pay. The Employer seeks to avoid this "double pay" when the holiday falls on a leave day. and so seeks to eliminate Subsection (2). The Chair, however, finds no persuasive reason for changing a formulation under which holiday pay has been calculated for several years. That formula is identical to what is contained in the police patrol and command contracts and so, as a matter of parity, should also be continued. Also some comparable communities have similar provisions.⁵⁸ Finally, there is no explanation as to why Subsection (5) should be deleted under the City's LBO. And this is unclear because there is agreement that Fire Prevention personnel be schedule off on holidays.

⁵⁵ Union exhibit 60 A reveals that eight comparable communities have 12 days; two have 13 holidays and one has 14 holidays.

⁵⁶ See U#6, page 57 and U#8 page 39.

⁵⁷ Six of the eight provide additional holiday pay, four in the same manner as is currently paid in Southgate, without requiring that the employee actually work that day. (U#60 A).

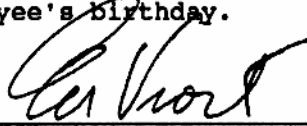
⁵⁸ See footnote 56.

Award: The Panel finds the Union's LBO on Issue #5 (Holiday Pay For 30-Hour Employees) more nearly complies with applicable Section 9 factors.⁵⁹ Article VIII, Section 6 (B) shall read:⁶⁰

- (B) (1) Holidays with pay at the regular rate for the Fire Prevention Division shall be as follows: New Years' Day, Good Friday, Washington's Birthday, Memorial Day, July 4, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Eve Day, Christmas, and employee's birthday.



David Angileri
Employer Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96



Elaine Frost
Impartial Chair
Dated: 3/21/96



Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

⁵⁹ The Chair concludes that the most important Section 9 criterion for resolution of Issue #5 is Section 9(h) ("Such other factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining..."). Under this factor the Chair finds that practice under the firefighters contract and parity support continuation of the language found in Article VIII, Section 6(B)(2). Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

⁶⁰ As noted in the Chair's letter to Panel Delegates, dated March 8, 1996, "Issue #5 (Holiday Pay 40-Hour).... should take effect upon execution of the contract, rather than be retroactive to the July 1, 1996 start of contract."

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ISSUE 6. SICK LEAVE VERIFICATION FORM

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Current

Contract: Article XII (Sick Leave), Section 1(B)(1):

Sick Leave. An employee shall be entitled to charge accumulated sick leave credits for the illness of himself, spouse, or children, subject to verification by medical certificate after being off work for FIVE (5) unverified duty days or two (2) consecutive twenty-four (24) hour work days in a calendar year. The medical certificate must state the diagnosis, how it disables the person working, and the approximate period of disability. The employee shall, to the extent possible, inform his Department head of such illness.

Union's

LBO: Amend ARTICLE XII, SICK LEAVE, Section 1(B)(1) to provide:

Sick Leave. An employee shall be entitled to charge accumulated sick leave credits for the illness of himself, spouse, or children, subject to verification by medical certificate after being off work for FIVE (5) unverified duty days or two (2) consecutive twenty-four (24) hour work days in a calendar year. When medical certification is required, the form attached as Attachment #3 shall be used. The employee shall, to the extent possible, inform his Department head of such illness.

City's

LBO: To the extent employees are required under the provisions of Article XII, Sick Leave, Charges Against Credits, of that Contract to provide the City with verification of illness, that they provide such verification on a Certification Form published by the Department.

Findings: Medical verification, when required, must "state the diagnosis, how it disables the person working, and the approximate period of disability." No specific form has been recognized by the contract. The Department made a form available about one year before the arbitration hearing, but bargaining unit members have declined or refused it.

Frustration over lack of medical verification was described by Chief Ahles: "often times the doctor scribbles one out on a prescription form.... usually the doctor will give me a diagnosis.... And usually I'll see something that indicates the time period the employee can't work. But very rarely does that certificate deal with or in any way try to related why that diagnosis would disable this employee from performing their job." (III:25-26).

Union's

Position: The Union but not the City is proposing adoption of a specific form to be used when medical verification is required.⁶¹ Its form will remove potential dispute concerning adequacy of medical verification because it covers all contact criteria. The Chief objected to the Union's form because it would not require the physician to state the diagnosis for the spouse or child of an employee who was taking off sick time off due to their illness. But the contract requires specifics only for the "person working," so the form should not include information on other family members aside from confirming that presence of the bargaining unit members is needed.

The Chief did not dispute that by past practice he has not required certification for illness of family members and he admitted that he normally would not require such proof; in most instances he would be satisfied if the doctor submitted a slip that said the individual was need at home.

City's

Position: The contract and a recent grievance arbitration expressly provide that the Employer has a right and duty to investigate sick leave requests. The City has proposed a form to be filled out by the doctor which explains the duties of a firefighter and requires information according to the contract.⁶² The

⁶¹ The content of the Union's form includes:

Employee's Name: _____ Date of Exam: _____

1. I have examined and/or treated the above named employee for the following illness, injury, or condition:

(Diagnosis)

1(a) I Have examined and or treated the above named employee's spouse or child. YES NO

2. Please check why the illness, injury or condition described above disables the employee from working:

___ Physically Impaired. (can't walk, run, crawl, bend, pull hose, etc.)

___ Can't Lift Objects or People.

___ Can't Climb. (ladders, on rooftops, etc.)

___ Can't Wear SCBA. (Self Contained Breathing Apparatus)

___ Medication Impaired. (can't drive heavy machinery, etc.)

___ Needed with ill or injured spouse or child

___ Other

3. List the approximate starting and ending date of the disability or illness period:

STARTING DATE _____ ENDING DATE _____

Signed: _____ Date: _____

Physician's Printed Name: _____

Address: _____ Number: _____

⁶² The content of the Employer's form is:

Article XII, Section 1(B)(1) provides in part "The medical certificate must state the diagnosis, how it disables the person working, and the approximate period of disability."

Therefore, pursuant to Policy # , you are required to have this form signed by an approved physician and return same to the Chiefs office prior to being returned to duty.

PHYSICIAN:

To assist you in determining if an employee of the Southgate Fire Department needs to be relieved of high-risk duty a job description is printed on the back side of this form. Please review the job description and fill out and sign the rest of this form.

Union's counter-form asks only limited questions and changes the contract requirements to allow the Union to evade verification concerning diagnosis of an ill family member and any explanation as to why the illness of the employee or family member prevents the employee from working. As to defects in the Union's form, Chief Ahles said "in the area of a diagnosis, it deletes the requirement or ... as to why, if an employee was using sick leave for the ... spouse or child, what the diagnosis for that spouse or child would be. The other concern ... is that it doesn't give the physician... any indication as to what the job duties and physical demand of the job are for a firefighters so they can make a reasonable determination as to whether whatever injury or illness that Employer might suffer -- how it would disable them from doing that." (III:25-26). He

1. I have examined and/or treated the above named employee (or the employee's spouse or child) for the following illness, injury, or condition:
(Diagnosis)

2. Please explain how the illness, injury or condition described above disables the employee from working:

3. List the approximate starting and ending date of the disability period:

STARTING DATE: _____ ENDING DATE: _____

Employee must see me again on _____ (enter date if applicable).

Signed: _____ Date: _____

Physician's Printed Name: _____

Address: _____

Phone Number: _____

SOUTHGATE FIRE DEPARTMENT

Job Description

ESSENTIAL DUTIES AND RESPONSIBILITIES

Performs firefighting activities including driving fire apparatus, operating pumps and related equipment, laying hose, and performing fire combat, containment and extinguishment tasks and operating tools and equipment.

Performs emergency medical activities including administering first aid and providing other assistance as required.

Receives and relays fire calls and alarms. Operates radio and other communication equipment.

Participates in the inspection of buildings, hydrants, and other structures in fire prevention programs.

Maintains fire equipment, apparatus and facilities. Performs minor repairs to departmental equipment.

Performs general maintenance work in the upkeep of fire facilities and equipment; cleans and washes floors; makes minor repairs; washes and dries hose; washes, cleans, polishes, maintains and tests apparatus and equipment. Assists in developing plans for special assignments such as emergency preparedness, hazardous materials, and emergency medical activities.

Performs salvage operations such as placing salvage covers and removing debris.

PHYSICAL DEMANDS

While performing the duties of this job, the employee is frequently required to stand; walk; use hands to finger, handle, or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to sit; climb or balance; stoop, kneel, crouch or crawl; talk or hear; and taste or smell.

The employee must frequently lift and/or move up to 10 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT

While performing the duties of this job, the employee regularly works in outside weather conditions. The employee occasionally works near moving mechanical parts and in high, precarious places and is occasionally exposed to wet and/or humid conditions, fumes or airborne particles, toxic or caustic chemical, risk of electrical shock, and vibration.

The noise level in the work environment is usually moderate, except during certain firefighting or EMT activities when noise levels may be loud.

also explained that to take sick leave for a spouse or child the medical certificate must show 1) the time period of the disability, 2) the diagnosis of the medical problem suffered and 3) the reason the medical problem prevents the employee from working. (III:22-23).

The City's proposal and form comply with both the language and the management right to avoid sick leave abuse. Generally the form of a medical certification and the required procedures are matters of managerial discretion, and this should be conclusive here.

Analysis: The parties agree a form would be appropriate for medical verification under XII Section 1(B)(1) but several points of disagreement exist over its content. The Union has concerns over privacy with respect to a family member's diagnosis; the Chief needs more information about how an employee is disabled from firefighting, and specific information about a family member's condition where the firefighter claims disability because of that condition.

The Chair concludes that adopting a form addressing the combined concerns of the parties, and drawing from the materials set forth in the two forms provided, should be made part for the contract. With respect to the diagnosis of family member, the Chair is persuaded that it is not expressly required by the contract. At the same time, however, the Department is clearly entitled to sufficient information upon which to evaluate whether or not the employee is disabled from working because of the family member's situation. The Chair has set forth a form intended to accommodate competing concerns as well as the unchallenged need of the Chief for more information about how an employee is disabled. If the awarded form in practice falls short of accommodating these goals, the parties will need to revisit the matter at a later date.⁶³

Award: The Panel finds on Issue #6 (Sick Leave Verification Form) that Article XII, Section 1(B)(1) shall be amended to read:

Sick Leave. An employee shall be entitled to charge accumulated sick leave credits for the illness of himself, spouse, or children, subject to verification by medical certificate after being off work for FIVE (5) unverified duty days or two (2) consecutive twenty-four (24) hour work days in a calendar year. When medical certification is required, the form attached as Attachment #3 shall be used. The employee shall, to the extent possible, inform his Department head of such illness.

And that "Attachment #3" shall read:

⁶³ This issue is "non-economic" and the Panel need not, therefore, select one of the two LBOs.

SOUTHGATE FIRE DEPARTMENT MEDICAL CERTIFICATE

Employee's Name: _____ Date of Exam: _____

A. I have examined and/or treated the above named employee for the following illness, injury, or condition: _____

(Diagnosis)

1. Indicate how the illness, injury or condition described above disables the employee from working:

- ____ **Cannot Operate Equipment.** (A firefighter must be able to drive fire apparatus, operate pumps and related equipment, lay hose, and operating tools and equipment necessary to combat, contain and extinguish fires).
- ____ **Impaired Mobility.** (A firefighter must be able to walk, run, climb or balance; stoop, kneel, crouch or crawl. A firefighter must be able to use hands to handle/operate objects, tools, or controls, to pull hose, to reach with hands and arms).
- ____ **Cannot Lift.** (A firefighter must be able to lift up to 10 pounds and occasionally lift up to 100 pounds).
- ____ **Cannot Wear SCBA.** (Self Contained Breathing Apparatus)
- ____ **Impaired Senses.** (A firefighter must be able to talk or hear, taste or smell, have close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus).
- ____ **Other.** _____

2. Period of disability:

Starting Date _____ Ending Date _____

3. Is employee scheduled for another appointment due to the reason described above? ____ (If yes, date of next appointment _____) -

B. I have examined and/or treated _____, who is the spouse or child of the above named employee, for an illness, injury, or condition.

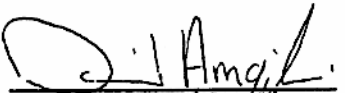
1. Identify the services or support needed by the above named spouse or child which disables the employee from working. _____

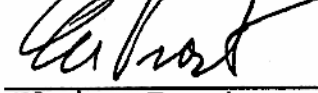
2. If the condition of the spouse or child requires the employee to miss work, state the period of the employee's disability:

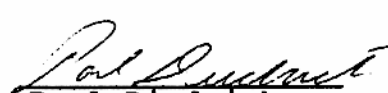
Starting Date _____
(When employee must miss work due to child or spouse)

Ending Date _____
(When employee can return to work)

Signature: _____ Date: _____
Physician's Printed Name: _____
Address: _____ Telephone: _____


David Angileri
Employer Delegate
CONCUR/DISSENT
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
CONCUR/DISSENT
Dated: 3/21/96

* * * * *

ISSUE 7. SUPER KELLY SCHEDULE

* * * * *

Current

Contract: No contract language exists on Super Kelly scheduling.

Union's

LBO: Add to ARTICLE IX, HOURS OF EMPLOYMENT:

Prior to September 1st of each year, the Chief and the Union will develop a Super Kelly schedule on a rotating 28-day schedule for the following calendar year. Under this rotating schedule, a Super Kelly day can be scheduled on any calendar day.⁶⁴

City's

LBO: Add to Article IX, Hours of Employment:

Prior to September 1st of each year, the Chief will develop and publish a Super Kelly Schedule on a rotating 28-day schedule for the following calendar year, utilizing, as practically possible, all days in each cycle.

Findings: Super Kelly days provide each firefighter an extra day off in each 28-day cycle. (They are necessary to keep the average work week at 50.4 hours). They are scheduled on 22 of the days in the cycle because there are 22 firefighters.

From 1978 to 1992 all calendar days, including contract holidays and other peak leave days, were used as Super Kelly days. The Union prepared the schedule in August each year, and gave it to the chief.⁶⁵

In 1993, with Chief Ahles in charge, he changed the practice by taking over the Super Kelly scheduling and changing the proposed schedule to exclude the assignment of such regular days off on holiday. When challenged, the Chief reinstated Christmas and Christmas Eve in 1993 and left the matter to negotiations/the Act 312 process. When the Chief subsequently prepared the Super Kelly schedule he excluded all holidays. (III:43-44). Chief Ahles said he schedules with consideration for certain high absentee days. These days are Easter, 4th of July, Thanksgiving, Christmas, New Year's, Memorial Day weekend and Labor Day weekend. Instead of scheduling Super Kellys on these high use days, if there is another day open in the 28-day rotation, he schedules the Super Kelly day on the other

⁶⁴ The Union's LBO was underscored to indicate "new language." For ease of reading, this underscoring has been deleted.

⁶⁵ The schedule for the next calendar year is prepared in August, to be ready before the firefighters make their winter vacation picks, on or about September 15th.

The City provided statistics showing the combined leave use for vacation, sick and personal business in each month from 1992 through 1994. These reveal that April, July, August and December are the peak use months. (C#51 and C#53).

Union's

Position: Exclusion of certain days from the scheduling of Super Kelly days is unfair, unreasonable and capricious. The Union has a long practice of creating the Super Kelly schedule and of utilizing all calendar days in the process.

The Chief's rationale of eliminating holidays as Super Kelly days to reduce overtime, and what he attempted to do in 1993, are exceeded by the City's open-ended LBO which does not even identify which holidays would be excluded. (This presents a situation where interpretative disputes will likely end up in arbitration).

The City has failed to show that scheduling Super Kellys on holidays has caused an increase in overtime. Thus, the City's peak time exhibits (C#49-#51) are flawed because they address overtime expenses by month, not by day, and so they are inadequate to pinpoint calendar days on which a Super Kelly might cause overtime. And, the traditionally high use of time off months, July, August and December, will continue to require overtime regardless of holidays or Super Kelly days. For example, there are times in December when personnel must take time off for certain accrued personal business time and bonus vacation days, or lose them. These things, vacation plans and sick leave use all affect overtime, not just Super Kelly days. Further, it is the reduced overall staffing and per shift staffing that has more likely been the culprit in any alleged increased overtime expenses.

City's

Position: Scheduling of regular work days is a management duty, not a responsibility to be granted to the Union. It makes sense for the Chief to avoid scheduling these regular days off on Holidays, due to the fact that on such days the City has a greater problem in securing the minimum, six man contingent and the overtime expense is greater, paid at double time.

As shown in City Exhibits #48-51 there are peak times when firefighters take time off. And from his records the Chief identified a number of high absentee days and the need to schedule around those days to the extent possible. (III:58-59).

Analysis: On six days each 28-day cycle no Super Kelly day is scheduled (given staffing of 22), so the Chief is able to "schedule around" holidays and other traditionally high leave days to avoid overtime triggered by insufficient minimum manpower. To reduce overtime the Chief has done this in 1994 and to some extent in 1993. In the past, however, before 1993 and since at least 1978, Super Kellys were scheduled on the holidays and high use days, and the schedules were prepared by the Union.

Initially, the Chair agrees with the City that scheduling is a traditional employer function. And although chiefs prior to Chief Ahles may have accepted the Union-prepared schedules without change, the Union recognizes that it was never in charge of scheduling. Now that Chief Ahles has, and the Chair finds permissibly, exercised exclusive domain over the Super Kelly schedule, the questions becomes whether he can create a schedule excluding as many holidays or other peak leave days as possible.

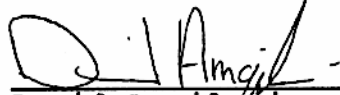
The City apparently concludes the authority to schedule equals total discretion to schedule Super Kellys on any holidays or high leave days as it finds appropriate. The basis for this claim is managerial authority and the data showing leave usage through the months in the years of 1992 to 1994. That data does support the conclusions that the months of April, July, August and December are high leave time months. But there is also the evidence of a long-standing practice since at least 1978, to include all holidays in the Super Kelly schedule, and the Chair views this as pertinent to resolution of the contract language which should go into the contract.

On balance, the Chair is persuaded to exempt from that long-standing practice the holidays in the months the City has established as having high leave time use. These are the holidays in April, July and December of Good Friday, Easter, July 4th, Christmas Eve and Christmas Day. (The Chair is not persuaded to adopt contract language which will exclude other holidays or other high leave use days from the assignment of Super Kelly days because the data as to these is insufficient to pinpoint days on which assignment of Super Kellys would trigger an inordinately high percentage of overtime use/expense. (With response to the holidays this is no problem, since double time pay and common sense come into play).

The Chair concludes that adoption of the Union's LBO language, without the reference to the Union, and with the added exclusion for holidays in April, July and December is appropriate.

Award: The Panel finds on Issue #7 (Super Kelly Schedule) that the following language will be added to Article IX (Hours of Employment):⁶⁶

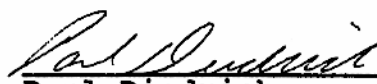
Prior to September 1st of each year, the Chief will develop a Super Kelly schedule on a rotating 28-day schedule for the following calendar year. Under this rotating schedule, a Super Kelly day can be scheduled on any calendar day except for Good Friday, Easter, July 4th, Christmas Eve and Christmas Day.



David Angileri
Employer Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96



Elaine Frost
Impartial Chair
Dated: 3/21/96



Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

⁶⁶ This issue is "non-economic" and the Panel need not, therefore, select one of the two LBOs.

* * * * *

ISSUE 8. SICK LEAVE FOR ILLNESS OF FAMILY MEMBER

* * * * *

Current

Contract: Article XII (Sick Leave), Section 1(B)(1):

Sick Leave. An employee shall be entitled to charge accumulated sick leave credits for the illness of himself, spouse, or children, subject to verification by medical certificate after being off work for FIVE (5) unverified duty days or two (2) consecutive twenty-four (24) hour work days in a calendar year. The medical certificate must state the diagnosis, how it disables the person working, and the approximate period of disability. The employee shall, to the extent possible, inform his Department head of such illness.

Union's

LBO: Add to the following to Article XII, Section 1(B)(1):⁶⁷

An employee shall be entitled to charge not more than thirty (30) days of accumulated sick leave credits in a calendar year for the illness of his spouse, or children.

City's

LBO: Change Article XII, Section (B)1 to:

An employee shall be entitled to charge not more than five (5) days of accumulated sick leave credits in any calendar year for the illness of his spouse, or children.

Union's

Position: Its LBO is justified by the Family Medical Leave Act (FMLA), 29 USC §2601, et seq. under which employees are allowed to take off twelve weeks per calendar day in order to care for the serious illness of a covered family member, which is what the LBO accomplishes.

The City's LBO is not justified under the comparables it presents, which misleadingly represent Southgate as the most generous in granting family illness leave. But in Eastpointe firefighters can take unlimited sick leave for any member of the household, not just for a spouse or child. In Lincoln Park where sick leave is not accumulated, an individual can take an unlimited amount of time off for the illness of any family member. And in Trenton with five days noted for this use, there are provisions for allowing more days used with approval.

The City failed to show a problem exists to merit its drastic proposal, particularly in light of the controls built into the system under which any family medical leave in excess of two consecutive days is subject to the submission of medical

⁶⁷ The Union's LBO was underscored to indicate "new language." For ease of reading, this underscoring has been deleted.

verification to the satisfaction of the Chief. The City only has evidence of one bargaining unit members who took off substantial time between January 1992 and April 4, 1993 for a family member. And the Chief could only identify one other extended sick leave taken for a family member, and this was limited to only a month or a month and a half.

City's

Position: Consistent with the comparables, the City proposes to cap at five days the use of sick time for family illness. This is essential to insure that firefighters are on duty providing services to the public, rather than absent, and creating further overtime expense to the City, when they are able to work.

Among the comparable communities Southgate is the highest with unlimited family leave time.⁶⁸ (Eastpointe also has no cap on family leave).

The Fire Department has experienced an enormous amount of sick leave taken by one firefighter, on account of an illness of a family member, which over a 16 month period caused overtime expenses of \$29,000 for this single firefighter. (C#67; III:84-85). Thus, he did not work February, March and April, 1993 but continued to receive full pay, holiday pay, food allowance, and he continued to accumulate seniority and otherwise added to his pension calculation. The Chief was unable to order him because the medical authorization met the contract requirements.

The proposed cap at five days is consistent with the comparables and would insure that firefighters are on duty, performing their jobs. It would help the City meet the minimum manning requirement, limit unnecessary absences, and result in greater safety to both the members of the Department and the members of the public. It is also reasonable to limit the use to five, for if the employee needs more time, it may be taken off subject to the FMLA.

Analysis: The parties recognize that reduction from the unlimited use of sick leave for the illness or injury of a family member should now be made part of the contract.

Clearly the Department has had one very long-term absence under the existing family leave provision covering overtime in 1992 of \$12,792 and in 1993 of \$16,448. But aside from this egregious example, and one other family sick leave situation of


⁶⁸ City Exhibit 66 reveals that of the seven other comparable communities which have use of sick leave for family members that:

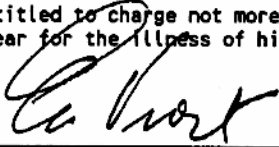
Southgate: No cap on Days (Allowed for Spouse + Children)
Eastpointe: No cap on Days (Allowed for anyone in Household)
Ferndale & Trenton: 5 Days (Allowed for Spouse + Children)
Allen Park: 4 Days (Allowed for any Family Member)
Garden City: 3 Days (Allowed for Spouse + Children)
Wyandotte: 2 Days (Allowed for Spouse + Children)
Madison Hts: 1 Day (Allowed for Spouse + Children)

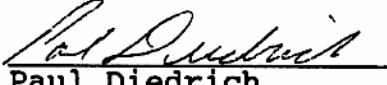
about 1.5 months, the Department has not had experience of this type of leave being greatly used. Given that relatively limited experience, and given the unlimited nature of the benefit which existed for many years, the Chair is persuaded that the more moderate approach of the Union's LBO is in order. Limiting to 30 the sick leave days which can be taken for a family member will establish Southgate's ranking as second, behind Eastpointe in generosity of this benefit. Further, the Union's more liberal LBO provides a cushion against a family catastrophe which is extremely important to any employee. Finally, with the Panel decision on Issue #6 (Sick Leave Verification Form), the Department will be in a position to better evaluate the legitimacy of use of sick leave for family members.

Award: The Panel finds the Union's LBO on Issue #8 (**Sick Leave For Illness of Family Member**) more nearly complies with the applicable Section 9 factors.⁶⁹ The following shall be added to Article XII, Section 1(B)(1):

An employee shall be entitled to charge not more than thirty (30) days of accumulated sick leave credits in a calendar year for the illness of his spouse, or children.


David Angilelli
Employer Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96


Elaine Frost
Impartial Chair
Dated: 3/21/96


Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

⁶⁹ The Chair concludes that the most important Section 9 criteria for resolution of Issue #8 are (d) "comparison... with other employees... in comparable communities," in that Southgate will move from first to second in the reduction of the use of sick leave for a family member. Also, Section 9(h) ("Such other factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining...") is important because the past history of the parties in having this unlimited benefit in their contract, and the negative experience the Department had with extreme use of this benefit by one firefighter, lead to the evaluation which resolved the Issue. Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

* * * * *

ISSUE 9. SICK LEAVE ACCUMULATION

* * * * *

Current

Contract: Article XII (Sick Leave), Section 1 (Fire Fighting Division) provides:

A. Accumulation of sick leave Credits

1. For the purpose of this section, "sick leave day" shall mean a 24-hour duty day.
2. Until Section 1(A)(3), next following, shall be applicable to him, each employee shall acquire one and one-half (1-1/2) days of sick leave credit for each month of service rendered.
3. Commencing January 1, following his completion of one year of service, and on such date, each employee shall receive sixteen (16) sick leave day credits with unlimited accumulation.
4. An employee on sick leave shall continue to accumulate sick leave credits as if he were in fact actively employed subject to the limitations otherwise applicable in this subsection (A).

Article XII (Sick Leave), Section 2 (Fire Prevention Division) provides:

The provisions of Section 1, above, shall, insofar as applicable, apply to the Fire Prevention Division, except that employees of the Fire Prevention Division shall receive 20 8-hour sick days per year credit, with unlimited accumulation.

Union's

LBO: Amend Article XII, Section 1, Firefighting Division, (A)(3) to read:

Commencing January 1, following his completion of one year of service, and on such date, each employee shall receive sixteen (16) sick leave day credits with unlimited accumulation. Effective January 1, 1996, commencing January 1, following his completion of fifteen (15) years of service, and on such date, each employee shall receive twelve (12) sick leave day credits with unlimited accumulation.

Also amend Article XII, Section 2, Fire Prevention Division, to read:

The provisions of Section 1, above, shall, insofar as applicable, apply to the Fire Prevention Division, except that employees of the Fire Prevention Division shall receive 20 8-hour sick days per year credit, with unlimited accumulation. Effective January 1, 1996, following completion of fifteen (15) years of service, employees of the Fire Prevention Division shall receive fifteen (15) eight-hour sick days per year credit with unlimited accumulation.

City's

LBO: Amend Article XII, Section 1 Firefighting Division to read:

A. Accumulation of Sick Leave Credits

1. No change.
2. Until Section 1(A)(3), next following, shall be applicable to him, each employee shall acquire one (1) day of sick leave credit for each month of service rendered.
3. Commencing January 1, following his completion of one year of service, and on such date, each employee shall receive ten (10) sick leave day credits, with unlimited accumulation.
4. No change, except add the following language to the end of Subsection 4: An employee shall not accumulate sick leave credits while receiving long-term disability pay discussed in Subsection 5.
5. After an employee exhausts all of his accumulated sick leave for the same illness or injury, the City will provide the employee with a long-term disability policy (either self-insured or through an insurance company) which will pay the employee seventy (70%) percent of the employee's regular base wage as set forth in the "Salary Schedule", Article VIII, Wages, computed on a 50.4 hour work week, over a period not to exceed one-hundred eighty (180) calendar days from and after the [date the] employee exhausts his last day of accumulated sick leave.

The City may require the employee to be examined by a City designated doctor periodically during the period of illness.

Findings: Southgate firefighters have accumulated 16 (24-hour) sick leave days per year since at least 1973. Southgate police officers initially received 20 which was reduced to 15 (eight-hour) sick days, and that number has not been changed in many years.

Chief Ahles said there are firefighters "who have a philosophy never to touch sick time... to those who use it up because it's just excess... going to waste if they don't use it and it slowly gets burned off." The Chief added that the overall department average is about four days a year, and "that's high." He contended that there are people "who use an average of eight and nine days a year, and those extra days, when you start filling them up for the department, start costing us a lot of money." (IV:78-79).

**City's
Position:**

The fundamental purpose of sick leave is to provide a benefit when someone is sick and to provide an appropriate cushion against unforeseen illness. But sick leave presently given to firefighters far exceeds what is needed. Thus, 16 days a year is more than needed or used by fire suppression employees since the average use according to Chief Ahles is "a little over four.... although someone might take or exceed 16 in any given year." (IV:36). City Exhibit #65 reveals, too, that of the seventeen members with five or more years of service, the sick leave use per year ranged from one day to just under ten days, with ten firefighters taking off less than five days and seven taking off more than five days. The City claims this benefit more than meets the need for actual sick

time. And, in its LBO the City has proposed a long-term benefit to provide a reasonable "cushion."⁷⁰

Sick leave has been used for other purposes which is easy to do where the first five days of sick leave are unverified and it is all but impossible to catch and prove cases of sick leave abuse. (It is normal per Ahles that fire-fighters stay under five sick leave days for the year to get their three bonus vacation days). This extra use of sick leave increases overtime compensation. The data from 1992, 1993 and 1994 the highest use of sick leave is in December when sick leave and other types of leave are used or lost. (C#51 and C#53).

Sick leave presently given to firefighters is far greater than that received by the comparable communities and the other City bargaining units. The average of days granted by the comparables is 9.6 days (with Southgate), and 8.8 days (excluding Southgate).⁷¹ (The City's points out that its LBO of ten sick days would still keep Southgate near the top, exceeded only by Garden City and Wyandotte). And that the sick leave as a percent of time worked for Southgate far exceeds that of the comparables which average 8.9% (including the Southgate figures) and 8.1% (excluding the Southgate figures).⁷² (The City's points out that its LBO of ten sick days would still give Southgate firefighters 9.2% of their time worked for sick leave, below only Garden City and Wyandotte). And the number of sick days which a Southgate firefighters, on average, accumulate is far higher than for any of the comparables.⁷³

Sick time as a percent of time worked for the Southgate firefighters also dramatically exceeds that of all other Southgate bargaining units which have an average of 5.34%

⁷⁰ In response to Union comments at the arbitration hearing that current numbers of sick days should be maintained because there is not long-term disability program, the City includes such a program in its LBO. And this combined with the statutory presumption under the Heart and Lung Act make the City's offer very reasonable.

⁷¹ City Exhibit C-62 shows:

Southgate.....	16
Garden City & Wyandotte.	12
Allen Park & Trenton....	9
Madison Heights.....	7.5
East Pointe & Ferndale..	6
Lincoln Park - N/A (unlimited use with approval; no banking of sick leave)	

⁷² City Exhibit C-63 shows:

Southgate.....	14.6%
Garden City & Wyandotte.	11.0%
Allen Park & Trenton....	8.3%
Madison Heights.....	6.9%
East Pointe & Ferndale..	5.5%
Lincoln Park - N/A (unlimited use with approval; no banking of sick leave)	

⁷³ See City Exhibit 92 reveals that a Southgate firefighter accumulates 400 sick leave days over a 25-year career, compared to 300 for Garden City and Wyandotte, 225 for Trenton and Allen Park, 187.5 for Madison Heights, and 150 for Eastpointe and Ferndale. (Lincoln Park N/A no accumulation).

(including the firefighters) and 4.0% (excluding the firefighters).⁷⁴ Even with adoption of the City's LBO Southgate firefighters will remain far above the internal comparables with other Southgate bargaining units. And this is especially so when the long-term disability provisions offered in the City's LBO are considered. It takes only 6.8 years under the current 16 per year rate for a firefighter to get a year off of sick days. (By contrast it takes a police officer a little over 17 years, and DPS employees 21.5 years to accumulate that level of sick leave coverage). (IV:118-120).

On parity Chief Ahles testified that firefighters are entitled to a "two-for-one based on what police get." (IV:17). Chief Ahles said removing the cap for vacations is viewed as a parity argument...language... dealing with three additional personal business days.... was based on that [parity] argument * * * * the police departments gets 15 eight-hour days per calendar year. Consequently, in a two-for-one formula, the fire fighters would receive seven a half as opposed to 16 [sick days]. That would be how the formula would work if it were in effect straight across the board." (IV:31-35). "The two-for-one came from a parity argument originally. * * * *When people were going to convert, they ... When they were going to go from a 24-hour shift and 24-hour sick days to an eight-hour shift and eight-hour shift days... That formula was developed based on a parity argument between the police and the fire... since about 1980 that's been the case.... At the time that formula was developed, fire fighters received 16 sick days per year and police officers received 20..... the fire fighters are still at 16; the police officers are now down to 15, not 20." (IV:79-80).

The City has tempered its request and has offered to provide ten sick days per year, an amount that would exceed the recognized parity with Police. The Union cannot gain through parity leave days under the Girolamo award based on parity, and now claim that sick leave days are excluded from parity. Given the combination of the reduction in police to 15 and long-standing two-for-one ratio to convert fire suppression sick days into 40 hour sick days, it is reasonable on the basis of parity and past practice to provide fire suppression employees with 7.5 sick days per year.

74 City Exhibit 64 reveals:

Firefighters.....	14.6%		
Police	5.8%	[15 days]	
AFSCME members hired			
prior to 7/93.....	4.6%	[12 days]	
Department heads.....	4.6%	" "	
Dispatchers hired			
prior to 7/93.....	4.6%	" "	
Others.....	4.6%	" "	
AFSCME members hired			
after 7/93.....	1.9%	[5 days]	
Dispatchers hired			
after 7/93.....	1.9%	" "	

Excessive amounts of sick days directly increase the City's costs for firefighters overtime and decrease services that can be provided. Sick Days for 1992, 1993 and 1994 reveal peak sick leave months are August and December.⁷⁵ Comparison to overtime expense against this use shows April, August and December are peak months.⁷⁶ And the City presented cost figures for the overtime caused by sick leave in 1993 and 1994, which Chief Ahles said he calculated from the individual daily reports, to tell if, when someone was sick, it caused an overtime fill-in.⁷⁷ (The City Exhibit #61 reveals that 87.9%

⁷⁵ City Exhibit 52 reveals, monthly use of sick days:

Jan 94 - 27.06	May 94 - 6.27	Sep 94 - 5.92
Jan 93 - 20.50	May 93 - 9.96	Sep 93 - 10.96
Jan 92 - 13.46	May 92 - 12.27	Sep 92 - 17.71
Feb 94 - 20.23	Jun 94 - 5.00	Oct 94 - 6.29
Feb 93 - 19.42	Jun 93 - 7.73	Oct 93 - 7.63
Feb 92 - 13.21	Jun 92 - 5.83	Oct 92 - 18.48
Mar 94 - 22.92	Jul 94 - 10.79	Nov 94 - 10.15
Mar 93 - 24.54	Jul 93 - 5.50	Nov 93 - 6.21
Mar 92 - 9.75	Jul 92 - 21.75	Nov 92 - 18.92
Apr 94 - 19.58	Aug 94 - 5.04	Dec 94 - 17.38
Apr 93 - 13.25	Aug 93 - 10.54	Dec 93 - 18.02
Apr 92 - 12.38	Aug 92 - 27.38	Dec 92 - 29.24

The arbitrator calculates the combined monthly averages 1992-94 as:

Jan: 61.02	May: 28.50	Sep: 34.59
Feb: 52.86	Jun: 18.56	Oct: 32.40
Mar: 57.21	Jul: 38.04	Nov: 35.28
Apr: 45.21	Aug: 42.96	Dec: 64.64

⁷⁶ City Exhibit 53 reveals, monthly overtime as follows:

Jan 94 - 53.82	May 94 - 46.08	Sep 94 - 42.61
Jan 93 - 37.38	May 93 - 47.30	Sep 93 - 43.17
Jan 92 - 17.18	May 92 - 44.34	Sep 92 - 49.83
Feb 94 - 43.50	Jun 94 - 47.14	Oct 94 - 32.26
Feb 93 - 47.15	Jun 93 - 37.63	Oct 93 - 41.27
Feb 92 - 24.67	Jun 92 - 34.58	Oct 92 - 47.61
Mar 94 - 49.58	Jul 94 - 44.52	Nov 94 - 35.51
Mar 93 - 43.24	Jul 93 - 43.70	Nov 93 - 26.58
Mar 92 - 21.31	Jul 92 - 59.40	Nov 92 - 41.54
Apr 94 - 67.34	Aug 94 - 48.40	Dec 94 - 60.92
Apr 93 - 54.92	Aug 93 - 46.97	Dec 93 - 56.52
Apr 92 - 53.01	Aug 92 - 72.13	Dec 92 - 68.27

The arbitrator calculates the combined, monthly overtime averages for 1992-94 as:

Jan: 108.38	May: 137.72	Sep: 135.61
Feb: 115.32	Jun: 119.35	Oct: 120.14
Mar: 114.13	Jul: 147.62	Nov: 103.63
Apr: 175.27	Aug: 167.50	Dec: 185.71

⁷⁷ City Exhibit 60 reveals cost figures for the overtime caused by sick leave in 1993 and 1994:

Jan 93 - \$ 8,500	May 93 - \$ 4,979	Sep 93 - \$ 3,771
Jan 94 - 12,115	May 94 - 3,135	Sep 94 - 5,437
Feb 93 - 8,333	Jun 93 - 3,365	Oct 93 - 3,562
Feb 94 - 8,865	Jun 94 - 3,000	Oct 94 - 4,062
Mar 93 - 10,260	Jul 93 - 2,500	Nov 93 - 3,104
Mar 94 - 9,458	Jul 94 - 5,479	Nov 94 - 4,385
Apr 93 - 6,542	Aug 93 - 4,396	Dec 93 - 8,448
Apr 94 - 9,500	Aug 94 - 2,251	Dec 94 - 8,687

of the 154.25 sick days taken in 1993 resulted in overtime and that 97.9% of the 156.63 sick days taken in 1994 resulted in overtime).⁷⁸

Excessive accumulation of sick days has caused significant long-term liabilities which have caused a very tenuous financial situation. CPA and outside City auditor Gordon Krater testified that in June of 1994 accumulated sick and vacation days had a value of \$3 Million Dollars (C#37),⁷⁹ and "there've been several pronouncements issued by the Governmental Accounting Standards Board, which is the board that deals with governmental accounting, talking about the new reporting model and what they are going to require cities to... record the liability for accumulated sick and vacation pay benefits in the general fund. [If now required], it would show that Southgate now had a \$3 million deficit fund balance." (III:134-135). From City Exhibits 74 and 37 Krater also testified that in 1993 36.1% of the total City sick and vacation liabilities was attributable to the Fire Department⁸⁰ (which employs about 15% of the City's work force), in 1994, 36.7% of the total City sick and vacation liabilities was attributable to the Fire Department.⁸¹

Krater said "I think the financial condition is very tenuous. The City is in a position of not being able to raise revenues,⁸² in a position of having high fixed costs. The

The two-year totals for each month are calculated by the Chair as:

Jan: \$20,615	May: \$8,114	Sep: \$ 9,208
Feb: 17,198	Jun: 6,365	Oct: 7,624
Mar: 19,718	Jul: 7,979	Nov: 7,489
Apr: 16,042	Aug: 6,917	Dec: 17,135

⁷⁸ Chief Ahles said that hiring two additional firefighters (to bring staffing up to 24 would not resolve this sick leave-overtime problem. He said on paper it would only cost the City \$20,000 if the overtime came off, but when you start taking overtime away from employees "it will work in the long run, but in the short run, there's a tendency to not to let that reduce itself. They're used to living at that level.... It will work in the long run; it doesn't work in the short run." (IV:59-60). He also said that with two new firefighters "our overtime problem is not gone away. You know, with minimum manning being at six people, even if we add two people, our overtime is still going to be in the neighborhood of \$200,000 a year..." (IV:67-71).

⁷⁹ Krater is a CPA with Plante & Moran where he coordinator of their governmental group, overseeing a staff of accounts and the audits for about 145 governmental units and another 75 school districts.

⁸⁰ City Exhibit 74 gives the value of this 36.1% as \$883,000.

⁸¹ City Exhibit 75 gives the value of this 36.7% as \$1,122,000.

⁸² Krater explained that 55% of the City revenue is from property taxes, 28% is from state shared revenue which are dependent for amount on the City's population and the State legislature as well as the financial situation of the State. The City has no control, absent a vote over the revenue from property taxes since it is already levying the maximum millage it is allowed (now 18.31), and as all communities must operate under the restrictions of Proposal A (III:114-117) limiting increases in property value against which the millage is applied. The fund balance, the key indicator of financial stability for a city, was \$188,914 and Krater said 10% is the recommended amount for a city like Southgate which would be \$1,297,000 for 1994. Krater said that over the last five years Southgate has been significantly below the safe and recommended level of fund balance and in 1992 and 1993 suffered a deficit fund balance, which if not

fund balance, or the reserves, are very low for a city the size of Southgate. So I think they're in very difficult shape right now, and with any kind of economic downturn, I'm fearful for the future financial condition." (III:139-40).

Excessive accumulation of sick leave has caused significant long-term liabilities which jeopardize City autonomy and its bond rating and causing a very tenuous financial situation at present.

Sick leave has been distorted to become an implicit pension provision which exaggerates pension payoffs and retirement benefits. (The contract allows up to 90 sick leave days to be included in the FAC calculation). This results in huge pay-out costs at retirement,⁸³ and distorted pension benefits.⁸⁴ The City must directly allocate the anticipated severance payouts each year for employees who are eligible to retire, which for employees eligible in 1997 and 1998 is anticipated to cost the City about \$600,000 of general fund money. (And there is solid legal support for the proposition that it is inappropriate to determine the level of sick leave benefits to be provided on the basis of impact on pensions.⁸⁵)

It is inadequate to defend the current level of sick leave accumulation on the ground that it has been received for a long time and provides a cushion to make up for the lack of long-term disability insurance. The City is not proposing to change to diminish any existing sick banks, this means that such firefighter would take 10.5 years to accumulate a one-year cushion. Clearly the 10-level provides sufficient sick leave to cover illnesses or injuries along with the long-term program offered by the City.

corrected could allow the State to step in and take over city operations. Of expenditures, 72% are for payroll and fringe benefits and retirement contributions. (See, C#38).

⁸³ Upon retirement, the employee receives a lump sum payment for three fourths of the sick days accumulated, up to a maximum of 90 days. (Ahles did not recall any firefighter except one who left on a disability retirement who received less than the maximum payout upon retirement).

⁸⁴ City exhibit #71 reveals these severance payouts for the last four firefighters who retired: \$42,810 (4/92); \$17,665 (4/94); \$39,194 (10/94) and \$39,862 (3/95). (These amounts are folded into compensation for the last year, and therefore affect the FAC which in turn is used to calculate the pension amount). The monthly pensions paid to these four individuals are: \$3,224 (4/92); \$3,797 (4/94); \$3,927 (10/94) and \$4,589 (3/95).

⁸⁵ Stover v Retirement Board, 78 Mich App 409 (1977) the Court of Appeals held that unless otherwise expressly agreed in a collective bargaining agreement, sick bank pay-offs at retirement shall not be included in FAC because these payments do not truly reflect the person's actual annual compensation, and these payment skew the employee's pension above what should be received.

Union's

Position: The City's LBO should be summarily rejected because it deviates so substantially from its position at the hearing.⁸⁶ Thus, the City never argued replacement of sick leave accumulations with insurance nor requiring firefighters to be examined by a City physician. And the many questions these unlitigated matters pose deny the Panel the ability to make a fully-informed decision.

The City's LBO should also be rejected because its sole justification is that Southgate firefighters receive more sick leave than their counterparts in the comparable communities and more than police officers in Southgate. Although the beneficial advantage exists, the sick leave benefit which is extremely important to the unit; it is a unique benefit which has existed since at least 1973; and for it to now be changed there must be evidence that circumstances since it was negotiated have changed to such a degree that its elimination is warranted. Simply arguing comparability is not enough. (Moreover, the same relationship exists today between sick leave for the firefighters and police officers in Southgate and for Southgate firefighters and those in the comparable communities as it has over the years).

The City's LBO is not justified by comparing overtime costs between the Southgate fire and police departments. First, firefighters can only use sick leave if they or a family member are actually sick, and in those circumstances any overtime which results is unavoidable. Moreover, the real reason the firefighter overtime costs have increased is because manpower has been decreased. It argues that since manpower was reduced to 22 a maximum of seven (instead of eight) firefighters are frequently scheduled, and this has made it more likely that a sick day or other leave will cause overtime. And overtime has increased dramatically: in 1990-1991 and 1992-1993 overtime costs within the department increased by nearly \$100,000, or by 50% due primarily to decreased manpower. The situation has now stabilized, however, as individuals have return from long-term illnesses and new hires have passed probation and become counted toward minimum manpower. Thus, for the 1994-1995 fiscal year, overtime was reduced by \$50,000 to \$246,000 which was actually below budget. So overtime is not substantially greater now than it was in the past. Since the City consciously made the decisions which have caused the overtime to increase, the Panel should not allow the City to offset its

⁸⁶ The City at the hearing proposed .625 days of sick leave credit for each month until January 1st following completion of their first year of service, then 7.5 sick leave credits each year, with unlimited accumulation. At the hearing it made no proposals with respect to long-term disability or examination by a City designated doctor.

The City at the hearing also proposed that the number of sick days for fire prevention personnel be reduced from 20 to 14 eight-hour days per year. (Since this not part of the LBO, no further mention of this issue or arguments on it is presented).

increased expenditures by reducing a long-standing firefighter benefit.⁸⁷

Next, it stresses that the City is not claiming that sick leave has been abused. And indeed it is not in a position to do so since it has the ability to require verification of sick leave use, to insist on proof that no abuse is occurring.

Next, it argues that whether or not the amount of accumulated sick leave might some day need be reflected on the City's financial statements is sheer speculation. And even if that occurs, the bond rating companies would be provided with information about all the City's long-term debt, including sick leave accumulation, so dire pronouncements are unjustified. Thus, the Panel's actions should have no impact on the continuing fiscal soundness of the City. Also, the Union has agreed that firefighters hired after 1981 will no longer receive a lump sum severance payment, but will simply have the value of that payment included as part of their FAC. This will reduce the potential accumulated sick leave payments as early as nine years from now and improve the City's balance sheet without decreasing annual sick leave accumulation.⁸⁸

Further, in an attempt to meet at least some of the City's objections to the effect of increasing long-term debt, the Union has agreed to reduce the number of annual sick leave days received after 15 years from 16 to 12, and by Fire Prevention personnel after 15 years from 20 to 15. This would reduce the long-term debt potential for the City by 40 sick leave days for firefighters over the last ten years before eligibility for retirement and by fifty sick leave days for Fire Prevention personnel over the same last ten years. This is far more reasonable than the City's LBO which would reduce sick leave accumulation for firefighters by six days each year, yet not reduce the accumulation for the Fire Marshal.

Next, it argues there has never been parity between time off in the police and fire departments: firefighters have always received 16 24-hour days per year while police officers have received 15 eight-hour days. And none of the parties' past arbitration awards support the view that the Union ever made any other claim. Thus, the Union never agreed on parity 2::1

87 Union Exhibit 108 reveals:

<u>Year</u>	<u>Manpower</u>	<u>Overtime</u>	<u>Year</u>	<u>Manpower</u>	<u>Overtime</u>
1986-87	24	\$129,157	1990-91	24	\$208,578
1987-88	24	\$183,692	1991-92	24	\$214,817
1988-89	24	\$183,015	1992-93	21	\$307,125
1989-90	24	\$191,014	1993-94	22	\$301,939

88 Article XXVI (Pensions), Section 3(A) provides for employees hired after January 1, 1981 that "on the dollar amount of annual accrued sick leave bank, up to a maximum of ninety... shall be factored into [FAC]". As explained at the hearing, this will delete the City's payment at retirement for accumulated sick leave (up to 90 days), and the retiree will receive (over eight years) additional pension compensation (through the pension trust) which is calculated to compensate for there being no sick leave pay-out at the time of retirement. (IV:138-41; 148) It appears that this tentative agreement does not affect the City's obligation to pay (out of general funds) the accumulated amounts of vacation and personal business days.

exchange and Chief Ahles admitted this; the Union only made this proposal because that City and Union always used this ratio when firefighters transferred between fire divisions, and the Union simply wished it to be memorialized. Also, the Union argued in 1993 that leave time (personal business days) could be considered a form of compensation, when given in exchange for a wage freeze, so additional leave time granted police should under parity be granted the firefighters who lost a 4% increase through parity of the wage freeze.⁸⁹ (The Union adds that a comparable situation would only be relevant in the present Act 312 proceeding if the police units had agreed to a reduction in their accumulated sick leave benefits in return for improved wages).

Analysis: Under the City's LBO, the unnumbered sixth subsection of Section 1(A) states that "the City may require the employee to be examined by a City designated doctor periodically during the period of illness." The Chair finds this is an entirely new and separate issue, first presented in the LBO. It is not, for instance, a revision, enlargement or retreat from a position on an issue identified during the Act 312 process.⁹⁰ Therefore, the Chair finds the Panel has no jurisdiction to consider this provision and it is stricken from the City's LBO.

Another threshold question is presented by the surprise injection of long-term disability insurance in Section 1(A)(5) of the City's LBO. The Chair finds that new provision presents a different consideration that is presented by the physician examination language. For one thing, the insurance question is not a separate question, ie of whether or not the parties should have long-term disability and, if so, what should be its details. Instead, the City tacked it on to its sick leave accumulation proposal to make it more palatable. At this stage, of course, introduction of what might have been a valid bargaining suggestion is entirely out of place. And the Chair concludes that the Panel cannot consider or give any weight to

⁸⁹ In the 1992 negotiations with the police the fire personnel lost the 4% increase they had negotiated effective July 1, 1992 and had to repay the increase they had received since that date. The Fire Union contended that the three personal leave days granted to police in exchange for the wage freeze, should be extended by parity, and Arbitrator Joseph Girolamo agreed. He found that the firefighter in equivalent circumstances (ie hired before January 1, 1981) should receive the same benefit. The Union argued compensation does not have a fixed meaning within Article VIII, Section 7, and instead the intent of the parties must be examined.

⁹⁰ Nothing in the Act 312 statute requires that the LBOs conform to the proofs at the hearing. Because they are to be measured by the Section 9 criteria, it behooves a party to present persuasive evidence of their portions. At the same time, however, it may be that they are persuaded to be more reasonable, to decrease the gap so to speak, and this is not counterproductive of anything except adversity.

the long-term disability insurance offer in evaluating the competing LBOs under the Act 312, Section 9 criteria.⁹¹

Turning to the merits, the Chair finds favoring the Union's LBO the long-standing benefit of 16 sick leave days each year. Basically, the Chair agrees with the Union that since it is a long-standing benefit, of keen importance to the unit, the structure of this benefit should not be modified absent some compelling reasons to do so. In this instance, however, the Chair is persuaded that such reasons do exist and that the City's LBO more nearly complies with the applicable Section 9 factors.

The Chair finds the City has shown the present benefit level exceeds what is needed to cover illness and injury. Thus, the 17 firefighters with more than five-years seniority used an average of under five days of sick leave per year. (C#65) From this data and the testimony of Chief Ahles, the Chair finds that the current benefit level greatly exceeds what is needed to cover sickness and to set up a "cushion" in the event of a long period of sick time. Also, the Chair views the comparable communities, where the average levels are less than 10 days per year, as providing further evidence that the level of accumulation of sick leave in Southgate exceeds reasonable need for sickness.⁹² Were these the only conclusions, the arbitrator would defer to the long-standing tenure of the benefit enjoyed by Southgate firefighters. But the Chair finds that other factors combine with these to create a compelling reason to change that benefit.

First the Chair notes that there has been sufficient accumulation of unused sick leave and vacation days by the bargaining unit that its current value in 1993 was \$884,000 and in 1994 its value rose to \$1,122,00.⁹³ From this the Chair finds significance both because it indicates that more sick leave is granted to firefighters than is need for covering sick time, and also because its value presents the City with a substantial question of long-term debt. For the City might one day need to report the \$1.2 Million as a deficit against general fund. And even if the Governmental Accounting

91 The long-term disability insurance provision is not, however, stricken. For although it lacks any record support upon which the Panel can consider and weigh it, what is proposed in Subsection (A)(5) is (from the City's arguments) intended to "sweeten" its LBO and be part of that offer. Since the City's LBO has been selected, that insurance provision will become part of the contract for "whatever it is worth."

92 The average of days granted by the comparables is 9.6 days (with Southgate), and 8.8 days (excluding Southgate). (C#62). The data provides:

Southgate - 16	Madison Hts. 7.5
Garden City 12	Eastpointe 6
Wyandotte 12	Ferndale 6
Allen Park 9	Lincoln park N/A
Trenton 9	

93 See footnotes 78 and 79 and accompanying text.

Standards Board does not soon, or ever, take such steps, the fact that such matters are well-known and communicated provide the City with sufficient cause for concern over its financial future. Certainly, when the 16-day level of benefit was first provided firefighters, the City was not facing such a situation.

In this case, the City does not seek to encroach upon the leave accumulations of firefighters. (A Southgate firefighter exceeds by 100 days the accumulation enjoyed by the next closest comparable).⁹⁴ The Chair does, however, see as a valid and relatively non-intrusive step to decrease future accumulations, the reduction of present levels of sick leave accrual. Indeed, by both the LBOs, the parties recognize that some downward modification in the historic level is necessary in this contract.

The Chair also notes that Southgate bargaining units have recently, in 1993, experienced roll backs in the level of their sick leave benefits, and this along with the City's financial arguments in this case persuade the Chair that it is earnest in its efforts to lower the threat to its future financial status that accumulations of sick time can work.

In concluding that the City's LBO should be accepted on sick leave accumulation, the Chair has also considered that the fact that in the 1993-96 contract firefighters will receive a vacation improvement, with the removal of the cap on seniority vacation days. (Issue #4).

⁹⁴ See City Exhibit 92 reveals that leave days over a 25-year career, compared to 300 for Garden City and Wyandotte, 225 for Trenton and Allen Park, 187.5 for Madison Heights, and 150 for Eastpointe and Ferndale. (Lincoln Park N/A no accumulation).

Award: The Panel finds that the City's LBO on Issue #9 (Sick Leave Accumulation) (absent the last paragraph on medical examination) more nearly complies with the applicable Section 9 factors.⁹⁵ Article XII, Section 1 (A)(2) through (A)(5) will read:⁹⁶

A. Accumulation of sick leave Credits

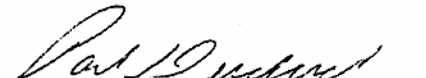
2. Until Section 1(A)(3), next following, shall be applicable to him, each employee shall acquire one (1) day of sick leave credit for each month of service rendered.
3. Commencing January 1, following his completion of one year of service, and on such date, each employee shall receive ten (10) sick leave day credits, with unlimited accumulation.
4. An employee on sick leave shall continue to accumulate sick leave credits as if he were in fact actively employed subject to the limitations otherwise applicable in this subsection (A). An employee shall not accumulate sick leave credits while receiving long-term disability pay discussed in Subsection
5. After an employee exhausts all of his accumulated sick leave for the same illness or injury, the City will provide the employee with a long-term disability policy (either self-insured or through an insurance company) which will pay the employee seventy (70%) percent of the employee's regular base wage as set forth in the "Salary Schedule", Article VIII, Wages, computed on a 50.4 hour work week, over a period not to exceed one-hundred eighty (180) calendar days from and after the [date the] employee exhausts his last day of accumulated sick leave.



David Angileri
Employer Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96



Elaine Frost
Impartial Chair
Dated: 3/21/96



Paul Diedrich
Union Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96

⁹⁵ The Chair concludes that the most important Section 9 criteria for resolution of Issue #9 are Section 9(c) with respect to the future financial impact that the accumulation of unused sick leave has on the City's long-term debt structure. The Chair has also relied on Section 9(d) in that comparable communities and their relative level of sick leave accrual and accumulations has been considered, as well as have comparisons to the other Southgate units with respect to their having recently taken cuts in the percentage of sick leave they receive. Next, the Chair has considered Section 9(h) cover "other factors... into consideration in... voluntary collective bargaining..." in a number of aspects. Consideration has been made of improvement to the firefighters ability to accrue additional vacation days, consideration has been taken the changes since the 16 per year level of accrual was in the contract and the effects of the long-standing practice which successive contracts had followed. Although thought was given to the other pertinent Section 9 factors (see footnote 9), these factors were found to be of little or no weight.

⁹⁶ As noted in the Chair's letter to Panel Delegates, dated March 8, 1996, "Issue #9 (Sick Leave Accumulation).... should take effect upon execution of the contract, rather than be retroactive to the July 1, 1996 start of contract. (As to Sick Leave it seems this must be the case since the Employer's LBO assured that no accumulations would be affected)."

Union Panel Member Dissenting Opinion Issue #9

As the Panel Member for the Union, I disagree with the Chair's award of the Cities LBO for the issue of Sick Time Accumulation. The Union showed there was no abuse of sick time within the Fire Dept. and the Union had a long standing benefit which the City had no problem with since 1973. The Chair in her analysis writes the panel should give no weight to the long term disability insurance policy the City proposed in its LBO, as it was totally new to the issue and not discussed in hearings, and the Chair writes the long term debt liability to the City for sick days was not yet a reality. The Chair, however, sites both of these issues as justification for awarding the Cities LBO. The loss of 150-24 hour days over a career for Fire Fighters was far to extreme for one contract. The Union's LBO more fairly addressed the issue.

Paul Diedrich, Union Panel Member

* * * * *

ISSUE 10. PROBATIONARY EMPLOYEES/MINIMUM MANNING

* * * * *

Current

Contract: Article XXI (Safety), provides in Section 1:

Minimum Manpower Requirement

There shall, at all times, be a minimum of six (6) Fire Fighter employees on duty during any normal twenty-four hour shift for the duration of this Agreement.

Probationary Fire Fighters shall not be counted as part of the Article XXI, Section 1, Minimum Manpower, nor shall probationary Fire Fighters be eligible to be called for overtime work unless and until they have successfully completed their probationary period or the basic (240 hr.) Fire Fighter training, with 90 days on-the-job service, whichever comes first. When the probationary Fire Fighter is in school, he shall not be counted toward minimum manpower requirements, nor shall probationary Fire Fighters be eligible to be called for overtime work unless and until they have successfully completed their probationary period; provided, that in the event that all seniority Fire Fighters refuse overtime, the city shall be permitted to utilize probationary Fire Fighters for such overtime work.

City's

LBO: Amend Article XXI, Section 1, to provide that:

Probationary firefighters to work forty (40) hour work weeks during the first two weeks of employment, and 50.4 hour weeks during the remaining first thirty (30) days of employment; and that the Section be changed to allow probationary firefighters to be counted toward minimum manpower after the first thirty (30) days of employment, unless the Chief of the Department is notified in writing by the Unit Officer that the particular probationary firefighter is lacking or deficient in required knowledge and/or skills necessary to satisfactorily perform the duties of firefighter. The Notice shall detail the particular areas in which the employee's knowledge or skill is deemed to be deficient, and unable to satisfactorily perform his job, and describe those instances where the employee demonstrated a lack of knowledge or skill required to perform his job.

Union's

LBO: Add to the contract:

Probationary employees may be assigned to a forty (40) hour work shift for the first thirty (30) days of their on-the-job service. They shall be assigned to twenty-four (24) hour shifts thereafter.⁹⁷

City's

Position: In accord with a majority of the comparable communities, the City is proposing to allow probationary firefighters be counted toward the minimum manpower requirements after 30 calendar days. And the City proposes to assign probationary firefighters on a 40-hour schedule during an orientation in the first two weeks of employment. This will cut down on the

⁹⁷ The Union's LBO was underscored to indicate "new language." For ease of reading, this underscoring has been deleted.

excess time, currently 90 days to six months, that qualified employees are excluded from being counted toward the minimum manpower requirements. Thus, if new hires have Firefighter I and II certifications the 90 days runs from the date of hire, but if they do not have these certifications, they are not counted toward minimum manpower requirements until 90 days after certified, or six months after hire, whichever occurs first. New hires are put on a 40-hour schedule so they can become familiar with equipment, get uniforms ordered, and be exposed to other employees at times when they are active. Currently many new hires are already certified and qualified to perform the job and the City wants to cut down on the time they are not counted towards minimum manpower. Five of the eight comparable communities allow a probationary employee to be counted toward minimum manpower in 30 days or less. Given the caliber of recent recruits, Chief Ahles testified that 30 days is adequate time to become oriented, and to alleviate Union concerns of an individuals inability to perform, the City's LBO proposes that the new hire will not be counted if the Unit Officer provides written notification of lack of deficiency. With this added safeguard, the City's proposal is consistent with the practice in most comparable communities and is a very reasonable solution to the problem.

Union's

Position: Its LBO would memorialize the current practice, but the City's proposal would change the current 90-days on-the-job training requirement before a probationary employee can count toward minimum manpower. Historically, since the 1980-82 contract new hires have not been included as part of minimum manpower until conclusion of their six-month probationary period. The current practice (since the 1984-87 contract) is to place new hires on a 40-hour week the first 30 days after which they are placed on 24-hour shifts.

The City's LBO is extreme because it could result in a new hire being counted toward minimum manpower with as little as 20 eight-hour days (160 hours) of service. (Under the current practice a new hire must work 648 hours before being counted. (IV:171-72)). With so little service, a new hire could lack emergency training, and have only finished Firefighter I and II which although "hands-on," is not conducted under true emergency situations. Nor would a new hire have experience of being awakened in the night to respond to an emergency. And the Chief acknowledged that individuals respond differently to this experience. (IV:175-76). Under these circumstances it would be stressful and perhaps dangerous to place such a new hire on a unit as one of only three men all of whom need be capable of responding to any number of emergency situations.

Also, there is no formal evaluation process under the City's proposal, creating further uncertainty of whether the individual officer will be afforded an opportunity to work with and evaluate the new hire.

The motivation for the City's proposal here is clear. It does not want to have new hires counted as part of minimum manpower simply because it believes that advances in training have allowed it. Instead, it wishes to save money, by not having to call in a fire fighter on overtime when manpower has been reduced to six on duty, including a probationary employee within his first ninety days of employment, as it now would be required to do.

Certainly, this justification is not sufficient, without more, to warrant the arbitrator's granting of a proposal which would adversely impact the safety of the fire fighters on duty, which it will, as seen below.

Although the data supplied by City and Union provides glaring differences as to comparable communities,⁹⁸ it is clear that in all comparable communities where probationary employees can be counted as part of minimum manpower earlier than in Southgate, minimum manpower is higher than in Southgate.⁹⁹ And in the two comparable communities where minimum manpower is less than Southgate, Eastpointe and Garden City, a new hire is not counted for three months or more.

Analysis: The lack of assurance that new hires would have some actual emergency response experience, including those upon being awakened at night, and the lack of any assurance that a supervisor would be in a position to thoroughly evaluate a new hire's ability and readiness for full service, persuade the arbitrator that the Union's LBO should be adopted. There are too many questions as to how a new hire, with only Firefighter I and II training, would be able to step so quickly into a firefighter position as the City's LBO maintains. The Chair also agrees with the Union that in the comparable communities where new hires are more quickly counted than is the case under the Union's LBO, enjoy relatively greater staffing levels.¹⁰⁰

⁹⁸ See City #35 and Union #89.

⁹⁹ City Exhibit #88 reveals:

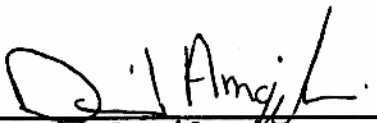
City	Numb of Platoons	Total Number Assigned Per Shift	Minimum Number on Duty Per Shift	Minimum Staffing Requirement	Minimum as Percent Of Total
Allen Park	2	13	7	by contract	53.85%
Eastpointe	2	11	5	by contract	45.45%
Ferndale	3	11	8	by contract	72.73%
Garden City	3	7	5	by practice	71.43%
Lincoln Park	2	11	8	by contract	72.73%
Madison Heights	3	12	9	by practice	75.00%
SOUTHGATE	2	11	6	by contract	54.55%
Trenton	3	11	8	by practice	72.73%
Wyandotte	2	17	8	by contract	47.06%

¹⁰⁰ See Union Exhibits 88 & 89.

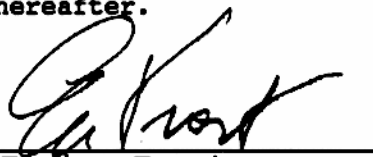
Since the Union's LBO simply memorializes the current practice, it is further evidence of its reasonableness.¹⁰¹

Award: The Panel finds on Issue #10 (Probationary Employees/Minimum Manning that the Union's LBO will be adopted. The following shall be added to Article XXI, Section 1:

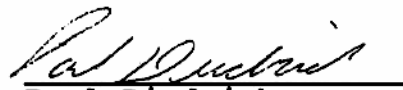
Probationary employees may be assigned to a forty (40) hour work shift for the first thirty (30) days of their on-the-job service. They shall be assigned to twenty-four (24) hour shifts thereafter.



David Angiler
Employer Delegate
~~CONCUR~~/DISSENT
Dated: 3/21/96



Elaine Frost
Impartial Chair
Dated: 3/21/96



Paul Diedrich
Union Delegate
CONCUR/~~DISSENT~~
Dated: 3/21/96

¹⁰¹ This issue is "non-economic."

41

TENTATIVE AGREEMENTS TO BE INCLUDED AS PART OF ACT 312 AWARD

1. Article VII, Wages

The wage scale in effect as of June 30, 1993 shall be amended to provide the following percentage increases.

<u>Classification</u>	<u>7/1/93</u>	<u>7/1/94</u>	<u>7/1/95</u>
Firefighter	3%	3%	3%
Sergeant	0%	4%	4%
Lieutenant	0%	4%	4%
Fire Marshal	0%	4%	4%

2. Article X, Vacations

In Article X, Section 1(B)(2), the words "and so on" shall be added after "25 years - 16 days."

The third sentence of the second and third paragraphs of Article X, Section 4 shall be amended to read: "Such approval shall not be denied if the change will not result in employees being scheduled off more than sixty hours in combined personal leave and vacation leave."

3. Article XII, Sick Leave

(a) Article XII, Section 1(B)(2)(b), (c), and (d) shall be replaced with: "The Chief may deny time off for personal business, except as provided in Article XXI, Education and Schooling, if at the time the request is made more than sixty (60) hours are scheduled off for vacation leave and/or personal business during the requested time period. Even if more than sixty (60) hours are scheduled off for vacation leave and/or personal business during the requested time period, the Chief, in his discretion, may find special circumstances of an emergency nature which would warrant the employee being off." SP

(b) Article X, Section 3, Relations Between Divisions shall be amended to read:

In the event an employee changes from the Fire Fighting Division to the Fire Prevention Division, or vice versa, his vacation and sick leave credits shall be pro-rated on a 2-1 (Fire Fighting to Fire Prevention) basis.

SP (c) Article ~~X~~^{XII}, Section 5(B) shall be amended to read:

Such three (3) bonus vacation days shall be 24-hour work days, and may be liquidated at a time of the employee's choice * * *

work days, and may be liquidated at a time of the employee's choice * * * .

4. Article XIV, Food Allowance, Section 1 shall be amended to read as follows:

Effective July 1, 1993, the City shall pay each employee of the Fire Fighting Division holding the rank of Sergeant and above \$600 as an annual food allowance. The City shall pay each employee of the Fire Fighting Division below the rank of Sergeant \$670 as an annual food allowance. The food allowance shall be payable in advance in the second pay of January; provided that in the event an employee fails to complete the year's work for which he has been paid, he shall pro-rata reimburse the City for the funds covering the portion of the year not worked.

5. Article XVI, Insurance.

The attached Exhibit A shall be added to the agreement.

6. Article XVII, Uniform Allowance shall be amended as follows:

- a. Section 2(A) shall be amended to read:

Effective July 1, 1993, the City shall, in addition thereto, pay each employee of the Fire Fighting Division below the rank of Sergeant, after one (1) years of service in the Department, as uniform allowance \$790.00 per year and shall pay each employee of the Fire Fighting Division holding the rank of Sergeant and above as uniform allowance \$550.00 per year. The uniform allowance shall be payable on-half the first pay in February, and one-half the first pay in August. Each employee of the Fire Prevention Division shall be paid a uniform allowance of \$600.00 per year, payable one-half in the first pay in February, and one-half the first pay in August.

- b. In Section 3 and Attachment 2, the reference to protector style jackets shall be deleted.

- c. Attachment 2 shall be amended to delete the requirement that new hires be provided dress uniforms, to add three (3) pairs of pants for the Fire Marshal, to provide a spring jacket for all employees, and to provide for patches on an "as needed" basis.

7. In Article XXI, Safety, Section 1, second paragraph, the reference to "the basic (240 hr.) Fire Fighter training," will be changed to "Fire Fighter I and II training,".

8. Article XXVI,

ARTICLE XVI

INSURANCE

Section 1.

The City at its cost shall obtain for each active duty employee, term life insurance of \$25,000.00 and sickness and accident insurance of \$50.00 per week for twenty-six (26) weeks. The employee shall be authorized to provide, at his own expense, additional coverage or benefits for himself or his dependents.

Section 2.

In the event of death from non-natural cause while on active duty or as a result of such injury received while on active duty, but occurring during non-duty hours, the City will provide an immediate \$1,000.00 cash payment to the employee's surviving spouse to provide living income while other death benefits are being processed, and furthermore, in each month following the month of death, an additional \$1,000.00 will be paid up to a maximum of \$3,000.00.

Section 3.

- A. Michigan Blue Cross and Blue Shield Hospitalization and Medical Insurance coverage, Preferred Provider Trust 15/Plus 15 shall be provided for active duty employees at not less than the MVF-1 level with COMP semi-private, D45NM, SAT2, SOTPE, and Master Medical 3 riders. The City will pay the full cost of the above Blue Cross-Blue Shield Preferred Provider Plan which shall include the family plan \$2.00 deductible APDBP prescription drug rider.
- The City may offer alternative health care systems (HMO, etc.) to all employees, as well as retirees, on an optional basis.

- B. The City will provide and pay the premiums for an 80/20 Dental Insurance Program with a one thousand dollar (\$1,000) annual maximum benefit and a two thousand dollar (\$2,000) lifetime orthodontic benefit for employees and eligible dependents.

Section 4.

- A. Command (Sergeant, Lieutenant and Fire Marshal) retirees shall receive the following benefits:

1. The City shall, at its cost, obtain for each retiree and retiree's spouse at the time of retirement, a life insurance policy of \$10,000.00.
2. Michigan Blue Cross and Blue Shield Hospitalization and Medical Insurance coverage and benefits shall be continued for all retirees under family plan coverage, which shall include spouse at not less than the levels existing as of December 31, 1987, including the retiree only \$2.00 deductible prescription drug rider.
3. Dental Insurance, as defined herein for active duty employees, shall be provided to retirees and the retiree's spouse at the time of retirement.
4. Upon the death of an employee retiree, such retiree's spouse shall continue being covered under the City's medical and hospitalization plan.

B. Non-Command (Fire Fighters) retirees shall receive the following benefits:

1. The City shall, at its cost, obtain for each retiree life insurance of \$10,000.
2. Michigan Blue Cross and Blue Shield Hospitalization and Medical Insurance coverage and benefits shall be continued for all retirees under family plan coverage, which shall include spouse at not less than the levels existing as of December 31, 1987, including the retiree only \$2.00 deductible prescription drug rider.

Section 5.

All employees covered under this contract shall receive copies of policies for amounts specified in contract or riders.

Section 6.

- A. The Insurer has the right to have the employee examined at its expense while a Sickness and Accident claim is pending or being paid.
- B. The City at its expense may require the employee to submit to a physical examination in order to verify the employee's ability to return to full-time work.
- C. In the event of a dispute between an employee, the Sickness and Accident Insurer or the City concerning the physical condition of such employees, such disputes shall be referred to the Chief of the Service of Henry Ford Hospital or University of Michigan Hospital within whose specialty the symptoms lie. Such

Chief of Service shall designate a physician whose determination shall be binding upon the parties.

Section 7.

Should the City be obligated by law to contribute to a governmentally sponsored insurance program, state, national or otherwise, which duplicates the benefits provided by the City under insurance policies currently in effect as a result of this Agreement, it is the intent of the parties that the City not be obligated to provide double coverage; to escape such double coverage, the City shall be permitted to cancel benefits or policies which duplicate compulsory governmentally sponsored insurance programs; provided, however, the City agrees to maintain the benefit level established by this Agreement supplementing compulsory policies if necessary; provided further, that the City shall neither cancel nor alter benefit levels as a result of compulsory insurance without the mutual agreement of the Union.

Section 8.

If an employee covered by this Agreement is working for another employer who covers that employee with Hospitalization or sickness and accident insurance, such City employee will utilize the insurance of the other employer for injuries incurred while in the employ on the job of such other employer.

Section 9.

New hires shall be added to and become eligible for benefits, as of the first premium payment following their hire; provided that new hires shall not respond to emergency runs until the City provides the life insurance coverage provided by this Agreement.

Section 10.

The City shall continue in effect the current optical plan through June 30, 1988; effective July 1, 1988, the City will provide Blue Cross Blue Shield 80/20 Optical Insurance Plan for active employees and eligible family members only.

Section 11.

The City reserves the right to subrogation and recovery of amounts paid by the City, or its insurance plans, on behalf of a person covered by the City's insurance plans because of an injury in which the person covered by the City's insurance plan is entitled to recovery and is paid damages by another party. Subrogation shall apply to direct medical expenses and wages recovered and not to subjective damages such as "pain and suffering."

ARTICLE XXVI

PENSIONS

Section 1.

The City will maintain the Act 345, Section 6(d) option, by providing a 2.5 percentage payment for employees hired prior to January 1, 1981, and implement a 2.69 percentage of payment for employees hired after January 1, 1981.

Section 2.

Employee contribution rates shall be 7.5% of pay for officers of the rank of Sergeant and higher prior to January 1, 1981, and 5% of pay for all other employees.

For officers of the rank of Sergeant and higher, an average of three (3) years of highest annual compensation, as defined in Section 3 below, during the ten (10) years immediately preceding retirement shall be used to calculate such employee's pension entitlement upon retirement.

Section 3.

- A. Final Average Compensation (FAC) for Command Officers shall be based upon all compensation received during the employees FAC period, to include any payment received for sick, vacation, or bonus vacation days. ~~In addition, the dollar value of any compensatory time earned during the officers FAC period shall be factored in.~~ For employees hired after January 1, 1981, only the dollar value of annual accrued sick leave bank, up to maximum of ninety (90) days at the employee's current rate of pay (two hundred (200) days at the employee's rate of pay for an employee in Fire Prevention), shall be factored

into the Final Average Compensation.

- B. For Non-Command Officers hired after January 1, 1981, Final Average Compensation shall include and be based upon base wage (which shall include out-of-class pay and shift differential), overtime pay, longevity pay, holiday pay, accumulated and unused vacation days at the time of retirement, food allowance and cleaning and clothing allowance and one half of accumulated sick leave, to a maximum of forty-five (45) days. For Non-Command Officers hired prior to January 1, 1981, Final Average Compensation will also include a maximum of ninety (90) sick leave days.

Section 4.

Because of the impact on minimum manpower requirements, an employee must provide at least sixty (60) days prior notice of the desired retirement date. This notice shall be irrevocable once the individual's replacement has started employment.

Section 5.

- A. Effective July 1, 1988, employees who are members of the Act 345 system, upon retirement, shall be allowed to withdraw their accumulated contributions, or any portion thereof, (with interest), to retirement date. The parties hereto understand that upon such withdrawal, the member's pension shall be reduced by that portion of his retirement allowance which was financed by the member's contribution.
- B. The most recent interest rate in the actuarial report published by the Pension Benefit Guaranty Corporation (as determined by the Actuary) immediately preceding the member's retirement shall be used to determine the formula to compute the assumed

rate of investment return.

- C. The parties agree that the de facto operation of the Act 345 Retirement system for the City of Southgate since at least July 1, 1988, consists of a defined benefit plan, commonly referred to as a pension plan and a defined contribution plan, commonly referred to as an annuity plan, which plans have been treated by the parties to this Agreement and the Board of Trustees of the Retirement System as qualified plans under the provisions of the Internal Revenue Code. The parties agree to continue the qualified status of the two plans within the Pension Trust Fund and agree to take action which may be required by Internal Revenue Service rules and regulations and the tax laws to maintain qualified plan status of the defined benefit plan (pension Plan) and the defined contribution plan (annuity plan) under Section 401(a) or any other applicable section of the Internal Revenue code. The parties will request, and cooperate with, the Board of Trustees to apply for qualified plan status determination letters for each (i.e., the pension and annuity) of the plans of the Retirement System. It is agreed that, except for costs reasonable related to administration of the plans described herein, the actions required by the City pursuant to this section, shall not result in any additional costs or charges to the City or to the Pension Fund, nor shall the City or Pension Fund be obligated for same.

Section 6.

A. Commencing July 1, 1991, the City agrees to the institution of a pension "pick-up" plan for the employees covered by this agreement, provided that the Internal Revenue Service approves such a "pick-up" approved by the Internal Revenue Service is limited solely to those employees. If the Internal Revenue Service does not approve a "pick-up" limited solely to the employees covered by this Agreement, the said "pick-up" shall not be applicable. The "pick-up" plan as set forth herein shall be instituted as follows:

- (1) The City shall pick up the employee contributions required by employees for all compensation earned after the effective date of this provision. The contributions, so picked up, shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. Employee contributions picked-up by the City, pursuant to this provision, shall be treated for all other purposes, in the same manner and to the same extent, as employee contributions made prior to the effective date of this provision.
- (2) The effective date of this provision shall be the date of IRS approval. These employee contributions so picked-up shall not be included in gross income for tax purposes until such time as they are distributed by refund or benefit payment.

(3) With respect to the Plan Amendment and the "pick-up" of Employee pension contributions set forth above, it is expressly understood and agreed as follows:

- (a) The plan amendment is being adopted only for the purpose of allowing employees to take advantage of the IRS code provisions which permit governmental employees to tax shelter their pension plan contributions.
- (b) Employee contributions will be withheld from actual gross salary and paid to the plan as in the past.
- (c) Salary before reduction for contribution will continue to serve as the basis for determining the amount of salary related fringe benefits, including retirement benefits.
- (d) The City will maintain information which will permit identification of the amount of employee contributions made before and after the plan amendment. This is necessary in order to determine the extent to which a pension plan distribution is taxable income to the employee at the time the distribution is received.
- (e) The plan amendment is being accomplished by local agreement rather than a change in State law.

B. The effect of this provision is that each employee's compensation shall be reduced by the amount of the pension contribution which would otherwise be required of an employee under the provisions of the retirement system and the City will contribute this compensation reduction to the retirement system. The compensation reduction is

to be considered a part of each employee's compensation for purposes of determining the contribution which would otherwise be required of an employee under the provisions of the retirement system.

C. It is the intention of this provision that the above described contributions be treated as "pick-up" by the City for purposes of Section 414 (h)(2) of the Internal Revenue Code of 1986, in that the two criteria for such treatment are satisfied:

- (1) The City hereby specifies that the above-described contributions, although specified as employee contributions under the retirement system, although withheld from actual gross salary and paid to the Plan as in the past, are being paid by the City to the retirement system in lieu of contributions by the employee, and
- (2) The employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City to the retirement system.
- (3) It is the intention of the City and the Union that each employee may, pursuant to Section 414 (h)(2) of the Internal Revenue Code of 1986, exclude from current gross income, for Federal Income Tax purposes, all of the contributions made by the City to the retirement system and that such contributions shall not be includible in the employee's gross income until distributed or made available to the employees.

Section 7.

The parties agree that one hundred (100%) percent of the cost of hospitalization and medical insurance (family plan coverage) for retirees and spouses shall be the sole obligation of the Act 345 Pension System, and shall be paid by and out of the Act 345 pension levy.

Section 8.

Upon retirement for a service-connected disability, a member who has not met the minimum requirements for a normal service retirement, i.e., 25 years of service/50 years of age, shall receive a disability retirement pension of 50% of the members' final average compensation, which shall be payable to the member until the date that the member would have met the minimum service requirements for normal retirement had the member not been retired. The disabled member thereupon shall receive a regular retirement pension computed in accordance with Article XXVI, Section 1. In computing the regular retirement pension the member ^{shall be given service credit for the period of time the member} was in receipt of a disability pension. If the disability retirant shall die before ^Δ attaining the point at which the member would have met the minimum service requirements for normal retirement had the member not been retired, his/her surviving spouse shall receive a survivor disability pension equal to 60% of the disability pension payable to the disability retirant on the date of the retirant's death.

Section 9.

Section 6(1)(i) of Act 345 shall be amended to read as follows:

A member who continues in service on or after the date of acquiring ten (10) years of service credit and who does not have an option I election, provided for in subparagraph (i), in force,

and dies while in service of the City of village before the effective date of his retirement, and leaves a surviving spouse, the spouse shall receive a pension computed in the same manner as if the member had (1) retired effective the day preceding the date of his death, (2) elected option I provided for in subparagraph (h), and (3) nominated the spouse as survivor beneficiary. Upon the death of the spouse, the pension shall terminate. A pension shall not be paid under this subparagraph on account of the death of member if benefits are paid under subdivision (2) on account of his death.

AGREEMENT AND RESOLUTION OF GRIEVANCE NO. 141
AND AMERICAN ARBITRATION ASSOCIATION CASE NO. 54-39-0677-93

This Agreement dated this _____ day of July, 1994, between the CITY OF SOUTHGATE, MICHIGAN, a Michigan Municipal Corporation, hereinafter referred to as "City", and the SOUTHGATE FIRE FIGHTERS LOCAL 1307, hereinafter referred to as "Union".

WITNESSETH:

WHEREAS, the Union has heretofore filed Grievance No. 141, and has instituted arbitration proceedings, under American Arbitration Association Case No. 54-39-0677-93; and

WHEREAS, the parties have met, conferred and negotiated a settlement of the outstanding grievance and wish to make this document a written memorandum of the agreement as to the resolution of same;

NOW, THEREFORE, it is agreed and understood as follows:

1. This agreement will apply only to training mandated by state or federal law and the respective agencies that administer and regulate said law for fire fighters to perform their duties. Said duties include but are not limited to fire fighting, emergency medical care, hazardous materials response, specialized rescue and other emergency responses which are routinely handled by the Fire Department;

2. Attendance by employees during the employees' off-duty hours at such training shall be voluntary;

3. As soon as practical after the Chief of the Fire Department learns, or should have learned, of mandated training, the Chief will notify the Union of the training requirements, including the courses needed to meet these requirements, and the date by which that training must be obtained by posting said notice on the bulletin board outside the Chief's office and giving a copy to a Union officer.

4. If training can be arranged at the station, the Chief will give at least thirty (30) days notice of any training classes in the manner prescribed in Paragraph 3. These classes will be scheduled for each unit, with at least fourteen (14) days between the classes. Additionally, the Chief will also schedule a make-up class for each unit at least thirty (30) days, but no more than sixty (60) days after the initial class offered on that unit. The Chief reserves the right to cancel or reschedule the make-up class if no attendance is anticipated or move the class to another location if minimal attendance is anticipated. Any other mandated training an employee wishes to attend must be approved in advance by the Chief as meeting the requirements necessary to certify that employee is adequately trained.

5. Employees will be expected to attend the training class on their regularly scheduled duty day. Employees may attend a class on an off-duty day but will only be compensated additionally (at the rate of time and one half) if the class is not given on their regularly scheduled duty day or if they had scheduled time off on that training class day prior to the Chief posting notice of the class and are not scheduled on the make-up class day. If employees schedule the time off after the Chief's notice of the class, they may still be compensated at the rate of time and one half for attending the class on their off duty day if they provide verification to the Chief of their inability to attend the class on their duty day, such as serious illness or death in the family, or the serious illness of the employee.

6. If any employee has not obtained the mandated training by the date required (as noticed by the Chief in Paragraph 3), except if that employee has been prevented from obtaining that training through long-term illness or injury, then that employee will be suspended without pay or benefits, including accrual of seniority for any purpose, for up to 60 days. The employee's insurance benefits will be maintained during the period of the suspension. If the employee fails to obtain the required training within these sixty days, the City, at its *sole* option, *and in its sole discretion*, may discharge the employee and the employee shall repay to the City, including through deduction from the employee's final check, the cost of the insurance coverage maintained on that employee's behalf by the City during the period of the suspension. If the employee does obtain the necessary training during the suspension, then that employee shall be reinstated, without any back pay or benefits, except that any seniority lost during the period of the employee's suspension shall be restored.

7. That upon execution of the Agreement, all claims made against the City by the Union under Grievance No. 141 and American Arbitration Case No. 54-39-0677-93 shall be withdrawn and dismissed with prejudice by the Union.

8. This agreement shall be incorporated into the parties' collective bargaining agreement.

9. This agreement shall be effective on April 21, 1994, notwithstanding that the parties hereto may have executed the agreement on some other date.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

CITY OF SOUTHGATE, a Michigan
Municipal Corporation

BY: _____
STEVE AHLES, Fire Chief

SOUTHGATE FIRE FIGHTERS LOCAL 1307

BY: _____
PAUL DIEDRICH, President

BY: _____
Trustee

ADDITIONAL TENTATIVE AGREEMENTS TO BE ADDED TO CONTRACT

I. Add to Article XII, Section 1(2):

In accordance with the Award of the Arbitrator in AAA Case No. 54 39 0204 93, employees hired prior to January 1, 1981, shall receive three (3) additional personal business days each calendar year until they are promoted to the rank of Sergeant or above. These days shall not be charged against sick leave.

II. Add to Article XXV, Education and Schooling.

The City will attempt to offer the opportunity for all members of the bargaining unit, if scheduled for duty at the time the classes are posted, to attend, while on duty, the classes necessary for re-certification as Emergency Medical Technicians. In the event the City does not offer such classes, during the employee's re-certification period, thereby making it necessary for an employee to attend EMT classes while off-duty, the employee will be compensated at the rate of time and one-half for all time spent in attending such classes.