3/15/95
Arb. MSU

STATE OF MICHIGAN

DEPARTMENT OF LABOR

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration
Under Act 312 (Public Acts of 1969):

CITY OF SPRINGFIELD MERC Case No. L92A-0270

-and-

SPRINGFIELD FIRE FIGHTERS ASSOCIATION, AFL-CIO LOCAL #2566

Springfield, City of

OPINION AND AWARD

Chairman of Arbitration Panel:	Kenneth P. Frankland
City Delegate:	Bernard Guida
Union Delegate:	Ronald Johnson
Representing City:	Michael R. Kluck
Representing Union:	Alison L. Paton
Pre-Hearing Conference:	2/2/94
Hearings Held:	7/1, 7/22, 8/24, 8/29/94 All held in the City Hall
Post-Hearing Briefs Received:	11/18/94 & 11/25/94
Post-Hearing Panel Conference:	
Opinion & Award Issued:	3/15, 1995

STATEMENT OF THE CASE

The City of Springfield filed a petition for arbitration pursuant to Act 312 of the Public Acts of 1969 on January 3, 1994. The labor organization, Springfield Fire Fighters Local 2566, filed an answer on January 12, 1994. On February 7, 1994, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chair person of the arbitration panel in this matter. A pre-hearing conference was held on March 2, and a pre-trial conference report was generated by the chair including establishing hearing dates. On May 16, 1994, the City filed an amended petition to indicate unresolved issues in dispute. Pursuant to notice, hearings were held in the City of Springfield on July 1, July 22, August 24 and August 29, 1994. The last offers were exchanged and after receipt of the transcripts, briefs were filed by the respective parties and received by the panel chair at the end of November.

The issues involved were summarized by the chair at pages 4 through 10 of TR-1, which at time were 34 in number. During the hearing, some issues were withdrawn. Thirty unresolved issues are identified in the Table of Contents of the Union Brief and at pages 2 and 3 of the City Brief.

The panel summarizes the Issues from the City Brief including the moving party and whether it is economic or non economic.

ISSUE TITLE	MOVING PARTY	ECONOMIC OR NON-ECONOMIC
Article II - Employer Rights Section 1(B)	Employer	Non-Economic

Article III - Grievance Procedure		
Section 1 - Definition	Employer	Non-Economic
Section 5 - Arbitration Powers	Employer	Non-Economic
Section 6 - Procedural Errors	Employer	Non-Economic
Article VI - Seniority		
Section 4 - Seniority Termination (C)	Employer	Non-Economic
Section 6 - Filling Vacancies (A&B)	Employer	Non-Economic
Article VII - Leaves of Absence		
Section 8 - Funeral Leave	Union	Economic
Article VIII - Sickness & Accident Plan		
Section 6 - Other Leaves	Employer	Economic
Article IX - Hours of Work		
Section 2 - Project Assignment	Employer	Economic
Section 3 - Trading of Time	Employer	Economic
Article XI - Holidays		
Section 1 - Holidays	Employer	Economic
Section 2 - Holiday Pay	Employer	Economic
Section 3 - Floating Holiday	Employer	Economic
Section 4 - Personal Leave Day	Employer	Economic
Article XII - Longevity Pay		
Section 1 - Longevity Pay	Union	Economic
Article XIII - Insurance		
Section 2 - Group Health Insurance	Employer*	Economic
Section 2 - (NEW) Optical	Union	Economic
Section 2 - (NEW) Dental	Union	Economic
Section 3 - Retiree Health Insurance	Joint	Economic
Section 4 - Dependents Continuation	Employer*	Economic

* Sections 2 and 4 are considered one issue.

Article XIV - Pension		
Section 1 - Act 345 Retirement		
Final Average Compensation	Union	Economic
Pension Formula	Union	Economic

Article XV - Job Classification and Wages		
Section 2 - Rates of Pay	Joint	Economic
Section 3 - Overtime (A)	Union	Economic
Section 3 - Overtime (D&F)	Employer	Withdrawn
Section 4 - Pay Schedule	Employer	Withdrawn
Article XVI - Safety and Training		
Section 4 - (NEW) Minimum Manpower	Union	Withdrawn
Article XVII - General		
Section 2 - Uniforms	Union	Economic
Section 3 - Maintenance	Employer	Withdrawn
Section 4 - Annual Allowance	Employer	Withdrawn
Section 9 - Maintenance of Standards	Employer	Economic
Section 11- Employee Physicals	Employer	Non-Economic
Section 12- Educational Incentive Pay	Union	Economic
Article XIX - Duration		
Section 1 - Effective Period (decided)	Joint	Economic
Section 1 - (NEW) Continuation Language	Union	Economic

The determination of economic or non-economic was the result of stipulation or in a few instances by a determination of the chair.

As provided in Act 312, the panel is comprised of a delegate chosen by each party and an impartial chair elected by the parties by MERC. The chair of this panel is Kenneth P. Frankland, Bernard Guida is the City of Springfield delegate and William McMillan was first a delegate and then Ronald Johnson substituted in for Mr. McMillan upon his retirement for the Springfield Fire Fighters Association Local 2566. Pursuant to the Act, the panel is required to adopt the final offer of settlement by one or the other party for each economic issue. On non-economic issues, the panel is not so constrained.

Either at the pre-hearing or during the regular hearings, the parties reached certain stipulations or agreements.

The issue of duration was to be decided by the panel before the submission of last offers. Oral arguments were held at the end of the proofs. The panel met in executive session and voted 2 to 1 that the new contract would be three years from July 1, 1992 to July 1, 1995. The Union delegate dissented. The discussion of that issue is set forth later. The parties stipulated to the jurisdiction of the panel and that all statutory time limits were waived (TR-1, 3).

The parties also agree that the new contract would consist of the predecessor agreement as modified by the parties' settlements on various issues and the panel's award on the issues in dispute. The agreement on settled issues is contained at TR-1, 3-4, and those are adopted and incorporated by the panel in the new agreement.

BACKGROUND

The City of Springfield is located in Calhoun County which is almost an enclave of Battle Creek. It is just north of I-94, a major east-west interstate. The City has a fire department of nine bargaining unit members, since reduced to seven by two retirements. Historically, there have been three fire fighters, three lieutenants and three captains, with one of each on the three platoons. The work cycle is 24 hours on duty and 48 hours off for each platoon. In 1980, the fire chief position was replaced by

Public Safety Director and the incumbent in that position is James Jenkins. The City has a manager, Bernard Guida. There are two police agency unions, with the Police Officers Association of Michigan representing officers below the rank of sergeant and the Police Officer's Labor Council representing all officers above the rank of sergeant. During the proceedings, there was some discussion of the potentiality of a combined public safety department at some point in the future.

Bargaining unit members perform typical duties of a fire fighter, responding to structure fires, car fires, accidents and medical calls. On most fire runs, the lieutenant and fire fighter are dispatched unless the shift is manned by a captain. The record discloses at E-21 and U-45 that a majority of the runs are for medical reasons and structural fires from 1988 through 1993 were 48.

Some of the bargaining unit members are first responders to medical calls but the City does not have a first responder ambulance and when private ambulance service personnel arrive, they take over the first responder responsibilities. Fire fighters are also involved in inspections and maintenance among other things in addition to their regular station duties. They assist the City's public works dispatch operations after 5:00 p.m. on Mondays through Fridays and on weekends. The Union presented information of additional responsibilities after 1990 including the above-mentioned first responder on medical runs. The Union operates the "jaws of life" device. The Union also suggests that they assist

in mandatory inspection of the businesses around the City and the routine vehicle maintenance formerly done by persons outside the fire department.

Because of its mutual agreement with Battle Creek, the City provides first response to Fort Custer Industrial Park located within the City limits of Battle Creek. Fire suppression, however, is the primary responsibility of Battle Creek. Part of the agreement with Battle Creek provides first response to an area in the City of Springfield because they have a closer station. The Union suggests the amount of total runs in all categories under their Exhibit 8 suggests a 350 percent increase over the six year period of 1987 to 1993 from 183 to 635.

On the financial side, the City has not argued inability to pay. It levies 15.95 mills, producing $800,000 annually and also levies a one percent income tax for residents and a half percent on non-residents which produces another $600,000. According to Mr. Guida, the income tax levy is restricted for infrastructure improvements and for former laid off police positions. Union Exhibit 14 suggests that the City's fund balance has increased from $198,845 in 88-89 to $416,119 through fiscal year 92-93. However, the City has suggested that the fund balance does not mean that cash flow is available for extended costs in a contract.

STANDARDS OF THE PANEL'S DECISION

Section 9 of Act 312 sets forth the following factors upon which the panel's decision must rest.

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

COMPARABILITY

The Panel will address each Section 9 factor, first discussing Section 9(d), which states:

(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.

The parties have both argued that Section 9 is important and that no single factor is most critical but comparability is central to many issues. Communities may be comparable, or not comparable, on many different bases. The panel's task, of course, is to select the criteria that are most important, or most relevant, to the issues in dispute.

Act 312 is more than an exercise in computer analysis and comparability is at best a matter of degree in judgment not a litmus test for dichotomies. The Act does not define comparability. However, experience has given rise to various factors which are often considered. Those are set forth in an article by Halveston and Paton, An Act 312 Primer; Interest Arbitration for Fire Fighters and Police in Michigan, 64 Mich BJ 1060 (10/85). Some of the criteria enumerated are type of department, size of department, geographic proximity, population, size of the community and square miles, number of housing units, type of community, industrial, commercial or residential, per capita income, tax base measured by SEV, millage rates, number of fire runs, and medical runs. Use of these are commonly called the traditional approach. Other methods use a labor market analysis. The concept looks at areas in which the job seeker is generally

assumed to seek work within a reasonable distance from the employee's location. This approach generally relies upon comparison of statistical data and SMSA's. It is sometimes helpful for a panel to chart various factors and the panel will do so so that all five proposed communities can be seen in relation to each other. This will help the panel in sorting out this criteria which are more compelling and will be used as a basis for its ruling.

The parties could not agree on any comparable community. The employer submitted the cities of Belding and Dowagiac and the Union submitted the cities of Marysville, Marshall and Battle Creek. The City utilized a consultant, Mr. William Rye, to select its proposed comparable communities and his testimony and exhibits were offered in support of the City's approach. The Union presented its case from statistical exhibits as explained by its advocate.

It is unfortunate that there is no agreed comparable because the panel could obviously take characteristics of that community and then compare it with the proposed communities. Additionally, there is no prior history of any Act 312 awards for Springfield. As Springfield may truly be unique, the chair reviewed numerous Act 312 awards which are filed at the Michigan State University Library. The panel found no cases in which Springfield was identified as a comparable. Of the City's proposals, research discloses that Belding was subject to Act 312 and was found to be comparable to St. Johns, St. Louis, Portland and South Haven. Dowagiac was also a subject of prior 312's and Dowagiac itself was used as a comparable community in the Mason Act 312 award of

4/20/87. Of the Union's proposed comparables, Marshall has been the subject of several Act 312's as has Marysville. In the 1971 Marysville award, Marshall was deemed to be a comparable community.

Mr. Rye testified he used the following factors: 1) geographic proximity, being south of the Bay City-Muskegon line; 2) population - communities that are 50 percent above or below Springfield; 3) state equalized value; 4) fire departments employing at least four full time fire fighters and not cross trained public safety officers; 5) square miles of community; and 6) median home values.

In support of the Union's comparables, they argue that the panel should use other than the rigid and inflexible approach of Mr. Rye's analysis. The Union rather argues for a more flexible approach obtained from a cross section of the communities providing useful and relevant comparable information. Indeed, the Union's focus was on the geographic proximity of Springfield and Battle Creek as sharing the same labor market, same purchasing market of goods and services, the same housing market and being affected by the same overall economic influences. Their focus was upon the standard metropolitan logistical area analysis (SMSA). They argued for Battle Creek based upon geographic, economic and operational relationships.

The Union utilizes the SMSA analysis for Marshall as well as comparing some of the traditional factors. With respect to Marysville, they argued primarily population, size of the bargaining unit, per capita income, among others. Based upon the chart of information that follows, an analysis of all of the

exhibits, information and arguments of the parties, the panel determines that Marshall, Marysville, Belding and Dowagiac are considered to be comparable in using Section 9(d) analysis and would exclude the City of Battle Creek.

The chart of the most relevant information is a composite taken from numerous City and Union exhibits and helps to reduce the mass of information into a manageable format. Each of the advocates has been very skilful in presenting arguments in support of their external comparables and if we are to believe each side, they argue that only their comparables should be included and the others are simply outrageously inapplicable. That is obviously not the case.

In explanation of acceptance of the four comparables, the panel has a sense that Springfield is a small community, almost surrounding Battle Creek. Putting aside the labor market approach, the only thing that suggests Battle Creek should be comparable is its proximity. However, that is negated by the sheer magnitude of its population, per square miles, housing units, SEV, and property tax income (see chart attached). Battle Creek dwarfs Springfield and the other communities and thus when you are trying to get a similarity, it simply is much too large. More will be said by the panel regarding the labor-econometric theory later.

If we use the more traditional approach, the size of the departments should be close. Springfield with nine, Marshall with eight and Marysville with nine, Belding with four and Dowagiac with five suggests that they are comparable. Each relies upon

FINANCIAL CRITERIA

	1993 SEV	SEV PER CAPITA	SEV % INDUSTRIAL	SEV % RESIDENTIAL	SEV COMM
BATTLE CREEK	808,538,410	15,102	7.6	48.3	1
SPRINGFIELD	50,036,217	8,964	11.1	41.	3.
MARSHALL	119,427,560	17,331	6.9	54.7	1:
MARYSVILLE	219,897,300	25,825	16.3	50.7	'
BELDING	56,396,900	9,448	10.6	53.9	1.
DOWAGIAC	60,702,000	9,471	10.1	45.9	2(

DEMOGRAPHIC CRITERIA

	DEPARTMENT SIZE	1990 POPULATION	SQUARE MILES	HOUSI
BATTLE CREEK	115 or 90*	53,540	42.8	
SPRINGFIELD	9	5,582	3.8	
MARSHALL	8 (21)**	6,891	5.6	
MARYSVILLE	9 (20)**	8,515	6.9	
BELDING	4 (18)**	5,969	4.8	
DOWAGIAC	5 (25)**	6,409	3.9	

* Union says 90 (U-6); City says 115 (E3, Chart B-U)
** ( ) is size are volunteers

volunteers to a significant degree, with Marshall utilizing 21, Marysville 20, Belding 18 and Dowagiac 25. Thus, the number of available fire fighters is within a reasonable range.

We next look at who these fire fighters serve. The population of Springfield is 5582, which is actually the lowest with next being Belding at 5969, Dowagiac at 6409, Marshall at 6891 and Marysville at 8515. When we are looking at a reasonable mix, the Marshall and Marysville populations are not so large as to be excluded. Mr. Rye's arbitrary use of 50 percent above and below Springfield is just that - arbitrary. It may be helpful to have a large selection to choose from but here it cannot be said that Marshall and Marysville are too large.

Since the fire fighters are serving these population bases, what is the square mileage. Springfield is 3.8, Dowagiac is 3.9, Belding is 4.8, Marshall 5.6, and Marysville 6.9. Again, this is a reasonable mix with all four communities having slightly larger areas than Springfield. Battle Creek at 42.8 square miles simply dwarfs the others.

Looking at the mix of housing units, again Springfield is at 2409, Belding is lower at 2290, Dowagiac at 2624, Marshall at 2894 and Marysville at 3518. The work of the fire fighters protecting housing units seems to be within a reasonable range. Battle Creek at 23,252 is almost ten times that of Springfield.

If we now look at the mix of residential, commercial and industrial properties as a percentage of SEV, we again see ranges which are well within acceptable norms. For example, the

industrial SEV in Springfield is 11.1. It is lower in Marshall at 6.9, Belding at 10.6, Dowagiac at 10.1 and Marysville is higher at 16.3. We cannot say that there is a significant industrial exposure unique to Springfield but rather the relative degree of risk is no greater than the other four.

With respect to the SEV of commercial property, Springfield has 33.7 percent. The next highest community is Dowagiac at 20.1, Marshall at 18.6, Belding at 14.5 and Marysville at 7.7. Assumptively, with more commercial properties, potentially with high rises or multi levels, the risk to the fire fighters would be great. The percentages of SEV is within reasonable ranges, suggesting why they should be comparable.

The percentage of residential SEV is also fairly constant, with Springfield actually lower at 41 percent, next is Dowagiac at 45.9, Marysville at 50.7, Belding at 53.9 and Marshall at 54.7. In other words, the comparable communities have almost half their SEV in residential which suggests a reasonable mix compared to Springfield's 41 percent.

The median value of the homes is another indicator of what the fire fighters are called upon to protect. In Springfield, the median value is $33,400 with only Dowagiac lower at $31,400 and Belding at $38,000, Marshall at $53,000, and Marysville at $67,900, which is slightly higher but the range is not so disproportionate that on this factor alone you would exclude those two.

Returning to financial based criteria, the SEV is an indicator of the amount of property that is eligible for taxation and

obviously is the backbone of the financial resources of the community. Springfield had a 1993 SEV of $50 million, Belding of $56 million, Dowagiac $60 million, Marshall $119 million and Marysville $219 million. It is clear that Belding and Dowagiac are arguably closer in SEV, Marshall and Marysville may be two and four times as high as Springfield. However, we do not look at any individual criteria and give it any more weight than the others. If we only look to SEV, arguably Marshall and Marysville would be "too rich", but we may look for a blend of some higher SEV's such as Marshall and Marysville without jeopardizing the balance of comparables.

Because Marshall and Marysville have higher SEV's than Springfield, it would be natural that the SEV per capita would also be larger. Thus, they should not be excluded solely because of a higher SEV per capita.

With respect to millages and property taxes, Springfield assesses 15.95 against its SEV of $800,000. There is an additional millage that will be discussed under ability to pay later. Belding assesses 15.50 mills and produces $814,000; Dowagiac assesses 17.7 mills and produces $1.016 million. These clearly are within a reasonable range of Springfield. Marshall and Marysville have a higher SEV and also have a relatively high millages which produces $2 million and $3.97 million respectively. Although all of these financial numbers tend to show that Marshall and Marysville could be excluded if those are the only things you are looking at, the other factors, such as size of department, population per square

mile, percentages of SEV dedicated to residential are equally important and when balanced against all of the criteria, these cities should be included.

Proximity is generally an important criteria. Mr. Rye used any community south of the Bay City-Muskegon line. If that was good enough for the City's comparables it also would be good enough for Marysville which is substantially distant, adjacent to the City of Port Huron on the far east side of the state. Marshall, of course, is in the same county and clearly would satisfy almost any proximity factor. Belding and Dowagiac are 70 and 100 miles respectively. The distances are not so extreme as to disqualify any one of the four on proximity alone.

Relative to proximity, we have excluded Battle Creek and it is obviously right next door. Ordinarily, the panel would take a community that is right next door because they share one common denominator. However, the Union has attempted to devalue traditional concepts of population, size of department, square miles, housing units and the like and has sought to use the labor econometric model as an explanation for including Battle Creek. Although that theory may be used in some Act 312's, and the Union suggests the Lincoln Park decision as one such, this panel believes Lincoln Park is distinguishable. Where you truly have a multitude of municipalities contiguous to each other on all sides and you essentially have one flowing region, the Union's argument might make sense. For example, the downriver communities south of Detroit such as Lincoln Park or those in western Wayne County,

merge and blur their boundaries. Thus, a compelling argument for utilization of common labor markets, common housing values and the like might be acceptable.

The panel has not disregarded the testimony of Mr. McMillan and exhibits regarding Fort Custer Industrial Park, or its first and second responses, or some common training with Battle Creek, because although those factors could well be considered by some panels, they are not perceived to be as significant here because the immensity of the Battle Creek square miles at 42.8, the size of its department, its population and its SEV at $808 million, dwarfs Springfield. It produces $10.6 million in property tax revenues with only 14.23 mills. Thus, there is a tremendous financial revenue available to Battle Creek in comparison to the $800,000 in property taxes on 15.95 mills assessed by Springfield and the $600,000 from income taxes not available for general fund expenditures. We are looking for <u>communities</u> that have the proper mix of criteria, not communities who have collective bargaining agreements and economic incentives in those agreements which are most favorable to one party or another. Arguably, because of its size and resources, Battle Creek could easily provide economic benefits which would not be possible for Springfield and the other four comparable communities. The panel does not perceive the City's approach to be rigid and inflexible and by applying most of the City's criteria to Marshall and Marysville, the panel has accepted those communities. As stated above, this panel simply does not believe that the utilization of the U.S. Department of

Commerce SMSA data is the most relevant in this case. The panel does not deny that these communities may share labor markets and share purchasing of goods and services, but that is all that can be said on this record. The other relevant data suggests the inclusion of the other four and the exclusion of Battle Creek.

A word about Dowagiac. The Union vehemently argues to exclude this non-unionized community. Section 9(d), however, doesn't say unionized but says, "in public employment in comparable communities." That a community is not unionized is not per se a legal basis for exclusion.

Policy wise, an argument could be made that the charter or ordinance in the non-unionized community is so grossly unfair to unrepresented employees that the community should be excluded. That was not evidenced here. Since many of the criteria used by the panel are very relative to Dowagiac it should be included.

INTERNAL COMPARABLES

The City offers the internal comparables of the Police Officer's Association of Michigan representing non supervisory police officers (POAM) and the Police Officer's Labor Council, formerly FOP, representing the police sergeants (POLC). The Union counsel during the hearing acknowledged that it is important to know what is going on with the police units. In many instances, either the police or the fire units are the tail wagging the dog. The panel does not recall seeing this issue presented in the Union's brief and it seems that the comment of the Union's counsel

suggests that they likewise would agree that the police bargaining unit information could be considered by the panel relative to the issues in dispute.

ABILITY TO PAY

The panel is charged to consider, Section 9(c), the financial ability of the municipality to meet the costs which would be imposed upon it if the Union's economic proposals were adopted. This employer did not plead poverty in its presentation. It stipulated that it was not posing an inability to pay argument. The City did indicate that it was not inability but an unwillingness which is at the heart of the matter.

Our discussion on comparability related to SEV. There was little discussion regarding the City income tax which obviously is a source of revenue for the City to balance its budget. In 1988, the City assessed a one percent tax on residents and half percent on non residents (TR-1, 89; TR-III, 84). The City Manager testified that the tax generates about $600,000 per year and he also testified that this citizen voted millage is not to be used for general fund purposes but rather for infrastructure improvements or to pay police officers who were laid off. Since the income tax monies are used for those purposes, that means less impact on the general fund for any economic increase awarded. The panel can take into consideration the fact that there is income other than the property tax for this City. The City has not levied the maximum number of mills statutorily allowed by the Home Rules

City Act and has an income tax source. There was no mention of any impending great financial concern that would negate the City's ability to afford any economic increases that might be awarded by the panel.

INTEREST AND WELFARE OF THE PUBLIC [9(c)]

This issue was not a major focus of the hearing. The citizens of Springfield obviously want a fire department that is responsive to the City's needs. The public welfare, according to the Union, would best be served and improved by granting its demands and that those should be given a high priority within the City's scheme of financial obligations. There does not appear to be any particular added weight that should be given to the interest and welfare of the public but to the extent necessary, this factor will be considered as pertinent on individual issues.

COST OF LIVING

The City has presented several exhibits to demonstrate that the C.O.L. index has risen less than the percentage advanced in their wage proposal. They also argue this should be considered as improvements requested by the Union, which would be in excess of the C.O.L. As required, the panel will consider this factor as it may impact each issue.

BALANCE OF STATUTORY FACTORS

None of the other Section 9 factors were persuasively argued

by the parties other than 9(h). To the extent the past history of the unit is important as it relates to the burden of proof to change the status quo, the panel will give weight to Section 9(h).

DISCUSSION OF DISPUTED ISSUES

1. DURATION

Position of the Parties

The City proposed a 2 year agreement to commence when the Act 312 award is entered and for 24 months thereafter. Union proposal is a 4 year contract for the period July 1, 1992 through June 30, 1996.

Summary of Evidence

The Union offered the testimony of Mr. McMillan in support of its position. He testified that historically this unit usually ended up with a 2 year contract, signed not more than 6 months after the settlement. In each instance, the provisions have been retroactive to the first day of the contract irrespective of when the contract was signed. The Union wants 4 years because 2 plus years have already passed and they don't want to have to go into immediate negotiations on a new contract. On cross-examination he admitted that a tentative agreement had been reached during the first 2 years and apparently it took some time for the Union to reject the tentative agreement. The Union stipulated that there had been no 4 year offer during the negotiations; 4 years was first

proposed in these proceedings.

On behalf of the City, Mr. Guida indicated that he had been a member of the City negotiating team and that pursuant to the City Council direction, they only wanted 2 years. 4 years would present a problem because it would violate the Council's directive to the negotiating team and it would negatively impact upon the City's options regarding reorganization and possible development of a public safety department with merged police and fire services.

Joint Exhibits 6, 7, 8, & 9 were offered. Joint 6 is the FOP contract starting 7/1/89 to 6/30/92, joint 7 POAM contract 7/1/89 to 6/30/92, joint 8 POAM contract 7/1/92 to 6/30/95 and joint 9 the labor council contract 7/1/92 to 6/30/96. Relative to joint Exhibit 9, Mr. Guida testified that the City signed the 4 year agreement because the supervisor's Union held back in their negotiations to see what was happening to the others and the City obtained reasonable assurances that they would be able to implement a public safety department with the ability to cross train all new police officers. With respect to both police units, all new employees would sign off on a new form that would allow cross training and development of a public safety department.

Mr. James Jenkins, Public Service Director for the last 3 years, indicated that two officers in the POAM unit signed the above mentioned letters and that a Sergeant Coles had signed the agreement. He was a patrol officer, subsequently was promoted to sergeant. During the proceedings, the Union took the position that these individual agreements are unenforceable if not signed by the

bargaining unit.

Discussion

The existing contract is for 2 years and expires June 30, 1992. The full extent of the bargaining history, and the alleged tentative agreement was not placed before the panel in any evidentiary manner. The file referred to the panel by MERC simply indicates a petition filed by the employer on or about January 3, 1994 indicating that mediation had occurred on February 9, 1993 and May 10, 1993. Attached to the petition were issues in dispute.

At the conclusion of the evidentiary hearing, as agreed prior to the hearing, the panel met in executive session, discussed the issue of duration and then announced its decision to the parties so they could formulate last best offers. The panel discussed both proposals and ultimately concluded that in this non-economic issue the panel was not constrained to the proposal of either party and concluded that the duration should be 3 years commencing July 1, 1992 and ending June 30, 1995. The chair and the City concurred in this award, the Union dissented. The rationale of the majority follows.

Although there has been an historical pattern of 2 year agreements, the City's proposal simply was impractical and possibly unreasonable. Asking for a 2 year contract from when the award is entered is punitive because it would deny wage increases or other economic benefits that might be awarded from July 1, 1992 to the end 1994 when the ultimate award would be entered. Given the

nature of collective bargaining agreements and the review of joint Exhibits 6, 7, 8, & 9, no unit in the City of Springfield has ever had a contract, irrespective of when it was signed, that did not have a retroactive start date to the first day following the expired contract. Without considering retroactivity of individual issues to be awarded, it's very clear that the duration of the contract has always been applied retroactively. Since the issue of continuation language is also before the panel and is a separate issue, without a contract being retroactive to July 1, 1992, there would be significant dispute as to benefits and interpretation of the old contract between July 1, 1992 and the issuance of this final award.

Turning to the Union's proposal of a 4 year contract, the only evidence in support of that proposition is the fact that the labor council negotiated a new contract beginning 7/1/92 to expire 6/13/96 (J9). Although the old contract expired on June 30, 1992, J9 was not signed until December 23, 1993, a full year and a half later. The Union argues that it's almost an identical factual situation here and thus 4 years should be adopted. The panel believes, however, that joint Exhibit 9 is a unique contract in the collective bargaining history of this community. There is no evidence in the record as to why it was a 4 year contract, that is what may have been the motivation of either party. It is noted this contract is only for the <u>four</u> supervisory unit members. The panel noted that the POAM has always had 3 year contracts, and their existing contract will expire June 30, 1995 and thus their

contract and the fire fighters will have identical duration. Although it is also not a large unit, having both of these contracts expire at the same time requires the City, and these two bargaining units, to have serious and mutual understandings regarding reorganization. Since these two units are the majority of the work force and would actually be doing most of the day-to-day work, absent agreement from these units there will be no reorganization. Potential reorganization is a proper issue for the City and the bargaining units to discuss and hopefully to resolve to their mutual satisfaction. Having a 3 year contract for this unit along with the POAM might aid and assist in that process. It would force all parties to start planning for what will happen after July, 1995.

Although the Union presented a compelling argument to create more harmony and to let some time lapse in order to heal potential bad feelings, there is no evidence in this record to support that theory other than pointing a finger towards the labor council's 4 year agreement. A 2 year contract, given the totality of the circumstances, would simply be unfair for the reasons stated above and by adding a 3rd year the panel's award provides some fairness and equity. The panel's objective is to create the agreement which the parties presumably would have negotiated themselves. At no time during the negotiations were the parties considering a 4 year agreement. The discussions were for 2 years. The panel has adopted a 3 year contract, 2 years the parties would probably have agreed upon, with the additional year being added for the time that

has lapsed without a signed contract.

For the foregoing reason, therefore, the award of the panel is a 3 year contract from July 1, 1992 to June 30, 1995.

Dated: 3/8/95

City delegate
Concur ✓; Dissent____

Dated: 3-8-95

Union delegate
Concur____; Dissent ✓

2. WAGES - FIRST YEAR

ARTICLE XV
JOB CLASSIFICATION AND WAGES

(Economic)

The Union's L.B.O. proposes an across-the-board increase of 4% for all classifications, with full retroactivity to July 1, 1992; Article XV, Section 2 to be modified accordingly.

> [N.B. - full retroactivity to include wages, overtime, and any and all other benefits which are related to or based on wages.]

City's L.B.O.:

Section 2: Rates of Pay

During the term of this Agreement the job classifications and rates of pay set forth herein shall remain in full force and effect.

Classification	Steps	Effective the first full payroll period after July 1, 1992.
Fire fighter	Start	$6.58
	6 mos.	$7.05
	1 Year	$7.50
	2 Years	$8.13
	3 Years	$8.77
	4 Years	$9.41
Lieutenant		$10.00
Captain		$10.82

Discussion

The Union has presented its case for a four percent increase in the first year by arguing that the panel should use a "hourly rate" rather than an annual rate because comparable communities do not all have the same basic work schedules. There is some validity to that and the panel does have a difficult time analyzing the hourly, annual, actual dollar and percentage exhibits. The City, in its brief, has used percentages throughout rather than either annualized or hourly figures. It's exhibit, under tab 18, shows the Belding and Dowagiac annual rates and then has Springfield hourly rates, leaving the panel to do calculations. Its L.B.O. had hourly rate per classification. Further, when the panel considered comparability, it did not look at the specific provisions of collective bargaining agreements as to what the wage rates were or how expressed. We were trying to find communities that were comparable on objective data without examining the specific contracts. We will try to use hourly rates.

Predictably, the City's comparables of Belding and Dowagiac

have lower pay scales than does Springfield and conversely Marshall and Marysville, the Union's comparables, have higher rates of pay than Springfield. Why does this not surprise the panel. When considering wages, we need to see not only what is paid in other communities, but we also need to know if this unit does more things than the comparable. The Union's argument that there have been increased duties and therefore they should receive more pay is compelling. The Union suggests that the annual cash compensation for a top fire fighter should be considered and offered Exhibit 30. Although the wages are slightly lower in Springfield than in Marshall and Marysville, in Marshall the total cash compensation is almost identical, $30,052 in Springfield and $30,934 in Marshall. The difference between hourly wages and total compensation is the substantial lump sum holiday pay in Springfield.

If 4 percent is awarded, the new $9.51 rate for fire fighters, Springfield would be just slightly lower than the $10 per hour in Marshall. In Belding, they only work 40 hours rather than 56 hours per week and 2080 hour per year rather than 2912. Although the gross annual salary in Belding looks low, the hourly rate would be $12.49 for the more senior fire fighters. In Dowagiac, the same fire fighter receives $25,984 effective 7/1/92 but we don't know how many hours they work. If they work a 56 hour week, their hourly rate would be $8.92 but if they only work a 40 hour week, their hourly rate would be $12.49. On balance, 4 percent seems more in line with the comparables than 3 percent.

A further factor would be comparison with the police officers who make more per hour than fire fighters. We are not going to try to explain the different rates and whether one service should receive higher wages. That is a City policy issue. We do know that 4 percent on a lower base produces at least equal or probably a slightly greater increase than will 3 percent on a higher base. The City argues strenuously that fire fighters should not be rewarded in arbitration more than what patrol officers accepted in bargaining. But to just talk about percentages ignores the base upon which the percentages are applied and in this case also ignores some of the additional functions the fire fighters have been performing since 1990. The counter argument, of course, from the City's perspective is that as long as the fire fighters are on duty and there are no fire calls, they might as well be doing something to help the City out. This may be true but an additional one percent increase for fire fighters over that given to police officers would not be out of line and when applied to a lower base narrows the current gap between police and fire and moves toward parity.

When we summarize all of this data, we must come back to the reality that the parties are only one percent apart, or roughly 10 cents an hour. It is obvious that the City has the financial resources for such an increase. While the panel recognizes that the cost of living has not been at 4 percent, there is nothing in 9(e) that says that increases can't exceed the cost of living. Given the fact that on an hourly rate Belding makes more than

Springfield and that on total cash compensation a 4 percent increase would put Springfield almost dead even with Marshall, and that 4 percent will move close to parity with the internal comparables, and the panel believes that applying all Section 9 factors that the Union's L.B.O. of 4 percent should be adopted.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur CL; Dissent_____

3. WAGES - SECOND YEAR

ARTICLE XV
JOB CLASSIFICATION AND WAGES

(Joint Issue)

The Union's L.B.O. proposes an across-the-board increase of 4% for all classifications, with full retroactivity to July 1, 1993; Article XV, Section 2 to be modified accordingly.

[N.B. - full retroactivity to include wages, overtime, and any and all other benefits which are related to or based on wages.]

City's L.B.O.

Section 2: Rates of Pay

During the term of this Agreement the job classifications and rates of pay set forth herein shall remain in full force and effect.

Classification	Steps	Effective the first full payroll period after July 1, 1993
Fire fighter	Start	$6.78
	6 mos.	$7.26
	1 Year	$7.73
	2 Years	$8.37
	3 Years	$9.03
	4 Years	$9.69
Lieutenant		$10.30
Captain		$11.15

Discussion

Again in the second year, the difference is one percent between the City's proposal of 3 percent and the Union's proposal of 4 percent. Having granted 4 percent for 1992, a 4 percent rate for 1993 would equate to $9.89 for fire fighters and $10.40 for lieutenant and $11.36 for a captain. We are repeating the analysis in issue 2 and we adopt the same for year two. The City's argument does not dissuade the panel from the same logic that 4 percent in 1992 applies equally in 1993.

For all other reasons articulated in Wages - First Year, the panel adopts the Union's last offer as most closely complying with the relevant section 9 factors.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

4. WAGES - THIRD YEAR

ARTICLE XV
JOB CLASSIFICATION AND WAGES

(Joint Issue)

The Union's L.B.O. proposes an across-the-board increase of 4% for all classifications, with full retroactivity to July 1, 1994; Article XV, Section 2 to be modified accordingly.

[N.B. - full retroactivity to include wages, overtime, and any and all other benefits which are related to or based on wages.]

City's L.B.O.

Section 2: Rates of Pay

During the term of this Agreement the job classifications and rates of pay set forth herein shall remain in full force and effect.

Classification	Steps	Effective the first full payroll period after July 1, 1994.
Fire fighter	Start	$7.05
	6 mos.	$7.55
	1 Year	$8.04
	2 Years	$8.70
	3 Years	$9.39
	4 Years	$10.08
Lieutenant		$10.71
Captain		$11.60

Discussion

Both parties have proposed a 4 percent increase but by the City's proposal, the rate increase is to take effect the first full payroll period after July 1. This is not an unreasonable request

and avoids splitting payroll periods. Since the police officer contracts contain this language, it would make sense at least in the third year of this contract to have consistency. The panel would have made the same suggestion relative to years one and two, but since the panel must take the economic offers as presented, the Union's proposal simply was to have the wages effective on July 1 each year. The panel adopts the City's L.B.O. as more closely complying with the relevant Section 9 factors.

Dated: 3/8/95

City delegate
Concur BG ; Dissent_____

Dated: 3-8-95

Union delegate
Concur ; Dissent_____

5. HOLIDAY PAY

ARTICLE XI, SECTION 1
(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XI, Section 1.

[N.B. - Since the Union has withdrawn its proposed improvement, this is no longer a joint issue and is instead a City issue.]

City's L.B.O.

Section 1: Holidays (Current contract until third year of contract.)

The following days are considered holidays:

1. New Years Day
2. Good Friday (½) one-half day
3. Memorial Day
4. July 4th
5. Labor Day
6. Veterans Day
7. Thanksgiving
8. The day following Thanksgiving Day
* 9. Christmas Eve Day (½) one-half day
10. Christmas Day
** 11. New Years Eve Day (½) one-half day

* Effective 12-24-94
** Effective 12-31-94

Discussion

The employer has proposed changing the contract so that the number of paid holidays would be reduced effective December 24, 1994 and December 31, 1994. Both Christmas eve and New Year's eve would be modified from a full to a half day holiday. While the Union originally proposed a modification, the last offer was to maintain the current language, that is maintain Christmas eve day and New Year's eve day as full days for holiday pay purposes.

The City argues for consistency within the City. The internal police units recognize these as half day holidays. Also, the evidence shows Belding has a full day, Dowagiac has a half day for these holidays.

However, the rest of the story. The parties have historically negotiated that because at least one platoon is working on every holiday, that the fire fighters would receive an annual lump sum for holiday pay which under Article X1, Section 1, is 10-1/2 days. They receive holiday pay in a lump sum equal to 252 hours of pay

each year. Under the City's proposal, the lump sum would be reduced by 24 hours of pay, for a total of 228 hours of holiday pay each year.

The party that initiates a change in the contract always bears the burden to present compelling reasons why the contract should change. Thus, the City has the burden. Captain McMillan testified that both days were increased from half to full days in the 1990-1992 contract (TR-II, 101). Having just negotiated this provision, the City is hard pressed to give a plausible explanation for the "take away". Given the Section 9 factors under either (d) or (h), there appears to be little evidence to support a change. Although apparently patrol officers receive a lump sum payoff, based on the total number of holidays, they do not receive time off and receive pay in lieu. Patrol officers receive 10.5 days, which is what the fire fighters currently receive. Even if the police units consider Christmas and New Year's eve as half days, they still have the same total number of holidays paid in a lump sum. Additionally, the police get time and a half paid if they actually work the holiday. The fire fighters receive time and a half only if they are called into work while off duty on the holiday.

The panel believes that nothing in the internal nor external comparables suggests a compelling reason for change. The status quo of the contract should prevail and thus the Union's last best offer is awarded.

Dated: 3/8/95

Bernard Gruda
City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

6. HOLIDAY PAY

ARTICLE XI, SECTION 2
(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XI, Section 2.

The City's L.B.O. proposes:

Section 2: Holiday Pay

The Employer agrees to pay twenty four (24) hours pay for full-day holidays and twelve (12) hours pay for half day holidays for each holiday whether on or off duty. If in the event an employee is called in to work on a holiday on an overtime basis, he/she shall be paid time and on-half plus the appropriate number of hours of holiday pay.

Discussion

Originally the City proposed to modify Article XI, Section 2 to pay holiday pay only if the bargaining unit employee actually worked the holiday as opposed to the current system of a lump sum for all members of the bargaining unit irrespective of who actually works the holiday. The City's last best offer is the language of the current contract. Since the Union's last best offer is

likewise the status quo, the panel awards maintenance of the status quo or the current language. The only modification is substituting "he/she" for "he" which was agreed to by the parties during the hearing.

Dated: 3/8/95

City delegate
Concur BG; Dissent____

Dated: 3-8-95

Union delegate
Concur ___; Dissent____

7. FLOATING HOLIDAY

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XI, Section 3.

The City's L.B.O.:

Section 3: Floating Holiday (Current contract until 7/1/94)

Effective July 1, 1994, an employee, who has completed his probationary period, is entitled to one (1) floating holiday per year with twenty four (24) hours pay.

Discussion

At the current time the fire fighters receive 2 floating holidays. Originally the City proposed to delete those 2 holidays. Now, its final best offer is to change the contract so that

effective July 1, 1994 there will only be 1 floating holiday. The City characterizes this as modest economic relief. Modest is accurate because even with the awarded wage increases effective July 1, 1994, the savings to the City are in the range from $235 to $250 per unit member depending upon their rank. Given there are but 7 members now instead of the original 9, we are talking about very modest numbers.

This issue is very typical of the several matters before the panel. A test of will power. As we discussed in issue 5, in reducing 2 full holidays to half holidays, the economic impact is modest indeed. Because of the smallness of the unit, the dollars are not significant. But they are symbolic. They mirror a philosophy of negotiating a collective bargaining agreement by proposing take aways as leverage for reductions in the Union's proposed increases. Negotiations have broken down, we are now in arbitration. The panel doesn't have the benefit of what was going on in negotiations, the give and take, and the reasons why take aways were on the table and what was expected in return.

Here the City is correct that if you just look at the comparables on the issue of floating holidays they don't exist in Belding, Dowagiac, Marshall or Marysville. POAM has one day, POLC has none. So the comparables might support the City's proposal.

However, we look at all Section 9 factors not just 9(d). Here, as pointed out by the Union, we must look at the bargaining history, a Section 9(h) factor. Floating holidays attested to by Mr. McMillan are longstanding and the second holiday was agreed to

in 1981. The record suggests that other City employees received Presidents Day as a holiday and according to Mr. McMillan, fire fighters received one more floating day. Once collectively bargained benefits have been awarded, it's very difficult to take them away by compulsory arbitration unless there is an overwhelming compelling reason. Here we cannot ignore the past bargaining history in favor of comparable contracts.

The Union argued through exhibits 23 and 24 that the floating holidays for this unit are similar to paid time off enjoyed in the comparables. When comparing fire fighters with the police internals, we get into the issue of 12 versus 24 hours, and the total amount of work for the police versus fire fighters. These arguments can be used to suit one's purpose. The City points out that a paid day off for a fire fighter is 24 hours of pay. A paid day off for police personnel is 8 and at the most 12. Thus, eliminating one day saves the City money. There are not significant differences internally such that the City can show why a major change should be made in the holiday program.

For the foregoing reasons, the panel's recommendation is that the last best offer of the Union is awarded insofar as the moving party has not demonstrated a compelling need for its offer.

Dated: 3/8/95

Bernard Gruda
City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

8. PERSONAL LEAVE

ARTICLE XI, SECTION 4

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XI, Section 4.

City's L.B.O.:

Section 4: Personal Leave Day

The City's Last Best Offer is to eliminate this Section effective July 1, 1994.

Discussion

Presently, fire fighters receive 3 personal leave days of 24 hours each. These days are granted by the Chief upon request but they are not to be a cause for overtime pay for a replacement. The City's offer is to eliminate this provision by 1/19/94, the third year and the Union's offer is the status quo, the current language.

As stated in the prior issue, comparables are but one area to look at and the bargaining history is equally important. Mr. McMillan testified that personal leave is a longstanding benefit which he described as equivalent to the 2 "stress days" enjoyed by the police units. Although it was 2 days until the 1990 contract, for whatever reason (not disclosed in the record), the parties negotiated an additional day. The City used the external comparables in support of its position that total leave days in

Springfield are greater and thus leave days should be taken away. Collective bargaining history along with the internal comparables suggests that the City has not sustained its burden.

The patrol unit receives 3 personal days and the sergeants unit receives 6 days. It would be ill-advised to reduce the fire fighters to less than the units in the City. Even if they get 24 hours pay versus 8 or 12 hours for the police units, that by itself is not sufficient to take away what was just bargained. Since the concept of personal days seems to be deeply rooted as a policy within the City, it would not be appropriate for this panel to take away 3 personal leave days creating disparity of treatment within the internal units.

For the above reasons, the last best offer the Union is awarded as consistent with the Section 9 criteria.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

9. RETIREE HEALTH INSURANCE

ARTICLE XIII, SECTION 3

(Economic)
(Joint Issue)

The Union's L.B.O. is to add the following new paragraph at the end of Article XIII, Section 3:

"For employees retiring on or after July 1, 1994, the retiree health insurance benefit as set forth above shall apply, <u>except</u> that no capped premium rate shall apply and the City shall assume the full cost of all insurance premiums."

City's L.B.O.:

<u>Section 3: Retiree Health Plan</u>

The Employer agrees to allow retired members of the Association to continue in the group health insurance plan of the City. Provided that the Employer shall pay the full premium, for the retired member as well as the member's dependent spouse and/or children, which shall be capped at the rates in effect at the time the employee retires and further provided that group insurance shall cease upon obtaining employment which provides a health care plan to its employees. The retired member shall have the right to return to the Employer group health insurance upon ceasing other employment where a health care plan was provided. At such time as a retiree is eligible to enroll in Medicare (as provided by Federal Law) the employee, if a member of the City's insurance group, shall enroll with the group insurance becoming supplemental to Medicare. The City will pay the premium for the supplement subject to the respective retiree's capped premium provided for above.

<u>Discussion</u>

Presently, the City pays the total monthly rate for group health insurance for a retiree and his dependents subject to the amount being capped at the rate when the employee retires.

The Union's last best offer is to have the City pick up 100% of the annual rate for all bargaining unit members retiring on or after January 1, 1994. The City's original offer during hearing was to require retirees to pay 50 percent of all premium increases occurring from 1992 forward regardless of when the employee retires but its last best offer is to maintain the status quo.

Although this is a joint issue, the Union has the burden insofar as they are proposing an increase in the benefit. They argue the City has general fund revenue increases from increased property taxes, has never pleaded poverty, and apparently has the ability to pay. The Union argues that retirees are on fixed incomes which are eroded by the cost of living and it's a hardship for them to pay increased premium costs. This ignores the reality that many fire fighters while employed develop occupational skills which can be pursued on a full time basis after retirement. Although there is no specific evidence here, the panel can take cognizance of this reality. Also, the Union now wants the panel to apply Section 9(d) comparability evidence as being overwhelming in support of its proposal. Yet it argued that Section 9(d) comparability should not be the more important but rather bargaining history in its holiday presentation.

The City suggested there is a legitimate reason why existing contract language should be sustained. Internal bargaining units have a cap at the rates in effect at the time of retirement. Additionally, the City only covers the police person not the group or family rate as they do for fire fighters. The Union attempted

to negate the internal comparables having accepted a continuation of the cap as outweighed by the Union comparables in Marysville and Marshall that provide the benefit level that the Union seeks here. But, the Union ignores the fact that in Belding there is no provision for health insurance benefits for retirees. Dowagiac has a provision which effective after October 1, 1984 places a cap of one-half the costs of premiums attributable to the employee only. Thus, the City's comparable have lesser programs than Springfield, and the Union's comparables have provisions which support the Union's position. The panel cannot help but note with some irony the proposed comparables of each party just happen to have provisions in their contracts which support the proponent's best offer.

A further word on this proposal. The Union has structured its proposal to be effective on January 1, 1994, the third year rather than the first or second year. This obviously inures to the benefit of 2 members of the unit who did retire after July 1, 1994. In effect, if the Union's proposal is granted, it would be providing a retroactive benefit to these two members who retired after July 1, 1994.

Based upon the above discussion, the panel's recommendation and award is that the City's last best offer more closely complies with the relevant factors of Section 9.

Dated: 3/8/95

Bernard Gruda
City delegate
Concur BG ; Dissent____

Dated: 3-8-95

Union delegate
Concur_____; Dissent_____

10. HEALTH INSURANCE

ARTICLE XIII, SECTION 2 AND 4

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XIII, Sections 2 and 4.

[N.B. - Notwithstanding the above, the Union proposes new additional language as set forth under separate issues #11 and #12 herein.]

The City's L.B.O.:

Section 2: Group Health Insurance

The Employer shall provide paid, to each member, full coverage at family ward rates, Blue Cross/Blue Shield Medical and Hospitalization Insurance, MVF-1 plan with prescription rider and Master Medical. Such insurance shall provide coverage to the member and all his/her dependents as defined under the policy.

The Employer has implemented an 80-20 deductible plan with $5 prescription co-payment.

During the first two (2) years of this Agreement, the Employer will pay the entire premium for the employee and his dependents. The Employer reserves the right to substitute another carrier, provided, the coverage is comparable. Effective July 1, 1994, each employer eligible for health care coverage shall contribute, on a monthly basis, through payroll deduction, towards the cost of

health care coverage in accordance with the following schedule:

TYPE OF COVERAGE	MONTHLY EMPLOYEE CONTRIBUTION
Single	$11.00 per month
Two Person	$23.00 per month
Family	$25.00 per month
Family Continuation	$5.55 per month/dependent

Employees will continue to pay the full cost for dental and optical coverage.

Section 4: Dependent Continuation

The Employer agrees to contribute toward the cost for health insurance coverage, subject to the applicable caps elsewhere in this Article, for the current month plus one month to provide coverage to dependents of any employee or retiree upon that member's death. The Employer further agrees, subject to COBRA of 1985, that dependents may continue with the City's group health insurance plan provided that such dependents pay the entire premium and provided further that remarriages would terminate coverage under the plan with no reinstatement right.

11. DENTAL INSURANCE

(Economic)

(Union Issue)

The Union's L.B.O. proposes to add the following language at the end of Article XIII, Section 2:

> "Provided, however, that effective January 1, 1995, the City shall pay the full premium cost for dental insurance for employees and their dependent; the level of dental insurance benefits shall remain the same."

The City's L.B.O. is to maintain status quo.

12. OPTICAL INSURANCE

(Economic)
(Union Issue)

The Union's L.B.O. proposes to add the following language at the end of Article XIII, Section 2:

> "Provided, however, that effective January 1, 1995, the City shall pay the full premium cost for optical insurance for employees and their dependents; the level of optical insurance benefits shall remain the same."

The City's L.B.O. is to maintain status quo.

Discussion

The City's last best offer is a total redraft of Section 2 and is substantially different from their proposal at the time of the hearing. The City pays a total monthly subscriber rate for group health insurance for employees and dependents. Employees pay the full cost of any dental and optical coverage and as we've seen in the previous issue, the current contract provides for the capping of retiree health care benefits at the rate in effect at the time that the employee retires.

The City wants a substantial cost containment health insurance program. In lieu of the current language, Section 2 is revamped to provide for employee contribution toward premium costs effective July 1, 1994, add new language giving the employer the right to substitute another carrier Blue Cross/Blue Shield, reference to implementation of an 80/20 deductible plan, and a $5 prescription

co-payment. Although the dental and optical is an Union issue, it will be discussed here along with Sections 2 and 4, but separate awards will be made on both dental and optical.

From the testimony of Mr. Guida, quoted in their brief, the City has made it very clear that City Council gave the bargaining committee direction that it must have a contract with cost containment (TR-II, 129). Mr. Guida supported that policy directive by illustrating the rising costs. The single person rate in 1990 was $133.74 and had jumped to $169.60 in 1992. For a family, in 1990 the rate was $299.29 and was $383.43 in 1992. In 1993 the single rate was $188.26 and the family rate had gone up from $383.43 to $425.22 per month. Both 1992 and 1993 have already passed and the City has already paid those rates thus, there could only be cost containment in the third year of the contract beginning July 1, 1994. However, Mr. Guida's testimony at TR-II, 131 shows that for 1994 the overall cost has been the same. There has been no increase for "94 rates". Given this as evidence and testimony it is hard to understand how the City's comprehensive change in Section 2 is justified.

The City prefaced its proposal in its brief by quoting from Arbitrators St. Antoine and Sugerman to the effect that Act 312 panels are trying to effectuate an award that the parties most surely would have negotiated had they been able to voluntarily agree. This chair concurs. But when applied to the facts of this case, how is the panel to know what the parties might have voluntarily agreed to if this most comprehensive change to Section

2 was not presented to the Union for negotiation. Since it is a dramatic change, the Union presumably would have said no or bargained something else to accept it. Conversely, if the City wanted something different from the current language but less than what its last best offer is, it may well have compromised on other economic issues. This panel is in the dark as to what bargaining would have ensued and what the parties most likely would have agreed to because on this health issue, the last offers are extremes.

The City argued the internal comparables, voluntarily agreed to a form of employee contribution and that Section 2 is a mere image of those contracts. Even if that is true, and even though the City wants uniformity amongst these units, the proposal is so dramatically different from what was presented at the hearing and since there was no total cost increase in 1994, the panel cannot abide by the City's "new wish list" and declines such invitation. The external comparables likewise essentially support the status quo. City exhibit 10 shows that Belding provides full health, dental and vision. Dowagiac pays 100% of health and dental.

Relative to dental and optical coverage, the Union has proposed that the City pay the full premium for these coverages for employees and dependents if they elect the coverage. The City's internal comparables do not receive paid dental benefits nor do they receive employer paid optical. Only Marysville has an optical insurance plan and Marshall has a $200 dollar annual maximum reimbursement. Belding has a vision coverage and Dowagiac does

not. Given the comments above regarding the regular health plan, the panel cannot find in this record that there is evidence to change the status quo for optical and dental. This Union "wish list" is not supported by the record and is clearly contrary to the City's well articulated efforts for cost containment. The internal comparables pay for this coverage if they elect it.

On Article XIII, Section 2 and 4, the panel finds that the Union's proposal for status quo closely effectuates the purposes of Section 9 and is so awarded. On the issue of dental care, the panel awards the City's last best offer of maintenance of the status quo as most closely effectuating the Section 9 factors. On the issue of optical care, the panel awards the City's L.B.O. of status quo.

OPTICAL AND DENTAL:

Dated: 3/8/95

Bernard Finda
City delegate
Concur BG ; Dissent_____

issue: 11 + 12

Dated: 3-8-95

Union delegate
Concur_____; Dissent

Article XIII section 2 & 4

DATED: 3/8/95

City Delegate Bernard Finda
CONCUR _____ ; Dissent BG

13. PENSION FINAL AVERAGE COMPENSATION

ARTICLE XIV

(Economic)
(Union Issue)

The Union's L.B.O. proposes to add a new section to Article XIV providing as follows:

Union Delegate

ISSUE: 10

Dated: 3-8-95

Concur ; Dissent:

"Effective for all employees retiring on or after July 1, 1994 Final Average Compensation shall be based on three (3) years rather than five (5) years."

The City's L.B.O.:

Section 1: Act 345 Retirement

The employees covered by the pension provisions of Public Act 345 of 1937 shall, effective July 1, 1988, contribute 6% of their pay and have their retirement benefits calculated on the basis of 2.5% of final average compensation multiplied by the first twenty five (25) years of service credited, plus 1% of final average compensation for each year or fraction after twenty five (25) years up to a maximum benefit equal to 70% of final average compensation.

Discussion

This is a Union issue and they propose to add to the contract that for employees retiring on or after July 1, 1994, the final average compensation (FAC) should be based on 3 rather than 5 years. The City's last best offer is maintenance of the status quo.

Pension benefits along with wages and health benefits are significant economic issues. Pensions are also complicated because many individual factors are interrelated to develop the benefit. Since there are several factors, all of which are negotiated, benefits vary widely from city to city.

The concept of final average compensation is the base upon which a multiplier is used to determine a defined benefit plan.

As compensation generally peaks near retirement, it is obviously better to have the average of your last 3 years rather than the average of your last 5.

In support of its position, the Union states that Marshall has an FAC of 3 years and Marysville has only 1 year FAC. The Union through exhibit 30 attempted to show what might happen to a typical employee in Marshall and Marysville and Springfield if the FAC was changed. However, to do that they also had to use the multiplier which in Springfield, Marshall and Marysville is the same, 2.25 and that's multiplied against 25 years in Springfield, 25 in Marysville and 30 in Marshall. Assuming the validity of these numbers, the illustrated annual benefit in Springfield would be $20,442, Marshall $21,271 and Marysville $23,748. Because of the uniqueness of Marysville's 1 year FAC and high wage, the panel ought not to rely upon that statistic. In reality, what we are dealing with is a comparison of Springfield and Marshall and the difference would be $829 per year. Marshall and Springfield's total formula is very similar with Marshall total percentage being 67.5 and Springfield also 67.5 using the U-30 exhibit. Thus the sole distinction using a 3 year versus a 5 year FAC according to this exhibit is $829 per year.

The next question is what would it cost to fund this benefit. Actuaries give estimates of the accrued unfunded liability given the composition of the fire fighters unit, their age seniority, potential retirement ages and the like. The updated actuarial study is Union exhibit 35-A and the cost estimate of the Union

proposal is exhibit 35-B. Actuarial assumptions used were the accrued liabilities amortized over 3 years, assumed rate of interest is 6.5% and that payrolls increase at 3.5% per year. The actual cost of the 3 year FAC would be .93% of fire fighter payroll or .3% of total retirement system payroll. Excluding Mr. McMillan, the first year cash contribution increase would be $2,469.

As of July 1, 1994, contributions committed to meet the financial objects of the system amount to 12.83% of payroll for the City of Springfield Police and Fireman Retirement system. The total normal costs are 17.27%, less member contributions of 5.44%, plus amortization equals the 12.83 total. The Union's FAC proposal would be added to the 12.83%, or 13.13%. According to page C-6, the unfunded accrued liability to the system is $7,006 or 1% of payroll. The actuaries at page A-13 concluded the plan is in good financial condition.

Another issue to consider is what resources are available to fund any increase. Record testimony is that the City's contribution does not come out of the general fund but from a special unlimited millage afforded by the voters that allows the City to assess necessary millages for police and fire pensions. On July 1, 1994, the special pension millage was reduced to .7582 from .9500. The SEV is $50,036,217 and produces $37,937 at least based on 1993 numbers. As of December 31, 1993, covered payroll in the pension plan including police was $688,464. If the City's cost is 12.83% of payroll that would be $38,835. Thus, the current millage would produce almost enough money to make the contribution

for the fiscal year July 1, 1994 based upon 1993 SEV and December 31, 1993 total payroll. Assuming there is a slight increase in the SEV for 1994, it is conceivable that the existing millage rate might be close to producing the .93% of fire fighters payroll needed to fund the normal costs and the unfunded accrued liability for this improved FAC.

In this context, Mr. Guida indicated that .7582 mills generate $35,700 and that's what was imposed in July tax bills and is the amount in the 1994-95 budget. Mr. Guida also testified that 1 mill produces about $55,000 and if that were accurate then .7582 would produce $41,701. Mr. Guida also testified that in the 3 years he has been here, no general fund monies have been used. Only the special millage funds the City's retirement contribution.

In evaluating this issue, past history is important. The City prefers not to lower the FAC because it creates a permanent increase in future funding obligations. It prefers to provide "windows of opportunity" at select periods of time for employees to retire with enhanced benefits. Since 1988, there have been 3 persons who, with City discretion, were able to use 3 year FAC. With respect to Mr. McMillan, the record is silent whether he retired under the 5 year FAC or would be covered under a 3 year FAC if the Union proposal is adopted. The same is true of the other individual who has retired. The Union argues that allowing City management the option to individually consider an employee request for change in the FAC is arbitrary. The contract should lock in the 3 year FAC. Mr. Guida said that passing on the cost of an

improved benefit plan to the community via the millage is not the approach that the Council wants. They desire all options and to make ad hoc decisions.

The issue then is whether the Union's FAC proposal has support in the record and the internal and external comparables as well as other Section 9 factors to put into place a contractual provision which will bind the City indefinitely, versus the City's current position of reviewing an individual employee request for a three year FAC which historically the City has granted on three occasions since 1988.

As noted, Marshall has a three year FAC and Marysville has one year. Neither Belding nor Dowagiac have FAC's because they don't have defined benefit programs but rather defined contribution plans for their employees. The FAC has not been improved for at least 21 years, but the City has since 1988 allowed individuals to retire with three year FAC. There are now seven persons listed in the bargaining unit, each of those members contribute 6 percent of their pay to their pension.

It is the recommendation of the Panel that the Union's proposal for a three year FAC be adapted as being consistent with what has been done on a voluntary basis at least three times since 1988 and the fact that the same is not cost prohibitive.

It obviously has a cost as explained above, but the already reduced special millage rate of .7582, which is already on the books for 1994, may well cover anticipated costs for this year if Mr. Guida's estimate of the SEV producing $55,000 per mill holds

true. The suggestion by the Union that the two police units are slightly distinguishable seems persuasive. The City of course argues that the five year FAC for police requires internal consistency for bargaining units in the City. However, police only contribute 5 percent rather than 6 percent. Also, fire fighters have had the same FAC for over 20 years and for some reason the police units have had less generous pension programs and it was only in 1992 that the multiplier was raised from 2 to 2.5 for the police.

There has obviously been significant differences between the police and fire pension plans and the panel won't make any inferences as to why. However, the fact that this unit would now have a three year FAC is not incompatible with that longstanding pattern. The fact that there hasn't been a FAC change in a long time, that it seems to be affordable within the existing millage and removes the potential abuse of discretion or arbitrariness from the City are compelling reasons for the three year FAC. Accordingly, as it relates to the FAC factor, the Union's last best offer more closely approximates the factors of Section 9.

Dated: 3/8/95

Bernard Gruda
City delegate
Concur ; Dissent X

Dated: 3-8-95

Union delegate
Concur ; Dissent

14. PENSION FORMULA

ARTICLE XIV

(Economic)
(Union Issue)

The Union's L.B.O. proposes to add a new section to Article XIV providing as follows:

> "Effective for all employees retiring on or after January 1, 1995, their retirement benefit shall be calculated on the basis of 3.0% of Final Average Compensation up to a maximum benefit of 75% of Final Average Compensation."

The City's L.B.O. is maintenance of the status quo.

Discussion

The Union's last best offer, as a moving party on this issue, is to increase the multiplier to 3 percent each year from the current 2.5 and increase the maximum benefit to 75 percent of FAC, the current maximum is 70 percent. The City offers to maintain status quo.

Without repeating the discussion in the preceding issue, all that information is relevant here. However, the conclusion to be deduced from the information suggests that the City's last best offer to maintain status quo should be adopted rather than the Union's. There is no record evidence that 3 percent multiplier is available in any of the comparables since we have excluded Battle Creek. The most important consideration, of course, is the cost, which is an additional $11,866 per year equal to 3.92 percent of fire fighter payroll, or 1.76 percent of the total payroll

according to the actuary (Union Exhibit 35B). While the three year FAC is reasonable and affordable, to also increase the multiplier would create fiscal uncertainties and require the City Council to increase the special millage, obviously not a desired result. If this were adopted, since the 1994 millage has already been authorized, a substantial unfunded accrued liability would have to be made up in 1995. To dramatically increase the multiplier to 3 percent would probably interpose too great a disparity and create greater internal inconsistencies than was evidenced by the past history. Marshall's multiplier is 2.25 and Marysville's is 2.25. Even the Union's comparables don't suggest a change.

For the foregoing reasons and based upon the above information and those in the preceding issue, the City's last best offer more closely approximates the Section 9 factors than does the Union's proposal and it is awarded.

Dated: 3/8/95

City delegate
Concur ✓; Dissent_____

Dated: 3-8-95

Union delegate
Concur_____; Dissent ✓

15. LONGEVITY PAY

ARTICLE XII, SECTION 1

(Economic)
(Union Issue)

Union's L.B.O.:

Effective December 1, 1994, the Union proposes to modify Article XII, Section 1 to provide as follows:

> "Employees who are in the employ of the City as of December 1 and have completed seven (7) years of continuous service with the City as of that date shall qualify for a lump sum longevity payment in the first pay period following said December 1. Such lump sum is to equal three percent (3%) of his previous fiscal year base pay excluding overtime pay, or any special allowances. Employees with twelve (12) years of service shall be paid five percent (5%) of this previous fiscal year base pay as outlined above."

The City's L.B.O.:

Section 1: Longevity Pay

Employees who are in the employ of the City as of December 1, and have completed seven (7) years of continuous service with the City as of that date shall qualify for a lump sum longevity payment in the first pay period following said December 1. Such lump sum is to equal two percent (2%) of his previous fiscal year base pay excluding overtime pay, or any special allowances. Employees with twelve (12) years of service shall be paid four percent (4%) of this previous fiscal year base pay as outlined above.

Discussion

The Union, proposing a change, is the moving party. The Union proposes to increase the longevity pay from the current 2 percent for persons with seven years of service to 3 percent, and to increase the current 4 percent for 12 years of service to 5

The Union's witness Ron Johnson testified that increased longevity will provide a greater incentive for employees to stay with the Springfield Fire Department. However, the most recent retirees retired after the full 30 years. The longevity benefit doesn't appear to affect whether a person stays or not. It simply reflects that the longer you are employed, it is an incentive to stay through retirement, as from year 12 on, you get 4 percent of your pay.

Of the external comparables, Dowagiac has no longevity pay and Belding pays $232 per year in longevity for 7 year employees, $252 for 12 year employees. By comparison, Springfield employees receive $532 and $1,065 respectively from their current contract. Of the Union's comparables, Marshall, is 1.4 percent for 7 years, 2.4 percent for 12 years, both under the existing 2 and 4 percent in Springfield. Marysville has 2.5 percent for 7 years and 3 percent for 12 years. Internal comparables have 2 percent at 11 years and 4 percent at 14 years.

Since the Union has the burden on this issue, the record evidence doesn't support the proposal either with external or internal comparables or policy considerations. The award of the Panel is that the City's best offer is accepted. Maintenance of the current contract complies more favorably to the Section 9 factors.

Dated: 3/8/95

Bernard Gruda
City delegate
Concur TG; Dissent_____

Dated: 3-8-95

Union delegate
Concur_____; Dissent ✓

16. OVERTIME FLSA PAY

ARTICLE XV, SECTION 3(A)

(Economic)
(Union Issue)

Union's L.B.O.:

Effective thirty (30) days after issuance of the Act 312 arbitration award, the Union proposes that Article XV, Section 3(A) be modified to provide as follows:

> "Pursuant to the requirements of Section 207(k) of the Federal Fair Labor Standards Act (29 U.S.C.) provisions for public employees engaged in fire protection, a work period of seven (7) consecutive days is designated. All hours worked in excess of fifty three (53) hours during the designated work period shall be paid at a rate of pay which is one and one half times the regular rate of pay. Such FLSA overtime pay shall be paid with the employee's regular paycheck."

City's L.B.O.:

Section 3: Overtime

(A) Pursuant to the requirements of Section 207(k) of the Federal Fair Labor Standards Act (29 U.S.C.) provisions for public employees engaged in fire protection a work period of twenty eight (28) consecutive days is designated. All hours worked in excess of two hundred and twelve (212) hours during the designated work period shall be paid at the rate of pay which is one and one half

times the regular rate of pay.

Discussion

This is a Union issue effective 30 days after this award, to modify Article XV, Section 3(A) to provide for a work period of 7 days for purposes of FLSA (Federal Fair Labor Standards Act) pay as opposed to the current work period of 28 days. Overtime pay would be actual hours worked at the end of every 7 days rather than every 28 days. The City's last best offer is to maintain the current contract.

The Fair Labor Standards Act allows use of 28 days for purposes of determining overtime for fire fighters. The Act also permits something less. In the existing system, fire fighters work 56 hours per week, which is based on a pattern of 216 scheduled hours in a 28 day period. Then there is another 216 hours for the next 28 day period, and then 246 hours the following 28 day period. At the end of each 28 day cycle, if a fire fighter worked the 212 hours he receives one-half day for those hours over 212. If he worked all scheduled hours during the cycle, he is entitled to half-pay for the extra 28 hours or 14 hours of pay. During the short cycle with no time off, he receives an extra one-half time pay for four hours.

If a 7 day period is utilized, the standard for fire fighters is 53 hours, and since a fire fighter normally works 56 hours, he would receive one-half time for the extra 3 hours.

Mr. Johnson suggested that under the existing system employees

avoid taking time off during the long cycle because of the extra pay. As a result, he claims that even when they are sick they show up, potentially spread germs to other employees, which in turn causes more sick time, those people go off work, which increases overtime costs. He also suggested that it creates a conflict with vacation leave since fire fighters want to take vacations during the short cycles rather than the long cycles to avoid losing overtime.

Of the comparables, Marshall presently pays overtime on the same basis as Springfield, hours worked in excess of 212 in a 28 day work period. Marysville pays for all scheduled work days. Belding pays overtime based on hours worked in excess of 80 in a pay period, and Dowagiac has no provision for overtime. Thus, external comparables lend little support to the Union's argument. In fact in their brief they say the comparability factor "is not particularly instructive."

If the comparables are not instructive, the only basis is Mr. Johnson's testimony. On cross examination, he was unable to calculate what this increased benefit might cost the City. Since it is predicated upon subjective behavior of employees, it would be speculative whether this change would impede the fire fighters from reporting when sick or would alleviate the alleged conflict with scheduling vacations. Since the Union has the burden of proof, they must come up with information which the Panel must rely on as to why the status quo should be changed. The Panel believes that the information presented is not compelling and there is no

significant reason why the contract should be changed. Accordingly, the last best offer of the City is awarded as the current contract language as being more compatible with the Section 9 factors.

Dated: 3/8/95

City delegate
Concur ✓; Dissent____

Dated: 3-8-95

Union delegate
Concur____; Dissent ✓

17. FUNERAL LEAVE

ARTICLE VII, SECTION 8

(Economic)
(Union Issue)

The Union proposes, effective upon issuance of the Act 312 award, to modify Article VII, Section 8, by adding the following at the end of the definition of immediate family:

", or any person as to whom the employee is legal guardian."

The City's L.B.O.:

Section 8: Funeral Leave

Permission to take paid leave to make arrangements for or to attend the funeral of a member of an employee's immediate family as defined below shall be granted by the Employer. Such leave shall not exceed two (2) consecutive scheduled twenty-four (24)

hour work days. Under conditions of an unusual nature, extension of the funeral leave may be granted with the permission of the chief and the approval of the City Manager.

Immediate family is to be defined as: mother, father, stepparents, brother, sister, current spouse, son, daughter, stepchildren, current mother-in-law, current father-in-law, current brother-in-law, current sister-in-law, current daughter-in-law, current son-in-law, grandparents, grandchildren.

Discussion

This is a Union issue and the Union proposes that Article VII, Section 8, definition of immediate family be expanded to include "any person to whom the employee is legal guardian" in order to be eligible for paid leave not exceeding two consecutive scheduled 24 workdays. The City proposes maintaining the current language.

The Union support for this proposal is what they call fairness and equity. According to Mr. Johnson's testimony, on two occasions a fire fighter used vacation or personal leave time to attend the funeral of relatives that the fire fighter had been appointed by a court as legal guardian. They analogize that this should be the same as attending the funeral of a immediate family member. In other words, they want to expand the funeral leave time off rather than using some other paid time off.

None of the comparable communities has a provision for legal guardian. However, the Union argues that since Marshall and

Marysville have more expanded definitions of immediate family then Springfield should have an expanded definition also.

As the City points out, the immediate family definition is fairly expansive and would cover most situations. Appointment of legal guardianship is clearly very unique and may never happen again. Since employees have two days off for every day they work, the situation may never arise when a scheduled day is needed as time off. If it needs to be taken off, the employee can be paid if he utilizes a personal leave day, floating day or vacation day.

Since the Union has the burden of proof on this issue, the Panel does not believe that the information provided is compelling to meet that burden. Accordingly, the City's last best offer is awarded which is the current contract as being most closely meeting the criteria of Section 9.

Dated: 3/8/95

City delegate
Concur BG; Dissent____

Dated: 3-8-95

Union delegate
Concur____; Dissent

18. EDUCATION INCENTIVE PAY

ARTICLE XVII, SECTION 12

(Economic)
(Union Issue)

The Union's L.B.O. proposes to add the following at the end of Article XVII, Section 12:

> "Effective January 1, 1995 the City shall reimburse employees for tuition paid for any college courses taken in order to obtain a degree in Fire Science, or any courses taken for Fire Officer or EMT certification or recertification, provided the employee successfully completes and passes the course."

The City's L.B.O.:

Section 12: Educational Incentive Pay

For those members of the bargaining unit who achieve an Associates Degree, a one (1) time bonus of one hundred dollars ($100.00) will be paid at the time of attainment. For those members who receive a Bachelors Degree, a one (1) time bonus of two hundred dollars ($200.00) will be paid at the time of attainment.

Discussion

This is a Union issue. At the present time, the unit members who achieve an Associates Degree get a one time bonus of $100, and then who receive a bachelor's degree, get a one time bonus of $200. Originally, the Union's offer at the time of the hearing was to increase those numbers to $200 and $400. The current last best offer of the Union is to add a new paragraph at the end of Article XVII, Section 2. The effect is on January 1, 1995, employees would be reimbursed by the City for tuition of any college course taken to obtain a degree in fire science, or any course taken for fire officer or EMT certification.

Mr. Johnson testified that their proposal was an incentive to

higher educate the department, and therefore indirectly benefit the department and public served by the department. The Union argues that in Marshall, by policy and/or past practice they pay for tuition for classes needed to obtain any type of degree in fire science, and in Marysville, the city pays tuition for courses which their employees successfully complete if approved by the city. Contrarily, the City says there is no educational incentive in Belding or Dowagiac. In the internal units, the incentive is the same for associate or bachelor programs.

Since the Union has the burden on this economic issue, they have not shown what the benefit would cost, nor can they substantiate what officers are currently enrolled in any college courses leading to fire science degrees. While it is clearly a laudable objective to have a more educated staff, the proposal by the Union is contrary to the position that it took at the hearing. Rather than just increasing the bonus incentives, the L.B.O. would require the City to pay for a college education for the members of the unit. While certainly laudatory, and has only nominal appeal to the public interest, it does not have any support under Section 9 factors. It is not the type of new program to be awarded in arbitration, but rather the kind of incentive that should be collectively bargained and mutually agreed during the give and take of a total contract. For the reasons stated above, the City's last best offer more closely approximates the Section 9 factors and it is hereby awarded.

Dated: 3/8/95

City delegate
Concur ✓; Dissent_____

Dated: 3-8-95

Union delegate
Concur_____; Dissent ✓

19. UNIFORM JACKETS

ARTICLE XVII, SECTION 2

(Economic)
(Union Issue)

The Union's L.B.O. proposes to add the following language at the end of Article XVII, Section 2, effective thirty (30) days after issuance of the award:

> "The City shall also provide to each current employee, and to each new employee upon hire, one (1) uniform winter jacket, said jacket to be of 3/4 length with insulated zip-out liner and having a patch and badge holder. The City and Union shall agree on the particular uniform winter jacket to be purchased prior to purchase."

The City's L.B.O.:

Section 2: Uniforms

It is the policy of the City that the Fire Fighters shall be required to wear their dress uniforms only when acting as an official representative of the City of the Department. While on duty, the employee shall be required to wear his work uniform. In accord with the policy, the Employer agrees to furnish each new Fire Department employee with the following:

1 long sleeved dress shirt	1 short sleeved dress shirt
1 pair dress pants	1 black tie
1 dress belt	1 dress blouse
1 dress uniform cap	3 badges
2 pair work uniform pants	1 work belt
2 long or short sleeved work shirts	1 pair work coveralls

Discussion

This is a Union economic issue. The last best offer of the Union is to require the City to provide winter jackets of three-quarters length with a zip-out liner with a patch and badge holder. The City and Union shall agree on the particular jacket to be purchased. The City's offer is status quo.

Apparently, there is a $600 uniform allowance and the City's response is the allowance is more than adequate for winter jackets if they want one. The City also argues that requiring the Union to approve what the City might purchase infringes upon the management rights.

Mr. Johnson testified that their proposal was based on Department Order G7 (Union Exhibit 44) that requires employees to be in uniform during their shift, which among other enumerated items, includes "dark blue jacket." In colder weather when they have to be outside, the Union believes that for fire inspection work, training classes, responding to emergency medical runs, being in and out of the vehicle, they should have a dark blue winter jacket.

Director Jenkins testified that G7 does not require the City to purchase the winter jacket as employees can use turnout gear for

medical runs. His testimony was accurate, but not necessarily complete. He did concede that he wanted standardized clothing for a "snappy professional outfit" while representing the City, and was the genesis of order G-7. He agreed that police officers have winter jackets paid by the City. Ultimately, he agreed that fire fighters, who are in and out of their vehicles, are no less different than police officers who are in and out of their vehicles during the winter. The City does provide winter jackets to police officers, which Mr. Jenkins said cost between $80 to $100. Of the external comparables, Marshall provides a winter jacket and Marysville does not. Dowagiac provides a winter uniform, and although there is no reference in the Belding contract to a winter uniform, apparently through the testimony, the uniform in Belding includes a jacket furnished by the city.

This is another sensitive issue that demonstrated the apparent testiness and uneasiness between the Union and the City. Mr. Jenkins, while totally supportive of the City's position, grudgingly made some concessions during his cross examination. Whether Order G7, that specifies a dark blue jacket, was intended to require a winter jacket is certainly debatable. But the panel must choose one or the other offer on this economic issue. There is evidence that internal and external comparables provide such jackets. If police officers receive this benefit when in and out of their vehicles, why not fire fighters when they are in and out of their vehicles on City business. Mr. Jenkins' attempt to differentiate doesn't hold up under close scrutiny. Medical runs

are a significant part of the fire fighters work in all seasons. The director's request for a "snappy professional" group with common dark blue jackets seems appropriate. Whether the City should pay for them or whether a uniform allowance is adequate is a close question. We, however, must make a choice, and the Union's offer most closely follows the Section 9 factors.

The City retort that it should not be deprived of the option to provide a winter jacket is not compelling. The fact that both the City and the Union must agree on the jacket ought not to be an impediment and doesn't infringe on a management right. Assumptively, the City already knows what the jackets cost because they provide them to the police officers. If the fire fighters don't like what the City will provide, they can disagree and there is a stalemate. Without mutual agreement, the City doesn't have to pay and the Union won't receive the benefit.

Accordingly, the Union's last best offer is awarded.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

20. CONTINUATION LANGUAGE

ARTICLE XIX

(Economic)

(Union Issue)

The Union's L.B.O. proposes to add a new section to Article XIX providing as follows:

> "In the event negotiations extend beyond the contract expiration date, all terms and provisions of the collective bargaining agreement shall remain in full force and effect until a new successor agreement is reached, or until a Petition for Act 312 Arbitration is filed by either party."

The City's L.B.O. is maintenance of status quo, no new language.

Discussion

This is a Union economic issue. There is no continuation clause in the current contract and the Union proposes language that all terms of the old contract remain in force until a new contract is reached or an Act 312 petition is filed.

The City's position is maintenance of the status quo. That is, no continuation language.

This issue stems from the Michigan Supreme Court case of Ottawa County v Jaklinski, 423 Mich 1 (1985). The Supreme Court held that a Union could not invoke grievance arbitration after the expiration of a contract and before the filing of an Act 312 petition unless there is express language in the expired contract.

The Union asserts that like in this situation, there is a time period after the contract expires and the petition is filed in which the Union is in limbo relative to grievances. The City agrees that limbo is possible because that is what Jaklinski has decided. Continuation is not a mandatory subject of arbitration. Under current law, a continuation clause must be mutually agreed to.

Against this legal backdrop, Mr. McMillan asserted the Union sent its 90 day notice according to the contract but the parties didn't commence negotiations until after the July 1 expiration date. That is not entirely accurate as there was a first bargaining session on June 23 with subsequent bargaining after July 1. The Union says that in the absence of its language, bargaining must commence and be exhausted, that mediation be exhausted and the petition filed in the 90 day period following notification. Mr. Guida, called as an adverse witness by the Union, agreed and stated that it would be appropriate to have those guidelines as specific language in the contract. The Union argued that the former manager intentionally stalled until the contract had expired and the Union lost its grievance rights. This issue is clouded by apparent acrimony between the parties and some lack of trust on both sides. The Union claims that the City usually sandbags by not making concurrent proposals and the City responds that the Union should present its proposals first and the City should have an opportunity to review them so they have some idea what the differences might be between the parties. Each side wants to dig

in their feet and this is essentially a test of wills.

The City correctly says there is no continuation clause in the internal comparables nor any external comparables.

If the arbitration panel is supposed to fashion the contract, the parties would have reached, the panel cannot force one party, the City, to accept what it claims it has a legal right to reject without very compelling reasons. The panel really doesn't have much choice but to accept the City's proposal. The City stated that they have never taken disciplinary action or altered any of the terms of the contract after it expired and before the petition was filed. The Union is apparently unwilling to accept that statement without strict continuation language. Under the assumption that the City is in fact willing to continue to try to make the system work, the evidence on this record simply doesn't provide a basis for the panel to award the Union's requested language. For the reasons stated above, the award of the panel is to accept the City's last best offer, being closest to the intent of the Section 9 factors.

Dated: 3/8/95

City delegate
Concur ✓; Dissent____

Dated: 3-8-95

Union delegate
Concur____; Dissent ✓

21. EMPLOYER RIGHTS

ARTICLE II, SECTION 1(B)

(Non-Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article II, Section 1(B).

The City's L.B.O.:

Section 1: Operation

The Association recognizes the prerogatives and responsibilities of the Employer to operate and manage the affairs of the Fire Department in all respects in accordance with its powers, authorities and obligations to its citizens. The Association further recognizes that the Employer retains the right to:

(B) Hire, assign, and accomplish reductions in the work force.

Discussion

This is a City non-economic issue. Current Article II, Section 1(b), permits a reduction in force only "where justified by lack of work or funds by means of layoffs as defined in layoffs section of this agreement". The City's offer is to delete this language. The Union's proposal is the current contract.

Mr. McMillan testified the language has been in existence since 1978 and there has been no effort to modify. Historically, there was one layoff which was based upon a lack of funds.

The City's proposal is based on the testimony of Mr. Guida, as quoted by the City at page 32 of its brief. It is the City's desire, and the direction given to City's bargaining group, to maximize all of its options for enhanced management prerogatives to allocate resources unrestricted by lack of need. In plain english, the City wants to remove contractual barriers of a combined public safety department. This objective surfaced many times at the hearing by inference. The City's representatives on various issues made it quite clear they would like to have a unified police/fire force. Obviously, they cannot do that with the existing language. A consolidated force could cause layoffs of fire fighters. While this is clearly a proper subject for the City to pursue, it must do so face to face with the Unions involved and not sub rosa by elimination of this provision. This language has been in the contract since 1978. The long collective bargaining history between the parties cannot be ignored and just as the panel has adopted the burden of proof standard that requires the moving party to support change in the current contract with significant evidence, we do so here. We cannot find on this record any compelling Section 9 factors to accept the City's offer. The City's brief uses the Marysville contract to support their position. However, it is at best an exercise in semantics to accept the inferences drawn by the City. The contract provisions in the external comparables suggest that layoffs are conditioned upon specific contractual economic factors rather than a policy preference of the governing body to alter the composition of the

bargaining unit. If the City relies on the public interest factor, no evidence was produced to that effect. Maybe it is good policy, and maybe the citizens want it, but severing the layoff language in this contract is not an appropriate exercise of Act 312 authority on this record.

For the reasons stated, this panel awards the Union's position as being more closely compatible to Section 9 factors. This being a non-economic issue, we are not bound specifically by the offer. This is not an issue where the panel would propose any language.

Dated: 3/8/95

Bernard J. Fuchs
City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

22. GRIEVANCE PROCEDURE

ARTICLE III, SECTION 1

(Non-Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article III, Section 1.

The City's L.B.O.:

Section 1: Definition

For the purpose of this Agreement, a grievance means any and all disputes with respect to the meaning, interpretation,

application or alleged violation of the terms of this contract.

Discussion

The current contract defines a grievance. The City proposes to eliminate the descriptive phrase "including but not necessarily limited to rates of pay, hours, and conditions of employment including rules and regulations of the Department." The Union proposes status quo. This is denominated as a non-economic issue.

The current language has been in the contract since 1978 and the only basis for change was the manager's assertion that the language is superfluous and redundant. The real issue here is whether or not rules and regulations of the Department are going to be subject to grievances. The City's definition would exclude those subjects of grievances but didn't offer a compelling basis as to why the longstanding practice since 1978 that rules and regulations are subject to grievance should be changed. The City argues that the comparables' contracts defining "grievance" essentially limits a grievance to terms and provisions of the "agreement". The City asserts that the internal units have this generalized definitional language and ask that for uniformity the same be adopted here. However, the City ignores the fact that Section 4.1 of the patrol officer's contract and Sections 4.1 and 7.0 of the sergeant's contract is specific that rules and regulations are part of the grievance procedure.

It is unclear in Belding whether its definition also includes rules and regulations as being a part of the agreement. Arguably,

Article 5 under Management Rights says they can adopt and enforce work rules and procedures. It is part of the "agreement" and the management right clause is probably subject to grievance procedures under Article 17, Section 1 of that contract.

So too in the Marshall contract (Joint Exhibit 12). Although the grievance procedure has the generalized language, limited to the "agreement". Under Article I, Section 3(1), the City can adopt, revise and enforce working rules and regulations. Since there is a reference to rules and regulations in the management rights clause, it is part of the "agreement" and therefore grievable.

The better approach in this situation is to include the words "including rules and regulations of the department" to the City's proposed language. It is probably true that "but not necessarily limited to rates of pay, hours, and conditions of employment" is redundant since all are clearly enumerated elsewhere in the agreement. If there is ambiguity whether rules and regulations would be includable in the grievance, under the proposed language of the City, this panel's recommendation is to avoid such a problem. In deference to the longstanding bargaining history that rules and regulations may be grieved, and if the City wishes to change the definition, without any major loss to the Union, the rules and regulations of the department should not be excluded.

It is the panel's award that the new definition of Section 1 proposed by the City is adopted with the addition of the phrase "including rules and regulations of the Department" immediately

following the last word "contract". This award is more closely associated with consideration of Section 9(h) rather than 9(d) and appears to satisfy the public interest as well.

Dated: 3/8/95

City delegate
Concur BG; Dissent____

Dated: 3-8-95

Union delegate
Concur____; Dissent

23. GRIEVANCE PROCEDURE

ARTICLE III, SECTION 5

(Non-Economic)
(City Issue)

The Union proposes status quo, i.e., to maintain the current language of Article III, Section 5.

The City's L.B.O.:

Section 5: Arbitration Powers

The arbitrator shall have no power to amend, add to, alter, ignore, change or modify the provisions of the Agreement or the written rules and regulations of the department or of the Employer, and the arbitrator's decision shall be limited to the application or interpretation of the above and to the specific issue presented to him. No decision of the arbitrator shall contain a retroactive liability beyond the date of written grievance. However, within the limitations of this provision, the arbitrator shall have the power to award to either party the remedy he considers appropriate

to the circumstances. The arbitrator shall render his decision in writing, as soon after the hearing as possible, and the fees and expenses shall be borne equally between the parties hereto. The decision of the arbitrator shall be final and binding upon the parties, including the Association, its members, the employee(s) involved, the Employer and its officials, including the Fire Chief, the City Manager, and their designated representatives.

Discussion

The City's modified proposal is to accept the current language. The Union likewise proposes to maintain status quo. Since both offers are the same, the panel awards the status quo.

Dated: 3/8/95

City delegate
Concur ✓; Dissent_____

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

24. GRIEVANCE PROCEDURE

ARTICLE III, SECTION 6

(Non-Economic)
(City Issue)

The Union proposes status quo, i.e., to maintain the current language of Article III, Section 6.

The City's L.B.O.:

Section 6: Procedural Errors

The failure of either party to follow the steps and time limits as allowed outlined herein shall result in the following:

(A) If the Employer does not respond within the time limits, the grievance shall automatically advance to the next step when the time for the answer has expired except no grievance shall automatically advance to arbitration.

(B) In the event the grievance is not filed or appealed from one step to another within the time limits and the fashion required, no grievance shall be deemed to have existed or as the case may be, shall be considered as settled on the basis of the Employer's last answer.

The time limits at any step of the grievance procedure may be extended only by written mutual agreement between the Employer and the Association. The time limits set forth in the grievance and arbitration provisions shall be strictly adhered to. Saturdays, Sundays, and Holidays shall be excluded from the time limits for processing grievances.

Discussion

Currently, Section 6(a) provides that if the employer doesn't respond within a time limit, the grievance is granted. The Union, under Subsection (b), must appeal a grievance in a timely manner it shall be considered settled. The City wishes to change this language by advancing to the next step. If not timely replied to

by the City but in no circumstance shall failure to comply within a time limit move the grievance to arbitration. Also, they want to change Section (b) that if the Union fails to appeal within a timely manner, the grievance is considered denied.

Current procedure is in all contracts since 1978 and has not been subject to collective bargaining since then. The City urges change because a "time bomb" may be ticking according to Mr. Guida. Since he nor the Director of Public Safety have administrative assistants, the grievance "might get lost in the shuffle". Though the record evidence is speculative based upon the conjecture of Mr. Guida, the City argues that neither of the internal comparables have default language nor does Marysville. Marshall has a provision that failure of management to respond is considered a denial. It is suggested that Belding and Dowagiac also don't have default language.

It is difficult to understand how this language has been retained for years without being problematic before now. Since the police units don't have default language, the City might want uniformity and modify this contract accordingly. However, why not simply incorporate the identical language of the other two internals rather than the elaborate proposed Section 6(a)? It seems incongruous that management could fail to do anything with a grievance at the last level and not have the grievance automatically go to arbitration. How long would a grievance stay in suspended animation? The proposal doesn't answer that question. The theory behind time limits is to force parties to act rather

than allowing grievances to linger. Penalty generally applies to both parties for inaction. The record indicates that a time limit has not been missed during the three years of this agreement. It is difficult for the panel to justify a change in a contract, mandated over the objection of the other party on the basis of speculation and what ifs. If the City's perception that a change is necessary, it should be contractually bargained. Without a strong argument for change, and some is presented here, the panel will not accept the City's invitation to compel changes by arbitration.

In this context, the panel awards the Union's last offer of status quo and refrains from exercising its discretion to suggest an award of different language.

Dated: 3/8/95

City delegate
Concur____; Dissent DG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent____

25. SENIORITY TERMINATION

ARTICLE VI, SECTION 4(C)

(Economic)
(City Issue)

The Union proposes status quo, i.e., to maintain the current language of Article VI, Section 4(C).

The City's L.B.O.:

Section 4: Seniority Termination

An employee's seniority shall be terminated:

(C) When an employee has been laid off for a period in excess of thirty six (36) consecutive months. This subsection is subject to the conditions set forth in Section 5 below.

Discussion

This is a City economic issue. Currently, the employee's seniority is terminated when laid off for lack of work or funds for a period in excess of three consecutive months. The City proposes to eliminate "lack of work or funds". It is argued this is requested in order to avoid any inference that the City is limited to lay off of unit members only if it demonstrates a lack of work or funds. This issue is similar to the management rights issue (#21). The City wishes to maintain all of its options regarding reasons for layoffs in the event of consolidation. Thus, it insists that it needs to eliminate this language. They argue if it is eliminated, fire fighters will get more protection, that is 36 months irrespective of the layoff reason.

Since this language has been in existence since 1978 and not the subject of bargaining previously, the reasons articulated in employers rights issue will not be restated here, but those reasons shall be the basis for accepting of the Union's last best offer as complying with the Section 9 factor.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

26. FILLING VACANCIES

ARTICLE VI, SECTION 6(A)(B)

(Non-Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article VI, Section 6(a)(b).

The City's L.B.O. is to eliminate Section 6, Filling Vacancies.

Discussion

This is a City non-economic issue. In the existing contract, filling a vacancy is supposed to start not more than 30 days after the creation of the vacancy and the process of promotion normally starts not more than 60 days after the vacancy exists. The City proposes to delete both of these requisites in Section 6(a) and (b). The rationale from Director Jenkins' testimony is that it is difficult to comply with the commencement process of 30 days and that the City needs more latitude. He also thought that there was an expectation by the Union that a vacancy should be filled within

30 days. They have the same expectations regarding promotions within 60 days. However, there is nothing else to support the suggested need for this provision.

The City asserts no comparable community has such a provision. But if you don't have a demonstrated need why the City needs to change that which has been adopted, what difference does it make what is in the other comparables. No need, no change. Simply because something in another contract in a comparable community doesn't mean that it ought or should be awarded by a panel over the strenuous objection of the other party. Further, this filling vacancies language was negotiated in the last agreement and there haven't been any vacancies or promotions to fill. There have been two vacancies since 7/1/94 and this will be the first opportunity to see how the new language works. It would improvident to change the language before it has even had an opportunity to be placed in action. The underlying reason for this suggested change is to remove impediments in the existing contract for development of a public safety department.

The panel awards this issue to the Union's proposal of status quo.

Dated: 3/8/95

Bernard Gindin
City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

27. SICKNESS AND ACCIDENT

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article VIII, Section 6.

The City's L.B.O.:

Section 6: Other Leaves

Employees shall not be eligible for long-term sick leave once an employee commences a scheduled personal leave, floating holiday, or vacation until such leave has been exhausted.

Discussion

This is a City economic issue. Article VIII, Section 6 currently indicates that if you are on long term sick leave prior to a scheduled holiday, personal leave or vacation you are not charged that leave and you don't lose it. The City wants to change the eligibility for long term sick leave until after exhaustion of the scheduled personal leave, holiday or vacation.

The City's proposal as explained by Director Jenkins is a slight clarification of existing practice He wants the employee to exhaust the prior approved leave when there is a claim for a long term sickness. Presently, use of vacation or other leave time is cancelled if the member starts sick and accident benefits before the date the leave starts. This issue particularly pertains to Captain McMillan as he suffered a knee injury and went to Florida

while still in layoff status for his previously scheduled vacation. McMillan used his LTD and did not have to use up his vacation time. Although Mr. McMillan's injury was genuine and the director indicated that while an employee is on medical leave he doesn't have to stay within the City, he still believes that if the employee had a scheduled vacation he should use up that time rather than continue to receive LTD.

There are no provisions in any of the internal/external contracts for the City to rely on. Again, the City as the moving party has the burden of proof and this panel must accept one or the other offers. In the absence of any compelling reason to change because of financial hardship or any other economic stress it would not be prudent for the panel to impose a change of this contractual provision which has been in existence for over 20 years. Mr. Jenkins' comments notwithstanding, no need to change is shown.

Accordingly, the panel awards the Union's last best offer of status quo as being compatible with the Section 9 factors.

Dated: 3/8/95

Bernard D. Fuda
City delegate
Concur_____; Dissent BF

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

28. PROJECT ASSIGNMENT

ARTICLE IX, SECTION 2

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article IX, Section 2.

The City's L.B.O.:

Section 2: Project Assignment

The employer shall have the right to assign employees to special projects that are not directly related to the operation of the Fire Department. Each project would be for the purpose of utilizing the time and talents of employees for the betterment of the community to the extent possible without diminishing the Fire Department's fire fighting capability.

Discussion

This is a City economic issue. Apparently, the City and Union agreed to explore assigning unit members to special projects not directly related to the fire department. They have also agreed they will meet and mutually agree upon each project and procedure. The City's proposal gives the employer the right to assign employees to special projects and deletes mutuality on each project.

The apparent basis for the City's proposal is Director Jenkins' statement that he should be able to make assignments of work without securing the "mutual agreement of the Union". The

Union testified that there are many things that they have done which are not fire related such as washing the parking lot, getting a flagpole, putting Christmas tree lights up and similar projects at the request of Mr. Jenkins. Although he believed no substantial change would occur, the Director wanted the flexibility to make assignments without the need to confer with the Union.

This provision has been in the contracts since 1978. There is no evidence that the Union has been uncooperative and that there is any real need to change. Although the Director clearly has the right to make assignments of work within the Fire Department, there is nothing inherent in the position of the Director that should allow this individual the unilateral discretion to assign non-fire related duties to fire fighters. It does make sense that in slow periods that the Union continue to cooperate with the City to do non-fire related activities which essentially are in the public interest. However, the Act 312 process should not be used in the absence of a clear showing that there has been a failure to cooperate or that the confer system doesn't work. Just the opposite is true here. Accordingly, the panel awards the Union's offer of current language of an economic issue is compatible with Section 9 factors.

Dated: 3/8/95

Bernard Fuchs
City delegate
Concur_____; Dissent ✓

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

29. TRADING TIME

ARTICLE IX, SECTION 3

(Economic)
(City Issue)

The Union's L.B.O. proposes to modify Article IX, Section 3 to provide as follows, effective upon issuance of the Act 312 award:

> "It is agreed that each employee may be allowed to trade time. Such request must be made to the Director in advance of the day being requested for trade; approval of the request shall not be unreasonably denied. Informal trading of time on less than a full day basis will continue to be permitted. Employees working for other employees shall be subject to disciplinary action and deductions in pay for tardiness as if regularly assigned to the platoon. Requests for trading of time must be made in writing on a form provided by the Employer. Employees shall not be allowed to use "traded" time that has been carried forward from a prior year of the use of such time will expose the Employer to payment for overtime hours under the Fair Labor Standards Act, as amended. No overtime may be gained as a result of such traded time."

The City's L.B.O.:

Section 3: Trading of Time

It is agreed that each employee may be allowed to trade time. Such requests must be made to the Director in advance of the day being requested for trade. Informal trading of time on less than a full day basis will continue to be permitted. Employees working for other employees shall be subject to disciplinary action and deductions in pay for tardiness as if regularly assigned to the platoon. Requests for trading of time must be made in writing on

a form provided by the Employer. Employees shall not be allowed to use "traded" time that has been carried forward from a prior year if the use of such time will expose the Employer to payment for overtime hours under the Fair Labor Standards Act, as amended. No overtime may be gained as a result of such traded time.

Discussion

This is a City economic issue. At the present time, employees have the right to trade up to six days for any reason providing at least 48 hours notice. The City's offer is to eliminate the reference to six duty days and 48 hours notice. The Union's last best offer likewise would omit those items. The City would change the word "shall" to "may" and the Union would add the proviso "approval of the request shall not be unreasonably denied."

Both parties approach this issue from the same basis that 48 hours advance notice has never been required nor whether more than six trades have been allowed. Director Jenkins wasn't concerned about the 48 hours and didn't really know whether people traded more than six times. What he wanted to do was to make it permissive so that if a trade was proposed and it had the wrong mix of personnel it might not be in the best interests of the City and might have an economic impact where a ranking person ends up getting differential pay. The City feels the contract should not contain language that doesn't actually reflect what's happening. The panel agrees.

Director Jenkins, on cross examination at TR-IV, page 125,

stated that it would be his intention to approve all trades in a reasonable manner and would not be unreasonable in deciding whether to approve or deny a time trade assuming the City got its "may" language. Given this stated intent by Director Jenkins, it seems that the Union proviso regarding reasonableness should be adopted. We would achieve what the parties apparently would voluntarily agree to. The question directed to Mr. Jenkins and his reply evidences the common understanding of the parties.

Accordingly, the Union's offer on this economic proposal which also includes the permissive "may" as requested by the City is adopted as being most compatible with Section 9 factors.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

30. MAINTENANCE OF STANDARDS

ARTICLE XVII, SECTION 9

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XVII, Section 9.

The City's L.B.O. is to eliminate Section 9: Maintenance of Standards.

Discussion

This is an employer economic issue. The employer wants to delete Section 9 in its entirety. The Union wants to retain the language.

Mr. Guida testified that there is a long history of bargaining between the parties with opportunities to put multiple issues on the table. Since all terms and conditions of those negotiations are listed in the contract, maintenance of standards language is superfluous. He also said the City is considering changing its "mode of operation". The City also argued that Marshall has maintenance of standards language. Further, the Springfield contract is significantly different from Marysville. No City internal nor external contracts have this provision.

The Union of course responds by saying that this has been in the contract since 1978 and there have been no disputes or disagreements. They claim maintenance of standards essentially is a repository of past practices. Also, they argue Mr. Guida's superfluous theory is part of the veiled threat to replace the fire department with a public safety department and thus elimination of the maintenance of standards would remove an impediment to any new options.

As the moving party, the City bears the burden of showing demonstrable need or reasons why the provision should be removed over the objection of the Union. This record is simply speculative based upon assumptions of Mr. Guida and no articulated problems or confrontations regarding this section are set forth. Because of

the lack of any demonstrable evidence particularly of economic impact, the panel will award the Union's last best offer of status quo as being compatible with Section 9 factors.

Dated: 3/8/95

City delegate
Concur_____; Dissent BG

Dated: 3-8-95

Union delegate
Concur ✓; Dissent_____

31. EMPLOYEE PHYSICALS

ARTICLE XVII, SECTION 11

(Economic)
(City Issue)

The Union's L.B.O. proposes status quo, i.e., to maintain the current language of Article XVII, Section 11.

The City's L.B.O.:

Section 11: Employee Physicals

The Employer, at its expense, shall have the right to require an employee to submit to a physical/psychological examination by an expert(s) of the Employer's choice to determine and employee's ability or inability, to perform his/her job functions.

Discussion

This is an economic employer proposal. Currently, the parties have agreed in principal to a mandatory employee physical but they haven't agreed on any details. A letter of understanding is

supposed to have developed those details. The Union wants to keep this language and the City wants to right to require a physical/ psychological examination by an expert of its choice.

Apparently, this provision went into the contract in 1988 but no agreement has been reached so far for implementation. Director Jenkins said he wanted the ability to make sure that a person has the proper level of fitness. It would be in addition to their normal practice of having a physical when there has been some type of "precipitating event". Apparently, none of the comparables accept Dowagiac have any language similar to this. The City argues that this is a management prerogative to require a physical examination. The Union asserts that the City shouldn't have the unilateral power to subject them to physical and psychological exams and suggests that the real intent is to give the Director unilateral control over mandatory physical programs which they contend are mandatory subjects of bargaining.

Since the parties have not given much attention to this issue since 1988, and since it is a non-economic issue, the panel can modify the approach of the City and would award the following: "The employer, at its expense, may require an employee to submit to an annual physical examination and shall have the right to require a physical examination as the result of an actual illness or injury. The details of the annual physical examination program shall be presented by the City within 30 days of the effective date of this award and the Union will have 30 days thereafter to respond. In the absence of a mutually agreed understanding of

procedures thereafter this section will be collectively bargained during negotiations on the next contract."

Dated: 3/8/95

Bernard Guida
City delegate
Concur_____; Dissent 36

Dated: 3-8-95

Union delegate
Concur_____; Dissent_____

Respectfully submitted,

Kenneth P. Frankland, Chair