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STATE OF MICHIGAN

ARBITRATION UNDER ACT NO. 312

PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of the Statutory Arbitration between

CITY OF TROY,
Employer,

and

TROY POLICE OFFICERS ASSOCIATION,
FRATERNAL ORDER OF POLICE,
Labor Organization.

Michigan Employment Relations Commission
Case No. D89 A-0157

OPINION AND ORDERS OF THE ARBITRATION PANEL
1 October 1990

Arbitration Panel:

Carl Cohen	Chairman
Michael Somero	Union Panelist
Peggy Clifton	City Panelist

Appearing on behalf of the Union:
Mr. John Lyons, Esq.
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Appearing on behalf of the City:
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Troy, City of

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Part 1. Authority and Membership of this Arbitration Panel

These arbitration proceedings take place pursuant to Public Act No. 312, Public Acts of 1969, as amended by Act No. 127, Public Acts of 1972, providing binding arbitration for the resolution of unresolved contractual issues in municipal police and fire departments in the State of Michigan.

The Michigan Employment Relations Commission, by letter on 5 December 1989, appointed Carl Cohen to serve as Chairman of a Panel of Arbitrators in a dispute involving contract negotiations between the City of Troy, Michigan, [henceforth, "the City"] and the Troy Police Officers Association, Fraternal Order of Police, [henceforth, "the Union"].

The other two members of the Panel were designated by the parties. The designated Panelist of the City was Ms. Peggy Clifton, Acting Personnel Director for the City of Troy; the designated Panelist of the Union was Mr. Michael Somero, a representative of the Fraternal Order of Police.

This document is the final report of the arbitration panel [henceforth, "the Panel"], registering and explaining its orders.

Part 2. Hearings, Procedures and Exhibits

A. Hearings

Arbitration proceedings in this matter were lengthy. A pre-hearing conference, during which hearing procedures were agreed upon and issues and calendar given preliminary review, was held on 24 January 1990. The Parties were not able to begin formal hearings until 2 April 1990, when the first in a series of eight full-day sessions was held. Subsequent sessions, each attended by all representatives of the parties and the full Panel, were held on 6 April, 9 April, 16 April, 7 May, 10 May, 17 May, and 22 May, 1990. With minor exceptions, sessions began at 10:00 AM and adjourned at approximately 4:30 PM; all were held in the main conference room of the Municipal Building of the City of Troy, at 500 W. Big Beaver Road, Troy, Michigan. All sessions were open to the public; there was some attendance by interested citizens.

In these hearings the parties were given the fullest opportunity to examine and cross-examine witnesses, and to present evidence and submit argument on all aspects of the matters before the Arbitration Panel.

A verbatim record the proceedings at each of the hearing sessions was made. The Reporter for six of these sessions was Mr. Raymond Marcoux, of the Michigan Employment Relations Commission; Mr. Philip Liburdi (in session 1 only) and Ms. Maria E. Greenhough (in session 5 only) substituted for Mr. Marcoux when he was unable to be present. The volumes of the transcript, carefully and accurately prepared, were received by the Chairman of the Panel in timely fashion, in late June of 1990. The Record of these proceedings comprise 8 large volumes, each of approximately two hundred pages, totalling just over 1,700 pages.

B. Procedures

Last offers of settlement with regard to the issues remaining in dispute were submitted by both parties, to the Panel, in timely fashion, in early June of 1990. The post-hearing Briefs of the parties, thoroughly and thoughtfully argued on both sides, were submitted to the Panel in timely fashion, after a short delay initiated and agreed upon by the parties, in early August of 1990.

The Opinions and Orders of the Arbitration Panel are being issued herewith on 1 October 1990.

C. Exhibits.

Documentary evidence submitted during these proceedings was voluminous. Some 247 exhibits, many of them lengthy and detailed, were received by the Panel, and in addition to these there were some supporting materials requested by the Panel Chairman, and some other relevant arbitration awards and court opinions. No useful purpose would be served by seeking to describe here the nature, subject matter, and substance of this vast body of material. It will be enough to say here that these many exhibits include the labor agreements of all the comparable communities, and detailed analyses, from the perspectives of both parties, of the facts and figures bearing upon the issues in dispute.

Joint exhibits were only two in number: the most recently expired master agreement between the parties, and the set of tentative agreements that had been reached before these proceedings had begun, and which the parties agree shall be incorporated within this Act 312 Award.

Part 3. Appearances

The formal presentation of the case for the City, as noted on the cover pages of this report, was made by Mr. Craig Lange, Esq., of Barlow and Lange, P.C.; the formal presentation of the case for the Union, also noted above, was made by Mr. John Lyons, Esq. The highest standards of civility and intellect were exhibited by both parties.

Seven witnesses presented formal testimony for the Union; they were:

1. Ms. Nancy L. Ciccone, Labor Relations Analyst, Fraternal Order of Police
2. Mr. Robert Crawford, TPOA (Troy Police Officers Assoc.)
3. Mr. Brad Dalton, President, TPOA
4. Mr. Stanley Stanczak, Psychologist and Union Consultant
5. Mr. David Livingston, TPOA
6. Mr. Joseph Quaiatto, TPOA
7. Mr. Alan Haggerty, TPOA

Also appearing regularly with the Union representatives was Mr. Bob Morgan, although he did not present formal testimony.

Five witnesses presented formal testimony for the City; they were:

1. Ms. Peggy Clifton, Acting Personnel Director City of Troy
2. Mr. Stephen Cooperrider, Personnel Technician City of Troy
3. Lawrence R. Carey, Chief of Police City of Troy
4. Jack D. Petersen, Actuary and City Consultant
5. Stephen Downs, Account Executive Blue Cross/Blue Shield

Part 4. Background

A long process of negotiation between these two parties has failed to produce a new contract. The most recent contract (referred to below as "the old contract") became effective on 1 July 1986 and expired on 30 June 1989, long before these proceedings began, and more than a full year before these arbitration orders are being written.

On many matters the parties are in agreement. After some preliminary dispute they came to agree at an early hearing session that the contract that will emerge as the result of these arbitration proceedings (referred to below as "the new contract") will be three years in duration, and that it will take effect, retroactively, from 1 July 1989. It should be borne in mind, therefore, that the first year of the new contract (July 89 - June 90) has already elapsed; the second year of the new contract will run from 1 July 1990 to 30 June 1991; the third year of the new contract will run from 1 July 1991 to 30 June 1992.

Certain matters in dispute when these arbitration proceedings began have been resolved, at the urging of the Panel chairman, by agreement between the parties; these will be noted in Appendices A and B, below.

The parties have further agreed that -- except where changes will have been introduced by any of these arbitration orders, or by the agreements noted in the Appendices below -- the language of the old contract is to be incorporated into the new contract.

Part 5. Issues: Classification and Treatment

In these proceedings even the number of issues in dispute, is in dispute! As the Union views the proceedings there are 16 matters requiring resolution; as the City views the proceedings there are 19 matters requiring resolution. This difference is not major, however, since the City here divides what the Union combines. In such cases it is best always to accept the greater number of divisions proposed for the sake of clarity. Therefore, the Panel will shortly identify 19 issues in dispute; and to avoid creating more numbering systems than are needed, the Panel will accept, for the purposes of identification only, the numerical identification proposed by the City in its Last Offers of Settlement.

Of these 19 issues it is essential to determine at the outset which are essentially economic, and which are not. This must be done because, under the Public Act that authorizes these proceedings, the charge given to the Panel differs in the two categories of issues. The authority of the Panel is binding in all cases, but -- and here the words of the statute are quite explicit -- "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors in Section 9." [Act 312, Sec. 423.238].

In classifying the 19 outstanding issues as "economic" or "non-economic", there is no dispute between the parties over any such classification save one -- the status of the issue involving minimum strength standards and assignments. This is a non-economic issue from the perspective of the Union, since it chiefly concerns (in its view) the safety and well-being of police officers. This is an economic issue from the perspective of the City, since it very greatly concerns (in its view) the employment costs imposed by differing standards. There is plausibility in both perspectives, of course.

The spirit of Act 312 is one in which issues that are economic should be subject to the decision-making pattern described above. This obliges the Panel to adopt the City view of this classificatory matter. Safety is involved, but since substantial costs are also involved the Panel must treat this issue as an economic one for purposes of determining whether one of the two last offers of settlement must be accepted. The issue will be so treated. This classification, however, leaves entirely open the question of the merits of the two competing last offers in this sphere. They will be discussed at length below.

We are now in a position to identify and name the issues to be discussed in detail below. The first thirteen

of these issues are economic; the last six are non-economic. For purposes of our discussion they will be numbered and named as follows:

Economic Issues:

1. Wages

[Issues 2, 3, 4, and 5, below, all concern retirement -- eligibility, pension computation, etc, and are clumped by the Union in its presentation of last offers.]

2. Retirement: Eligibility after 25 years of service Regardless of Age.

3. Retirement: Purchase by Retiree of earlier Military or Police Service for credit at Retirement.

4. Retirement: Payment of Medical Insurance for Retirees and Spouses.

5. Retirement: Role of Sick Leave Payment in calculating retirement pension.

6. Shift Premium Pay

7. Longevity Pay

8. Uniform Purchase Allowance

9. Uniform Cleaning Allowance

[Issues #8 and #9, above, are combined by the Union in its presentation of last offers.]

10. Life Insurance

11. Health Insurance

12. Association Business

13. Minimum Strength Standards and Assignments.

Non-economic issues:

14. Disciplinary Proceedings: Suspension

15. Political Activity

16. Financial Disclosure

17. Disciplinary Proceedings: Notification & Representation

18. Disciplinary Proceedings: Investigation Files

19. Outside Employment

Each of these issues will be treated below as follows. The last best offers of the two parties on the issue at hand will be set forth, in some cases with an introductory explanation. Following that, the analysis and discussion of the Arbitration Panel will be presented. Following that the arbitration order of the Panel will be registered.

The issues will be addressed in the order indicated above.

Part 6. Criteria for Resolution of Issues in Dispute

In its decision-making process the Panel must comply rigorously with the specific provisions of the statute under which it is authorized and constituted. Section 9 of Act 312, referred to above, specifically requires that:

> "...the arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:
> (a) The lawful authority of the employer.
> (b) Stipulations of the Parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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 times, 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 public employment."

The Panel here underscores the fact that in each of judgments reached below, every one of these identified factors, so far as it is applicable to the matter then at hand, has been carefully weighed and used in reaching those judgments. It would be needlessly duplicative and wordy to lengthen a report that must in any case by quite long, by repeating each of these factors under each issue -- but the

process, in which these nine criteria have been employed in each case, ought not be forgotten.

Two of these factors require fuller consideration at this point: (1) the ability of the City of Troy to meet the costs of alternative arbitration orders, [(c) above] and (2) the nature and names of the communities with which the Panel, reaching its decisions in compliance with the statute, considers the City of Troy to be properly comparable [(d) above].

(1) Ability to Pay.

The ability of the City of Troy to bear the costs of alternative arbitration orders was not (in this proceeding, unlike many others) an issue between the parties here. The provision of the statute identified above, which directs the panel to consider the ability of government to meet costs, does not in any way imply that, because the City may be financially able to bear the cost of an order requested by the Union, that it should be obliged to do so. All of the nine factors must be weighed. Costs imposing unreasonable burdens upon the "interests and welfare of the public" or costs out of line with those borne by comparable communities, ought not be ordered even if the City has the financial ability to meet them. The fact that no issue was made of the City's ability to pay in these proceedings does mean, however, that inability to pay cannot be considered here as a good reason for refraining from an order that would be fully justified in all other respects.

(2) Comparable Communities

In this as in most proceedings under Act 312, there was much dispute over which communities are most properly used by the Panel in determining what is done in "comparable communities" -- an expression used repeatedly in the authorizing statute. Both parties presented lists of communities it holds comparable, and arguments in support of its selections. The Panel has given this controversial matter very careful and very detailed consideration, examining (so far as the evidence made possible) the several circumstances of the proposed comparables of each side -- regarding such matters as size, and wealth, and demographics, and general character, and so on.

The Panel has reached a clear resolution of this matter of comparability. To avoid having to repeat the grounds of its judgements under each issue discussed below, the Panel will explain at this point issues in conflict here, and the resolution of the matter achieved, and the reasons it has adopted a particular set of "comparable communities."

Communities may be considered "comparable" on many different bases, of course -- and each party in a dispute of this nature will, understandably, urge the adoption of those criteria for selection that would, if adopted, yield the set of comparables most favorable to its conclusions. In these proceedings the City and the Union each presented a list of proposed comparable communities in southeastern Michigan, the City listing ten, the Union listing nine, and each presented plausible reasons in support of its list. Both the City and the Union included the following seven cities:

Dearborn Heights
Farmington Hills
Pontiac
Royal Oak
Southfield
Taylor
Westland

This is substantial overlap, and, as the Union Brief puts it, this shows that on this matter there is, in fact "broad general agreement." [Union Brief, p. 4]

To this list of seven the City adds three others, the Union two different others. The City finds it difficult to understand what unifying threads tie all of the Union's proposed comparables together. The Union responds that it does present specific criteria for its list, identifying 12 distinct characteristics -- population, land area, crime

statistics, median household income, housing, police department composition, and so on. [See Union Ex D-1] Utilizing some of these Union-proposed criteria, the City points out that one or more of the cities it adds to the common list of seven may fit better than those added by the Union. To this the Union replies that it gives no specific weight to each factor [See D-1], but rather looks to the "total picture" of the makeup of alternative communities. A persuasive defense of this "total picture" approach is presented in the testimony of witness Nancy Ciccone, under stiff cross examination. [See Record, Vol 1, pp.105, ff., and especially p. 107.] The City, on the other hand, is far more rigorous in applying its criteria, which were, very simply, geography and population. All and only those communities within the Detroit Metropolitan Area, and having a population between 50,000 and 100,000, were included in the City list. This approach, as the City argues in its Brief, eliminates subjectivity in its selection process. That is correct and fair. On the other hand, that elimination of subjectivity is achieved by reducing the number of criteria used so as to leave doubt as to what genuine comparability remains on other important levels.

The several additions proposed by the parties, and the reasons for favoring or disfavoring them, have been carefully weighed by the Panel. Much of the verbatim testimony transcribed in Volume 1 of the Record concerns this matter; 18 City exhibits (City Ex 1-a through 1-s), and 19 Union exhibits (Union Ex D-1 through D-19) are directed expressly to this matter. And as the Union Brief notes, "the bottom line on this particular inquiry is that the Panel will have to make the ultimate decision as to which comparables should be used." That is correct. The Panel does resolve the matter, we think very fairly, in the following way:

Nothing in the statute directs us to adopt as comparable communities a list of any particular length. Nor are any particular criteria suggested in the statute. If seven different cities are proposed by the City of Troy as among those properly comparable to it for this purpose, that is very helpful; if the Union, in this dispute, provides a list of seven cities it selects as among those properly comparable, that is equally helpful. If, as is the case here, there is full agreement between the parties upon these seven cities -- the seven listed above -- we can have confidence, by agreement of the parties, in that list of comparable communities about which there can be little dispute. And this list is surely long enough, and the comparability it provides great enough, to give the assistance needed in making the judgments to be called for.

The Panel therefore adopts the seven cities listed above -- all and only those common to both City and Union

lists -- as the set of comparable communities to be used in the judgments made below. Once again, these seven communities are:

Dearborn Heights
Farmington Hills
Pontiac
Royal Oak
Southfield
Taylor
Westland

Their performance, on average, will serve as one factor (but not necessarily a controlling factor) in guiding the judgments of the arbitration panel.

Part 7. Issues: Opinions and Orders

Issue #1 Wages

Last Offers of Settlement

Last Offer of the Union:

Effective 7/1/89 -- 4.5% increase in base wage
Effective 1/1/90 -- 1.5% increase in base wage
Effective 7/1/90 -- 4.5% increase in base wage
Effective 7/1/91 -- 4.25 increase in base wage

Last Offer of the City:

Effective 7/1/89 -- 4.5% increase in base wage
Effective 7/1/90 -- 4.25% increase in base wage
Effective 7/1/91 -- 4.25% increase in base wage

Discussion and Analysis

A contract of three years duration is at issue. The City offer proposes an increase for each of three years; the Union offer proposes an increase for each of the final two years, and two increases for the first year, one for the first half, and another for the second half. The differences in percentages is not very great, but the resulting difference in absolute sums is substantial.

Put in terms of dollars, the last and best offers would yield these numerical results for the base wage of police officers at the highest step -- the level at which most police officers in Troy are, and the level most commonly used for inter-city comparisons:

	City Proposal	Union Proposal
Effective 1 July 89:	$34,538	$34,538
Effective 1 Jan 90:	34,538	35,056
Effective 1 July 90:	36,006	36,634
Effective 1 July 91:	37,536	38,191

What confronts the Panel is one offer from each side, for a three-year period, not three separate offers. And although the percentage proposed for the third year of the contract is the same under both offers (4.25%), the differences in percentages for the preceding two years, although not large, result in a significant difference in dollars by the third year.

A great part of Volume 3 and Volume 4 of the verbatim Record (as well as smaller portions of other Volumes) is devoted to testimony on this topic. 17 City exhibits (City

Ex 9-A through 9-R) and 16 Union exhibits (Union Ex L-1 through L-16) address various aspects of this important matter and have been examined by the arbitration Panel in detail.

We begin by comparing base salary. For the first year (base salary effective 1 July 89) the comparison of the two offers is a bit tricky, since the Union offer requires that the base salary for the first half of the year be averaged with the base salary for the second half (for which a 1.5 % further increase would be given). Thus the City figure for 1 July 89, $34,538, must be compared with a composite figure for the Union, $34,797. To both of these figures we must compare the average base salary of the comparable communities (that is, the six whose base salary for that period is known), which average is $33,915. On this basis alone one would have to conclude that the City proposal is closer to the mean of the comparables than is the Union proposal.

For periods after the first year, not enough data about the base salaries in effect in the comparable communities is known to make possible any reliable comparisons.

Of course the comparisons that are required properly go beyond base salaries, to include also the total compensation of the affected employees -- which includes not only direct compensation in its several forms, but indirect compensation in the form of insurance of different sorts paid by the employer (especially medical insurance), pension provisions, and so on. So, what do we find when comparing the total compensation of the police officers in Troy to the total compensation of the police officers in the comparable communities?

Even the figures given by the City, as corrected at hearing [in Ex 9-G] show the total compensation of the Troy police officers ($55,846) below that of the total compensation of the average of the seven comparables ($57,463). But that average figure includes the figure for Pontiac based in part on a pension provision for that year in that city of more than sixteen thousand dollars -- which is either an error, or so anomalous as to deserve exclusion. Averaging the other six comparables without Pontiac, we get, for total compensation for the period, $56,034. This is $188 more than that of the Troy officers -- but it does show that Troy is very close to the mean of the agreed upon comparables.

The matter may be looked at in yet another way, suggested by the Union in its Ex L-9, displaying the relative rank of the several cities in their total compensation for the year 1988. If we consider the 8 cities in the relevant group (the seven comparables plus Troy), and

rank order them, three comparables rank above Troy, four below Troy. Of course the Union exhibit includes some cities not here considered -- but exhibits by the City also include information derived from a set of communities larger than the list of comparables here being used. In these comparisons (we here repeat) we use as comparables only the seven cities appearing on the lists of both parties. Troy is a reasonably prosperous community, as the Union points out, and it would be wrong, as the Union Brief justly argues, to establish salary rates under which police officers in Troy are treated as second class citizens. The Union proposal would avoid that, But, in fairness, so also would that of the City.

Yet one further calculation is helpful in determining which of the two offers is more nearly fair to all concerned. The statute obliges the panel to consider the rise in <u>the cost of living</u> for the relevant period in determining appropriate increases in wages -- and while no one can predict the inflation rate for the second and third years of the new contract, we do know the consumer price index for July 1989. If we compare the increase in the cost of living from 1983 to 1989, we find that the percentage rise is 15.6. Taking the proposed City figure, somewhat lower than that of the Union, for base salary effective July 1989, the increase in base salary for police officers (from '83 to '89) would be 20.2%. Even the City proposal, we must conclude, shows the income of Troy police officers, for this period, rising faster than the cost of living.

The absolute differences between the two competing proposals are not <u>very</u> great. After the changes of the first two years of the contract are worked in, the difference in base pay between the Union proposal and the City proposal, for the year beginning July 1991, is $653.

> But the panel must select one of the two proposals, and the Panel is led again and again to the same conclusion, whatever the direction from which the calculation is made. Calculating the base salary of comparables, calculating the total compensation of comparables, calculating the rank of Troy as compared with its comparable communities, and tracking base salary in Troy against the rise in the rate of inflation -- the proposal made by the City is repeatedly the one more nearly appropriate for the City of Troy, in the light of the criteria identified in the statute.

Order of the Arbitration Panel

The last offer of the City is adopted.

Effective July 1, 1989, a 4.5% increase in all July 1, 1988 wage rates set forth in Section 43 of the expired collective bargaining agreement.

Effective July 1, 1990, a 4.25% increase in all July 1, 1989 wage rates.

Effective July 1, 1991, a 4.25% increase in all July 1, 1990 wage rates.

Reflecting the changes effected by this order, Paragraphs A and B of Section 43, Wages, of the new contract, will read as follows:

A. Annual salaries for Police Officers are outlined in the following schedule:

	July 1, 1989	July 1, 1990	July 1, 1991
Step 1(start)	$21,132	22,030	22,966
Step 2(6 mos.)	23,379	24,373	25,409
Step 3(1 yr.)	28,568	29,782	31,048
Step 4(end prob.)	29,714	30,977	32,294
Step 5(2 yrs.)	31,023	32,341	33,715
Step 6(3 yrs.)	32,904	34,302	35,760
Step 7(4 yrs..)	34,538	36,006	37,536

B. The above salaries are retroactive to their effective dates, and shall be paid to all officers on the payroll as of the date the new contract is signed.

Issue # 2 Retirement: Eligibility for Retirement After 25 Years of Service Regardless of Age.

Last Offers of Settlement:

Last Offer of the City:

The City urges that the status quo be maintained, and that eligibility for retirement be maintained at age 50, with 27 years of credited service.

Last Offer of the Union:

The Union urges that retirement be permitted after 25 years of service, with no age requirement.

Discussion and Analysis:

This matter is not addressed explicitly in the old contract, but is carefully addressed in a letter of understanding signed by both parties on 27 March 1985 -- a letter that appears as City Ex 5-B. The first numbered paragraph of that letter lowers the age requirement for retirement (with 27 years of service) from 55 to 50. The Union seeks to eliminate the age requirement altogether, and reduce the number of years of service required to 25.

This issue does not directly address the way in which retirement benefits will be calculated, but it is nevertheless an economic issue because the impact of the earlier retirements permitted by the proposed change would oblige the City to fund these retirements at an earlier date, and require the City to provide the needed funding.

The City argues, in its Brief, [pp. 24 ff.] that the cost of this change would be 2.93% of payroll; but this figure appears to be somewhat erroneous. The City here relies upon actuarial figures reported in City Ex 5-C, in which what is called "Proposal 1", earlier described in that same exhibit, is held to have that cost. But "Proposal 1" of that Exhibit, although it includes the change here at issue (commonly called "25 and out" for convenience) also includes another change, retirement at age 60 after only ten years of service, a change not here at issue. Even if 2.93% of payroll costs be a correct actuarial calculation (and it seems in any event counter-intuitively high), it is not precisely a calculation of the cost of the one change here in view -- and we cannot know what proportion of that larger cost is imposed by this change, and what proportion by the other.

The City also points out [City Brief pp. 22-24] that it has absorbed -- without major contribution by employees --

the costs of substantial improvements in retirement benefits over recent years, as the Letter of Agreement referred to above substantiates. But the fact that there have been recent improvements, which may perhaps have been overdue, leaves open the question of the merit of this change.

There are a number of police officers now on the payroll in Troy whose seniority date is in the late 1960s or early 1970s, and who might choose to retire after 25 years of service not long after 1990. This matter is therefore of substantial importance.

The Union presented detailed testimony by a psychological consultant [Record, Vol 2, pp. 5-46] whose thrust was that the stress of police work resulted often in an early burn-out, and that therefore retirement after 25 years was important not merely as a benefit, but as a matter of good psychological health. At the request of the Chairman of the Panel, some additional scholarly materials referred to by this witness were promptly provided by the Union; but the subsequent examination of these materials does not show, whatever the facts may be about the stress of police work, that it justifies earlier retirement. In any event, what is true generally about police work may be somewhat less applicable to police work in Troy, in view of the character of this City. No one can deny, of course, that police work is dangerous -- but its dangers are well understood by police officers, and in itself danger has an uncertain relation to retirement. Other studies support the conclusion that retirement in mid-life often results in the demoralization of the retirees, dissatisfaction and decline in health. The scientific argument here, over the medical and psychological values of retirement, has simply not been resolved.

The Panel turns for guidance to the behavior of the comparable communities -- but again, unfortunately, there is no pattern clearly governing. Of the 7 comparable communities, 4 do have a "25 and out" system, while 3 do not -- hardly dispositive; and the City points out, correctly, that the degree of participation by the employee in the retirement program must also be weighed.

Perhaps the most helpful approach to this question is that of asking what retirement is understood to be and mean in the life of an employee. When life expectancy was much shorter than it presently is, and remaining years of life were not many after 25 or 27 years of service, retirement was generally understood to be the probable end of one's active life. The indices of that change would then correctly be an age requirement of 65, or 60 or so -- and many years of service. But it is plain that retirement for the employees of Troy, and the Troy police department, as for employees more generally, has now a rather different role.

After a substantial number of years of service, the retirement benefits accrued permit a phased reduction in one's active working life. For many, retirement before the age of fifty, or in the early fifties, signals the commencement of a second or alternative career. Of course, if retirement comes at an earlier age, the pension benefits accrued by the retiree are likely to be less -- but the years remaining to pursue other activities are greater, and the opportunities to earn other income are greater. That is the point, surely, in reducing the age requirement to 50 as has been done -- and once reduced to that age there is no real reason (beyond the purely actuarial) to maintain an age requirement at all. And, from the point of view of the citizens of Troy, in whose interest the police force is maintained, there is no real benefit in maintaining an age requirement, since to do so may simply oblige senior officers, who wish to leave the force to do other things, to "serve their time" so as to qualify for retirement. That is not likely to make for contented policemen, or for well-served citizens.

The costs of the changed retirement program, in terms of needed funding over the years ahead, may thus purchase for the people of Troy a more youthful police force, and a more dedicated one -- since officers in their later years who remain on the force might do so more because of their dedication and satisfaction than because of their retirement needs.

This appears to be the trend in many departments in many municipalities. Among the cities comparable to Troy that practice in police departments is, understandably, more common than not. The Panel finds that this change, urged by the Union, is a more fitting adjustment of the retirement program for police officers than is the rigid retention of the status quo.

Order of the Arbitration Panel:

The last offer of the Union is adopted.

The Letter of Understanding (dated 3/27/85) whether or not incorporated into the new contract, is to be modified so as to permit retirement after twenty-five (25) years of service, with no age requirement.

Issue # 3: Retirement: Purchase by Retiree of Earlier Military or Police Service for Credit at Retirement.

Last Offers of Settlement:

Last Offer of the Union:

That the Letter of Agreement 27 March 1985, regarding retirement benefits, be further modified so as to permit the "purchase", by an employee, of earlier years of service in other police forces or in the military, for the purpose of calculating the number of years of service credited, to a maximum of five years, at a rate of 5% of base salary per year purchased.

Last Offer of the City:

The City strongly opposes this change, and urges the retention of the status quo.

Analysis and Discussion:

The change proposed by the Union here would require the City to treat as years of service to it, years actually spent in the service of some other city, or of the federal government.

Although this practice had been adopted by three of the communities among the seven comparables, those three did so for a short "window" of time, and have now discontinued the practice. Of the remaining four comparables, three have not adopted the practice, and only one has -- and that one, Taylor, with a lesser maximum than the maximum the Union here proposes. Following the pattern of the comparables, therefore, the Panel would refrain from ordering the change here sought by the Union.

But there is an even more important reason to refrain from such an order. The "interests and welfare of the public" are by statute the concern of the Panel, and the public here is, of course, principally the citizenry of Troy. To permit the purchase of time spent in military service or in the service of some other city, in calculating the retirement pension to be paid for by Troy, cannot be fair to the citizens of Troy.

An analysis of the roster of the police officers of Troy, provided the Panel in the Union exhibits, shows that there are some 51 officers who would be eligible to "purchase" time, and that they might purchase, on average, almost three years of retirement credit. The cost of the purchase to them is relatively low; the cost of the

purchase, from the point of view of the tax-payer who must help to fund the ensuing retirements, is high; the "buy" this change would permit is (as one says of a terrific bargain), "a steal."

Moreover, this is an economic benefit to some employees but not to others. The cost of it, estimated by the City as between 1 and 2 percent of payroll, would more justly be spent in direct payments from which all could benefit -- and the matter of direct payments has already been addressed under the heading of wages.

Finally, the Panel would note that, on the analysis of retirement and its meaning given above, this change does not make good sense. If retirement means the end of working life, the completion of one's active days, then, perhaps, one might wish to count the active days (in certain special categories) as among the working days in Troy. But if retirement is to mean the shift from one period of working life to another phase of life, each of life's phases need to be treated honestly for what they are, not permitting the game-like substitution of some years for others.

Order of the Arbitration Panel

The last offer of the City is Adopted.

No purchase of previous service years for retirement credit is ordered; the status quo in this matter is retained.

Issue # 4 Retirement: Medical Insurance for Retiree and Spouse

Last Offers of Settlement:

Before specifying the last offers of settlement, it is essential to have clearly in mind the present system of health insurance for retirees, since both the Union and the City propose changes in this system. The Panel, of course, is obliged to select one of the two options proposed.

In accordance with numbered paragraph 6, of the Letter of Understanding signed by the parties, dated 27 March 85, the present arrangements are these:

> "6. The employee and current spouse will receive medical insurance after retirement, as provided in Article 36, A1, less optical insurance, provided that the City's contribution for said medical insurance shall not exceed one hundred and ten dollars ($110.00) per month and also provided that said medical insurance shall be provided to the spouse of a deceased employee only while said spouse continues to receive pension checks."

Last offer of the Union:

The Union proposes that the same general system of health insurance for retirees be retained, but that it be adjusted in the following respect: that the City pay the full premiums for the Current Blue Cross/Blue Shield health insurance for retiree and spouse.

Last Offer of the City:

The City proposes to introduce a significant change into the structure of health insurance for retirees, retaining a Blue Cross/ Blue Shield policy much like the one currently in force, but adjusting it so that policy will be accompanied by a deductibility rider, called "DRI275/550", and with a $5 drug co-pay rider also added. But the City also proposes to increase its monthly contribution to a maximum of $200.

The precise wording of the City offer involves the following addition to Section 42 (Retirement) of the Contract:

> "C. Any employee who retires after July 1, 1990 and current spouse will receive medical insurance after retirement, as provided in Article 36 A 1, less optical insurance, and including DRI275/550, $5.00 drug co-pay and FAE-RC Riders. The City's contribution for said medical insurance shall not exceed two hundred dollars

($200.00) per month. Said medical insurance shall be provided to the spouse of a deceased employee only while said spouse continues to receive pension checks."

Analysis and Discussion

This is a very complicated issue, as every analysis of health insurance must be, in these days. The panel will explain, in what follows, its reasons for the order to be given, but would note again at the outset that it is obliged to choose between the two offers proposed.

Further, the discussion of this issue involves a discussion of the DRI275/550 Rider, a rider that places responsibility for the first $275 of medical costs per year, per individual, upon the insured individual [Hence "DRI" Deductibility Responsibility Individual], or the first $550 of medical costs per family, upon the family. This rider becomes an important issue again below in resolving Issue #11, Health Insurance for active employees. Under that heading more will be said about the rider in question.

The Union proposal would put the burden of the entire medical insurance premium, for retirees and their spouses, upon the City. The actual cost of this insurance (for a family) is just over $397 per month. Of this sum, the City, by earlier agreement, pays $110. The balance -- $287 per month -- must be paid by the retiree. [Costs for two persons, and for a single retiree, are lower, but we use here the figures for the family, since that will be commonly needed, and since we must make comparison with a $550 family deductible rider.] The Union proposal would have this annual cost of some $3,444 per retiree added to the City's retirement costs burden. Further, since the costs of medical insurance have been steadily rising, and are likely to continue to rise, extent of the burden this proposal would impose cannot even by fully known. This is a sharp alteration in the arrangements between the parties, and one not happily introduced by an arbitration panel, without the negotiated consent of both parties. This Panel is loathe to impose such a burden upon the City.

The City proposal, on the other hand, would introduce a deductibility rider into the health insurance coverage that would greatly reduce the value of the insurance provided. For those retirees who do become ill, or whose families need medical care, the cost of the rider, to them, is $275 dollars per year for an individual, or a cumulative maximum of $550 per year for a family. Introducing so substantial a change in coverage in this way, without the negotiated agreement of the parties, is also something this Panel is loathe to do.

The problem is less difficult than it appears on the surface, however, because the City, according to its proposal, would increase its contribution to the retirees premium from $110 to $200. In evaluating these matters it is always wise to assume the worst case, in which a retired family does have expenses of $550 or more in a given year, and would be responsible for that first $550; that will surely often be the case for older families. In such circumstances, the annual cost to the family would (under the City proposal) be their portion of the monthly premium, times 12, plus the $550 deductible. But, because insurance with a deductibility rider is much less costly, the total monthly premium is reduced from $397 to $341. From this the new City contribution, $200, must be subtracted. So the annual premium cost to the family is 141 X 12 = $1,692. To this must be added the (probable but not inevitable) $550 -- making a total annual cost to the retired family $2,242, some $1202 less than the cost under the present letter of agreement.

This is a very significant improvement for retired families. Similar improvements (although the amounts of the improvements would be somewhat less) would accrue to retired couples, and retired single individuals. On the whole this proposal -- which derives much of its feasibility from the actuarial statistics which render insurance policies with deductibles so much less expensive to buy -- is more reasonable than the Union's proposal that would shift the whole of the insurance burden for retirees, without deductibles, to the City.

The additional $5.00 drug co-pay does not impose great additional costs and can be accepted as a reasonable additional element of the City's proposal. The replacement of the current FAA rider with the FAE-RC rider is actually an improvement from the employee's perspective, since it eliminates the cap on the payments made toward emergency room physician charges, and provides instead for the payment of "reasonable and customary" charges.

Order of the Arbitration Panel:

The last offer of the City is adopted.

Within the contract, in Article 42, Retirement, will be added a new Section, C, that will read:

> **"Any employee who retires after July 1, 1990 and current spouse will receive medical insurance after retirement, as provided in Article 36 A. 1. less optical insurance and including the DRI275/550, $5.00 drug co-pay, and FAE-RC Riders. The City's contribution for said medical insurance shall not exceed two hundred**

dollars ($200.00) per month. Said medical insurance shall be provided to the spouse of a deceased employee only while said spouse continues to receive pension checks."

Issue #5 Retirement: Sick Leave Payment at Retirement

In its Last Offers of Settlement, the Union withdraws its proposal that paid sick time should be included in computing final average compensation upon retirement. The City opposes that inclusion of course -- but there is no need for an arbitral award, since the Union action effectively eliminates this as an issue in dispute between the parties.

Issue #6: Shift Premium

Last Offers of Settlement:

Last Offer of the Union:

$.35 per hour for all hours worked on Afternoon Shifts
$.55 per hour for all hours worked on Midnight Shifts

Last Offer of the City:

$.25 per hour for all hours worked on Afternoon Shifts
$.35 per hour for all hours worked on Midnight Shifts

Discussion and Analysis:

Much of the testimony and evidence earlier submitted on this issue pertained to proposals conflicting in structure as well as amounts. However, a result of modifications adopted by the parties in their final offers, the structural differences were resolved, and the remaining differences between the two proposals concern only amounts. Further, the parties agree that, once the amounts of the premiums are settled, those amounts will be paid for all hours worked on the respective shifts.

There is no way of determining the appropriate premium in such matters without examining the practices that are generally adopted by other communities in similar circumstances. The Panel therefore relies heavily, in this matter, upon a careful review of the behavior of the seven comparable communities. From these, for this purpose, we exclude Farmington Hills, whose practice is one of paying shift premiums only in special circumstances, and hence the amounts it uses are not strictly comparable.

Of the other six comparable communities, five pay either no shift premium at all (Dearborn Heights); or less than the premium proposed by the City of Troy (Pontiac, Westland); or precisely what is proposed by the City of Troy (Southfield, Taylor). Only one of the comparables pays a shift premium higher than that proposed by the City of Troy; that is Royal Oak, whose total compensation package, as the City correctly points out in its Brief [p.38] is well below that of Troy.

The Panel is obliged to conclude that of the two proposals, that of the City, which is less but not very greatly less than that of the Union, is the more appropriate for the City of Troy.

Order of the Arbitration Panel:
The Last Offer of the City is Adopted.

Section 43 E of the contract will be amended to read:

Employees who work in the Patrol Division, and who are regularly scheduled to work on the second or third shift (commonly referred to as the Afternoon and Midnight shifts, respectively) shall receive a shift bonus as provided below for a ten (10) hour work period for each such regularly scheduled day. The Shift bonus shall be as follows:

Second Shift (Afternoons)	**$.25**
Third Shift (Midnights)	**$.35**

The shift premium shall be paid to officers who qualify for it in a lump sum every two months.

Issue # 7: Longevity Pay

Last Offers of Settlement:

To understand the competing last offers, it is well to lay out here the existing scheme for determining longevity pay, as laid down in Article 41 of the contract, as follows:

All officers shall receive longevity pay on or before December 20 of each payment year in accordance with the following schedule:

Years of continuous city service as of Nov 30 of Payment Year	Percentage of Base Pay Earned from Dec 1 thru Nov 30
4-8 years	2% -- but not more than $550
9-13 years	4% -- but not more than $1,100
14-18 years	6% -- but not more than $1,650
19 years or over	8% -- but not more than $2,200

It is this schedule that is in dispute in the issue at hand.

Last Offer of the Union:

The Union proposes that the dollar cap, noted in the right hand column above, be raised for each category, so that the caps would be:

4-8	yrs:	$660
9-13	yrs:	1320
14-18	yrs:	1980
19 +	yrs:	2640

Last Offer of the City:

The City opposes the amendment of Section 41, and urges the retention of the status quo.

Discussion and Analysis:

The formulation of the longevity pay award in terms of percentages, with a cap, is misleading. Since the wage levels in Troy are such that virtually all police officers within any given category must receive the cap for that category, the percentages are, for practical purposes, of no effect. We therefore rightly think of the issue here as one

of competing sums, in absolute terms; the present caps (as in the schedule above) is the offer of the City, urging the status quo; the caps proposed by the Union are the sums that would in fact replace them, were the Union proposal adopted.

Longevity is a recognition of loyal years of service given; the longer the continuous service, the higher the sum. But the level at which that recognition is given is a matter of practice within the field of work, and what is done in one field, or in one part of the country may be very different from what is done in another field or another part of the country. In short, there are no strictly objective standards to rely upon in this matter. The Panel is therefore obliged, as the parties rightly understand, to look very closely, in this sphere, at the behavior of comparable communities.

Seven comparable communities have been identified, but for this purpose we exclude one of them, Dearborn Heights, because the system of longevity payments now being used in Dearborn Heights is a two-tiered system: for officers hired before 1983 a certain longevity rate; for officers hired after that date, a much lower rate. If one of those sets of figures be relied upon we get results for Dearborn Heights above the status quo in Troy, but if the other set be relied upon we get results below the status quo in Troy. The reasonable course is to exclude Dearborn Heights in these calculations.

Three of the comparables (Farmington Hills, Southfield, and Royal Oak) set their longevity payments for police officers at levels even higher than those proposed now by the Union in Troy, and much higher than that proposed by the City of Troy. One of the comparables (Pontiac) pays longevity as a level substantially higher than that of the status quo in Troy (the City proposal) and almost at the level proposed by the Union. Two of the comparables (Westland and Taylor) set longevity levels below that of the City proposal and substantially below that of the Union proposal.

With only this information to guide us, the Panel would be obliged to adopt the Union proposal. The City points out that there is an additional factor to weigh: that it begins payments after the fourth, rather than (as the comparables do) after the fifth year of service. That is true, and the sum is not trivial, but it does not greatly affect the general <u>level</u> of longevity pay.

On the other hand, there is a feature of the comparative situation that did not emerge in the testimony at hearing (to be found in various parts of Volume III of the Record). The schedule of longevity pay in all the comparables is divided into 5 categories, beginning at 5,

10, 15, 20 and 25 years. In Troy the schedule uses only four categories, beginning at 4, 9, 14 and 19 years. No doubt this was entirely plausible when it was adopted in the early 1980s, since the percentage figures underlying the caps might make it possible for longevity pay to track years of service, if the caps had not been reached. At present, however, when the percentages are of no effect, and the caps rule, the Troy situation is one in which the higher levels of longevity pay to which an officer might be thought entitled after 25 or more years of service simply do not appear. And the City exhibit on this matter -- Ex 6-B -- reports the comparative picture, but does so only with respect to the first three categories, leaving the figures for 20 years, and for 25 years, off the sheet. In fact it turns out, upon examining the actual contracts of the comparable communities [Exhibits DD-2, DD-3, DD-4, DD-5, DD-7, and DD-9] that longevity pay for very senior police officers in several of these comparable communities (especially in Farmington Hills, in Royal Oak, and in Pontiac) goes far, far higher, after 25 years, than the present cap in Troy, set for 19 years and over. Four of the six are well above Troy for very senior officers, and the average of all six (again excluding Dearborn Heights because of its somewhat incomparable payment structure) is hundreds of dollars higher than the longevity payments set for the most senior category in Troy.

Looking at longevity overall, therefore, and seeking to adopt the system that is most appropriate for the police department in Troy, all aspects considered, the adjustment proposed by the Union, raising a set of figures adopted by the parties almost a decade ago, is more appropriate than the status quo urged by the City.

Order of the Arbitration Panel:

The Last Offer of the Union is Adopted.

The schedule for longevity payments in Section 41 of the contract is adjusted, in accord with the Union proposal, as specified in detail above, with these being the new figures:

4-8 yrs: cap of $660
9-13 yrs: cap of $1,320
14-18 yrs: cap of $1,980
19 + yrs: cap of $2,640

Issue #8 Uniform Purchase Allowance:

Although testimony and other evidence on matters pertaining to the allowance for the purchase of clothing, and pertaining to the allowance for the cleaning of clothing were presented together at hearing, and these matters are argued in the same section of the parties' Briefs, the two issues are distinct and will be resolved separately.

The amount of the clothing purchase allowance ($400 per year, plus 50/50 on an additional one hundred dollars) is not at issue. The Union has modified the position it defended at the hearing, and accepts this amount.

Both the Union and the City, however, seek to add a short passage to Article 40 of the contract, which would qualify the present purchase allowance.

Last Offers of Settlement:

Last Offer of the City:

The City urges the addition of the following paragraph:

> "G. Body armor purchases, and any mandatory changes in uniform and/or personal equipment over $200, may be deducted over a two (2) year period from the officer's clothing allowance."

Last Offer of the Union:

The Union urges the addition of the following sentence to subsection A. of Article 40:

> "Any mandatory changes in uniform and/or personal equipment over $50.00 per year shall not be deducted from the officers' clothing allowance.

Analysis and Discussion:

Because there is no dispute over the basic amount of the clothing purchase allowance, this is perhaps the most minor of the differences between the parties. No help is given in looking to the behavior of comparable communities, because the issue concerns a qualification concerning which there is no clear pattern in various municipalities.

The Panel, therefore, seeks to determine what is most reasonable given the circumstances of the members of the department. If new, large uniform purchases, or armor purchases, are made mandatory by the Department, the City is prepared to allow that more time be allowed for the coverage of these from the established allowance -- up to two years.

The Union, on the other hand, urges that if the requirements exceed $50, the cost ought not have to be absorbed by the employee, but by the employer.

The Union's position in this matter is entirely reasonable. Clothing allowances are to cover the purchase of clothing which needs replacement from time to time, in order that a high standard in the City of Troy be maintained. If new requirements are imposed, sometimes (though rarely) major, and the allowance be used (over whatever time frame) to pay for these, the fundamental purpose of the allowance is undermined. Let the small mandatory purchases, if there are any, be treated like all other clothing. If the City wishes to impose major changes in uniform requirements, it is reasonable for the cost of those to be borne by the authority that commands them.

Order of the Arbitration Panel:

The Last Offer of the Union is Adopted.

The following sentence is to be added to subsection A of Article 40:

> **Any mandatory changes in uniform and/or personal equipment over $50.00 per year shall not be deducted from the officers' clothing allowance.**

Issue #9: Uniform Cleaning Allowance

Last Offers of Settlement:

Last Offer of the City:

That Subsection 40. F of the contract, providing that each officer receive a cleaning allowance $225 in the month of May, remain unchanged.

Last Offer of the Union:

That the cleaning allowance be increased from $225 to $300 per year.

Discussion and Analysis:

Although this is not a major issue, it is not a simple one, since, to resolve the matter fairly, there are two aspects of the dispute to be considered.

First, it appropriate to look to the behavior of the comparable communities in this respect. This, however, is a bit tricky, since of the seven comparables, three have combined the clothing and cleaning allowances into one payment, and so it cannot be said clearly what allowance they would make specifically for cleaning. One comparable community, Farmington Hills, actually provides cleaning, and so we have, in the City Exhibit on this matter [Ex 7-B] the cost of cleaning as estimated by the a cleaning establishment. This figure may reasonably be grouped with that of the other three comparables, the ones that do provide an allowance specifically for uniform cleaning; the resultant average for these four is over $350 per year. On that basis alone, the Union proposal is more nearly appropriate than the proposal of the City, for a continuation of the $225 amount.

But beyond the behavior of comparables, there is the equally central question of what the cleaning of uniforms really costs, and what a reasonable allowance ought to be. A cleaning allowance of $100 would be far too little to cover the costs; an allowance of $1,000 far too much. What is the real cost? Here we have evidence of two kinds -- that submitted by witnesses, at hearing, and that appearing in the Exhibits themselves. The City observes in its Brief, correctly, that the fact that the present allowance was agreed upon in 1981 is no argument in itself for its increase. But we must add to this fact the realization (about which testimony, appearing in Volume III of the Record, was forceful) that since 1981 the costs confronted by cleaning establishments have risen dramatically. One

witness reports that an increase of 100% over the past ten years is flatly asserted by several cleaning establishments; this is by no means implausible. If the figure set in 1981 was not greatly excessive (which we may well suppose) the increase in cleaning costs would justify an adjustment after the passage of a decade. Moreover, the standards of appearance set for officers in Troy are high, and those standards require more cleaning service, perhaps, than a normal working family would need to call upon. Some members of the department may achieve economies and save a bit on the allowance by laundering their own shirts, or by seeking out discount cleaners; but the central point is that the cleaning allowance is to provide for the properly cleaned and laundered uniforms of the officers. The best estimate we can make of the cost of that, per year, is something in excess of three hundred and fifty dollars, corresponding to the figure derived from the averaging of the allowances of the comparable communities.

Of course a cleaning allowance is a matter that can always be renegotiated. Conditions of employment might be such as to provide no such allowance whatever. But if the point and spirit of the allowance is to cover the actual cleaning and laundry costs of officers, the Panel is obliged to conclude that the upward adjustment in the cleaning allowance, sought by the Union, is reasonable, the resultant figure being nearer those actual costs than the status quo.

Order of the Arbitration Panel:

The last offer of the Union is adopted.

The uniform cleaning allowance, in Section 40 F of the contract, is to be increased to $300 per year.

Issue #10 Life Insurance:

The Union originally proposed an amendment of Section 35 of the contract, which the City opposed. But the Union in its final offers withdrew its proposal from Panel consideration. Hence there is no remaining dispute on this matter for the Arbitration Panel to confront.

Issue #11 Medical Insurance

First, an introductory note:

Of all the issues in dispute between these parties, this issue, concerning the nature of the medical insurance to be provided by the employer, and the level of contribution by the employee, is the most difficult, the most complicated, the most painful. The Chairman of the panel wishes to emphasize the fact that he has given to this matter the most detailed scrutiny, examining in detail the mass of evidence in the many Exhibits submitted by both parties, and the detailed testimony in the Record of hearings. Additionally, the patterns of health insurance in the seven comparable communities have been examined. Whichever final offer the Panel were to adopt in this regard, the party whose proposal is not accepted will surely be greatly pained. We can only strive to achieve what is fairest, most appropriate, and what is most nearly called for under the several criteria laid down in the statute authorizing this arbitration proceeding.

By that statute we are obliged to consider not only the practice of comparable communities, but the interest and welfare of the public, the rising cost of living, and so on. Many factors must be weighed; only one decision can be reached.

Under the old contract, Blue Cross/Blue Shield and Major Medical insurance, with certain specified riders, are provided by the City; the cost of the premiums is borne very largely by the City, except that employees electing such coverage (virtually all, of course) contribute $10 per month.

The Union, in its last offer of settlement, seeks essentially to retain this system, with minor adjustments: the rider for prescription drugs would be changed to involve a $5 rather than a $2 co-pay, and a program instituted in which the cash value of single coverage could be received by an employee in place of the medical insurance itself -- called "spousal cash value for single coverage." The City, in its proposal on the other hand, seeks a substantial change the system of payment for medical insurance, eliminating the employee contribution to the premium cost, but introducing a new rider on the policy offered, on that would establish deductible amounts to be paid by the employee in the event of illness, and would therefore much reduce the cost to the City of the insurance provided.

Last Offers of Settlement:

Last Offer of the Union:

The Union proposes the following changes in the current hospitalization insurance coverage:

A. The Union agrees to a $5.00 drug prescription rider.

B. Institute spousal cash value of singular coverage program.

C. Continue the current member contributions of $10.00 per month. [*]

[*] Panel note: Item C in this list is not a change, but a retention of the current contribution specified in the contract.

Last Offer of the City:

The City proposes that Section 36 of the old contract, Hospitalization and Medical Insurance, remain exactly as it is, except for the following amendments:

a) included in the riders provided for the Blue Cross/Blue Shield policy is to be the new DRI275/550 rider;

b) the deductible prescription rider will be changed from $2 to $5;

c) FAA rider will be replaced with FAE-RC rider;

c) with the implementation of the DRI275/550 program, employees will no longer contribute $10.00 per month for medical insurance.

Discussion and Analysis:

Before reaching the central questions here, some peripheral matters can be cleared away.

a) Both parties propose increasing the drug prescription rider from $2 co-pay to $5 co-pay. That will happen in any case, therefore, and is not at issue.

b) The Union proposes to "institute spousal cash value of single coverage program." The meaning of this, as the Panel understands it, is as follows: Under this program, members of the bargaining unit who are married, and who are covered by medical insurance through the policies of their spouses, may elect to receive from the City, instead of insurance coverage, the cash value of a single rate medical policy. The economic significance of this adjustment is not

clear. It is not clear how many members of the police department would elect to receive such a cash payment in place of insurance, and it is not clear to what degree, if any, the City would be benefitted by their doing so. The amount that their single medical insurance costs would remain the City's burden, although for some married employees that burden would be reduced to the cost of single coverage. But since the reductions in cost this program would effect, if any, are not known, and are nowhere specified in the materials presented to the Panel, the impact of this adjustment cannot be precisely weighed in these deliberations. Were this program to be adopted, the Panel supposes that the rules governing its application would be the same as the rules governing its operation where the program is already in effect (for Command Officers) in the Troy Police Department.

(c) The FAE-RC rider is an improvement over the existing FAE rider; under the current rider the payment to an emergency room physician is capped at $15; under the replacement that cap is removed, "reasonable and customary" charges being then paid by the policy.

The total impact of these minor adjustments, plus and minus, although not exactly determinable by the Panel, is sure to be small as compared to the very large impact of the City's newly proposed deductibles. So the Panel acts in this matter with central regard for the wisdom and fairness, or lack of wisdom and fairness, resulting from the introduction of the DRI275/550 rider.

This critical rider, although discussed briefly in dealing with issue #4, above (health insurance for retirees) needs to be examined with care. Evidence on this and related matters is presented in 15 City exhibits [17-A through 17-O], and in 3 Union Exhibits, S-1 through S-3. Detailed testimony on this matter appears in Volume VIII if the Record.

The object of the City, of course, is to reduce its costs in providing medical insurance. The costs of this insurance have been rising steadily and sharply for some time. To provide medical insurance for officers in the Police Department, the cost to the city of Troy has risen, in just the past 10 years, well over 300%. The burden of those costs is now painfully great.

Employers and unions alike, across the Country, have made repeated efforts, of different kinds, to reduce the costs of medical insurance. But it is not really possible to reduce those costs, or even to keep them level, because the costs of the medical services paid for by that insurance -- the charges of hospitals and the fees of physicians -- continue to rise sharply. Therefore the costs of the insurer

in providing those services must also rise; and therefore the premiums for the insurance they sell must rise as well. These are hard facts of contemporary American life. The question that underlies the issue arising here, very difficult and very painful, is this: When management and labor are at odds in the matter, who shall pay how much for this increasingly expensive health insurance?

At present the members of this bargaining unit pay $10 per month toward their health insurance policies. That charge, although not trivial, is only a small portion of the real cost. The Union proposals to ease the burden upon the City somewhat do go in the right direction -- but they go only a very small way toward the payment of insurance costs that have become enormous in recent years. Plus or minus a few dollars, the medical insurance premiums for Troy officers run about $400 per month (or nearly $5,000.00 per year) for each insured family. More precisely, the premium cost as of April of 1990, per family, was $397.69 per month; for each couple $375.84 per month; and for each one-person family $167.90 per month. In response to the specific inquiry of the Chairman of the Panel, the City provided figures detailing the cost of health insurance, in actual dollars, for the Troy Police Officers Association. Careful response by the City was promptly given, and deserves to be reported here. In just two years, from 1987 to 1989, the City's health insurance costs for the TPOA alone rose from $233,000.00 to $328,000.00 (Figures rounded). Increases of this dimension must be frightening to any responsible unit of government. Moreover, these rates are sure to continue to rise, but at a rate that is uncertain. [See City exhibits 17-H and 17-I].

The City argues, very persuasively, that the burden of these horrendous increases ought not have to be borne by it alone. Especially is this true, the City contends, since the high cost of this insurance is partly a result of the excellence of the coverage, the fact that the insurance provided is "first dollar" coverage -- that is, everything, from the first dollar of expense, is covered. Insurance companies offering such coverage must, of course, raise the level of their premiums to cover the inevitable expenses they expect to incur.

Two important points need to be made additionally about medical coverage of this kind: First. this is particularly expensive insurance because, as everyone knows, persons who are covered from the first dollar of expense are less likely to hesitate in calling the doctor, or in going to the doctor's office or to a hospital, even for minor medical problems or inquiries. Why should they hesitate, after all? The care they seek has been paid for by insurance premiums earlier charged; they are entitled to everything, because everything has been paid for. This is, plainly, the very

best sort of medical insurance from the perspective of the insured, and for that reason it is also the very most expensive.

Second, the very reasons that make it very expensive also make it very wise for the insured to be so covered, since there is little likelihood that he will then be deterred (for reasons of cost) from consulting a physician on a matter that may be minor, but may not be. Thus, with such coverage, serious diseases or disorders are more likely to be caught at an early stage when the problem is more remediable. For example, a small growth on the arm or the ear, one that might be ignored if a visit to the doctor may be expected to cost $35 or $50 or more. may in fact call for the most speedy attention; the growth is not likely to be malignant -- but if it is it may eventually prove deadly, although easily removable when small. Similar circumstances arise with some kinds of infections, and the like. Early treatment is better treatment. And although early treatment is possible whether the insurance coverage be from first dollar or not, it is a psychological reality that first dollar coverage will tend to encourage the early attention to medical symptoms.

How then, are employees to share, fairly, in some degree, the burden of increasing costs for medical insurance? That must be done in one of two ways: either the employee must contribute a portion of the monthly premium, or the cost of the insurance must be reduced by including deductibles in the coverage, deductible amounts that must be paid by the employee when medical care is sought.

In the former case (by contributing to premiums) the coverage remains from first dollar. But any significant sharing of the costs of this coverage would involve a <u>co-pay</u> of disagreeably great magnitude. The Union, in this dispute, now pays $10 per month, and does not propose to increase that sum at all.

In the latter case (coverage not to be from first dollar, but only after the individual employee has paid the established deductible amount) the cost of the insurance policy is substantially reduced -- but reduced because of the increased expense borne by the insured employee. Insurance coverage containing large deductible riders are much cheaper for the City to buy, for two reasons: First, and obviously, the bill from the hospital to the insurance company will in every case be reduced by the amount of the deductible. Second, and also very important, those insured, very conscious of the deductible they are to be charged, are less likely to incur any expense at all, less likely to visit the doctor's office or the hospital. [Whether this is good or bad overall cannot be told in advance. It is good if

there really was no need for medical attention and waste had been discouraged; it is bad if there was genuine need for medical attention, and best care was not received because of the fear of expense.]

In any event, it is the second path, introducing deductibles, that the City of Troy, in its proposal, urges upon the arbitration Panel. The general spirit of the City proposal, that there should be a sharing of costs through deductibility of low level expenses, is surely plausible. The DRI275/550 rider is a program that helps to achieve directly much of what is sought in controlling medical insurance costs. It effects a large and immediate reduction in the cost to the City of the medical insurance provided. That is very much in the interest of the citizens of Troy.

To illustrate: where the cost of first dollar coverage (as of April 1990; dollar amounts rounded) is $398 per month for a family, it is $341 per month with the 275/550 deductible rider. For a couple the amount drops from $378 to $322 per month; for a single person the cost is reduced from $168 to $144 per month. Assuming that most police officers in Troy are married, we may infer that the cost to the City of medical insurance would be reduced by approximately $50 per month as a result of the newly introduced deductibles. That is approximately $600+ per year, more than the amount of the deductible itself! [The reason for this has to do with the savings, to the insurance company, effected by the restraint of the insureds (because of the deductible charge) in visiting doctors, as noted above. These are very complicated actuarial calculations not to be pursued in detail here.]

This approach also has the general advantage to the citizens of lowering the total costs of health care in the community somewhat, and reducing somewhat the drain upon the medical facilities of the community, by discouraging inessential uses of medical services. This is not to suggest that those who visit doctors are commonly frivolous, but only that many such visits are not objectively called for. Unfortunately the normal lay person, when sick, cannot know, in advance, whether the visit to the doctor is advisable or not.

All this may be said in support of the approach taken by the City. But the particular pattern of deductible charges proposed by the City is highly problematic in several respects.

In the first place, the level of the deductibles established by the DRI275/550 rider is very high. Concretely the rider has this impact: for each person insured, however many persons there are in the family, the employee must pay

the first $275 of medical expense. Only after the total paid for all members of the family reaches $550 does the $550 cap become effective. And, of course, the physician and hospital will render the bill first, which the insured must pay; the reimbursement, if any, will come later. A witness for the City, from Blue Cross/Blue Shield, testified at length on how this would actually work, assuring the Panel that the computer would spot the payments made and keep the system operating accurately and fairly. Every user of medical insurance will testify that computerized systems (relying upon very many human inputs as well as the machine) are of uncertain reliability in this regard. And especially is this system to be mistrusted when it is brand new, as this one is, with all of its wrinkles not yet ironed out.

There is a cost to the insured family that goes beyond mere financial burden. The essence of this deductibility system is that those who use the system pay the charges. But those who use the system are the sick folks, those who are least likely to be able to afford it, who are most likely to have other expenses to meet because of their illness, and most likely to have a deductible expense for major medical insurance also, and those who have most on their minds and are least in a position and least inclined to do the record-keeping that proper reimbursement will require. For the insured a system of medical insurance of this kind is very much less good than the system now in effect.

In dollars the price tag is very high. Not every family will have to expend the full $550 deductible, but it is reasonable to assume that the preponderant majority will. Only one day for one person in the hospital, or even one short visit to the emergency room of a hospital, or one series of medical visits or treatments, is likely, at today's prices, to bring on bills totalling the full amount of the deductible. So, for purposes of estimating impact, the Panel must assume that each family will confront the expense of this deductible -- an additional $275 for a single person, $550 for a family, per year.

The Union finds this outrageous, unacceptable, because it "takes away" a great chunk of whatever salary improvement has been achieved with the new contract. The Union argues in its Brief that a relatively new employee would receive, if the City's wage proposal is adopted (and which in fact the Panel did adopt and order), salary improvement of a little over $900, of which more than half will probably need to be spent in medical deductibles. This paints the picture in its gloomiest colors, of course. There are other economic benefits flowing to Union members from the new contract, in longevity, in uniform cleaning allowance, and so on. Moreover most officers are not "relatively new" but at the top step of the salary scale, where the salary improvement will be about $1,500.00. Nevertheless there is much merit

in the Union complaint; the $550.00 expense, to be anticipated for most families, will reduce the salary improvement achieved by anywhere from a third to a half or more, and that is a very hard bullet to bite.

Of course, what is "taken away" is not the whole of the deductible in every case, but that portion of it that actually must be spent by each family. And, the City argues quite correctly, the amount of new burden must be calculated as the cost of the deductible minus the saving of $120 per year flowing from the discontinuation of the $10 per month co-pay. All true. But the blow that is inflicted by this deductible remains very heavy.

Is it unfairly heavy? Would the resultant burden to the City be in harmony with what takes place in comparable communities? Of course each of the seven comparable communities has its own system of health insurance, and therefore no exact comparison can be made. Not one of them has this deductible program, as the Union points out -- but that is true simply because the program is new, and that cannot be a compelling consideration or nothing new would ever happen. But we can compare the amounts of money expended, in health insurance payments, by the several comparable cities, to see how those payments compare to the payments of the City of Troy with, and without, the DRI275/550 deductible program. We have good comparative figures presented by the City. In its Exhibit 17-L the City reports the health expenditures of the several cities, per employee, as of 1 July 1989 -- figures that will have risen by now, but will rise for all at approximately the same rate. So we use the City figures here.

The average expenditure for Troy is $4,658.

Expenditure for the seven comparable cities (Dearborn Heights, Farmington Hills, Pontiac, Royal Oak, Westland, Taylor, Southfield) range from a high of $5,476 for Royal Oak to a low of $4,228 for Pontiac. But the extraordinary thing is that the average of the seven cities is <u>exactly</u> the same as the Troy expenditure per employee: $4,658!

The Panel is obliged to conclude that, although the burden is presently very heavy, it is not heavier than communities of comparable kind may expect to have to bear. Troy <u>can</u> bear the expense, heavy though it is. We repeat what was said much earlier: the fact that Troy has the ability to pay costs, does not mean that it should be obliged to do so. But if the costs are more or less standard for cities of this kind, this City cannot make the argument that the price tag is simply out of its reach, or beyond reason.

But what happens if the DRI275/550 rider program is enacted? The cost to the city, per employee, drops significantly. For each family insured it drops by $57 dollars per month, or $684 per year; for each two-person family insured it drops $56 per month, or $672 per year; for each one-person family insured it drops $24 per month, or $288 per year. [See City exhibit 17-I] Not knowing the marital profile of the police department, it is reasonable to assume that the average saving to the City from the institution of the proposed deductible program would be in the neighborhood of $600. These are enormous savings in the cost of health insurance. If that much money could be saved, why can the savings not be shared by the City and the Union? They could be, of course. If the members of the Union increased their contribution to the premiums paid, not by $550 per year but by half of that, the City would have its burden greatly eased, and the employees would retain worry-free, first dollar coverage. But such a proposal, or one moving in that direction, was not put before the arbitration panel and cannot be ordered by it. We are obliged to select one of the two last best offers submitted by the parties in dispute on every economic issue.

In summary, the Panel is obliged to choose between a proposal that essentially keeps things as pretty much as they are, while costs rise and premiums become ever more burdensome, and a proposal that moves the sharing of costs in the right direction, but does so by imposing a new and very great cost upon one of the parties, and buys a system that is untried and likely to be replete with confusion, and a source of much frustration and dissatisfaction among Troy police officers.

Faced with these alternatives, and examining again the evidence bearing upon the costs borne by the comparable cities, the Panel finds that the Union proposal is, of the two, the wiser and the more reasonable.

Three further matters pertaining to this change must be considered.

First, about the structure of the system of health insurance under the two proposals: First dollar coverage of medical and hospitalization costs is better coverage, healthier coverage, more anxiety-free coverage, than that provided by a system with large deductibles. The City is correct when it argues that it is time for the Union to face the fact that the increases in health care costs will have to be shared in greater degree than in the past. But the mode of sharing here proposed by the City cannot be ordered by this Panel.

Second, about consistency. It will be noted that the Panel, rejecting here the introduction of the DRI275/550

rider, has nevertheless ordered the inclusion of that same rider in resolving issue #4, (above) pertaining to medical insurance for retirees. There is no inconsistency in this. What was said here about first dollar coverage applies to retirees as well, of course; it would be better if they could retain it. But in the case of the retirees, a very heavy cost has been long burdening them, and with the introduction of the DRI275/550 rider the contribution of the City toward their health insurance premiums could be so greatly increased that, all, things considered, introducing the DRI275/550 rider was a fair and even beneficial outcome for that group, while its introduction for the entire Department could not be so characterized.

Finally, about the future. Both parties will be better served over the long haul if they can join in finding some way to retain health insurance with first dollar coverage for the members of the bargaining unit. It is unlikely that this can be done wholly at City expense for the indefinite future. But a reasonable and just compromise on this matter, if it is to endure, must be a negotiated compromise, as the Union rightly argues, one to which both parties knowingly commit themselves, and not a sharp change imposed by the order of an arbitration panel.

Order of the Arbitration Panel:

The Last Offer of the Union is adopted.

The health insurance coverage provided for in the contract is amended only to adjust the drug prescription co-pay from $2 to $5, and to institute, the "spousal cash value of singular coverage" program, as it has been instituted for Command Officers in the Troy Police Department. The DRI275/550 rider is not ordered; first dollar coverage for members of the police department is maintained.

Issue #12 Association Business

Section 10 G of the old contract provides that the President of the Association or his designated representative shall be given time off to attend Act 78 disciplinary hearings and additional time off not to exceed 80 hours each year. Both parties seek an adjustment of the wording of this Section. The City seeks to narrow the language describing the activities for which time off is given; the Union seeks to increase the number of hours off allowed.

Last Offers of Settlement:

Last Offer of the City:

The City proposes that Section 10.G be amended, by striking the words "disciplinary hearings" and replacing them with the phrase "meetings which pertain to Police Department-related issues".

Last Offer of the Union:

The Union seeks to retain the language of Section G as it is, amending it only by replacing the figure of 80 hours with the figure of 100 hours.

Discussion and Analysis:

It is not common among the comparable communities for the number of hours needed by the President of the Union for department-related business to be limited by precise number. The standard practice is to allow reasonable time off for these legitimate purposes, and to develop a spirit of mutual trust such that improper use of these hours is never seriously contemplated, and no tight controls by the employer are made necessary by inappropriate behavior.

The detailed examination and close cross-examination of the current President of the Union, Brad Dalton, made it very clear to the Panel that neither the Union nor the City believes that there is any deliberate or consequential abuse of the provision now in force. Requests for time off for union business are frequently submitted, and without exception have been approved by the Chief of Police, and in no case has there been any suggestion of inappropriate behaviors -- either from the Union in taking advantage of the provision, or from the City in refraining from recognizing the Union's needs.

Why this dispute, then? It appears that the current Union President is a particularly assiduous worker in behalf

of his members, and, saving some of the hours provided for union conferences and conventions, finds himself devoting a substantial number of hours of his own time to Union business. The Union has 86 members; he faces one or another sort of union business virtually every day, certainly every week. To do it all, conscientiously, the allotted 80 hours are not enough. Of that there is little doubt.

The City correctly points out that of the 80 hours provided, not all are commonly consumed -- but that is a consequence of what is meant by "consumed". Many more than 80 hours go to legitimate Union business; a loyal officer of the union, no doubt also receiving some personal satisfaction from the service given, need not charge to the 80 hours every hour spent. And this President surely has not done so.

The City asks for a narrowing of the language so that the activities for which time is given be clearly department-related. The substance of that concern is fair, but it is a change needed in the contract only if there is reason to think that the uses of that time have been inappropriate. But that, as we have seen, does not seem to be the case.

The Union asks, not that the provision be changed to "reasonable time off" or some words of that sort, common among comparable communities, but only that the number of hours specified be increased to 100. In a work year of over 2,000 hours, and a bargaining unit approaching 100 members, -- and with a prevailing spirit of fair and honest use of the time provided -- that is not by any means an unreasonable provision.

Order of the Arbitration Panel:

The last offer of the Union is adopted.

Section 10.G of the contract is amended so as to provide 100 hours time off, for the Union President or his designated representative, for legitimate Association activities.

Issue #13 Minimum Strength Standards and Assignments

No provisions in the old contract obliged the City to maintain minimum assignments of personnel at given times or for given functions. The Union seeks, in this issue, to introduce a new article in the contract that would establish, with some detail, a set of such minimums, for each shift, and for each set of hours of the day.

The Union makes this proposal out of concern for the well-being of its members. In its view this is largely a safety matter, and not an economic matter. But in the view of the City, since such minimum assignments may impose considerable costs upon the City to maintain, this is above all an economic issue.

Both parties are right in their concerns; but since the matter is certainly an economic issue in large part, the Panel must treat it in that way for purposes of these 312 proceedings, adopting one or the other of the two last offers of settlement.

Last Offers of Settlement:

Last Offer of the Union:

The Union proposes a new article to be introduced into the Contract, to read as follows:

> MINIMUM STRENGTH STANDARDS AND ASSIGNMENTS
>
> It shall be the policy of this Department to assign and schedule an adequate number of personnel to all components of the organization. Only through proper allocation and distribution will the Department be able to respond efficiently and effectively to the community's calls for service.
>
> Patrol Division Police Officer Minimum Shift Strength Standards
>
> 1. For advance scheduling purposes, Shift Supervisors must schedule the following minimum shift strengths.
>
> Shift 1 -- 5 Officers
> Shift 2 -- 5 Officers
> Shift 3 -- 5 Officers
> Shift 4 -- 5 Officers
>
> 2. Daily minimum shift strength shall be based on manpower by hour-of-day. The minimum strength by hour-of-day shall be:

0245 - 1200 hours -- 5 Officers
1200 - 0245 hours -- 5 Officers

3. Officers who are on probation and who are not eligible to patrol alone, as determined by the Shift Commander, shall not be included in the minimum shift for determining the number of officers available for duty under this guideline.

4. Shift Supervisors shall use these minimum manpower strengths as a guide for granting officers time off. Time off shall not be granted if such requests place the shift strength below the advance daily scheduled minimums or daily minimum shift strengths.

Patrol Unit Assignments [*]

[* Panel Note: In its Last Offer of Settlement, the Union revised the formulation of its proposed new article, deleting the first two parts of what had earlier been numbered as Section 5, pertaining to the assignment of patrol units. The newly numbered Section 5, (originally proposed as the third part of that Section) as well as proposed Sections 6 and 7, which remain in the Union final offer, also pertain to patrol unit assignments, and it is therefore appropriate to retain this heading for the Sections that follow -- although, in the Union final offer, the heading itself was included among the words deleted. For the sake of clarity, the heading is here retained.]

5. Patrol supervisors will have authority and discretion to assign two-officer patrol units, during the hours of darkness, when basic patrol areas are covered by one-officer units and extra officers are available.

6. The Employer and the Association agree that for reasons of safety and service to the City, the minimum number of patrol units actually in the field on any given patrol shift shall be at least 5 of the number of officers officially assigned to that shift. If, because of illness or other reasons, 5 units are not actually on patrol within the City limits, the employer or its designee shall call in enough off-duty officers to bring the strength up to the required 5 units.

7. One-officer patrol units will not be dispatched or required to handle dangerous calls for service without a backup unit.

Last Offer of the City:

The City opposes the inclusion of minimum strength standards and assignments in the collective bargaining agreement, and urges the retention of the status quo.

Discussion and Analysis:

This issue is one of the most complicated arising in this set of proceedings. Most of Volume VII, and portions of Volume VIII of the Record consist of testimony, by the Chief of Police, and by the President of the Union, on this matter. The Union has submitted 16 evidentiary exhibits [P-1 through P-16] on this matter; the City has submitted 17 exhibits [16-A through 16-Q] on this matter as well. The Panel has reviewed all of this material with great care.

There is no doubt in the mind of the Chairman of the Panel that Union members are genuinely concerned about the good of the City, as well as their own safety, in proposing these strength minimums, and that they feel strongly about it. Because safety factors are at least part of what is at issue here, the topic is one that, in Michigan law, has been considered a mandatory and not merely a permissive subject of collective bargaining. But the City questions whether, in this case, there really is a safety issue at stake.

There is no doubt that the City, and its Police Chief, care deeply about the good order of the City and the success of its Police Department, and the appropriate methods of personnel deployment. That the cost of newly imposed staffing requirements will be high is clear to the City, and they also feel very strongly about this matter. But the Union questions whether, in this case, there really is any substantial additional cost to the City in providing these minimums.

The Panel, upon reviewing the mass of evidence submitted, is convinced without doubt that this much is true: that the introduction of the minimum staffing requirement sought by the Union would, indeed, impose substantial additional costs upon the City. To maintain the staffing levels mandated in the proposed article, either new personnel would have to be brought in, or a substantial amount of overtime duty assigned. Either course would impose substantial expense upon the City of Troy.

The burden, therefore, must fall upon the Union to show that the introduction of this article, and the expenses carried in its train, are essential, fully justified by the safety needs of the City and the Department. This burden the evidence submitted to the Panel does not sustain. No useful purpose would be served here by the detailed re-consideration of each of the proposed requirements, and the costs that they might or are likely to introduce.

The essence of the matter is this: the present operation of the Police Force in Troy has been effective and efficient, and, by all reasonable standards, safe. There is adequate personnel on hand in almost all circumstances; there is adequate flexible time for the re-direction of personnel in ways that special needs may require. All of this is made very clear by the testimony, unrefuted, of the Chief of Police, whose was subjected, at hearing to very thoughtful cross-examination by the representative of the Union at that session, Mr. Kenneth W. Zatkoff. Standards maintained by the City of Troy exceed those generally proposed by law enforcement authorities, for cities of this kind. [See Record, Vol VII, pp. 4 ff.]

And the evidence further supports the conclusion that the effectiveness of the operations of the Troy Police Department is due in good part to the intelligent management of its resources -- management that entails the authority of its command offices to deploy and re-deploy personnel in accord with their best managerial judgment. That, after all, is a large part of their job, and they do it well. The City contends, in its Brief, that "[t]he determination of staffing levels and the assignment of personnel is a fundamental right lying at the core of management control." [City Brief, p. 60] This is an extreme statement of the position, and it may well be argued that such a "right" must be limited by safety considerations, if the exercise of that right had plainly endangered the life or safety of employees or citizens. But no such endangerment has been shown in this case. And if the Panel cannot affirm an absolute and overpowering right of management in this matter, neither can the Panel deny that, given a history of good and effective management such as that revealed here, the introduction of staffing minimums, as proposed by the Union, would very seriously interfere with the flexibility and decision making authority of the Chief and others in the Police Department, and thereby interfere unjustifiably in the performance of their duties.

Even if it were believed that some such minimum staffing requirements were called for (a need not established in these proceedings) it is likely that such requirements are far better expressed in Orders of the Chief, or even in Letters of Understanding -- rather than in an article of the master collective bargaining agreement.

Made rigidly into elements of the contract, changing circumstances could not be quickly dealt with; one party or the other would likely find it inadvisable to renegotiate a portion of the contract itself.

That this is not the wisest way in which to administer a police department -- and especially one with a good history -- is reinforced by the examination of the behavior of the comparable communities. Four of the comparable communities, Royal Oak, Dearborn Heights, Westland, and Taylor, include in their contracts some language about appropriate staffing -- but in no one of those cases is there any set of minimum strength standards like that appearing in this Union proposal. What those communities do (and Troy does similarly, using internal orders in place of contractual requirements) is establish guidelines for the assignment of two-officer patrols during certain hours. Those provisions are very different from the new article proposed by the Union in this proceeding. [See Contracts of Westland [Ex DD-9] of Royal Oak [Ex DD-4], of Taylor [Ex DD-7], and of Dearborn Heights [Ex DD-1]. Union exhibits, seeking to show that such staffing requirements are appropriate for the contract, strain unsuccessfully to do so. [See Union Exhibits P-3, P-4, P-5, and P-6].

In Royal Oak the authority to determine two-officer assignments is plainly retained by the "ranking shift supervisor or higher Police Department authority"; two-officer car assignments are indicated "under normal conditions" under certain "parameters." [See Royal Oak contract, Ex DD-4, p. 69] That is nothing like the article here proposed.

In Taylor the contract provides that "between sunset and sunrise" patrolmen will double, using "two-man cars", with "the understanding that there will be a minimum of two double cars on duty" during those hours. [See Taylor Contract, Ex DD-7, p. 30] Troy practice matches and commonly exceeds that standard in fact. Such contract language in Taylor cannot justify the proposed contract language, with vastly more detail regarding minimum strengths of the several shifts, here proposed.

In Westland there is a specification, in the contract, of the number of two-man cars, and the number of one-man cars that shall be assigned, <u>depending upon the number of officers on the road</u> -- but there is no specification of the minimum number of officers on duty, or on the road. And a substantial number of one-man cars are provided for in that contract under many circumstances. [See Westland Contract, Ex DD-9, pp. 20, 21]

In Dearborn Heights may be found the stiffest minimum staffing requirement among all the comparable communities.

It is to be found in article 18, p. 22 of the Dearborn Heights contract -- which, oddly, is not referenced in the exhibits of the Union in this matter. But, whether appearing the Union Exhibits presented to the Panel or not, it is relevant, and reads as follows:

> "The City agrees in principle that a minimum of two (2) police officers shall occupy each scout car after sunset. No officer shall be required to work a one (1) officer car after sunset unless officer agrees to work a one (1) officer car."

[See Dearborn Heights Contract, Ex DD-1, p.22] But here also the requirement, so far as it is contractually specified, concerns an understanding about the assignment of officers to one-person or two-person cars after sunset. The Proposal of the Troy Police Officers Association goes very far beyond statements of that sort.

The Panel concludes that neither safety, nor efficiency, nor the good management of the Troy Police Department, nor the behavior of other comparable communities, requires or suggests the wisdom of introducing minimum strength and staffing requirements into the master contract.

A final consideration in this matter deserves mention. The Union asks the Arbitration Panel to introduce a new article into the contract between the parties. That is within the authority of the Panel, and would be done if fully justified, of course. But if the substantive issues here were close, the Panel would be loathe to impose its vision of a master contract upon parties who had not negotiated so major a change. If a new set of contractual provisions, setting minimums staffing levels in various settings, are to be introduced, it is far better that the parties do this by mutual agreement, a mutual agreement not possible in this case, obviously. This very point is made by the Union, very vigorously, in its Brief, in discussing medical insurance, where the change proposed by the City was substantial, but not so great as it would the proposed change here, introducing an entirely new article into the contract. [See above, Issue 11.] In any event, the change sought at this point is not found to be fully justified, nor will the new article be introduced.

Order of the Arbitration Panel:

The last offer of the City is adopted. No minimum strength standards are ordered; no new article of the Contract is adopted; the status quo in this regard is maintained.

Issue #14 Disciplinary Proceedings: Time of Suspension

Many issues concerning disciplinary proceedings have arisen in the course of these proceedings, some of greater and some of lesser import. This particular issue is not major, not because its substance is unimportant, but because what is proposed by the City is language that makes explicit what is already implicitly there. The question is one of the time **at which a disciplinary suspension may take effect**.

Last Offers of Settlement:

Last offer of the City:

The City proposes, for the sake of clarity only, that the following language be added to Section 15 of the contract, as Paragraph J.:

> J. Disciplinary suspensions may, at the City's discretion, be served after issuance and without requiring the exhaustion of any grievance of appeal process.

Last Offer of the Union:

> The Union opposes the inclusion of such language.

Discussion and Analysis:

This matter will be treated here briefly, not because it is unimportant, but because, in the judgment of the Panel, no real changes are effected by the inclusion of the language in question.

The Union argued, at hearing, that to suspend before the appeals process has been completed is to determine the punishment before it is decided whether punishment is due. But the analogy with the proceedings in a criminal court, in which incarceration is normally (but not always) postponed until the exhaustion of the appeals process, is not really the correct approach to this matter.

The proceedings here are administrative, not criminal. The City has the obligation to maintain a safe and well-ordered police department. If, under certain circumstances, it is convinced that that can be done only while some person or persons have been suspended from duty for disciplinary reasons, the insistence upon an exhaustion of the appeals process prior to serving the suspension may render it very difficult, or impossible, for the City to serve its citizens as it is obliged to do.

The Union would like to have the system protect the employee against serving a disciplinary suspension until after the exhaustion of all appeals processes. This would not be administratively satisfactory. Not one of the comparable communities gives that assurance to its officers, for good and obvious reason.

We have no showing here of abuse, or mismanagement, or unfair suspensions by the City of Troy. What is proposed, in the testimony of the Union President, is an abstract defense of the rights of the individual police officers against premature punishment. The spirit of that concern is healthy, but the specific fears pertaining to premature suspension have no real ground in this case.

Order of the Arbitration Panel:

The Last Offer of the City is adopted.

A new Paragraph J is added to Section 15 of the Contract, making explicit what must be implicit in the administrative authority of the City. It will read:

> **J. Disciplinary suspension may, at the City's discretion, be served after issuance and without requiring the exhaustion of any grievance of appeal process.**

Issue # 15 Political Activity by the Employee

Under the old contract, the ability of the Police Department employee to engage in political activity is governed by Department Rule 6.20. [See City Ex 10-B, p.7]

The City's present rule prohibits classified employees from engaging in "improper political activity". Improper political activity is defined, in the rule as follows:

"The Rules
(1) prohibit any employee from becoming a candidate for or holding an elective Troy municipal office.

(2) prohibit any employee involvement on behalf of Troy Municipal candidates.

(3) prohibit any employee from using his/her position of employment, uniform or symbol of employment for political purposes, and

(4) prohibit political activity during normal working hours for any election, local state or national.

The words underlined are underlined in the City's Exhibit, 10-B, which presents this regulation in its entirety, so we must infer that the underlining does appear in the original, probably to give emphasis.

Last Offers of Settlement:

Last Offer of the City:

The City urges that the status quo be maintained, specifically Rule 6.20, cited above. [*]

> [*] Panel note: In its Last Offer of Settlement, the City refers to this rule as it appears in City Exhibit 10 [a] 7. But there is no 10 [a] 7. Plainly this is a typographical error, since the rule does appear as City Exhibit 10-B, the pertinent passage cited above appearing on pages 7 and 8.]

Last Offer of the Union:

The Union proposes to a new paragraph to be added to Section 15 of the contract, [Discipline]. The new paragraph would read as follows:

> K. Except when on duty or when acting in his official capacity, no member shall be prohibited from

engaging in political activity or be denied the right to refrain from engaging in political activity.

Discussion and Analysis:

The problems created when the employees of government (local, or state, or national) seek to participate in the political activity through which the jobs of their superiors, (and indirectly their own jobs) are much affected, has long been a very thorny one in American governmental theory. What is known in national politics as the Hatch Act has long forbidden political activity of many sorts by Federal employees. It happens that the substance of the Hatch Act is coming to the surface again, in these very weeks and months, on the national scene.

What we have in the City's rules is a sort of local Hatch Act. But the rule promulgated by the Police Department, Rule 6.20, is not well formulated, not put in a way that protects the fundamental rights of citizens. As it stands it is either trivial, prohibiting "improper activity" -- and no one seeks to defend improper activity, of course; or it is unduly restrictive. Of the categories of activity prohibited, which are cited verbatim above, the third is surely reasonable -- forbidding the uses of the uniform and so on for political purposes. There is no quarrel there. The fourth category, if meant to exclude activity while on duty is perfectly reasonable, and in accord with the Union's proposal, but it is framed, unhappily as election activity "during normal working hours." And what would make the activity inappropriate, if it is so, is not the hour at which it takes place, but the duty of the employee at that hour.

The other two prohibitions are seriously problematic. The City wishes to insure the ethical cleanliness of the Troy Police Department, the honesty and reliability of its employees; the Panel -- and indeed everyone -- will admire and respect that aim. We cannot achieve it, however, at the cost of forbidding citizens from doing what, by virtue of their being citizens, they have a fundamental right to do -- work on behalf of political candidates, and/or become candidates themselves. These capacities lie at the heart of the democratic process. Democracy does sometimes does make it difficult to keep scrupulously clean good order -- but that is a price we Americans pay, as democrats, for the retention of a system of self government.

The State Civil Service Commission, and by inference other governmental bodies properly representing Michigan citizens, may, by law, regulate employment-related activity, even going so far as to prohibit political activity during working hours, if that activity is found to interfere with

satisfactory job performance. But there is no reason to suppose that all electoral activity, off duty, would interfere with the job performance of police officers, and the suggestion that it would must suppose a corruptibility on the part of police officers exceeding that of all others. That supposition we must not make.

Some kinds of political activity, during hours of duty, may indeed be prohibited. And candidacy for office may be inconsistent with active duty, and may be held to require the candidate to take leave from his department duties, as is commonly done. But political activity generally is protected with vigor not only by the US Constitution, but by the first Article of the Constitution of the State of Michigan. Moreover, a Michigan statute, Act 169 of 1976, Sec.15.403, reads in pertinent part as follows:

> An employee of a political subdivision of the state may:
>
> (a) Become a member of a political party committee formed or authorized under the election laws of this state.
>
> (b) Be a delegate to a state convention, or a district or county convention held by a political party in this state.
>
> (c) Become a candidate for nomination and election to any state elective office, or any district, county, city, village, township, school district, or other local elective office without first obtaining a leave of absence from his employment.

When the Michigan legislature speaks with such clarity, cities and Arbitration Panels must listen closely. Once political candidacy is announced, leave may be obligatory. When performance on the job is interfered with, prohibitory rules are in order. But a universal prohibition of the sort encountered in the City's present rule goes far, far beyond these reasonable restrictions. And other police departments in comparable communities (as the Chief of Police admitted under cross-examination) do not have such blanket rules. Nor should they.

The language proposed for a new Paragraph of Article 15 of the contract protects what ought not need contractual language to protect. But the language in question does no more than reinforce existing Constitutional safeguards. Such reinforcement is appropriate here.

Order of the Arbitration Panel:

The last Offer of the Union is Adopted.

A new paragraph, K, is added to Article 15, Discipline, which will read:

> **K. Except when on duty or when acting in his official capacity, no member shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.**

Any rules and regulations promulgated by the Department must of course comply with this provision of the contract.

Issue # 16 Financial Disclosure

The old contract does not deal expressly with this matter. The situation is governed by a City Rule -- General Order 5.1A, issued by the Chief of Police. Sub-section A.6 of this General Order reads in pertinent parts as follows:

> The Chief of Police may require that an employee submit ... financial disclosure statements...when such information or action is specifically and narrowly related to a particular investigation which is administrative in nature. Failure to follow a direct order of this nature shall constitute separate infraction and may result in termination.

Last offers of Settlement:

Last offer of the City:

The City seeks to retain the status quo in this matter, adhering to the General Order now in force.

Last Offer of the Union:

The Union seeks to add a second new Paragraph to Article 15 of the contract, a paragraph that would protect members from forced disclosure of personal affairs without due legal process. The proposed paragraph would read:

> No member shall be required or requested for purposes of assignment or other personnel action, to disclose any item of his property, income, assets, source of income, debts, personal or domestic expenditures (including those of any member of his or her household), unless such information is obtained under proper legal procedures or tends to indicate a conflict of interest with respect to the performance of his official duties. This paragraph shall not prevent inquiries made by authorized agents of a tax collecting agency in accordance with acceptable and legally established procedures.

Discussion and Analysis:

The spirit of this Union proposal, like those of related in proposals called as a clump "bill of rights language" is healthy. Citizens ought not be obliged to make financial disclosures that may be of entirely personal import and not rightfully the business of City authorities. But the evidence submitted at hearing, and a close

examination of the language of the rule and of the proposed provision, shows that this provision is not needed, and is not even entirely clear in substance.

The contract is not a proper place for the repetition of every appropriate constitutional guarantee. Of course what is, by right, not the business of anyone else, cannot be forced by the order of the Department. And while a refusal of a direct order may be, according to the rule, a separate infraction subject to discharge, were the order given for reasons of personal harassment or other wrongful aim, no such discharge could be sustained.

The proposed provision is not entirely clear in its substance because it includes an exception if the "information...tends to indicate a conflict of interest..." But of course it is often the point of the inquiry to determine whether the information sought would reveal a conflict of interest, and hence it may be impossible to rely upon that alleged conflict in deciding whether or not the information may be demanded. In all we do not have here a well-thought-out proposal.

But all such talk seems to suppose that there is some real threat of unreasonable inquiries and unfair personal disclosures. In fact, nothing in the Record indicates that the Chief of Police, or any other officers in the Department in Troy, have acted abusively, or inappropriately, or have exhibited any tendency to act inappropriately in ordering financial disclosures. Moreover, the language of the rule is very explicit in making such orders possible only when the information sought is "specifically and narrowly related to a particular investigation which is administrative in nature." No effort to go beyond these limits by aggressive City administrators has been shown; no likelihood of it is on the horizon. There simply is no need to encumber the contract with provisions that will protect against threats that, although conceivable, have no foundation in the recent history of the City of Troy.

Order of the Arbitration Panel:

The last offer of the City is adopted.

No new provision is added to the contract specifically to prevent the threat of improper financial disclosures.

Issue 17: Disciplinary Proceedings: Notification and Representation.

17A Understanding the last offers of settlement of this issue, or these issues, requires that the Chairman first explain a problem arising from the different forms in which the last best offers of the parties have been submitted to the Panel. The two matters involved here must be treated together, although they are conceptually distinct, because of these different forms.

First, regarding the final positions of the parties with respect to notification:

The Panel received the City's final offers of settlement, posted to the Chairman of the Panel in timely fashion, on 4 June, 1990. The final offers of the Union, also arrived in timely fashion, posted on the same day. On page 17 of the City's final offer, the Chairman of the Panel is advised that both parties have signed a tentative agreement wherein "Officers who are requested to provide written or oral statements and are subject to discipline shall be notified of the incident under investigation and any allegations." This agreement was signed on 5 September 1989, long before final offers in this proceeding had been submitted. But reference to this agreement at hearing had led the Panel to suppose that this one issue, or sub-issue, had been happily resolved by agreement.

However, in a letter dated 7 June from the Union panelist, Mr. Somero, the Chairman was advised that there had been an error in the Union's submission of 4 June. Mr. Somero writes (on 7 June): "We now submit our corrected Last Best Offer." Then, under item #12 (pertaining to disciplinary proceedings) his letter continues with what is in fact (and, after inquiry by the Chairman, confirmed by Mr. Somero in his letter to the Chairman of 19 September 1990) the final offer of settlement of the Union concerning notification. This final offer is an amended paragraph 2G of Article 15, which would, on the Union proposal, then read as follows:

> "The member under investigation shall be informed of the nature of the investigation prior to any interrogation. Employees shall receive a copy of any citizen's complaint prior to answering any questions regarding the charges."

This revised version of the Union's proposed 2G could prove consistent with the Tentative Agreement of which the City writes, but it well might not be, since the Union's offer goes beyond that agreement, making reference to "a copy of any citizen's complaint" -- and the City offer makes no reference to such complaint copies. The text of the

Tentative Agreement on this matter was not submitted to the Panel as part of the formal Record, but was reported in the City's final offer of settlement.

It now becomes clear, after inquiry, where the parties stand on this issue; there is a dispute remaining between them, to wit: whether the specific language proposed by the Union in that letter from Mr. Somero of 7 June 1990, should be incorporated in the contract.

This completes the discussion of the forms of the parties' submissions. The Panel turns next to the merits of that dispute.

Notification of charges is a serious matter, of course; one is entitled to know, if one is subject to discipline, what the matter is under investigation and what one is alleged to have done wrong. So the spirit of the Union request is fully appropriate. But the substance of the Union request goes beyond that spirit, to include the demand that "a copy of any citizen's complaint" be provided -- and that may in some cases be unfair to the complainant seeking anonymity, who may honestly fear retribution. To resolve this problem the parties, after discussion of this matter in 1989, devised language that did achieve the central aim, but made no reference to complaint copies. That is the language of the agreement of 1989, which is, in the view of the City, the status quo, the way things are now.

The panel finds that that agreement is a reasonable one, that it provides police officers with adequate protection, and that the more recent insistence, by the Union, that a copy of any citizen complaint be provided, is not justified by any real procedural threat to the Officer -- given the fact that the incident and charges, if any, will be provided.

Order of the Arbitration Panel:

The position of the City is adopted.
The language of the Tentative Agreement of 5 September 1989 is ordered, in accordance with which: "Officers who are requested to provide written or oral statements and are subject to discipline shall be notified of the incident under investigation and any allegations."

17B The second aspect of this issue regarding disciplinary proceedings pertains to Union representation.

The Union seeks to specify the right of members to Union representation when they are questioned in regard to

an administrative investigation or proceeding, even if the member questioned is not the focus of that investigation.

It should be noted that the Union has presented, as a part of its final offers of settlement, a 3-page document, containing many parts and sub-parts. Paragraph 2 of this document has 11 sub-paragraphs (A through K). The Union proposal on this matter of representation comes to the Panel in the form of one sub-paragraph, 2K, of that very long document. That 3-page document, originally submitted as Union Exhibit N-3, and subsequently revised somewhat, is proposed by the Union as an addition to Article 15 of the old contract. During the hearing witnesses for the Union at times suggested that the new document would be a replacement for Article 15, but careful inquiry by the Chairman finally establishes (as confirmed by Mr. Somero in his letter to the Chairman of 19 September 1990) that this 3-page document is proposed as one new paragraph (with many sub-parts) of Article 15. Since two new paragraphs in Article 15 have been ordered by this Panel -- J, in accordance with the City's last offer under issue #15 regarding the time of disciplinary suspension, and K, in accordance with the Union's last offer under issue #16 regarding political activity -- the new paragraph here proposed by the Union would, if adopted, be identified as 15 L.

The Union's proposal is presented once again in final form -- in its last offers of settlement -- as Part B of the Union's proposed resolution of the issue it there numbers as #12, involving several distinct disciplinary matters.

Last Offers of Settlement:

Last Offer of the Union:

Within a new Article of Section 15 of the Contract, sub-paragraph 2K, dealing with representation, is to read:

"Members may have the right to have an Association representative present when the member is being questioned in regard to an administrative investigation or proceeding when that member is not the focus."

Last offer of the City:

The City urges the status quo in this matter.

Analysis and Discussion:

The Panel declines to re-write the entire contract between the parties, selecting chunks from general orders

and other rules, and adding to them new provisions which, if ever they are to be adopted, ought to be the outcome of thoughtful negotiation between the parties. Much of the language in the Union's proposed large-scale addition to Article 15 of the contract is, although of wholesome spirit, inappropriate for a master agreement between the parties. Many of the matters in this long proposal are dealt with elsewhere in the official documents of the City, and many are much more appropriately dealt with in those other places. Many of the elements of that long proposal are unclear or ambiguous; were it to be adopted the Panel would inflict upon the City, and the Union, an unending parade of disputes regarding the meaning and application of the several sub-elements. The Panel respectfully declines to do this, thinking it unwise for both parties, and certainly more than is called for by the need to resolve the actual disputes pending. Finally, the Panel would note, not every rule or principle that ought to govern the relations between the parties needs to be ensconced in the master contract.

The particular principle at issue here (which would be within the new addition to Article 15) is that when a member is not the object of an inquiry, but is being questioned in connection with some inquiry, that member, although not the subject of the investigation, is entitled by right to Union representation at the inquiry.

The Panel is persuaded by the testimony of the Chief of Police, Chief Carey, under direct examination and close cross-examination, [See Record, Volume VI, pages 4-112], that this is an unnecessarily cumbersome rule. Two points deserve emphasis. First, there appears to have been no specifiable case in which the questioning of a bargaining unit member who was not the subject of investigation did unfair injury to that person. Second, it is clear to the Panel that the normal proceedings of the Department, in protecting the rights of those questioned, are reasonably circumspect and by no means abusive.

Moreover, as testimony at hearing establishes, providing representation to every person questioned in an inquiry is not even in full harmony with the methods of investigation adopted by the very police officers who here seek this representation for themselves. Any person who is the <u>subject</u> of an investigation is entitled to representation and counsel, of course, and no doubt the Union will guard that right for its members jealously, as it should. To provide representation for every person questioned, on the other hand, is not a requirement of justice, and would be time-consuming, expensive, and so far as the Panel was able to determine from the evidence and testimony submitted, quite unnecessary. Were there any ground to believe that such questioning has regularly taken place in a way that undermines the rights of bargaining unit

members, or threatens their well-being, the Panel would think it wise to give some appropriate protection. But there is no such ground, and no satisfactory reason to encumber the master contract with a provision of this kind.

Order of the Arbitration Panel:

The last offer of the City is adopted.

The 3-page document proposed by the Union as a new paragraph of Article 15 of the contract is not added to the contract.

Issue 18: Disciplinary Proceedings: Investigation Files

One particularly delicate matter pertaining to disciplinary proceedings does have a place in the contract, that dealing with the disposition of files created in the course of an investigation of a member of the Police Department. The Union seeks their eventual delivery to the persons mentioned within them; the City is prepared to deliver the files to their subjects in some circumstances only.

Last Offers of Settlement:

Last Offer of the Union:

This last offer also appears as one paragraph, Subsection 5, of the 3-page document referred to above, and intended by the Union as a newly added paragraph of Article 15. This sub-section 5 was also amended slightly in the Union's last offer of settlement.

The final, amended version constitutes Part C of the Union's last offer with regard to the issue it identifies as number #12, pertaining to disciplinary proceedings:

> The contents of completed complaint and internal investigation files will be retained by Staff Inspections Section for a period of four (4) years. At the end of those four (4) years the files will be given to the affected officers.

Last Offer of the City:

The City proposes to amend one Section of Article 15 of the old contract, Paragraph I, to read as follows:

> "At the conclusion of any investigation conducted, the employee who is subject of the complaint shall be notified in writing of the outcome of that investigation. If the investigation results in discipline, a copy of the file will be supplied to the officer, if requested.

Analysis and Discussion:

The Panel has no reason to believe that the files of such investigations are being misused, or inappropriately retained after they are no longer needed, or that they are being improperly hidden or improperly conveyed to others. It may be that the Department's files cannot always be handed over to persons named within them, for reasons of fairness

not specifiable in advance. If the outcome of the investigation does result in discipline, the accused officer is entitled to see the file, of course -- and that change in the provisions of Article 15 the City agrees to make. Absent any reason to believe that Department files are being improperly handled as a general matter, the Panel concludes that contractual language that would guarantee the delivery of files to those mentioned within them in <u>every</u> case would be unjustified, as well as out of place in the contract.

Order of the Arbitration Panel:

The last offer of the City is adopted.

Paragraph I of Article 15 of the contract is amended to read:

> **"At the conclusion of any investigation conducted, the employee who is the subject of the complaint shall be notified in writing of the outcome of that investigation. If the investigation results in discipline, a copy of the file will be supplied to the officer, if requested."**

Issue #19 Outside Employment

On this matter the Union, in its last offer of settlement, withdraws its proposal from Act 312 proceedings. No further dispute in the matter therefore remains that might call for an order from the Arbitration Panel.

Part 8. Summary of Arbitration Orders.

Because this set of opinions and orders is unavoidably long, and the analyses detailed, the Panel here summarizes its actions and orders herein, dealing with the 19 issues specified above. For detailed accounts of the significance of these orders, and the evidence and reasoning that led to their adoption, the reader is urged to examine the opinions and discussions above. This section gives no more than a very brief summary.

Issue Number and Topic	Party prevailing
1. Wages	City

See above for details on percentages and amounts.

2. Retirement: 25 and out — Union

Eligibility for Retirement after 25 years of continuous service, regardless of age, is ordered.

3. Retirement: Purchase of earlier service — City

Status quo maintained.

4. Retirement: Medical insurance for retirees — City

See details above.

5. Pension: Sick leave pay at retirement — Withdrawn
No order issued.

6. Shift Premium — City

New shift premiums to be:

$.25 per hr. for all hours worked on afternoon shift.
$.35 per hr. for all hours worked on midnight shift.

7. Longevity Pay — Union

New longevity caps to be:

4-8 yrs:	$ 660
9-13 yrs.	1,320
14-18 yrs.	1,980
19 + yrs.	2,640

8. Clothing purchase allowance — Union

See details above.

9. Clothing cleaning allowance — Union

Increased to $300 per year.

10. Life insurance — Withdrawn

11. Medical Insurance — Union

See details above.

12. Association Business — Union

Increase from 80 to 100 hours time allowed.

13. Minimum Strength Standards — City

Status quo retained; no minimum strength standards ordered.

14. Disciplinary Proceedings: Suspension — City

See details (new Par J, Art. 15) above.

15. Political Activity by Employees — Union

See details (new Par K, Art. 15) above.

16. Financial Disclosure — City

Status quo maintained.

17. Disciplinary Proceedings
a) Notification — City
b) Representation — City
See details above.

18. Disciplinary proceedings: Files — City

See details above.

19. Outside employment — Withdrawn

No order issued.

Part 9. Concluding Remarks

These have been lengthy proceedings, requiring great energy, and patience, on the part of all concerned. The Chairman of the Arbitration Panel, on his own behalf and on behalf of the other members of the Panel, expresses deep appreciation for the continuing cooperation and unfailing civility and good spirit exhibited by all persons involved, including the many witnesses, whose testimony was invaluable. The technicians, working behind the scenes for the City and for the Union, did splendid work in preparing greatly detailed and very helpful evidentiary exhibits of every kind. Above all the Chairman would express his appreciation to the spokespersons for the two parties, Mr. Craig Lange for the City of Troy, and Mr. John Lyons for the Troy Police Officers Association, who exhibited fierce loyalty for their clients, examined and cross-examined with vigor but always with courtesy, and argued with penetration and spirit. Both parties may be proud of the representation given them during these arbitration proceedings.

Finally, the Chairman would like to thank the other members of the arbitration panel, Mr. Somero for the Union, and Ms. Clifton for the City, who were wonderfully patient and always helpful.

The Chairman concludes with the hope that the City and the Union prosper, and that their future relations be healthy and harmonious.

Part 10. Signatures

This set of opinions and orders is respectfully submitted to the Michigan Employment Relations Commission, and, pursuant to its instructions, to the parties in dispute, by the Arbitration Panel, on 1 October 1990.

The Orders registered above, respecting Issues #1, #3, #4, #6, #14, #16, #17a and b, and #18 are adopted by the Chairman of the Arbitration Panel and the City Delegate to the Panel; on these issues the Union Panelist dissents.

The Orders registered above, respecting Issues #2, #7, #8, #9, #11, #12, and #15 are adopted by the Chairman of the Arbitration Panel and the Union Delegate to the Panel; on these issues the City Panelist dissents.

With respect to Issues #5, #10, and #19 the resolutions achieved above are adopted by the Chairman and both Panelists.

Carl Cohen

Carl Cohen, Panel Chairman
16 Ridgeway
Ann Arbor, Michigan

Michael Somero

Michael Somero
Union Panelist

Peggy Clifton

Peggy Clifton
City Panelist

1 October 1990
Troy, Michigan

Appendix A: Drug Testing

At the outset of these arbitration proceedings, the parties remained in dispute concerning the issue of drug testing for police officers in Troy. Many conversations and much correspondence among the parties and the Panel seemed to be unavailing. Ultimately, however, good will on the part of both parties, and some vigorous urging from the Chairman of the arbitration panel, led to the adoption of an agreement upon this matter, which the parties requested be incorporated as a portion of the Arbitration Award.

Pursuant to that request, the Panel here includes the text of that agreement, signed by the parties on 2 April 1990, during the pendency of these proceedings:

"The employer has the right to conduct drug/alcohol testing under the following circumstances: 1) selection for assignment to SIU, CIU, DPU and drug enforcement units within the department; 2) whenever an employee discharges a firearm; 3) whenever an employee is involved in a fatal or serious injury accident; 4) as part of any regular physical examination required by the department; 5) whenever there is reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty, or illegally uses/possesses controlled substances. Any positive result of drug test shall be subject to confirmative testing."

Appendix B: Psychological Examinations

Dispute on this issue also continued well into the continuation of these proceedings. On 26 July 1990 the Chairman of the Panel was advised by the City, by telephone, that agreement between the parties on this issue had been reached. The text of that agreement, signed by the parties on 5 September 1990, during the pendency of these proceedings, amends Article 37 of the contract, whose new title will be "Physical and Psychological Examinations". The existing paragraph 1 of Article 37 remains as it is. A new Paragraph 2 is added, which is to read as follows:

"2. The employer may require an officer to submit to a psychological examination, related to the question of whether the officer is psychologically fit to perform the duties of police officer.

a. Officers will not be unreasonably ordered to submit to psychological exams. Any such orders shall be based upon specific circumstances which are explained to the officer, in the presence of a steward if the officer desires.

b. When officers are ordered to submit to psychological exams, the results shall include a pass/fail or fit/unfit for duty determination, and shall not include personal, intimate questions or answers that the officer in confidence revealed to the doctor unless directly related to the officer's ability to perform his duties. Upon request of the officer, a copy of the exam results will be supplied. Such copy may exclude conclusions or recommendations which, in the opinion of the doctor, would be detrimental to the treatment, adjustment or welfare of the officer, if revealed. Failure to pass the psychological examination shall not, by itself, constitute misconduct which would result in disciplinary action.

c. In the event an officer fails to be certified as being psychologically fit for duty, the objective test results will be forwarded by the doctor to a second facility for review and an oral interview conducted at the City's expense.

d. If the second facility disagrees with the conclusion of the first facility, the objective test results will be forwarded by the second doctor to a third facility and an oral interview conducted for a final determination at the City's expense, which is binding on both the City and the Officer.

Appendix C: Other Tentative Agreements

Other agreements, reached tentatively by the parties prior to these arbitration proceedings, pending the resolution of the matters then remaining in dispute, are now incorporated into this Act 312 Arbitration Award, in accordance with the express wishes of the Parties.