

4/30/2002

Sub.

IN THE MATTER OF THE
ARBITRATION BETWEEN:

CITY OF PORTAGE

And

MERC Case No. L00 D-7014

PORTAGE COMMAND OFFICERS ASSOCIATION

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION AND AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Kevin McCarthy
City Delegate

Michael Ward
Union Delegate

Date: April 30, 2002

Portage City

INTRODUCTION

These proceedings were held pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, City Delegate Kevin McCarthy, and Union Delegate Michael Ward.

A pre-hearing was held on March 28, 2001 and hearings were held on November 5 and November 6, 2001 at the offices of Kevin McCarthy in the City of Kalamazoo. The City of Portage was represented by Attorney Kevin McCarthy. The Union was represented by Attorney Michael Ward. The record consists of 285 pages of record testimony in two volumes and 58 City and 14 Union exhibits. References to record testimony will be identified as TR-volume number, page number.

Last offers of settlement were submitted on December 5, 2001 by the Union and the City, but due to apparent mishandling by the postal service not received by the independent arbitrator until December 20, 2001. Post-hearing briefs were submitted by the City on February 8, 2002 and by the Union on February 21, 2002. Reply briefs were submitted by the City March 19, 2002 and by the Union March 18, 2002.

By written stipulation, which is contained in the case file, the parties waived all time limits applicable to this proceeding, both statutory and administrative. The parties also stipulated at the hearing that the exhibits entered in this case, U-1 through U-6 and E-1 through E-15, combined with the record testimony in MERC Case No. L00-D-7021 involving the Portage Police Officers and the City of Portage will suffice for testimony on a number of issues in this case, including the comparables (TR1—15).

Additionally, the Union issue of investment alternatives for employee 457 funds and the employer issue on body armor that were identified as issues in this dispute at the March 28, 2001 pre-hearing conference, as reflected in the independent arbitrator's March 30, 2001

letter summarizing the pre-hearing conference, were resolved (body armor) or withdrawn (investment alternatives) by the parties (TR2-70).

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. This section provides that "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 prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

- (a) *The lawful authority of the employer.*
- (b) *Stipulations of the parties.*
- (c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*
- (e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

BACKGROUND

The City of Portage is located in the West Central portion of Kalamazoo County, Michigan. It is bordered on the North by the City of Kalamazoo, which is bordered on its North by Kalamazoo Township. It is the second most populated unit of government in Kalamazoo

County and Kalamazoo Township is the most populated township and third most populated unit of government in Kalamazoo County.

COMPARABLE COMMUNITIES

As noted above, along with the relevant exhibits in this case, the parties stipulated to use of the record testimony and exhibits in Case No. L00 D-7021 involving the City of Portage and the Portage Police Officers Association. The comparable communities offered by the parties in this case are the same as those offered in Case No. L00 D-7021. The arbitrator in this case was also the arbitrator in that case. The opinion and award was issued in that case on March 18, 2002. There is no new or significantly different record evidence or testimony in this case from that contained in Case No. L00 D-7021 and the briefs and reply briefs of the parties in this case reveal no new information or positions.

The parties and others reviewing this order and opinion may refer to pages 4 through 8 of Case No. L00 D-7021, which support the findings and conclusions pertaining to the comparables offered in that case as a basis for the same findings and conclusions on the comparables in this case. Therefore, the panel chooses the following communities as comparable to the City of Portage in this proceeding: City of Kalamazoo, Township of Kalamazoo, County Sheriff's Department of Kalamazoo County, the Cities of Battle Creek, Bay City, Burton, East Lansing, Holland, Jackson, Kentwood, Midland, Port Huron and Wyoming.

ECONOMIC ISSUES

The parties have either withdrawn or reached agreement on previously identified non-economic issues. Therefore, the panel finds all outstanding remaining issues in this proceeding are economic issues. The panel will address each of these issues separately.

ISSUE 1

Residency

The current contract at Article III, Section 1, Subsection (a) (b) specifies that employees shall be permitted to live anywhere within a 15 mile radius of City Hall and that a new employee won't be required to conform to this requirement until a reasonable time after completing his/her probation period.

A state law, which became effective March 10, 2000, specifies that public employers, by collective bargaining agreement or otherwise, cannot require that an employee reside within a distance greater than a 20 mile radius of the unit of government's boundary.

The Union's last offer of settlement proposes elimination of the current contract language thereby placing no limit on the distance an employee may live from the City. The City's last offer of settlement proposes that employees in the bargaining unit be required to live within a 20 mile radius of any City of Portage boundary and that new employees be required to meet the requirement within 6 months from being removed from probation and prior to the next scheduled step increase.

The Union offered exhibit U-7 and the testimony of Lt. Butler in support of its position. The City offered exhibits E-16 through E-18 and the testimony of Chief White on the issue.

The Union points out in its testimony and post-hearing brief that: 1) 8 out of the 12 comparable communities have no residency requirement for employees performing similar duties, 2) that the City's current policy does not require command officers be on-call when off duty and the City's proposal on residency would not change that, 3) that the command officers that have volunteered for the special command unit have done so knowing they would assume the responsibility to be reasonably available, and there has been no evidence presented on this record that there has been a problem with their availability and response, 4) that even though the police officers within Portage have agreed in their contract to the same provision

that the City proposes here, that was a result of voluntary, non-arbitrated agreement and the circumstances of the need for patrol versus command officer availability for call-in may differ.

The City argues that city employees who occupy positions that must respond to urgent needs of the city should be required to live close enough to quickly respond. The City also supports its position by pointing out that Portage police officers, fire department employees and department heads are subject to this requirement and that since all current members of the bargaining unit already live within the current 15 mile limitation this proposal gives them more flexibility.

Record testimony reveals that the current practice and policy is that some officers in this unit volunteer to be a part of a critical response unit. As volunteers they may be paged and may be called at home or paged when there is a need of immediate response. When they are called and off duty they are not required to respond (TR1—40), but there is no record evidence to demonstrate that this current arrangement is presenting a problem of response.

The City, through the testimony of Chief White, acknowledges that it has no current mandatory "on-call" or mandatory response policy and is not proposing to establish one in this contract, but is attempting to address the issue of availability and response time of off duty officers in emergency needs situations by establishing this residency boundary policy (TR1—43).

The independent arbitrator finds the Union's last offer of settlement on this issue more nearly complying with the applicable factors in Section 9 of Act 312. The Union's position is supported by 8 of the 12 external comparables. The City's argument that the police officers, fire fighters and department heads within the City are currently subject to this provision does not justify the same for the employees within this bargaining unit without sufficient evidence to document the value and need for the City to have the same policy for these employees. The City has not shown, on the record, that the safety of the public would be better protected if the

City's position were accepted rather than the Union's. The independent arbitrator recognizes that the previous residency requirement may have had some impact on the timely response to off duty call-in needs, but there is no record evidence to indicate a substantial change in residency of officers in this unit will occur if the Union's position is adopted. Additionally, the City apparently has not considered the issues of availability and timely response important enough to establish a paid stand-by policy or mandatory response to call-in policy. The City has not shown, on this record, a compelling interest in placing this requirement on the employees of the bargaining unit.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on residency to be the more acceptable position. Therefore, Subsection (a) (b) of Section 1 of Article III of the contract will be eliminated to be effective on the date this arbitration award is issued.

City:	Agree _____	Disagree <u><i>Kevin McCarty</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 2

Worker's compensation supplemented pay

The current contract at Section 3 (b) of Article VIII provides that if an employee is absent from work due to a work related illness or injury the City will supplement the employee's worker's compensation payments for up to 13 weeks in any 12 consecutive months.

The Union's last offer of settlement proposes to extend the period the City would supplement the worker's compensation payment from 13 weeks to 52 weeks.

The City's last offer of settlement proposes to extend this period from 13 weeks to 26 weeks.

The parties in this proceeding presented the same positions on this issue in Case No. L00 D-7021 applicable to the Portage police officers and stipulated on this record that the testimony from that previous hearing on this issue be the testimony in this record (TR1—58). The Union offered exhibit U-8 on this issue and City offered the record from Case No. L00 D-7021 to support its position (TR1—59). The City and Union post-hearing briefs in this case provide no arguments different from the briefs in support of their respective positions in Case No. L00 D-7021.

The parties and others reviewing this order and opinion may refer to pages 20 and 21 of the order and opinion in Case No. L00 D-7021 as a basis for the findings and conclusions on this issue in this case.

Taking all of these factors into consideration the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, Section 3 (b) of Article VIII will be amended to reflect the language contained the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree *Vern McCarly*

Disagree _____

Union: Agree _____

Disagree *Michael Ward*

ISSUE 3

Health insurance for active employees (Article XIX, Section 2 (a)(b))

The current contract language at Article XIX, Section 2 (a)(b) requires the employer to provide group health insurance benefits plus a \$2 prescription rider, or its equivalent, and a vision care benefit plan comparable to that provided other city employees. The first paragraph of Subsection (b) requires the employer to pay a maximum of \$450 per month for this coverage.

benefits and must accept COBRA benefits to be eligible for the retiree health insurance benefit when the employee obtains age 55. The premium supplement paid by the City has been \$450 per month, per employee since July 1, 1998. The City also makes an annual payment to a Union managed supplemental retiree health insurance fund. The current contract requires that payment be \$23,200 on July 1, 1998 and \$25,000 on July 1, 1999.

The Union's last offer of settlement seeks to revise the contract for retiree health insurance in the following ways:

- 1) Require the City to pay the full cost of health insurance premiums for coverage comparable to that provided active employees of the bargaining unit.
- 2) Specify that the City be obligated to pay the insurance premium for the retiree's spouse and eligible dependents until the retiree and/or spouse obtain the age of Medicare eligibility.
- 3) Revise the eligibility period for coverage to permit a retiree who retires after July 1, 2000 and who is 53.5 years of age to be eligible for full employer paid coverage until the retiree and spouse obtain Medicare coverage.
- 4) Require the City to make an annual payment to the Union managed supplemental retiree health insurance fund of \$25,000 on July 1, 2001 and \$30,000 on July 1, 2002.
- 5) Allow the retiree to elect optional coverage.

The City's last offer of settlement proposes only one change from the current coverage. That change would modify Subsection 2 (e) to require the City to pay to the Union managed supplemental retiree health insurance fund \$25,000 on July 1, 2000 and \$25,500 on July 1, 2001.

The Union argues its proposal is justified because: 1) as the City points out, health insurance premiums are escalating at a rate greater than inflation and, therefore, with a capped amount being paid by the City the retiree is bearing more and more costs; 2) the external comparables in this case, reflected in E-27, reveal that the majority of the comparable

communities pay 100% of the premium for retirees and many pay some or all of the premium for spouse and dependents. The Union also notes that the City pays 100% of the premium for non-union employee retirees and department heads if they retire after age 55. The Union says its proposal to lower the eligibility age to 53.5 is consistent with the provision in Appendix F of the current agreement, which permitted employees at age 53.5 to be eligible for the \$450 per month payment from the City until age 55 and beyond age 55 provided they participated in COBRA covered City sponsored programs.

The Union says its proposal to increase the amount of the City's contribution to the Union managed supplemental retiree health insurance fund from \$25,000 to \$30,000 on July 1, 2002 is needed to assure adequate funds to meet anticipated future increases in insurance costs.

The City argues in its post-hearing briefs that the Union's proposal would be costly to the City, particularly related to the provisions to pay the full cost for spouse and dependents until the spouse reaches Medicare eligibility age. The City also says the provision in Appendix F of the current contract relative to the eligibility age of 53.5 for employees retiring between July 1, 1988 until June 30, 2000 was just what Appendix F reflects, a early retirement incentive for that period only and not intended to be continued beyond June 30, 2000. The City also says the Union's proposal is inconsistent with the City obligation to other employees for retiree health insurance. City witness Thompson testified that with the exception of the non-union employees and department heads for whom the City pays 100% of the insurance premium for the retirees from age 55 through 64 for single coverage, the City either caps the amount paid for coverage as in the current contract for this bargaining unit or pays nothing toward premiums. The City also argues that there has been no showing by the Union to justify increasing the amount of the City contribution to the union managed insurance supplemental fund by \$5,000 on July 1, 2002.

The independent arbitrator recognizes the validity of both parties' positions on this issue. As the Union points out in its post-hearing brief, the costs of health insurance are rising and it will be just as difficult, if not more so, for retirees to bear the burden of that increase as employers. There is also the problem of the gap in the employer paid portion of those costs in the current contract as the age for Medicaid eligibility rises beyond age 65. The Union also correctly points out that the majority of the comparable communities appear to provide a more expanded benefit relative to employer paid retiree health costs for employees performing similar duties than does the City of Portage.

On the other hand, the City has a valid point in noting that the extent of the expansion of benefits sought by the Union's proposal is beyond that currently provided to any other city employees and could potentially be quite costly.

It appears from the record evidence on this issue that the City's participation in the cost of retiree health care and the scope of the coverage and eligibility is not in line with that of the comparable communities, but is not that inconsistent with the internal comparables. At the same time, it appears the Union's proposal in this proceeding is also more expansive than the majority of the comparable communities and certainly more expansive than the internal comparables. A review of E-27 reveals generally that of the 12 comparable communities only 3 require the employer to pay 100% of the premium for retirees, spouse and dependents; 3 more pay 100% for retiree and spouse and 3 more pay 100% for the retiree only. The others require some employee contribution. None appear to allow the retired employee to elect optional coverage. Also, other than speculation as to future insurance costs, there was no record evidence presented by either party to support the amount of payment by the City to the union managed supplemental fund.

While the record evidence may support the rationale for changes beyond the current contract and beyond that proposed by the City in this proceeding, the Union proposal goes

beyond that supportable by the record evidence. No other external or internal comparable currently has the extended coverage for this benefit as inclusive as that proposed by the Union. Further negotiations may permit the parties to again address elements of this issue, such as the future gap resulting in the increasing age eligibility for Medicare and more accurate estimates of health care premium costs. The record in this proceeding leads the independent arbitrator to conclude that the City's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9 of Act 312.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, Section 2 (e) of Article XIX will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree *Kevin McCarthy*

Disagree _____

Union: Agree *J*

Disagree *Michael Ward*

ISSUE 5

Health insurance opt out

The second paragraph of Article XIX Section 2 (b) of the current contract permits employees who can provide evidence of health insurance coverage to opt out of the City's insurance plan and the City will provide the employee a monthly cash payment equal to 50% of the monthly premium of the insurance type and plan discontinued.

Both the City and the Union's last offer of settlement proposed modification to the language in this paragraph that would specify that the City's monthly cash payment would equal 50% of the monthly premium paid by the City for BCN5 coverage applicable to the employee. The Union's last offer of settlement adds language describing the process for reenrollment and enrollment if the employee has opted out at the time of hire.

The City offered E-28 and E-29 describing external comparables on this issue. There was no testimony on this record on this issue.

The Union states in its post-hearing brief that its proposed additional language is helpful to the City and the bargaining unit members and is the same language that the City agreed to in a contract with the Police Officers Association. The City, in its reply brief, says the language did appear in the contract with the Police Officers Association for the period 1996-2000, but points out that in the recent Police Officers Act 312 award this language was removed from the contract. The City argues that for consistency this language should therefore not be added to the command officer's contract.

The independent arbitrator concludes there is more benefit to the parties by including the Union's proposed additional language than excluding it. The City does not argue that the Union's language is inconsistent with the manner in which the City administers this provision or that its current omission in the police officer's contract will result in requiring the City to administer this provision differently for police officers than for command officers. Including the Union's additional language in the contract does not appear to unduly limit the City and provides additional clarity for both parties.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue the more reasonable position. Therefore, the second paragraph of Article XIX, Section 2 (b) of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree *Vin McGuff*

Union: Agree *Michael Ward*

Disagree _____

ISSUE 6

Sick leave payoff

Article VIII, Section 4 of the current contract specifies that an employee who has been continuously employed by the City for 15 years shall receive compensation for unused sick leave credits at his or her rate of pay at separation for a total of up to 50% of the eligible sick leave hours accrued, but with a maximum cap of 600 hours total.

The Union's last offer of settlement proposes to modify Section 4 by revising the cap from 600 hours to 700 hours as the total maximum of such payoff . . . 50% of 1,400 hours.

The City's last offer of settlement is to keep the current language as is.

The Union provided U-10 and the testimony of Lt. Anderson in support of its position. In its post-hearing brief the Union, using information provided in E-31 which provides a comparison of the external comparable communities on this issue, points out that the majority of the external comparables provide a payout of 50% of an unlimited number of sick days accumulated or have a cap higher than the 600 hours currently specified in the command officers contract and more than that proposed by the Union.

The City presented E-30 and E-31 and the testimony of Cindy Bezaury in support of its position. Ms. Bezaury testified on the internal comparables. She testified that the department heads, non-union employees, UAW employees, police officers and fire fighters all have a cap of 1,200 hours of sick leave that they can accumulate and that the DPS foreman have a cap of 1,000 hours they can accumulate. She did acknowledge that the command officers have a cap of 1,400 hours they can accumulate. She also testified that department heads, non-union employees have a payout cap of 600 hours and UAW, DPS foreman, police officers and firefighters have a payout cap of 500 hours (TR1-129, 130).

The City, in its post-hearing brief, acknowledges that the majority of the external comparables do provide a higher cap for sick leave payoff than the City of Portage, but note

that there is a difference between Portage and the vast majority of external comparables in that for the comparable communities this provision applies only to an employee who retires or dies, whereas in the City of Portage this provision applies to an employee upon any separation from employment. The City says taking this difference into account, along with the internal comparables supports the panel favoring the City's position on this issue.

This issue, like several others in this proceeding, presents the panel with a proposal which is supported by the external comparables, but not by the internal comparables. As the City notes, none of the other bargaining units or non-represented employees within the City have a payout in excess of 600 hours. But it should also be noted that none of the other employee groups have a provision allowing a maximum accumulation of sick days of 1,400, as does this contract. The City also relies on the distinction in most external comparable contracts of the maximum payout provision applying only at the time of retirement or death, not upon separation, as does the language in this contract. That distinction, in the view of the independent arbitrator, is not that significant. The Union proposal continues to require the employee have at least 15 years of continuous employment with the City to be eligible for this provision and there is no record evidence to show the frequency of employees exercising this provision through separation rather than retirement or death.

A review of E-31 reveals that 9 of the 12 external comparables provide a sick leave benefit with a cap significantly in excess of that currently provided or proposed by the Union for employees performing similar duties. The independent arbitrator is also aware that in the recent Act 312 opinion and order involving the Portage police officers the panel supported the City's position of continuing a 500 hour cap on payout. However, in that case the Union was proposing an unlimited accumulation of sick leave and a payout of 50% of all accumulated sick leave upon separation with no cap. In this proceeding the Union's position is supported by the external comparables to an extent that outweighs the differences from the internal

comparables. Additionally, it is noted that Section 5 of the current contract authorizes the employees in this bargaining unit to accumulate up to 1,400 hours of sick leave credits, which distinguishes it from other internal comparables. There is also record testimony that there was some recognition of the interrelationship of Section 4 and Section 5 during the previous negotiations (TR1-131).

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on sick leave payoff to be the more reasonable position. Therefore, Section 4 of Article VIII of the current contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____ Disagree *Kevin McCarthy*
Union: Agree *Michael Ward* Disagree _____

ISSUE 7

Shift premium

The current contract does not provide a per hour increase in pay for command officers working an afternoon or evening shift. The Union's last offer of settlement proposes a new Section 5 be added to Article X that would require that employees who work a shift which begins on or after 12:00 noon, but before 8:00 p.m. be entitled to a .35 cent per hour shift premium and employees who work a shift beginning on or after 8:00 p.m. but before 6:00 a.m. be entitled to a .50 cent per hour shift premium. The shift premium would not be added to the base rate for purposes of calculating longevity.

The City's last offer of settlement proposes no addition to the current contract.

The Union presented U-11 and the testimony of Sgt. Palenick in support of its position. The Union, in its post-hearing brief argues that E-33 provides evidence that 6 of the 12 external comparables provide a shift premium for command officers and that the City pays DPW

employees a shift premium. The Union also argues that a shift premium should be provided command officers because the Portage police officers working these shifts are provided the same shift premium sought by command officers in this proceeding.

The City presented exhibits E-32 and E-33 and the testimony of Cindy Bezaury in support of its position. Ms. Bezaury did testify that the City's police officers and streets, parks, laborers and mechanic employees who are required to work non-day shifts are paid .35 cents and .50 cents per hour for shifts worked similar to that proposed by the Union (TR1-142). The City, in its post-hearing brief argues that the City's DPS foreman are required to work various shifts and are not paid a shift premium and that the DPS employees that receive a shift premium do so because they are involuntarily assigned to these shifts.

There was record testimony that the shift premium, if accepted by the panel, would apply to four employees (TR1-136); 2 would receive a .35 cent per hour increase and 2 would receive a .50 cent per hour increase because 2 members of the bargaining unit are required to be on duty during each of these time periods. A review of E-33 reveals that one-half of the external comparables provide a shift premium similar to the one proposed here and one-half do not. The internal comparables tend to support the Union's position in that those employees who are required to work shifts extending into the evening and early morning hours are paid a shift premium. The City's argument that there is a distinction between the other City employees receiving a shift premium because they are required to work these hours is not convincing. There is nothing in the record in this proceeding to indicate that if no command officers volunteered to work these shifts that the Chief would not have the authority to select and require two employees to work each shift. The record evidence favors the Union's position on this issue.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on the issue of shift premium to be the more reasonable position. Therefore, the

Union's proposed new Section 5 will be added to Article X of the contract to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree _____

Disagree _____

Union: Agree Michael Ward

Disagree _____

ISSUE 8

Longevity

Article XIV, Section 1 of the current contract provides a schedule for longevity pay to employees based on seniority. The longevity pay schedule provides an additional percentage of base pay to all bargaining unit employees upon completion of years of employment as follows: 5 years equals 2%, 10 years equals 4%, 15 years equals 5.5%, 20 years equal 7.5%.

The Union's last offer of settlement proposes to revise Section 1 of Article XIV by adding an additional increase in longevity pay as follows: 25 years equals 8.5%.

The City's last offer of settlement proposes no change from the current contract.


The Union presented U-12 in support of its position and the City presented E-34 and E-35 in support of its position. The parties in this proceeding presented the same positions on this issue in Case No. L00 D-7021 applicable to the Portage police officers and stipulated on this record that the testimony from that previous hearing on this issue be the testimony in this record (TR1-146).

While exhibit E-35 differs slightly from exhibit E-73 in Case No. L00 D-7021, both describe the manner in which the comparable communities address this issue for employees performing similar duties. A review of E-35 in this case reveals that only 3 of the 12 comparable communities provide a longevity pay benefit above that proposed by the Union. There has been no significant change in the internal comparables testified to in Case No. L00

D-7021 and the City and Union post-hearing briefs in this case provide no arguments different from briefs in support of their respective positions in Case No. L00 D-7021.

The parties and others reviewing this order and opinion may refer to pages 42 and 43 of the order and opinion in Case No. L00 D-7021 as a basis for the findings and conclusions on this issue in this case.

Taking all of these factors into consideration, the panel finds the City's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of longevity pay, there will be no change from the current contract.

City: Agree 

Disagree _____

Union: Agree _____

Disagree 

ISSUE 9

Pension payments

Article XIX, Section 5 (a) of the current contract specifies an amount of money the City will pay quarterly on behalf of each employee to the employee's defined contribution plan. Section 5 states the defined contribution plan shall be implemented "in accordance with the terms and conditions as set forth in Appendix "c" which by this reference is made a part hereof." Paragraph 5 of Appendix "c" also specifies the date and amount of quarterly payments. Those dates and amounts are the same in Section 5 and paragraph 5 of Appendix "c" but paragraph 5 of Appendix "c" further states, "payments will be on a quarterly basis, in advance of the quarter due as follows."

Both the Union and the City propose revisions to the contract on this issue. The Union's last offer of settlement proposes to change paragraph 5 of Appendix "c" in two ways. First, instead of a dollar amount specified in the contract, it proposes that effective July 1, 2000 the employer contribute 18% of each bargaining unit employee's base salary each year to the

money purchased pension plan. Second, instead of the City making quarterly payments, as in the current contract, the Union proposes the City make monthly payments each month with the payment to be made on the first of the month for the next succeeding month.

The City's last offer of settlement also proposes changes to paragraph 5 of Appendix "c". The City proposes to retain the current payment amount of \$9,200 annually and continue the quarterly payment schedule of payments for the period July 1, 2000 through June 30, 2001. Beginning July 1, 2001 the City proposes to make monthly payments on the 15th day of each month. The monthly payment amounts, beginning in July 2001 through June 2002 and beginning July 2002 through July 2003 would be specified in the contract and reflect a 3% increase consistent with the 3% increase paid by the City on the issue of wages. The language specifies that the monthly payment shall be paid by the 15th of the month for the preceding month.

The Union offered U-13 in support of its position and the City provided E-36 through E-40 and the testimony of Cindy Bezaury in support of its position. There is little dispute about the exhibits or testimony and similar exhibits and testimony were offered in Case No. L00 D-7021 on this issue. The parties post-hearing briefs focus on the differences in the two proposals, which basically come down to three issues: 1) whether the City's contribution to the employee's pension for the first year of this agreement, 2000-2001, will increase, 2) whether to reflect the City's contribution on an annual basis as a percentage of the employee's base salary or as a specified dollar amount and 3) whether to require a monthly payment by the City each month on the first day of the month this benefit is to be paid to the employees' pension account or by the 15th of the month following the month the employees' pension account is to receive this amount.

The Union's post-hearing brief argues that currently pension payments are made on a quarterly basis, but paid in advance of each quarter. Therefore, its proposal that the City make

payment on the first of each month is not burdensome to the City since the City currently makes a three month payment in advance.

The City's post-hearing brief and reply brief argue that the current contract does not require the City to pay the quarterly payment in advance and, therefore, the City's proposal to pay monthly by the 15th of the month for the preceding month provides the payment into the employee's account sooner than under the current contract.

The City points to the language in Article XIX, Section 5 (a) to support its position that payments are made at the end of the quarter in the current contract, not the beginning of the quarter. The independent arbitrator presumes the City knows when it has made the payments and how many payments it has made under the current contract. However, the current contract also specifies in paragraph 5 of Appendix "c" that payments will be made on a quarterly basis "in advance of the quarter due" as follows. The independent arbitrator concludes that the words "in advance of the quarter due" have some meaning and further elaborate on the terms and conditions specified in Section 5 of Article XIX. The City also argues that putting money into the employee pension account on behalf of the employee on the first of the month would be administratively problematic in the event the employee changes position or terminates employment during that month. The independent arbitrator questions the extent of difficulty presented the City in this situation since in most cases the City will have advance notice of any change in employee status.

On the other hand, the Union in its post-hearing brief points out that under the City's proposal the City has the value of the use of these funds and/or earnings on their investment for up to 45 days before placing them into the employee's account. Correspondingly, if one considers this as part of the overall benefit package to the employee, as the City argues it is, the City is benefiting from monies due the employee from day 1 through day 44. The

independent arbitrator finds the Union's last offer of settlement on the issue of the timing of the monthly payment to be more equitable.

The issue of whether to reflect the City's contribution as a percentage of base salary or as a specified dollar amount was also an issue in the recently concluded case involving Portage police officers, Case No. L00 D-7021. The parties' arguments in this case on this point are substantially the same as in that case. The opinion and award in that case at pages 54 and 55 address the basis for the independent arbitrators decision to support the Union's position and the parties may refer to that decision to support the same finding in this case.

Lastly, the independent arbitrator finds the City's position of no increase in the amount of the contribution to the employee pension for the period beginning July 1, 2000 through June 30, 2001 not supported by the record. The City did not present evidence on the record to address why it would hold the pension contribution to the same amount currently paid for the first 12 months of the contract and then contribute an amount equal to the 18% of the employee's base salary the second and third year of the contract as proposed by the Union. The independent arbitrator notes that current contract provides for an annual increase. Also, an amount equal to 18% of the employee's base salary in the first year of the contract is consistent with the opinion and order in Case No. L00 D-7021 involving Portage police officers.

Taking all of these factors into consideration, the panel accepts the Union's last offer of settlement on the issue of employer contribution to pension. Therefore, paragraph 5 of Appendix "c" of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

City:	Agree_____	Disagree_____
Union:	Agree <u>Michael Wase</u>	Disagree <u>Kim McEnty</u>

ISSUE 10

Wages

Wages in the current contract are established in Appendix A. The parties have a provision for COLA contained in Appendix B. The parties in this proceeding have agreed to continue to include the same provision on COLA in the contract covered by this proceeding. Both parties last offer of settlement contains language in Appendix B to accomplish this.

The Union's last offer of settlement on wages proposes a 5% salary increase effective and retroactive to July 1, 2000 and a 5% salary increase effective and retroactive to July 1, 2001 to each bargaining unit classification at each step of the existing salary scale.

The City's last offer of settlement proposes a 3% increase for the same effective dates and the same across-the-board application as the Union. Exhibits U-14 and E-41 through E-57 were presented by the parties to support their respective positions. The exhibits and testimony compared this unit's wages with those of employees performing similar functions in comparable communities and with other employees within the City of Portage.

The Union argues in its post-hearing brief and reply brief that its proposed 5% increase will bring the employees in this bargaining unit's base salary closer to those but still less than those of the comparable communities identified by the Union. It also notes that while the County of Kalamazoo granted only a 1% increase in 2000 it also provided an increased contribution to the employees pension, thereby, bringing the total increase to more than 4.1% since other fringe benefits were improved.

The City, in its post-hearing brief and reply brief, says the Union's brief makes a comparison of the wage offered by the City to the overall economic package cost of contract settlements with other City bargaining units and, in this case, with several of the comparable communities. The City points out that when the City's proposal on health insurance is factored

into the benefits resulting from this proceeding, as they will be, along with other economic factors based on the findings in this proceeding, the employees' overall economic benefit is comparable to or exceeds nearly all of the comparable communities and internal comparables. Using E-46, adjusted to include the City's proposed 3% increase and the City's last offer of settlement on health insurance, reveals the City of Portage sergeants and lieutenants net annual pay will be second only to that of Kalamazoo County comparative employees. The City also argues that E-54 demonstrates that the proposed 3% increase by the City is in line with the majority of other wage increases provided by comparable communities and E-55 demonstrates that it is more in line than the Union's proposal with the Consumer Price Index for the period 1996-2001.

The record evidence and testimony on this issue relative to comparable wages, the CPI and considering overall compensation, support the City's last offer of settlement as more nearly complying with the applicable factors prescribed in Section 9.

Taking all of these factors into consideration, the panel accepts the City's last offer of settlement on the issue of wages. Therefore, Appendix A and B of the contract will be modified to reflect the language contained in the City's last offer of settlement to be effective on the date this arbitration award is issued.

City: Agree 

Disagree _____

Union: Agree _____

Disagree 

ISSUE 11

(Employer Issue 2)

Shift assignments

Article X, Section 3 of the current contract addresses shift assignments and allows employees to bid shifts, based on seniority, every 6 months. This process only applies to bargaining unit employees who are assigned to patrol teams.

The City's last offer of settlement proposes to modify this section by allowing employees to bid shifts every 3 months and also requiring a shift change by those most senior employees once each year.

The Union proposes no change to this provision.

The parties presented no exhibits on this issue, but Chief White testified on the City's behalf and Sgt. Palenick testified on behalf of the Union.

The Chief testified there were two principle reasons for proposing this change. 1) As employees are promoted into the command position, since the current system is based solely on seniority, the less senior officers may have to stay on the same shift for 2 or 3 years. This has caused some employee dissatisfaction and can impact police officers interested in being promoted to the command officer position. 2) The Chief feels required rotation broadens the supervisory experience of the officers.

The Union, in its post-hearing brief and in cross examination, pointed out that because the Chief already has authority to rotate 4 employees to and from special assignment units for 1 or 2 year periods the objective of exposing officers to different responsibilities is already met. The Chief also acknowledged the rotation is occurring (TR2-91, 95) but did express concern that in the future, because of recent promotions, employees rotating two other shifts may not be as frequent as it has been these past few years (TR2-96).

The Union says in its post-hearing brief that the City's proposal would be disruptive to family life for the employees and that the result would not be rotation of all command officers through all shifts, but rather 4 command officers moving to a different shift once a year and then moving back to their preferred shift the following year.

The independent arbitrator understands the intent of the City's proposal, but does not find the City has offered sufficient record support for it or that it fully meets the City's objective. There appears to be sufficient authority given to the Chief in the current contract to impact rotation and assignments. If the seniority system is resulting in problems with the majority or even a significant number of employees, it would be expected the Union would seek some change in cooperation with the Chief. There was not strong record evidence in support of this change and absent that evidence the independent arbitrator is reluctant to impose a change of this nature through an arbitrated agreement. This type of change is better accomplished through a negotiated settlement.

Taking all of these factors into consideration, the panel finds in the Union's position on this issue the more reasonable. Therefore, on the issue of shift assignments there will be no change from the current contract.

City:	Agree _____	Disagree <u><i>Vincent</i></u>
Union:	Agree <u><i>Michael Ward</i></u>	Disagree _____

ISSUE 12

(Employer Issue 4)

Long term disability

The City's last offer of settlement proposes a modification to Article XIX, Section 4 of the contract involving employer paid long term disability coverage and the scope of eligibility for that coverage. The Union proposes no change to the current contract.

The parties in this proceeding presented the same positions on this issue in Case No. L00 D-7021 applicable to the Portage police officers and stipulated on this record that the testimony from that previous hearing on this issue be the testimony in this record (TR2-69, 70). Neither party offered exhibits on this issue and post-hearing briefs in this case rely on their briefs in support of their respective positions in Case No. L00 D-7021.

The parties and others reviewing this order and opinion may refer to pages 56 and 57 of the order and opinion in Case No. L00 D-7021 as a basis for the findings and conclusions on this issue in this case.

Taking all of these factors into consideration the panel finds the Union's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article XIX, Section 4 of the contract.

City: Agree _____

Disagree Kevin McCarty

Union: Agree Michael Ward

Disagree _____

ISSUE 13

Contract duration

The parties differ on the length of the contract. The City, in its last offer of settlement proposes Article XXI of the contract be modified to provide an effective date of July 1, 2000 through June 30, 2003. The Union's position is that the contract be 2 years duration from July 1, 2000 through June 30, 2002.

There is no record testimony or evidence on the issue, only the parties' post-hearing briefs.

The City argues a June 30, 2002 expiration date would mean this contract would be in effect for approximately 10 weeks from the time this award is issued before it would expire, that an additional year would promote stable labor relations and that it would be good for the

parties to have a break. The City also notes the recently arbitrated police officers contract expires June 30, 2002 and a 3 year contract for this bargaining unit would relieve the City of having to negotiate both contracts at the same time and allow the parties the ability to consider the results of the police officers negotiations before embarking on negotiations for the next contract.

The Union supports a 2 year contract saying the parties have traditionally agreed to a 2 year contract evidenced by the City's stipulation to a 2 year contract for the Police Officers Association. The Union says the City has offered no proof or reason for breaking the 2 year pattern for these agreements.

Neither party has provided significant evidence for their positions. The Union speaks to a tradition of 2 year agreements, but the current contract and the recent POA contract is the only evidence to support that tradition. The City says an expiration a year after the expiration date for the POA contract is more efficient, but one might reasonably argue that addressing issues which may be similar in both POA and COA contracts simultaneously in negotiations would be just as efficient. Some of the issues addressed in this case and in Case No. L00 D-7021 are evidence of that.

The independent arbitrator recognizes that a June 2002 expiration date for this contract will cause the parties to be back into negotiations on a contract that has just begun to be implemented. On the other hand, the parties will have had the benefit of the extensive work and research necessary to present its positions in this and the POA proceeding and that information and knowledge will be fresh in the parties' minds. That information and knowledge hopefully can serve to focus and simplify the issues for upcoming negotiations. Additionally, setting aside tradition, the Union apparently believes there is some advantage to the City and disadvantage to the Union with a 3 year contract. Lacking clear record support for one position over another, the independent arbitrator is reluctant to impose a contract

condition resulting in one of the parties perceiving an advantage or disadvantage as negotiations begin.

Taking all of these factors into consideration, the panel accepts the Union's position on the issue of duration of the contract. Therefore, Article XXI will be modified to reflect an effective date of July 1, 2000 through June 30, 2002.

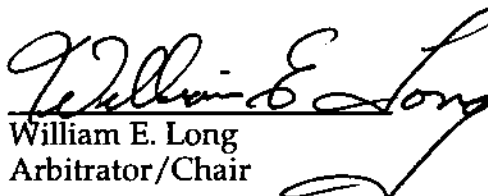
City: Agree _____ Disagree *Kevin McCarty*
Union: Agree *Michael Ward* Disagree _____

SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing. All agreements reached in negotiations as well as all mandatory subjects of bargaining contained in the prior contract not addressed in this proceeding will be carried forward into the collective bargaining agreement reached by the panel.

Re: City of Portage and Portage Command Officers Associations
MERC Case No. L 00 D-7014

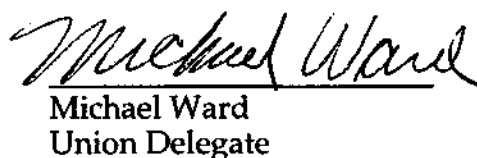
Date: 4/30/02


William E. Long
Arbitrator/Chair

Date: 4/27/02


Kevin McCarthy
City Delegate

Date: 4/22/02


Michael Ward
Union Delegate