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FF 9/18/91

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding Between:	)	
	)	
CITY OF WARREN	)	MERC Case No. D88 C-838
	)	
-and-	)	
	)	
MICHIGAN AFSCME COUNCIL 25 **LOCAL UNION NO. 1250**	)	

Warren, City of

FACT FINDER'S REPORT

The undersigned, Barry C. Brown, was appointed by the Michigan Employment Relations Commission to conduct a hearing and to issue a report in the matter captioned above. Hearings were held at the Rea Judicial Building in Warren, Michigan on April 27 & 28, May 17 and June 5, 6 and 19, 1991. Testimony was heard, exhibits were introduced and a transcript was produced. Post hearing briefs were submitted by the parties on August 21, 1991 and thereafter the record was closed.

APPEARANCES:

For the City:	For the Union:
Michael Smith, Dir. of Pers.	Michael Bommarito - Atty.
Thomas Elfers, Dir. of Labor Rels.	William O'Bryan - Local Pres.
Rick Fox, City Controller	Rick Traub - Vice Pres.
Richard Simoni, Budget Dir.	Daniel Kunert - Chief Steward
Diane Stephens, Labor Rel. Asst.	Ronald Perry - Board Member
Mark Simlar, Labor Rel. Spec.	Gene Zielinski - Board Member

I. STATEMENT OF THE CASE

Pursuant to Public Act 176 of 1939, as amended, and the Public Employment Relations Act, Public Act 379 of 1965, as amended (MCLA 423.1 et seq), the above-captioned matter was submitted to the fact finder under the direction of the Michigan Employment Relations Commission. The fact finder was empowered to conduct public hearings, prepare a report and to make recommendations with respect to the matters in disagreement in the bargaining for a new labor contract between the City of Warren and the Michigan Council 25 (AFSCME). This report is prepared and submitted under the authority granted by the commission under P.A. 176.

II. BACKGROUND

A) THE CITY OF WARREN

The City of Warren is the third largest city in the state of Michigan. The City provides a full range of services including police, fire, libraries, parks and recreation centers, refuse pick-up, and an independent sewage treatment plant. Administratively, it is divided into more than twenty separate divisions and the largest departments are Public Works, Parks and Recreation, Sanitation, Water, and the Waste Water Treatment Plant. Secretarial classifications, of course, exist in all of the divisions.

B) AFSCME LOCAL 1250

The size of the bargaining unit is approximately 330 members. The unit is formally described as including all permanent full-time employees, excluding police and fire, supervisory, executive, confidential, temporary, and part-time employees. The Union has represented this bargaining unit for many years and formed contracts with the City

since at least 1968. The bargaining unit consists of many job classifications throughout numerous departments and divisions of the City.

C) BARGAINING HISTORY

The Union and the City were parties to a 1986-88 collective bargaining agreement which expired on July 1, 1988. That contract went into effect in 1988 retroactive to 1986. The parties began negotiations for a successor agreement on May 6, 1988. The parties met on at least 36 separate occasions, including three (3) mediation sessions, but have been unable to reach agreement. For all practical purposes these parties have been bargaining for five years. The Union filed a petition for fact finding on or about October 29, 1990.

Six (6) fact finding hearings were held. The Union and the City presented both documentary and testimonial evidence. The last hearing was concluded on June 18, 1991 and the matter is now before the fact finder for his recommendation.

Over three (3) years have passed since the expiration of the 1986-88 agreement. In part this is explained as follows:

> "Shortly after the commencement of bargaining, the negotiation process came to a halt. For approximately eighteen months, the parties were unable to meet. In part, the problem was a decertification petition and an election. During that period the parties were legally precluded from negotiating. Also during that time and afterwards, the City began experiencing difficult economic times.

It went to the voters for additional millage and lost. After the loss, it tried again. Again the voters rejected the millage which would have benefitted city employees. The parties did not meet again until January 1990. (per city's brief)

On June 9, 1988 prior to the expiration of the collective bargaining agreement, the City offered to the Union a four (4) year package. At that time the City proposed an initial wage decrease followed by a wage freeze. The Union proposed a six percent (6%) increase in each year of the new contract. The Union was at that time considering only a two (2) year contract. Two years later in May 1990, a portion of the City's bargaining team met with the Union in a sidebar session to explore possible settlement terms. The City queried the Union as to whether they would be interested in a five (5) year proposal with increases respectively at two percent (2%), three percent (3%), three and one-quarter (3.25%), three and one-half percent (3.5%), and four percent (4%).

The reasons for the secret initiative was that the City was in a delicate economic situation and facing millage elections. The Union stated that it was not interested in the City's settlement offer but AFSCME countered with a three (3) year package with the annual increases at four and two-tenths percent (4.2%), four and one-half percent (4.5%), and four and seven-tenths percent (4.7%). Two months later on July 19, 1990, the Union tabled a new wage proposal for a three (3) year contract. This time the proposed rates

were fifty cents (50¢) across the board for the first year and four percent (4%) in each of the following years. Eleven days later on July 30, 1990, the City formally proposed to the Union a five (5) year contract with a wage freeze in the first year followed by consecutive annual wage increases of two percent (2%), two and one-quarter percent (2.25%), two and one-half percent (2.5%), and three percent (3%). The City by this time had resolved its millage elections. Subsequently, with the help of the state mediator, the City on August 2, 1990 made a comprehensive five (5) year offer which included a five hundred dollar ($500.00) signing bonus in the first year followed by annual increases of three percent (3%), three and one-half percent (3.5%) three and three-quarter percent (3.75%), and four percent (4%).

On March 21, 1991, the city's chief negotiator proposed a five (5) year wage offer consisting of a freeze for the first year -- although a $500.00 signing bonus in place of a first year raise was made at this point -- followed by annual increases of three precent (3%), three and one-half percent (3.5%), three and three quarter percent (3.75%), and four percent (4%). Then on April 28, 1991 the city made this offer:

> "In an effort to make our contract proposals more compatible with Local 1250's demands, the City has revised its proposal of March 21, 1991 to reflect a 25 cent wage increase effective July 1, 1988 in lieu of the five hundred dollar ($500.00) signing bonus. In addition, the City is willing

to agree to a three (3) year collective bargaining agreement which will expire on June 30, 1991.

The union countered with a five (5) year proposal. On April 28 the Union indicated that in the event a five (5) year contract were agreed to, it must contain a four percent (4%) raise in each of the two additional years, and pension benefits which would result in approximately twenty percent (20%) increase in annual payments received by Local 1250 retirees.

During negotiations the Union also filed a charge of unfair labor practice in connection with the city's implementation of new work rules during the no contract period. This charge was not acted on by MERC. The City had eliminated paid release time for Union representatives other than the president during this period. The City's right to do this and the propriety of its actions during a period of no contract have been settled. However, the issue of union representative release time continues to be one of the major issues in this controversy.

D) COMPARABILITY

1) The union offered nine cities in the area of metropolitan Detroit as cities which were similar for purposes of comparing the wages, hours and condtiions of employment which are offered to employees performing similar services as those in the bargaining unit of the City of Warren. The union's chief steward testified that these same nine cities had been used by the mayor's office in 1984

when the City of Warren was involved in a statutory interest arbitration case with the firefighters union. The cities presented by the union are in the same geographic area and most are about the same size (Detroit is larger and Roseville and St. Clair Shores are smaller). The 1990 population counts and state equalized valuations for these nine communities plus the City of Warren are shown below:

City	1990 Population	1990 SEV
Warren	144,595	2,683,009,307
Ann Arbor	109,252	2,173,216,200
Dearborn	88,896	2,555,705,218
Detroit	970,156	2,579,804,420
Livonia	100,443	2,799,568,800
Roseville	51,318	703,959,340
St. Clair Shores	67,971	1,032,325,590
Southfield	75,240	2,174,326,550
Sterling Heights	117,689	2,291,984,100
Troy	72,653	2,931,850,960

The City of Warren's population declined by more than 16,000 persons since 1980. But there were similar losses of population by all the other cities on the union's list except Troy and Ann Arbor. Detroit suffered the loss of nearly 250,000 residents during this period. The City of Warren's SEV rose by about $120,000,000 in the last ten years but some local municipalities like Sterling Heights and Troy experienced greater growth during this period.

2) The city did not provide a uniform list of comparable communities in its presentation. However it did present various cities at one time or another to show a benefit or working condition pattern or trend. It chose basically to refute the comparability of the cities offered by the union. The city asserted that the city of Detroit was several times larger than the City of Warren while Warren is twice the size of several other cities on the union's list. They similarly challenged the larger SEV of the City of Detroit and the smaller SEV of Roseville and St. Clair Shores. They also noted that Dearborn, Ann Arbor and Troy had a much stronger trend of economic growth than does the City of Warren. The employer also asserted that the following data weighs against the union's comparables:

Rank	City	Total # Employees	SEV $/Employee
1	Troy	378	$7,756,219
2	Livonia	641	$4,053,637
3	Sterling Heights	579	$3,958,522
4	St. Clair Shores	297	$3,475,844
5	Southfield	713	$3,049,546
6	Warren	903	$2,917,217
7	Dearborn	904	$2,827,108
8	Roseville	272	$2,588,086
9	Ann Arbor	988	$2,199,612
10	Detroit	19348	$ 279,006

Rank	City	Citizen Income Per Capita
1	Southfield	$17,068
2	Troy	$16,945
3	Livonia	$13,934
4	Dearborn	$13,524
5	St. Clair Shores	$13,158
6	Ann Arbor	$12,911
7	Sterling Heights	$12,760
8	Warren	$12,546
9	Roseville	$10,617
10	Detroit	$ 8,852

3) Discussion:

No two cities are going to be exactly the same. The factfinder simply looks to other generally similar communities to learn how other municipal employees are being compensated for performing similar services. A good test to determine if a city is "comparable" for such purposes is to learn where the citizens look to make comparisons about services offered or taxes assessed. Similarly one must learn what is the "labor market" in which this employer competes for the services of certain skilled or experienced employees. In this context the union has presented data from cities which are relatively near to the City of Warren (several are contiguous) and all are in the Detroit area. The cities of Flint, Pontiac and Grand Rapids do not compete in the same labor market and they are not considered comparable to Warren in the other respects mentioned above. The city made much of the shortcomings of the cities offered by the union but they did not convince the factfinder that there were better comparisons available.

E) OTHER RELEVANT FACTORS

1) The union asserts that the city is in sound financial condition. They noted that a two mill police and fire tax increase was approved by the voters in 1989. Further, the city's bond rating was recently upgraded to an A+ by Standard and Poor's agency. They argued that this rating reflects a low debt burden, modest property evaluation growth and an overall good financial performance which will allow a half-mill reduction in property taxes. They assert that a proposed first year wage freeze cannot be justified by the city's current financial condition. They also noted that no witness for the city testified that the city would be unable to grant the union's economic demands.

2) The city has other bargaining units for the police and fire-fighters and there is a group of unrepresented clerical and professional employees who are not in a union. The union maintains that all of these city employees have been covered by a two year FAC in their retirement plans since 1987. The AFSCME employees claim that this has meant a considerable savings to the city and it has represented a significant reduction in the overall benefits enjoyed by this unit in comparison with fellow city employees. The union also explained that AFSCME Local 1917 has a "me too" clause in it under which the employees in that unit will receive any superior benefit gained by the negotiations of Local 1250. Thus, the costing of some new benefits must include the impact on these additional employees. These AFSCME employees have already settled their contracts with the city as follows:

AFSCME LOCAL 1250 (Court employees)	AFSCME LOCAL 1917
7-1-88: .25¢ hr. plus $500 bonus	Same
7-1-89: 3%	Same
7-1-90: 3.5%	Same
7-1-91: 3.75%	Same
7-1-92: 4%	Same

3) The employer maintained that in terms of relative wealth the City of Warren is eighth in the list of comparable cities presented by the union. They argued that the union has proposed overall increases in wages and benefits which would cost much more than the union's estimate of $1.6 + million in the first three years. They said that the "me too" clauses, payroll taxes, overtime rates and insurance implications would greatly escalate the final cost of the union's demands. The employer estimated the total cost of the union's proposed wage adjustments, pay scale adjustments and equity adjustments to be more than $3.9 million for 1988, 1989, and 1990.

III. THE ISSUES IN DISPUTE

A) Article 5 - Managements Rights

1) The City's proposal (changes in caps):

Consistent with the express terms of this Agreement:

A. The Union recognizes the prerogatives of the City to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority, except as specifically abridged, delegated, granted or modified by this Agreement or any supplementary agreements. All remaining rights, powers, and authroity the City had prior to the signing of this Agreement,

AND ALL OTHER RIGHTS NORMALLY, USUALLY AND CUSTOMARILY RETAINED BY MANAGEMENT, are retained by the City and remain exclusively and without limitations within the rights of the City. EXCEPT AS SPECIFICALLY LIMITED BY THIS AGREEMENT, THE CITY MAY EXERCISE THESE RESERVED, RETAINED AND RESIDUAL RIGHTS, AND THOSE RIGHTS SPECIFICALLY ENUMERATED IN SECTION B HEREOF, WITHOUT PREVIOUSLY BARGAINING THE SAME WITH THE UNION: PROVIDED, HOWEVER, THAT SUCH ACTIONS SHALL NOT CONFLICT WITH THE TERMS OF THIS AGREEMENT.

B. Among the rights, powers and authority provided to the City by law, INCLUDING BY WAY OF EXAMPLE AND NOT IN LIMITATION OF THE FOREGOING, THE CITY HEREBY RETAINS AND RESERVES UNTO ITSELF THE RIGHT:

1. TO MANAGE ITS AFFAIRS EFFICIENTLY AND ECONOMICALLY, INCLUDING THE DETERMINATION OF QUALITY AND QUANTITY OF SERVICES TO BE RENDERED, THE CONTROL OF MATERIALS, TOOLS AND EQUIPMENT TO BE USED AND THE DISCONTINUANCE OF ANY SERVICES, MATERIALS, PROCESSES OR METHODS OF OPERATION.

2. TO ESTABLISH, DETERMINE AND REDETERMINE THE METHOD OR PROCESSES BY WHICH THE WORK IS TO BE PERFORMED AND TO INTRODUCE NEW EQUIPMENT, METHODS, MACHINEY OR PROCESSES, CHANGE OR ELIMINATE EXISTING EQUIPMENT OR METHODS AND INSTITUTE TECHNOLOGICAL CHANGES, DECIDE ON MATERIALS, SUPPLIES, EQUIPMENT AND TOOLS TO BE USED.

3. TO DETERMINE THE NUMBER, LOCATION, AND TYPE OF FACILITIES AND INSTALLATIONS.

4. TO FILL OR NOT FILL VACANT BUDGETED POSITIONS AS THE GOOD OF THE SERVICE MAY REQUIRE.

5. TO ESTABLISH, CHANGE, COMBINE, DISCONTINUE OR ELIMINATE JOB CLASSIFICATIONS AND DESCRIPTIONS, AND TO PRESCRIBE, ALTER, ASSIGN AND DETERMINE JOB DUTIES, CONTENT AND CLASSIFICATION, INCLUDING PRELIMINARY QUALIFICATIONS FOR SPECIFIC JOBS: PROVIDED, HOWEVER, THAT THE CITY WILL NOT ARBITRARILY AND CAPRICIOUSLY CHANGE ESTABLISHED JOB DESCRIPTIONS WITHOUT A LEGITIMATE BUSINESS REASON, AND WHEN ANY CHANGES ARE MADE THEREIN, THE CITY WILL GIVE THE UNION TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE REASONS FOR THE CHANGE, AND ANY SUCH CHANGES ARE SUBJECT TO ARBITRATION, TO BE HELD WITHIN THIRTY (30) DAYS BY AN ARBITRATION PANEL TO BE ESTABLISHED BY THE PARTIES. BEFORE ANY ESTABLISHMENT, COMBINATION, DISCONTINUATION OR ELIMINATION OF A CLASSIFICATION OCCURS, SUCH ACTION MUST BE APPROVED BY BOTH THE MAYOR AND THE CITY COUNCIL.

6. TO ESTABLISH REASONABLE WORK SCHEDULES INCLUDING THE SCHEDULING OF OVERTIME.

7. TO DISCIPLINE AND DISCHARGE EMPLOYEES FOR JUST CAUSE.

8. TO ADOPT, REVISE AND ENFORCE WORKING RULES AS IT MAY FROM TIME TO TIME DEEM BEST FOR THE PURPOSES OF MAINTAINING GOOD ORDER, SAFETY AND EFFECTIVE OPERATION OF CITY SERVICES.

9. TO MANAGE THE CITY BUSINESS AND TO DECIDE THE SERVICES TO BE PROVIDED AND THE MANNER OF PROVIDING THEM.

10. TO DETERMINE THE AMOUNT OF SUPERVISION NECESSARY AND TO SELECT EMPLOYEES FOR PROMOTION OR TRANSFER TO POSITIONS OUTSIDE THE BARGAINING UNIT IN ACCORDANCE WITH THE RULES AND REGULATIONS STIPULATED IN THE CIVIL SERVICE PROCEDURE, BUT THIS SHALL NOT BE HELD TO PERMIT INVOLUNTARY PROMOTIONS OR TRANSFERS.

11. To layoff for lack of work or funds, OR WHERE SUCH CONTINUATION OF WORK WOULD BE WASTEFUL AND UNPRODUCTIVE, OR WHERE THE CITY DEEMS SUCH LAYOFF TO BE NECESSARY, BUT IN SUCH CASE, THE CITY SHALL NOT BE ARBITRARY AND CAPRICIOUS.

C. The Union recognizes that the City has the right to contract or subcontract its services.

The City recongizes that it has a moral obligation to make a reasonable effort to secure reemployment for those persons who will be displaced in the event the City determines to contract or subcontract its services.

In recognition of this, the City agrees to meet with the Union prior to contracting or subcontracting its services for the purpose of attempting to make a diligent effort in securing reemployment for said employees in an equal job in another department in the City at the same rate of pay or attempt to secure for said employees outside employment at the same rate of pay.

In no event shall the City's right to contract or subcontract its services be used for the purpose or intention of undermining the Union nor to discriminate against any of its members.

As was expressed to your bargaining committee in the negotiations just completed, it is not the Employer's intention to subcontract any work presently being performed by bargaining unit employees for the duration of this contract."

2) The union's proposal

Status quo.

3) Discussion:

The city asserts that there are no new managements rights set forth in this contract language except for the fact that binding past practices would be eliminated by residual rights. They asserted that a more detailed manangements rights clause is necessary because it will better inform supervisors and employees of their rights and responsibilities. The city asserts that the new provision will clean up the contract language and make it functional. The employer also stated that it is not attempting to change Article 30 of the contract concerning job descriptions but rather it wishes to delineate that it does have an existing right to change job descriptions under the present contract language. The addition of a ten day advance notice and the right to arbitrate all changes is added to give the union additional safeguards while still allowing the employer to act when job conditions change. The city notes that its new list of rights is long but it argues that the rights enumerated are comonplace in other labor agreements for Detroit area municipal employees. Further this same clause has already been adopted by three other bargaining units of Warren city employees.

The union opposes all of these changes and it seeks to retain the existing management rights clause. They said there is no need to change this language because no substantive change is intended and no grievances were produced in which the employer's right to manage had been challenged. The union also explained that the city's

first proposal submitted to the union in 1988 had very few changes in the management's rights clause. Then in 1990 they presented the current changes which apparently would reduce employee rights by allowing job classification changes and which would broaden the employer's powers to layoff city employees. They also asserted that the city's announced intention to eliminate past practices would be contradicted by Article 43 which is a maintenance of benefits provision. AFSCME said that the city has demonstrated no need to eliminate the protections and safeguards of continuing existing and binding practices.

The union has also disputed the city's claimed unlimited right to eliminate and change job descriptions. They argued that in the past the city administrators have attempted to circumvent contractual transfer rights by creating new job classifications. These attempts have been frustrated by arbitration awards. The city now proposes that it have a free hand to alter and create job descriptions as long as it does not act in a "arbitrary and capricious" manner. The union notes that job descriptions are a mandatory subject of bargaining and the union should not be forced to waive its rights in this regard. The city and the union have bargained effectively over job descriptions and so there is no justification shown in the changes proposed by management. In fact they have most recently negotiated five new classifications. They said the permanency of these new jobs would be at risk if the city could now unilaterally make further changes.

The city acknowledges that the job descriptions clause would result in some significant changes but they argue that the city

already had the right to make unilateral job description changes and the management rights proposal merely clarifies those rights. The new terms requires management to notify the union, to prove a legitimate business reason for the change and a new arbitration step to handle disputed changes. The city also agrees that it seeks to eliminate past practices but the rest of the new language is only "housekeeping" changes. They find no conflict with the maintenance of benefits clause as they question whether such clause does indeed preserve past practices.

The employer maintained that even though no new rights are gained by its many new sections in the management rights clause, it is not mere surplusage. They felt that the clarification of unclear areas was a worthy goal that would benefit the future relations between the parties. The city also indicated that while it might have to bargain about the impact of certain management decisions,there was no conflict with the established law to recognize management's exclusive right to make the initial decision in the areas set forth in the new provisions.

4) Factfinder's recommendation:

The employer has made a case for a clearer more detailed statement of management's rights. However, in some areas its word choices were too harsh or controversial. The factfinder has therefore softened some sentences so they will not create unnecessary apprehensions for the city employees. The "residual rights" are surplusage over the

term "retained rights" and so those words were struck. Work rules should be "reasonable" and so that adjective was added. The remaining employer's language does not seem to have abolished all binding past practices but that would be determined on a case by case basis. The job description changes put forth by management were very significant and they do seem to affect the prior role enjoyed by the union in connection with new or changed jobs. The factfinder believes the status quo should continue regarding job descriptions and he has deleted that whole section from the employer's proposal.

The factfinder recommends the following new management rights provision be adopted by the parties:

"Article 5 Management Rights

Consistent with the express terms of this Agreement;

A. The Union recognizes the prerogatives of the City to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority, except as specifically abridged, delegated, granted or modified by this Agreement or any supplementary agreements. All remaining rights, powers, and authority the City had prior to the signing of this Agreement, AND ALL OTHER RIGHTS NORMALLY, USUALLY AND CUSTOMARILY RETAINED BY MANAGEMENT, are retained by the City and remain exclusively and without limitations within the rights of the City. EXCEPT AS SPECIFICALLY LIMITED BY THIS AGREEMENT, THE CITY MAY EXERCISE THESE RETAINED RIGHTS, AND THOSE RIGHTS SPECIFICALY ENUMERATED IN SECTION B HEREOF, WITHOUT PREVIOUSLY BARGAINING THE SAME WITH THE UNION; PROVIDED, HOWEVER, THAT SUCH ACTIONS SHALL NOT CONFLICT WITH THE TERMS OF THIS AGREEMENT.

B. Among the rights, powers and authority provided to the City by law, INCLUDING BY WAY OF EXAMPLE AND NOT IN LIMITATION OF THE FOREGOING, THE CITY HEREBY RETAINS AND RESERVES UNTO ITSELF THE RIGHT:

1. TO MANAGE ITS AFFAIRS EFFICIENTLY AND ECONOMICALLY, INCLUDING THE DETERMINATION OF QUALITY AND QUANTITY OF SERVICES TO BE RENDERED, THE CONTROL OF MATERIALS, TOOLS AND EQUIPMENT TO BE USED AND THE DISCONTINUANCE OF ANY SERVICES, MATERIALS, PROCESSES OR METHODS OF OPERATION.

2. TO ESTABLISH, DETERMINE AND REDTERMINE THE METHOD OR PROCESSES BY WHICH THE WORK IS TO BE PERFORMED AND TO INTRODUCE NEW EQUIPMENT, METHODS, MACHINERY OR PROCESSES, CHANGE OR ELIMINATE EXISTING EQUIPMENT OR METHODS AND INSTITUTE TECHNOLOGICAL CHANGES, DECIDE ON MATERIALS, SUPPLIES, EQUIPMENT AND TOOLS TO BE USED.

3. TO DETERMINE THE NUMBER, LOCATION, AND TYPE OF FACILITIES AND INSTALLATIONS.

4. TO FILL OR NOT FILL VACANT BUDGETED POSITIONS AS THE GOOD OF THE SERVICE MAY REQUIRE.

5. TO ESTABLISH REASONABLE WORK SCHEDULES INCLUDING THE SCHEDULING OF OVERTIME.

6. TO DISCIPLINE AND DISCHARGE EMPLOYEES FOR JUST CAUSE.

7. TO ADOPT, RÊVISE AND ENFORCE REASONABLE WORKING RULES AS IT MAY FROM TIME TO TIME DEEM BEST FOR THE PURPOSES OF MAINTAINING GOOD ORDER, SAFETY AND EFFECTIVE OPERATION OF CITY SERVICES.

8. TO MANAGE THE CITY BUSINESS AND TO DECIDE THE SERVICES TO BE PROVIDED AND THE MANNER OF PROVIDING THEM.

9. TO DETERMINE THE AMOUNT OF SUPERVISION NECESSARY AND TO SELECT EMPLOYEES FOR PROMOTION OR TRANSFER TO POSITIONS OUTSIDE THE BARGAINING UNIT IN ACCORDANCE WITH THE RULES AND REGULATIONS STIPULATED IN THE CIVIL SERVICE PROCEDURE, BUT THIS SHALL NOT BE HELD TO PERMIT INVOLUNTARY PROMOTIONS OR TRANSFERS.

10. To layoff for lack of work or funds, OR WHERE SUCH CONTINUATION OF WORK WOULD BE WASTEFUL AND UNPRODUCTIVE, BUT IN SUCH CASE, THE CITY SHALL NOT BE ARBITRARY AND CAPRICIOUS.

C. The Union recognizes that the City has the right to contract or subcontract its services.

The City recognizes that it has a moral obligation to make a reasonable effort to secure reemployment for those persons who will be displaced in the event the City determines to contract or subcontract its services.

In recognition of this, the City agrees to meet with the Union prior to contracting or subcontracting its services for the purpose of attempting to make a diligent effort in securing reemployment for said employees in an equal job in another department in the City at the same rate of pay or attempt to secure for said employees outside employment

at the same rate of pay. In no event shall the City's right to contract or subcontract its services be used for the purpose or intention of undermining the Union nor to discriminate against any of its members.

As was expressed to your bargaining committee in the negotiations just completed, it is not the Employer's intention to subcontract any work presently being performed by bargaining unit employees for the duration of this contract.

B. ARTICLE 9 REPRESENTATION

1) The City's proposal:

F. The Union Secretary and Treasurer will be allowed to perform union business during work hours WITH THEIR SUPERVISOR'S PERMISSION, BUT WITHOUT PAY. HOWEVER, the City expects the Secretary and Treasurer not to abuse the privilege and when it is necessary to transact union business, it will be kept as brief as possible.

J. The City agrees to continue to provide time off WITHOUT PAY for two union representatives who must be absent from work due to being elected or appointed to attend AFL-CIO and/or International conventions or conferences. Provided, hoever, this privilege shall not be abused.

L. The Union President or his designated representative and one (1) other union official will be provided time off WITHOUT PAY to attend the funeral of any member.

M. UNION REPRESENTATIVES WHO TAKE TIME OFF WORK TO CONDUCT UNION BUSINESS SHALL COMPLETE WHATEVER RECORDS ARE NECESSARY FOR THE CITY TO CALCULATE HOW MUCH TIME HAS BEEN TAKEN FOR UNION BUSINESS. THE CITY MAY UTILIZE TIME CLOCKS, OR OTHER RECORDING METHODS TO DETERMINE SUCH TIME.

2) The Union's proposal: Status quo

3) Discussion:

The city explained that its proposal would eliminate pay for the conducting of union business and it would require the union representatives to keep track of their time spent on union work for docking purposes. Management asserted that the taxpayers should not

pay for the union's time to conduct its business but rather the local members should fund their own activities. The administration estimated that this provision would save the city $30,000 and it would reduce grievances generated by union representatives who are now motivated to take time off to write new grievances. The employer asserted that the union chief steward abused his time off privileges prior to 1982 and more recently the chief steward was disciplined for misusing union business time in handling a members concerns over a pending transfer.

The employer acknowledged that on July 1, 1988 the city ceased all wage payments for union representatives time off for union activities. They still allowed any union representative to take time off the job but they docked them for such time. The local union president was exempted from this new policy and his time was paid. However, the treasurer, chief steward, etc. were all docked after the old contract expired on June 30, 1988. The city stopped deducting union dues at the same time. Two unfair labor practice charges were filed in relation to these changes. One filed in 1987 was withdrawn. The one filed 12-29-88 is now being held in abeyance by the Michigan Employment Relations Commission.

The union asserted that the city has presented no real justification for its proposal. The union maintained that the real purpose of this contract change is to undermine or "bust" the union. The current leadership of the union had never had a complaint from management about any abuse of paid time off for union business. The union noted that the city's termination of paid union time came with an ending of union dues payroll deduction and a proposal for a 6% cut in pay for

union members. All of this lead to a decertification effort, the union alleged, and it took time to convince the membership that the union was not powerless in spite of the actions by the city.

The union stated further that the union had to pay more than $32,000 from its treasury to continue its services to its members. The union representatives had less time to investigate grievances or to just represent its members. The union explained that there had been no recent management complaints about the union's representative use of paid time in the period immediately before 1988 and the one incident which occurred in 1990 was not really an abuse of time by a union representative and it covered only a brief time period.

4) The factfinder's recommendation:

The parties have both focused on this provision as a test of strength and a weathervane which will show which side "won" in these acrimonious negotiations. The factfinder is not motivated to show who is the winner but rather to leave in place contract language which will best provide labor peace and stability over the term of this collective bargaining agreement. The employer did not show current abuses by the union. It is customary that union representatives have time off with pay to handle union business. The unit is smaller now and so some cut back in paid union time is justified. The meat ax approach by management's proposal will only insure more rancor and grievances which are not well investigated and members who are not well informed. Thus, the provisions of Article 9 are substantially restored in the recommended provision shown below:

"F. The Union Secretary and Treasurer will be allowed to perform union business during work hours without loss of time or pay, WITH THEIR SUPERVISOR'S PERMISSION. HOWEVER, the City expects the Secretary and Treasurer not to abuse the privilege and when it is necessary to transact union business, it will be kept as brief as possible.

J. The City grees to continue to provide time off without loss of pay for one authorized union representative who must be absent from work due to being elected or appointed to attend AFL-CIO and/or International conventions or conferences. Provided, however, this privilege shall not be abused.

L. The Union President or his designated representative will be provided time off without loss of pay to attend the funeral of any member.

C. ARTICLE 13 (E) SPECIAL CONFERENCES

1) Employer's proposal:

"E. The Negotiation Committee shall have the right to investigate during regular working hours any matters which are to be brought to a special conference, without loss of time pay. This privilege shall not be abused.

2) Union's proposal: Status quo.

3) Discussion:

AFSCME asserted that the city's witness could not cite one recent instance in which this provision had allegedly been abused. They noted that typically it is the city which calls a special conference. They said that there was one occasion which involved five members of the negotiating committee in which an investigation had been held in 1990. This conference had been called by the employer in an attempt to liberalize its use of temporary employees in the recycling operations. For all of these reasons the union stated that the city had not established the merit of the changes it proposed in the labor agreement.

The employer said that the thrust of this proposal is to eliminate paid union time for investigations in connections with special conferences. They said this proposal is based on the same rationale as that which the city has offered to support the elimination of paid time for union business in Article 9. The city said that it believes that the union has used too many of its representatives to investigate conference matters in the past.

4) The fact finder's recommendation:

The factfinder recommends that there be no change in the existing language of Article 13 (E). The union's proposal of "status quo" should be adopted here.

D. ARTICLE 14 SENIORITY

1) Employer's proposal:

C. Temporary employees may be hired into bargaining unit positions from time to time on a seasonal basis or when otherwise required. No employee shall work in a bargaining unit position on a full-time temporary or part-time temporary basis for longer than ninety (90) consecutive days, except that the Employer and the Union may mutually agree to extend such employment for an additional ninety (90) day period. ~~If a temporary employee becomes a permanent employee with no break in his employment up to ninety (90) days or the time served as a temporary employee shall count as probationary time and towards seniority.~~ Temporary employees shall not be considered to have seniority, shall receive no fringe benefits, and shall not share in equalization of overtime. This provision shall not be interpreted to prevent the assignment of a temporary employee to overtime on his own job; provided, however, that no full-time employee in that classification shall be denied the opportunity to work such overtime first.

E. An employee shall lose his seniority AND HIS EMPLOYMENT under the following circumstances:

3. If he is absent for ~~five (5)~~ FIVE (5) consecutive working days or fails to return to work within ~~five (5)~~ FIVE (5) consecutive working days of the expiration of any type of leave of absence without notifying the Employer.

2) Union's proposal:

The union does not oppose the deletion of Section C but it wants to preserve the status quo in Section E.

3) Discussion:

The employer did not support these proposed changes with a rational for the new wording. The union asserted that there had been no problem in the past with using six days for the termination of seniority. The city did state that there had been some confusion about whether the loss of seniority also meant the loss of employment. The union did not indicate its opposition to this change.

4) Factfinder's recommendation:

The factfinder proposes that the following language be adopted in Article 14:

> C. Temporary employees may be hired into bargaining unit positions from time to time on a seasonal basis or when otherwise required. No employee shall work in a bargaining unit position on a full-time temporary or part-time temporary basis for longer than ninety (90) consecutive days, except that the Employer and the Union may mutually agree to extend such employment for an additional ninety (90) day period.//If a temporary employee becomes a permanent employee within no break in his employment//up to ninety (90) days of the time served as a temporary employee shall count as probationary time and towards seniority/ Temporary employees shall not be considered to have seniority, shall receive no fringe benefits, and shall not share in equalization of overtime. This provision shall not be interpreted to prevent the assignment of a temporary employee to overtime on his own job; provided, however, that no full-time employee in that classification shall be denied the opportunity to work such overtime first.
>
> E. An employee shall lose his seniority AND HIS EMPLOYMENT under the following circumstances:

E. ARTICLE 17 SHIFT PREFERENCE

1) The city's proposal:

In instances where employees within the same classification and the same division or department are employed on different shifts, the greater seniority employees shall be placed on the shift of their preference in accordance with the following procedure. It is understood that for purposes of this article the word "shift" means either the day shift, afternoon shift, or midnight shift and does not refer to different starting times within each shift.

1. An employee may register his shift preference choice with his division or department head, whichever is applicable, twice a year from August 15th to September 1st and from February 15th to March 1st.

2. Employees with the greatest seniority will be placed on the shift of their preference as soon as arrangements can be made. However, arrangements will be made by October 1st and April 1st.

3. If a vacancy occurs during the year, the department or division will poll the employees for the purpose of filling the vacancy with the senior eligible employee.

4. SHIFT PREFERENCE CHOICES ARE VALID ONLY FOR SHIFTS THAT ARE ACTUALLY SCHEDULED. IF A NEW SHIFT IS SCHEDULED, THE CITY SHALL GIVE SHIFT PREFERENCE TO EMPLOYEES ON A SENIORITY BASIS, AFTER A POSTING HAS OCCURRED.

2) The union's proposal: Status quo.

3) Discussion:

The employer explained that employees cannot bid for a shift when no work for that employee's classification is scheduled for that shift. They also said that when all work on a shift is cancelled the employees involved must bump to another shift.

The union noted that a recent arbitration award had confirmed that employees must be taken off a shift in seniority order and that the city cannot pick and choose who it wishes to remove from a shift in a reduction in force. The union argued that the matter has been resolved

and the employer should not try to reverse every arbitration case it has lost in the past by attempting to insert new corrective contract language. For this reason the union asks that the existing language be retained.

4) Factfinder's recommendation:

The 1990 arbitrator's award fully and fairly interpreted Article 17. The employer had attempted to treat one employee's bid to the midnight shift as "temporary" and then to bump the more senior employee to another shift. The new language proposed by the city would not change the outcome of the earlier case. The employer was not convincing in stating its reasons for the additional contract language. For these reasons the status quo is recommended.

F. ARTICLE 19 WORKING HOURS AND OVERTIME

1) Employer's proposal:

Revise Sections (E)(6), (7), and (9) as follows:

6. All work which is performed by Local 1250 bargaining unit employees during their regular workday will be offered to Local 1250 bargaining unit employees IN THE SAME CLASSIFICATION AND IN THE SAME DEPARTMENT OR DIVISION first when overtime is necessary.

7. *It is not the intent of the City to have bargaining unit work performed by supervisory employees either during regular or overtime hours. Nothing in this section should be construed as preventing immediate action at the site of an emergency to protect life and property. Furthermore, it is recognized that a foreman has a responsibility to train and instruct by example if need be, to perform a task properly and safely.*

SUPERVISORY EMPLOYEES MAY PERFORM ANY WORK NORMALLY PERFORMED BY THE EMPLOYEES UNDER THEIR SUPERVISION, AT ANY TIME THE SUPERVISOR DETERMINES THAT THE WORK CAN BE MORE EFFICIENTLY PERFORMED, AT LESS COST, BY THE SUPERVISOR THAN WOULD BE INCURRED BY CALLING IN OR OTHERWISE SCHEDULING A NON-SUPERVISORY EMPLOYEE TO PERFORM THE WORK.

9. Equalization of Overtime Procedure
Whenever possible, overtime shall be equally distributed among all eligible employees in the same job classification WITHIN THE SAME DIVISION OR DEPARTMENT, except at the Waste Water Treatment Plant where the W.W.T.P. Operator Specialists will share their overtime equally by shift. OVERTIME SHALL NOT BE EQUALIZED BETWEEN CLASSIFICATIONS OR BETWEEN DEPARTMENTS OR DIVISIONS. Overtime will be shared equally in the same job classification having "restricted" and "unrestricted" status.

ADD NEW SUBSECTIONS (J) AND (K) TO ARTICLE 19(E)(9) TO PROVIDE AS FOLLOWS:

J. IN THE EVENT THAT AN EMPLOYEE ELIGIBLE FOR OVERTIME ON THE OVERTIME OR "STANDBY" EQUALIZATION LIST IS NOT ASSIGNED SUCH OVERTIME, THEN SUCH EMPLOYEE SHALL BE GIVEN A FUTURE OPPORTUNITY TO EQUALIZE HOURS. PAYMENT SHALL NOT BE MADE FOR HOURS NOT WORKED.

K. THE EQUALIZATION PROCESS SHALL NOT INTERFERE WITH THE CITY'S RIGHT TO ALLOW ASSIGNED EMPLOYEES TO COMPLETE A JOB, WHEN IN THE CITY'S JUDGMENT SUCH JOB CONTINUATION IS APPROPRIATE.

2) Union's proposal: Status quo.

3) Discussion:

The city asserted that there has been confusion about whether overtime should be equalized between employees sharing the same classification in the same department or city wide. They also claimed that it is also unclear about the role of a foreman when bargaining unit work can be done more efficiently by the foreman. They said this is especially true on a weekend when there is a broken waterline and it can be fixed by the foreman without an expensive call-in of unit personnel. Further, the city wants it clearly presented that the remedy for having been overlooked in an overtime assignment is to be offered the next opportunity to work instead of

getting a windfall cash payment. Finally the city wishes to allow a crew in the field to complete work on an overtime basis rather than to send out a new crew to finish the job on an overtime basis.

The union maintained that the parties already understand that equalization of overtime is to be done among employees in the same classification in the same division or department. There is an arbitration award which confirms this interpretation. However, the union claims that the city seeks to codify all of its arbitration victories while it rewrites the contract to reverse the contract interpretations with which it disagrees. The union also objected to the new language which would give unlimited authority to supervisors to do bargaining unit work. The union also stated that sometimes payment for missed overtime opportunities is an appropriate remedy. They pointed out that if it can be shown that bad faith or repeated negligence is involved, then cash compensation may be required. The union contended that no reason was shown for these changes of well-settled contract language and the status quo should prevail.

4) Factfinder's recommendation:

The new language is subsections 6 and 9 clarifies what is the current practice. Making the contract clear to supervisors and employees would be beneficial. The factfinder recommends that these changes be adopted. However, the current language of Section 7 seems very adequate and the greater liberty given to supervisors would likely create dissention and erosion of the bargaining unit.

The status quo is recommended for sub-section 7.

The new sections J and K have not been shown to be necessary. As arbitrator Lipson has said there may be a proper basis on occasion for a cash payment to remedy lost overtime pay.

Regarding the proposed new Section K "whenever possible" language of subsection 9 should allow employees on a job to complete that job when calling out a new crew would be wasteful and inefficient. However, often keeping crews out past quitting time would reward inefficiency or create great disparties in overtime hours worked. It is better to let past practices and existing contract lanauge continue to govern in this area. The factfinder recommends no new section J & K be added to Article 19.

G. ARTICLE 21 VACATIONS

1. Vacation periods shall run from January 1st to December 31st each year.

2. All employees, except continuous and continued service employees at the Waste Water Treatment Plant, who have one (1) year of service are entitled to two (2) weeks paid vacation. Provided, however, that if an employee joins the city service prior to the beginning of the calendar year, he shall be permitted one (1) vacation day for every month of service in the previous calendar year, accumulating to a maximum of ten (10) days, which shall be taken during the following calendar year.

3. All employees, except continuous and continued service employees at the Waste Water Treatment Plant, with three (3) years of service shall be entitled to one (1) additional day of vacation. All employees except continuous and continued service employees at the Waste Water Treatment Plant, with four (4) years of service shall be entitled to fourteen (14) days of vacation. All employees, except continuous and continued service employees at the Waste Water Treatment Plant, with five (5) years of service shall be entitled to fifteen (15) days of vacation. Thereafter, employees will receive one (1) additional day of vacation for each additional year of service not to exceed five (5) weeks of vacation (25) working days. ALL EMPLOYEES WITH TWENTY-ONE (21) YEARS OF SERVICE OR MORE SHALL BE ENTITLED TO ONE (1) ADDITIONAL DAY OF VACATION FOR EACH YEAR OF SERVICE OF A MAXIMUM OF FIVE (5) ADDITIONAL VACATION DAYS.

(For lack of proposed change, paragraphs 4 through 7 have been omitted.)

8. A bonus vacation day system will be provided which will allow a maximum value of twelve (12) days to be earned in accordance with the following formula:

0 absences during a calendar year	12 days
1 absence during a calendar year	10 days
2 absences during a calendar year	8 days
3 absences during a calendar year	6 days
4 absences during a calendar year	4 days
5 absences during a calendar year	2 days
6 absences during a calendar year	0 days

Absence days counted will be sick leave or personal leave days, as well as absences when sick leave is not available or is otherwise not charged to sick bank. An employee who has been off less than ten (10) workdays, not necessarily consecutive, within a calendar year due to on-the-job injury will qualify for the bonus plan.

Annually, employees having less then ten (10) years seniority may use a maximum value of twelve (12) days of the bonus vacation system by exercising one of the following options subject to the conditions provided therein . . . .

~~Employees having less (10) years seniority may elect to receive pay for up to one half (1/2) of the days earned, and take up to one half (1/2) of the days earned off on pass up the months. Such employees shall not take off more than one half (1/2) of the days earned.~~

2) The employer's proposal: Status quo.

3) Discussion:

The change in section 3 would provide six weeks vacation for long term employees. The union has argued that the superivsors in Local 1917 have that level of vacations and so should the rank and file employees. The employer countered with the fact that the supervisors traded the extra week of vacation for a two-tiered vacation benefit program. That is, the lower seniority supervisors accumulate vacation at a slower rate effecting an overall cost savings for the city. Local 1250 is not interested in such a two-tier approach, the employer said, and theyhave rejected the employer's proposals in this regard.

The union contended that only an employee with more than 25 years of service would be entitled to the full six weeks of vacation. They also noted that all supervisors and non-union city employees already receive this benefit. They said that most Local 1917 employees have 25 years of service and so the slower accumulation rate is not important to them as it would be to Local 1250 employees. The union acknowledged that other cities do not offer more than 25 vacation days but they argued that all Warren city employees should be treated the same.

The union also seeks to allow all city employees to use all earned bonus days instead of the current 50% cap for employees with less than ten years seniority. The principal thrust of the union was that they want all of the people in the unit treated the same. The union argued that these bonus days actually save the city money because they reduce absenteeism and they reduce the city's liability at the time of retirement. The city also opposed this change. They said that their vacation time off is now the most generous of all comparable cities and they do not wish to add to the present level of vacation benefits.

4) Factfinder's recommendation:

The union's list of comparable cities shows the following maximum vacation days allowed for unit employees:

	Maximum Vacation Days
Warren	25
Ann Arbor	25
Dearborn	25
Roseville	25
Southfield	25
St. Clair Shores	25
Troy	25
Livonia	23
Detroit	20
Sterling Heights	20

While the union's comparisons to other city employees is normally a persuasive point, in this case the unwillingness of Local 1250 to accept the total vacation package adopted by Local 1917 weakens their comparison. Even without gaining the additional maximum benefits enjoyed by other city employees, the AFSCME Local 1250 workers still have a very good vacation plan.

The bonus plan is working well and the union offered no justification for a change except its desire to give the same bonus plan to all employees. However, vacations and other fringe benefits are often tied to seniority. The union is most often the advocate of rewarding long serive with more days off. It is consistent with this philosophy that 100% use of bonus days is not available until after ten years of service.

The factfinder recommends status quo for Article 21.

H. ARTICLE 22 INSURANCE

1) The city's proposal:

NEW PARAGRAPHS (10) AND (11) TO BE ADDED AS FOLLOWS:

10. THE HEALTH INSURANCE BENEFITS PROVIDED FOR IN THIS CONTRACT ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE MEDICAL INSURANCE PLAN SELECTED BY THE EMPLOYEE. THE TERMS AND CONDITIONS OF THE HMO'S PROVIDED FOR IN PARAGRAPHS (7) AND (9) AND THE CITY OF WARREN MEDICAL BENEFIT PLAN DATED OCTOBER 1, 1986, AND THE OPERATING AGREEMENTS WHICH HAVE BEEN PROVIDED TO THE UNION ARE INCORPORATED INTO THE CONTRACT BY REFERENCE. THE BENEFITS PROVIDED BY THE CITY OF WARREN MEDICAL BENEFIT PLAN DATED OCTOBER 1, 1986 SHALL NOT BE LESS THAN THE BENEFITS PROVIDED BY THE TERMS AND CONDITIONS OF THE BLUE CROSS PLANS REFERRED TO IN PARAGRAPHS (1) THROUGH (6), BUT IN THE EVENT ANY BENEFIT OF THE CITY OF WARREN PLAN IS LESS THAN A BENEFIT OF SAID BLUE CROSS PLANS, THE CITY SHALL PROVIDE SUCH IMPROVED BENEFIT.

11. EFFECTIVE UPON DATE OF RATIFICATION, EMPLOYEES HIRED BEFORE THE 25TH OF THE MONTH SHALL RECEIVE MEDICAL INSURANCE COVERAGE ON THE 1ST OF THE FOLLOWING MONTH. EMPLOYEES HIRED ON OR AFTER THE 25TH OF THE MONTH SHALL RECEIVE MEDICAL INSURANCE COVERAGE ON THE 1ST OF THE SECOND MONTH FOLLOWING DATE OF HIRE, SUBJECT TO THE TERMS AND CONDITIONS OF THE PLANS AS PROVIDED IN PARAGRAPH (10) ABOVE.

2) The union's proposal:

The union opposes the addition of new sections 10 and 11 shown above. They also claim that the city had already agreed to the following additions to the contract:

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY EMPLOYEE IN THE BARGAINING UNIT MAY ELECT TO WAIVE COVERAGE UNDER THE HEALTH INSURANCE POLICIES PROVIDED FOR HEREIN. AN EMPLOYEE WAIVING HEALTH INSURANCE COVERAGE SHALL COMPLETE AND FILE WITH THE CITY SUCH DOCUMENTS AS THE CITY MAY REQUIRE. THE ELECTION SHALL BE FILED PRIOR TO THE BEGINNING OF THE INSURANCE POLICY "PLAN YEAR" WHICH IS BEING WAIVED. DURING THE FIRST YEAR OF THIS CONTRACT, AN EMPLOYEE MAY WAIVE COVERAGE WITHIN THIRTY (30) DAYS OF THE DATE OF RATIFICATION AND RECEIVE A PRORATED PAYMENT BASED UPON THE NUMBER OR MONTHS REMAINING IN THE PLAN YEAR. WITHIN SIXTY (60) DAYS OF THE FILING OF SUCH WAIVER, THE CITY SHALL PAY THE EMPLOYEE THE SUM OF FIVE HUNDRED DOLLARS ($500.00) TO COMPENSATE SUCH EMPLOYEE FOR THE WAIVER OF COVERAGE UNDER THE HEALTH INSURANCE POLICIES PROVIDED FOR HEREIN. AN EMPLOYEE WHO WAIVES HEALTH INSURANCE COVERAGE SHALL NOT BE PERMITTED TO REVOKE OR RESCIND SUCH WAIVER UNTIL THE NEXT OPEN ENROLLMENT PERIOD; PROVIDED HOWEVER, AN EMPLOYEE, SUBJECT TO POLICY REQUIREMENTS AND CONDITIONS AT THE TIME HE EXERCISES THE ELECTION, MAY REINSTATE HIS HEALTH INSURANCE IN THE EVENT COVERAGE PROVIDED BY HIS SPOUSE IS TERMINATED, BUT IN SUCH CASE THE EMPLOYEE SHALL REIMBURSE THE CITY FOR THE PAYMENT MADE TO HIM UNDER THIS PROVISION.

Revise Paragraph (11) as follows:

EFFECTIVE UPON DATE OF RATIFICATION, EMPLOYEES COVERED BY THIS AGREEMENT SHALL RECEIVE LIFE INSURANCE IN THE FACE AMOUNT OF FIVE THOUSAND DOLLARS ($5,000.00) UPON THEIR RETIREMENT.

3) Discussion:

The city disputes the union's claim that its proposal had been tentatively adopted by the parties. The city also asserts that all other units of Warren city employees have adopted its proposed new language. The union did not provide any basis for its opposition to the city's proposed new section 11 and so that provision should be adopted.

The city's opposition to the union's proposal is weak. They argued that the savings to be gained by this change are "speculative". However, this benefit was granted to other units of city employees, and there was no showing in the factfinder's hearing that a similar treatment for Local 1250 employees was not appropriate.

The employer asserts that the addition of Section 10 is just "housekeeping" because it does not constitute a substantive change in the agreement. The union disputes this and they charged that when one of the carriers which had covered city employees recently went out of business,the city did pay many employee bills and this prevented the filing of grievances. The union claims that the city does guarantee a level of benefits and the city then chooses who to provide those benefits. For this reason the union opposes the employer's proposal which they say is vague and unfair.

4) Factfinder's recommendation:

The employer's proposed new section 10 is not recommended for adoption. The employer and the union dispute the present meaning of Article 22. Federal and state legislation heavily regulates the

provision of group fringe benefits to employees and insurance coverage in general. The factfinder believes the status quo is the best posture to take at this time. This is the sort of provision which should be negotiated by the parties and there is no pressing need for a change at this time.

The city's proposed new Section 11 is recommended for adoption.

The union's proposals for additions to Article 22 are recommended for adoption.

I. ARTICLE 23 SICK LEAVE

1) The city's proposal:

Revise Section (5) as follows:

> Before benefits will be paid under this article for an illness of three (3) days or more, the employee shall provide a physician's statement to verify the illness. IN ORDER ~~TO BE ELIGIBLE FOR BENEFITS~~, AN EMPLOYEE SHALL ~~COMPLY WITH THE FOREGOING AND SHALL~~ CALL IN AND REPORT HIS ABSENCE AT LEAST ONE-HALF (1/2) HOUR BEFORE OR AFTER THE BEGINNING OF HIS SHIFT, AT A TELEPHONE NUMBER DESIGNATED BY THE CITY.

NEW SECTION (9) TO READ AS FOLLOWS:

> 9. AN EMPLOYEE WHO HAS ONE OR MORE UNEXCUSED ABSENCES FROM WORK IN A SINGLE, CONTINUOUS CALENDAR YEAR PERIOD SHALL BE SUBJECT TO DISCIPLINARY ACTION, AS FOLLOWS:
>
> A. 1ST DAY OF UNEXCUSED ABSENCE - WRITTEN WARNING
>
> B. 2ND DAY OF UNEXCUSED ABSENCE - 1-DAY SUSPENSION
>
> C. 3RD DAY OF UNEXCUSED ABSENCE - 3-DAY SUSPENSION
>
> D. 4TH DAY OF UNEXCUSED ABSENCE - 6-DAY SUSPENSION
>
> E. 5TH DAY OF UNEXCUSED ABSENCE - DISCHARGE
>
> FOR PURPOSES OF THIS SECTION, AN "UNEXCUSED ABSENCE" SHALL MEAN THE USE OF ANY LEAVE DAY, UNLESS APPROVAL HAS BEEN GRANTED BY THE SUPERVISOR AS REQUIRED BY APPLICABLE PROVISIONS OF THIS CONTRACT, OR THE USE OF ANY DAY BY AN EMPLOYEE FOR WHICH HE RECEIVES "NO PAY" BECAUSE THE EMPLOYEE HAD NO AUTHORIZED LEAVE DAYS TO TAKE. AN "UNEXCUSED ABSENCE" SHALL NOT INCLUDE AN ABSENCE CHARGED TO SICK LEAVE, AS LONG AS THE USE OF THE SICK LEAVE COMPLIES WITH OTHER REQUIREMENTS OF ARTICLE 23 OF THIS CONTRACT. IN THE EVENT AN EMPLOYEE IS HOSPITALIZED, MULTIPLE CONSECUTIVE DAYS OF ABSENCE

SHALL BE COUNTED AS A SINGLE DAY FOR PURPOSES OF THIS POLICY. THIS SECTION SHALL NOT BE CONSTRUED AS ELIMINATING THE RIGHTS OF THE CITY TO DISCIPLINE OR TAKE OTHER CORRECTIVE ACTION AGAINST EMPLOYEES WHO HAVE EXCESSIVE ABSENTEEISM, AND IT IS SPECIFICALLY RECOGNIZED THAT THE CITY MAY CONTINUE TO EXERCISE SUCH RIGHTS IN ADDITION TO THE "NO-FAULT" POLICY ADOPTED HEREIN.

2) The union's proposal:

The union has agreed to the addition of new Section 9 but they oppose the new language in Section 5.

3) Discussion:

The union does not dispute that the city may unilaterally promulgate a rule which provides discipline for those employees who do not call in properly to report their absences. However, they do not wish to add such a provision to the labor agreement. Nor do they wish to agree to automatically deny benefits to all of those who call in late, etc. The city asserted that a timely call in is very important in order to properly replace all absentees. The city noted that often a whole crew is held up because the status of one person is not known. The union noted that the employer does not have the benefit ineligibility language in its other contracts. The employer maintained that call-in provisions are commonly found in the labor agreements for municipal employees.

4) The factfinder's recommendation:

The union has agreed to an extensive no-fault attendance program and this is a major concession to management's demands. The employer may achieve much of its goal by way of its work rules. The forfeiture of sick pay to an employee who is legitimately ill for the first occasion of a tardy call-in is a harsh penalty. The factfinder recommends against the adoption of the new language proposed by management for Section 5.

J. ARTICLE 24 S & A INSURANCE

1) Employer's proposal:

THE CITY MAY ASSIGN OR TRANSFER AN EMPLOYEE RECEIVING SICKNESS AND ACCIDENT BENEFITS TO ANY CLASSIFICATION IN THE BARGAINING UNIT THAT HE IS CAPABLE OF PERFORMING FOR THE DURATION OF THE EMPLOYEE'S ACCIDENT, ILLNESS OR INJURY. THE CITY MAY PERIODICALLY REQUIRE THE EMPLOYEE TO BE EXAMINED BY PHYSICIANS SELECTED BY THE CITY, PROVIDED HOWEVER THAT SAID REQUIREMENT SHALL NOT BE UNREASONABLY INVOLED. EMPLOYEES ON SICKNESS AND ACCIDENT SHALL NOT BE ELIGIBLE FOR INCREMENTAL PAY INCREASES OR ANNUAL PERCENTAGE INCREASES.

2) Union's proposal: Status quo.

3) Discussion:

The city indicates that it will be able to reduce sick pay expense and to fully utilize partly disabled employees by way of this new contract provision. They noted that under current language the city has been prevented from returning an employee to work until that employee is fully able to perform all normal job duties. The union answered that the city failed to cite any cases in which it was prevented from assigning an employee to light duty. The union maintained that the city did not present persuasive rebuttal evidence and the city could attempt to use this new language to disenfranchise non-disabled employees.

4) The factfinder's recommendation:

The employer did not support its wage freeze language for disabled employees and it was not clear what would happen to an employee on sick leave the week of a general raise. Would such employee lose that raise until the next general increase? This sentence is not practical or justified. Both parties will soon have to face strong federal legislation which impacts on the placement of partially disabled municipal employees under the Americans With Disabilities Act (42 U.S.C. 12101, et seq. (ADA)). The employer's increased authority to place a partially disabled employee on work the employee is capable of performing is consistent with this law. The factfinder is not convinced that this may only be done if there is an "opening". The other side of this issue will be the employer's duty to transfer some workers to work which accomodates a partial disability. The factfinder recommends the following new language for Article 24:

NEW PARAGRAPH TO BE ADDED TO ARTICLE 24 AS FOLLOWS:

THE CITY MAY ASSIGN OR TRANSFER AN EMPLOYEE RECEIVING SICKNESS AND ACCIDENT BENEFITS TO ANY CLASSIFICATION IN THE BARGAINING UNIT THAT HE IS CAPABLE OF PERFORMING FOR THE DURATION OF THE EMPLOYEE'S DISABILITY RESULTING FROM ACCIDENT, ILLNESS OR INJURY. THE CITY MAY PERIODICALLY REQUIRE THE EMPLOYEE TO BE EXAMINED BY PHYSICIANS SELECTED BY THE CITY, PROVIDED HOWEVER THAT SAID REQUIREMENT SHALL NOT BE UNREASONABLY INVOKED.

K. ARTICLE 27 LEAVES OF ABSENCE

1) The City's proposal:

Eligibility Requirements

Employees shall be eligible for leaves of absence after their probationary period is completed. NO LEAVE OF ABSENCE, EITHER PAID OR UNPAID, SHALL BE GRANTED FOR A PERIOD OF MORE THAN SIX (6) CONSECUTIVE MONTHS, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. CONSECUTIVE LEAVES SHALL NOT BE GRANTED. AN EMPLOYEE SHALL NOT BE ELIGIBLE FOR ANOTHER LEAVE UNTIL TWELVE (12) MONTHS HAS ELAPSED SINCE THE LAST DAY OF HIS PRECEDING LEAVE OF ABSENCE. NO EMPLOYEE ON A LEAVE OF ANY TYPE SHALL ACCRUE VACATION, SICK LEAVE OR OTHER LEAVE TIME. REQUESTS FOR ALL LEAVE TIME MUST BE APPROVED IN ADVANCE, IN WRITING, BY THE DEPARTMENT HEAD AFTER THE REQUEST HAS BEEN SUBMITTED TO THE EMPLOYEE'S IMMEDIATE SUPERVISOR.

Application for Leave

Any request for a paid or unpaid leave of absence shall be submitted in writing by the employee to his immediate supervisor. The request shall state the reason for the leave of absence and the length of time of same.

~~If the employee does not receive his answer in writing within ten (10) working days, the City and the Union shall meet in a special conference for the purpose of giving the employee a written answer to his request.~~

Any request for a leave of absence shall be answered within ten (10) working days.

Paid Leaves

Jury Duty: Employees shall be granted a leave of absence with pay ~~any time they are required to report for jury duty or jury service~~ FOR THE HOURS THAT AN EMPLOYEE IS REQUIRED TO BE PRESENT IN A COURT HOUSE FOR JURY DUTY AND FOR REASONABLE COMMUTING TIME TO AND FROM THE COURT. AN EMPLOYEE ON JURY DUTY SHALL RETURN TO WORK EACH DAY, IF HE IS RELEASED FOR THE DAY MORE THAN ONE HOUR PRIOR TO THE END OF HIS ASSIGNED SHIFT.

Employees shall be paid the difference between jury duty compensation they receive and their regular wages for ~~each day of jury service~~ THE HOURS IN QUESTION.

Employees shall complete whatever paper work is necessary to verify the time involved. An employee shall transfer to the day shift at the request of the City for the length of the time of the jury duty leave only. Employees in the Sanitation Division shall not work on the incentive system during the time they are on jury leave.

WITNESS DUTY: Employees shall be granted a leave of absence with pay any time they are required by subpoena to report as a pertinent witness to appear in court in connection with their job or as a witness in a criminal or civil case when their presence serves the public interest.

Employees shall be paid the difference between any witness fees compensation they receive and their regular wages for each day their service is required. PAYMENT SHALL BE MADE FOR HOURS ACTUALLY SERVED AS A WITNESS PLUS REASONABLE COMMUTING TIME IN THE SAME MANNER AS JURY DUTY. NO PAYMENT SHALL BE MADE TO ANY EMPLOYEE WHOSE USUAL JOB DUTIES INVOLVE TESTIFYING IN COURT. EMPLOYEES SHALL BE PAID THE DIFFERENCE BETWEEN ANY WITNESS FEES COMPENSATION THEY RECEIVE AND THEIR REGULAR WAGES FOR EACH DAY THEIR SERVICE IS REQUIRED.

Military Leave: Employees who are in any branch of the Armed Forces Reserve and/or the National Guard will be paid the difference in salary that the employee would have earned with the City and that which he earns during the normal fifteen (15) day annual training period and/or any additional service required by the appropriate authorities due to civil disturbances. Provided, however, that the total service time for which employees will not suffer loss of pay shall not exceed thirty (30) days in any one year. This paragraph shall not apply to the City of Walker Police Reserves or Auxiliaries. THE EMPLOYER SHALL NOT REQUIRE REIMBURSEMENT OF MONIES RECEIVED BY THE EMPLOYEE FOR MILITARY SERVICE ON HIS REGULAR WORKDAYS OFF PROVIDED THE CITY IS SUPPLIED WITH THE MILITARY PAY VOUCHER NECESSARY TO VERIFY RATES OF COMPENSATION.

Unpaid Leaves

1. Leaves of absence for a period not to exceed six (6) months, except as otherwise provided for herein, may be granted by the Employer for substantial reasons. The term "substantial reasons" shall be interpreted to include, but shall not be limited to, personal illness, injury, OR OTHER DISABILITY, family illness, active military service as specified below, union business as specified below, attendance required at a court trial, or education as specified below, IF IT IS DETERMINED THAT SUCH REASON ADVERSELY AFFECTS THE EMPLOYEE'S JOB PERFORMANCE. Leaves of absence shall not be granted to permit an employee to engage in other employment or self-employment, OR FOR ANY OTHER REASON NOT RELATED TO JOB PERFORMANCE.

2. Union Business: Employees elected to any union office or selected by the Union to do work which takes them from their employment with the Employer shall, at the written request of the Union, be granted a leave of absence. The time of such absence shall not exceed one (1) year but may be renewed or extended for a similar period at any time upon the request of the Union. FOR THE DURATION OF THEIR APPOINTMENT.

3. Public Office: Employees elected or appointed to any public office which takes them from their employment with the Employer shall, upon written request of the employee, be granted a leave of absence FOR THE DURATION OF THEIR APPOINTMENT.

4. Education: After completing one (1) year of service, any employee upon request may be granted a leave of absence for educational purposes in accordance with the provisions of Paragraph 1.

5. MILITARY LEAVE: Any employee who enters into active service in the Armed Forces of the United States while in the service of the Employer shall be granted a leave of absence for the period of his military service in accordance with the Veterans Preference Act

6. The language of this paragraph was submitted in error. (Tr. Vol. VI 88)

7. EMPLOYEES SHALL NOT ACCRUE SENIORITY WHILE ON AN UNPAID LEAVE OF ABSENCE OVER TWO (2) MONTHS. EMPLOYEES SHALL NOT BE ENTITLED TO ANY FRINGE BENEFITS DURING THE PERIOD OF THE LEAVE. EMPLOYEES SHALL NOT ACCUMULATE ANY SERVICE TIME FOR FRINGE BENEFIT

COMPUTATION PURPOSES WHILE ON AN UNPAID LEAVE. EMPLOYEES SHALL ACCRUE SENIORITY AND RETIREMENT SERVICE CREDIT WHILE ON UNPAID LEAVES OF TWO (2) MONTHS OR LESS. NOTHING IN THIS PARAGRAPH SHALL CONTRAVENE THE VETERANS PREFERENCE ACT.

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, EMPLOYEES ON LEAVE FOR UNION OFFICE AND PUBLIC OFFICE SHALL CONTINUE TO ACCUMULATE SENIORITY FOR DURATION OF THE LEAVE.

2) The union's proposal:

The union opposes the employer's changes in the paid leaves section concerning jury duty and witness duty. In the other areas the union consented to the changes.

3) Discussion:

The employer asserted that in the past it has had a problem with employees who were on a jury. They said that some employees were released from jury duty for the day at 8:30 a.m. and the employee still took the day off work as if it was a vacation day. The city has taken the position that such employee must return to work when they are available to do so. For this reason they have offered new language which focuses on hours and not on days. A similar proposal is made for witness duty.

The union indicates that it will not oppose most of the city's changes but it said that there is a well-established precedent for jury duty and witness duty by city employees. The parties have settled past grievances with the understanding that an employee excused for a day of jury duty need not return to work until their next regular shift regardless of when they are excused from such duty by the courts.

4) The factfinder's recommendation:

The city has made extensive changes in this article. In the application for leave, unpaid leaves, military leaves the employer

has improved its controls and gained some efficiencies. In the jury duty section the employer seeks to change a well-established precedent and to diminish the jury duty benefit for the Local 1250 employees to less than that enjoyed by other city employees. The factfinder recommends all of the employer's changes be adopted except that for the jury duty leave. The language for jury duty shall remain unchanged.

L. ARTICLE 28 TRANSFERS

1) The employer's proposal:

> When an employee desires a transfer within his classification to another division or department, he shall register his request for such transfer in writing with the Personnel Department during the posting period. THE DATE UPON WHICH THE TRANSFER IS MADE SHALL BE DETERMINED BY THE CITY. When an opening occurs within the classification, the employee with the greatest seniority who has applied for the transfer shall be given the opprtunity of transferring. Transfer request will be honored prior to promotions, ~~seniority permitting, provided, However, this section shall not apply to secondary openings caused by a transfer unless all promotional and demotional opportunities are exhausted first.~~ EXCEPT THAT AN EMPLOYEE WHO HAS THREE (3) OR MORE YEARS SENIORITY IN A DEPARTMENT OR DIVISION WHERE THE VACANCY OCCURS SHALL BE GIVEN THE OPPORTUNITY TO PROMOTE BEFORE ANY TRANSFERS ARE ALLOWED. AN EMPLOYEE TRANSFERRING TO A POSITION SHALL BE ON A FOUR (4) WEEK TRIAL PERIOD. AN EMPLOYEE PASSING THE TRIAL PERIOD SHALL NOT BE ELIGIBLE TO CHANGE POSITIONS FOR AT LEAST SIX (6) MONTHS WITHOUT THE CONSENT OF THE CITY.

2) The union's proposal: Status quo.

3) Discussion:

The city said that the date of transfer language is just housekeeping. The existing language of this section is confusing, the city argued, and the new language is clearer and it encourages inter-department promotion rather than bringing in inexperienced outsiders. The employer also asserted that the four week trial period

will allow the supervisors to weed out unqualified transferees. They said being sent back to an old job is better than discipline and discharge. Finally, the city said a six month cap on bidding is a common union contract provision to reduce job hopping.

The union contended that this language governs transfers where the employee stays in the same job classification. They said there is no need for a trial period in such circumstances. The union argued that the city cited no instances in which such a change would have aided the city or the employee. The employee had to serve a trial period to get into the classification and so a second trial period would be redundant. The union also indicated that the city had not cited any other collective bargaining agreement which would preclude a deserved promotion for six months. The union also said that the unit employees have long agreed that jobs are to be awarded on the basis of total seniority and not department or classification seniority. Further, they said that the city's proposal is poorly drafted and it would create more problems than it would solve.

4) The factfinder's recommendation:

The city should be able to set the transfer date for an employee. However, the other changes it has proposed in Article 28 would likely create more grievances and hostility in the unit. Employees jealously guard seniority rights. Management's tinkering with this provision will create antagonism and not build up intra-departmental expertise. Some employees already in a department may

have lesser skills for a job than does a person who would transfer in from another area. The factfinder was not convinced by the employer's arguments. It is recommended that the balance of Article 28 remain unchanged.

M. ARTICLE 29 PROMOTIONS AND DEMOTIONS

1) The city's proposal:

The order of priority for promotional and demotional purposes shall be: (1) Personnel within a division, (2) Personnel within a department, and (3) Personnel city wide.

A. Promotions and Demotions in a Series

1. Promotions and demotions to classifications within a series (as enumerated in Appendix A) shall be made without written examinations on the basis of seniority and qualifications set by the Civil Service Commission, except that an employee who "double" promotes to a classification within a series which is not the next higher classification in that series shall pass an assessment center examination administered by the Michigan Municipal League to establish the employee's qualifications for such higher classification. Job vacancies shall be posted for a period of seven (7) calendar days on the bulletin board in the division wherein the vacancy exists or city wide as necessary. Employees interested shall apply within the seven (7) calendar day posting period. The senior qualified applicant in the series shall be granted up to a ~~THIRTY~~ EIGHT (8) week trial period to determine.

   a. His ability to perform the job.

   b. His desire to remain on the job.

AN EMPLOYEE ON A TRIAL PERIOD SHALL NOT BE ELIGIBLE FOR PROMOTION TO ANOTHER CLASSIFICATION. AN EMPLOYEE PASSING HIS TRIAL PERIOD SHALL NOT BE ELIGIBLE TO CHANGE HIS POSITION FOR SIX (6) MONTHS WITHOUT THE CONSENT OF THE CITY. THE CITY SHALL NOT BE REQUIRED TO PERMANENTLY FILL ANY POSITION VACATED BY AN EMPLOYEE BECAUSE OF PROMOTION OR TRANSFER UNTIL SUCH EMPLOYEE HAS PASSED HIS TRIAL PERIOD.

2. If an employee is returned to his former classification due to an unsuccessful trial period, or in the event that the senior applicant in the series is denied the promotion or demotion, reasons for such denial shall be given in writing to such employee, his steward and the Union within three (3) working days. The employee shall have the right to appeal such denial to the Civil Service Commission, within seven (7) calendar days, which shall hear the appeal in accordance with its hearing procedures at its next regular meeting and/or the matter may be taken up at the fourth (4th) step of the grievance procedure.

3. During the trial period when an employee is promoted as mentioned in Section A above, he shall advance to a pay step in the higher classification which is immediately above that which he received in his previous classification.

   When an employee is demoted as mentioned in Section A above, his present rate shall be reduced to the next lower rate in the lower classification.

B. Promotions and Demotions Not in a Series

1. Promotions and demotions not in a series shall be made on the basis of seniority, qualifications, and examinations where stipulated in Appendix B. Job vacancies shall be posted for a period of seven (7) calendar days on the bulletin board of each work area. Employees interested shall apply within the seven (7) calendar days. The senior qualified applicant shall be granted up to a ~~EIGHT~~ SIXTEEN (16) week trial period to determine:

   a. His ability to perform the job.

   b. His desire to remain on the job.

AN EMPLOYEE ON A TRIAL PERIOD SHALL NOT BE ELIGIBLE FOR PROMOTION TO ANOTHER CLASSIFICATION. AN EMPLOYEE PASSING HIS TRIAL PERIOD SHALL NOT BE ELIGIBLE TO CHANGE HIS POSITION FOR SIX (6) MONTHS WITHOUT THE CONSENT OF THE CITY. THE CITY SHALL NOT BE REQUIRED TO PERMANENTLY FILL ANY POSITION VACATED BY AN EMPLOYEE BECAUSE OF PROMOTION OR TRANSFER UNTIL SUCH EMPLOYEE HAS PASSED HIS TRIAL PERIOD.

2. If an employee is returned to his former classification due to an unsuccessful trial period, or in the event the senior applicant is denied the promotion or demotion, reasons for such denial shall be given in writing to such employee, his steward and the Union within three (3) calendar days. If the employee is dissatisfied with the reasons given, he shall have the right to appeal such denial to the Civil Service Commission, within seven (7) calendar days, which shall hear the appeal in accordance

with its hearing procedures at its next regular meeting and/or the matter may be taken up at the fourth step of the grievance procedure.

3. During the trial period when an employee is promoted as mentioned in Section B above, he shall advance to a pay step in the next higher classification which is immediately above that which he received in his previous classification.

During the trial period when an employee desires to take a lower paying classification as mentioned in Section B above, he shall be placed in a pay rate in the lower classification which is the same or immediately lower to that he received in his previous classification.

2) The union's proposal: Status quo.

3) Discussion:

The city asserts that promotions which are not in a series brings an employee from an unrelated classification and thus a longer trial period is required to determine if the new job is within an employee's ability to learn. The city showed that other comparable communities often provided 60 days trial for a series jobs and 90 days trial for an out-of-series job. The city also maintains that it must freeze the successful candidate in the new position for six months to discourage job shopping. The city added that even more restrictive terms are now in place for Local 1917 employees.

The union objects to all of these changes and they charge that the city has not shown a justification for what they propose. The union asserted that promotions in a series are jobs which are all linked and in a clear hierarchy. Thus the need for a trial period is minimal. Further, they argued that the six month waiting period for bids would inflict a hardship on the employees and it is designed to discourage employees from seeking promotional opportunities.

4) The factfinder's recommendation:

The employer did not convince the factfinder of the need to extend the trial period for promotions in a series. These jobs are in a line of progression and the need for review and observation should not extend beyond four weeks. The factfinder recommends no change in the trial period in subsection A) 1).

The trial period for a promotion not in a series should be extended. Ninety days seemed the generally accepted trial period in other comparable communities. Thus, a trial period of 12 weeks would be in order. The sixteen weeks proposed by the city would be excessive. The factfinder recommends that the trial period in subsection B) 1) be changed from eight weeks to twelve weeks (not sixteen).

The factfinder was not convinced that "job shopping" has been a significant problem in this bargaining unit. Thus, there was no need shown for the six month job freeze proposed by management. In this regard the factfinder recommends the status quo.

N. ARTICLE 31 WAGES

I. Across the Board Increase:

a) The union's proposal:

7-1-88	50¢ per hour
7-1-89	4%
7-1-90	4%
7-1-91	4%
7-1-92	4%

b) The city's proposal:

7-1-88	25¢ per hour
7-1-89	3%
7-1-90	3.5%

II. Inequity increases:

a) The union's proposal:

Effective 7-1-90, (to be added to the 6-30-88 rate before the 7-1-88 increase is applied):

Account Technician, Administrative Secretary, Civil Service Personnel Technician, Computer Operator, Computer Technician, Election & Registration Speicalist, Purchasing Technician, Senior Clerk, Tax Account Technician --- $1400.00 per year and establish Micro Film Technician at the same rate as these classifications.

Electricians --- $1800.00 a year.

Auto Mechanic Specialist, Auto Mechanic Trainee, Auto Mechanic Technician and General Welder --- $0.25 per hour.

Water and Sewer Maintenance Technician --- $1.50 per hour.

Drafting Specialist --- $2,000 per year.

Engineering Specialist --- $1.00 per hour.

If five year contract is adopted the following equity raises are sought:

Effective 7-1-90:

Senior I.D. Technician $2000 per year.

Computer Instrumentation Technician $2000 per year

Water Meter Service Specialists 18¢ per hour

Inequity raise of $.03 per hour for Bldg & Grnds Maint. Specialist.

b) <u>The city's proposal</u>:

EFFECTIVE UPON DATE OF RATIFICATION, EQUITY ADJUSTMENTS ARE TO BE ADDED TO THE PAY RATE OF THE FOLLOWING CLASSIFICATIONS:

ACCOUNT TECHNICIAN	$500.00/YEAR
ADMIN. SECRETARY	$500.00/YEAR
CIVIL SERV. PERS. TECHN.	$500.00/YEAR
COMPUTER TECHNICIAN	$500.00/YEAR
ELECTION AND REG. SPEC.	$500.00/YEAR
MICROFILM TECHNICIAN	$500.00/YEAR
PURCHASING TECHNICIAN	$500.00/YEAR
SENIOR CLERK	$500.00/YEAR
W.W.T.P. ELECTRICIAN	$1,800.00/YEAR

AUTOMOTIVE MECH. SPEC.	$ .25/HOUR
AUTOMOTIVE MECH. TECH.	$ .25/HOUR
AUTOMOTIVE MECH. TRAINEE	$ .25/HOUR
GENERAL WELDER	$ .25/HOUR

III. Minimum rates:

a) Union's proposal:

Effective July 1, 1988, the entry level of the following classifications shall be 80% of the maximum rate and have a three year maximum rate schedule:

Account Specialist, Administrative Clerk, Automotive Mechanic Trainee, Building & Grounds Maint. Specialist, Janitor, Sanitation Operator Specialist, Stenographic Specialist, Stock Clerk, Tax Account Specialist, WWTP Building & Grounds Specialist, WWTP Mechanic Specialist, WWTP Operator Specialist and Water Meter Reader Specialist.

b) The city's proposal:

EFFECTIVE UPON DATE OF RATIFICATION, STARTING PAY RATES OF THE FOLLOWING CLASSIFICATIONS WILL BE ADJUSTED TO SEVENTY-FIVE PERCENT (75%) OF MAXIMUM, IF NOT ALREADY THERE:

ACCOUNT SPECIALIST

ADMINISTRATIVE CLERK

AUTOMOTIVE MECHANIC TRAINEE

BUILDING & GROUNDS MAINTENANCE SPEC.

JANITOR

SANITATION OPERATOR SPEICALIST

STENOGRAPHIC SPECIALIST

TAX ACCOUNT SPECIALIST

W.W.T.P. BUILDING & GROUNDS SPECIALIST

W.W.T.P. MECHANIC SPECIALIST

W.W.T.P. OPERATOR SPECIALIST

IV. Changes in salary step schedule

a) Union's proposal:

All in series or sequential position promotions shall have no more than one year progression to maximum rate.

b) Employer's proposal: Status quo.

V. Discussion:

The various wage proposals shown above have been combined for discussion purposes because the interrelationships and compounding effects of the combined proposals are too great to justify independent review and appraisal. The parties are not far apart in their across-the-board wage increase proposals but when one considers the differences in the minimum rates for some jobs, the compressed salary steps and the different inequity raises, the union's proposal becomes much more costly than is the city's. The factfinder will first make some general observations and then make his recommendations on each economic proposal.

The factfinder concludes that the union is trying to do too many things at the same time in the 1991 negotiations. Apart from a general increase for all of its members, the union also seeks to increase the starting wage, compress the steps to top rate, cure wage inequitities for some jobs and improve pension and other fringe benefits. The union seeks too much - too fast. Their demands would place some Warren city employees as the best paid of all other comparable municipal employees. Some employees would get a very inflated pay raise during the full term of the contract if all of the union's pay demands were granted.

On the other hand the employer has been too conservative and unyielding in its economic positions with the union. When the city's financial situation brightened the city did not significantly improve its offers to the union. Additionally the employer seemed bent on undermining the union with its heavy emphasis on management's rights changes and on reversing the effects of prior pro-union arbitration awards. Further, the employer seemed to frustrate the normal bargaining process by withdrawing initial offers and later introducing less favorable or more stringent proposals. This kind of bargaining always leads the other side to believe there is "more" available because it was once offered. The credibility of the employer's position is eroded by these inconsistencies.

Similarly, the union made a bargain with management in 1988 concerning the salary structure. In return for the union's 1988 concessions on new starting salaries and a "two tier" wage system, the city responded favorably to many of the union's economic demands. Then, just a few months after striking this bargain, the union made new salary proposals to raise the starting salaries and to condense the salary steps. This elimination of the newly negotiated two-tier system was an abrupt about face. The union's inconsistency also diminished confidence in their current position. A party who gains one goal by certain changes is thought to be using "whip-saw" bargaining techniques when that party seeks to repudiate recent concessions but to retain all reciprocal gains in the next round of bargaining.

A like criticism can be made of the extent of the union's current round of equity raises. It seems that with each new contract one segment of the bargaining unit seeks special raises. Then in the next round of bargaining those not included in the last "equity raises" seek to have their "turn" of higher than normal pay increases. An equity increase should normally be granted only when an employer is experiencing a problem recruiting or holding certain skilled employees. If one community is truly out of pattern for a particular job classification, then there is a true need for a special increase to cure the inequity. However, there should be an end to the current pattern of large numbers of bargaining unit personnel seeking equity raises with each new contract.

The city has the financial means to pay a fair wage package to its employees. The city of Warren may not be growing as fast as some neighboring communities to the north but it is a large and strong municipality with a well-estalbished tax base and a stable population. Other cities to the south of it are older and their financial future is more bleak. The factfinder cannot find that the city coffers are so full that the city of Warren should become the leader of all communities regarding the wage level of its employees. But neither can he recommend a wage freeze nor sub-par salary increases as he would for a city in financial distress. As has often happened in these negotiations - each side has taken a polarized, extreme position about the employer's ability to pay and this has contributed to the impasse in bargaining.

The bargaining history of these negotiations is very relevant here, especially as it relates to the across-the-board increases and duration of the contract. That history is presented graphically below:

1. June 6, 1988 proposals:

City:	Union:
4 yr contract	2 yr contract
Less 6%, 0%, 0% and 0%	6% and 6%

2. May 8, 1990 proposals:

City:	Union:
5 yr. contract	3 yr. contract
2%, 3%, 3.25%, 3.50% and 4%	4.2%, 4.5% and 4.7%

3. July 19, 1990 proposals:

City:	Union:
5 yr. contract	3 yr. contract
0%, 2%, 2.25%, 2.50% and 3%	50¢, 4% and 4%

4. August 2, 1990 mediated proposals:

City:	Union:
5 yr. contract	3 yr. contract
$500, 3%, 3.5%, 3.75% and 4%	50¢, 4% and 4%

5. March 21, 1991 proposals:

City:	Union:
5 yr. contract	3 yr. contract
$500, 3%, 3.5%, 3.75%, 4%	50¢, 4% and 4%

6. April 28, 1991 proposals:

City:	Union:
3 yr. contract	5 yr. contract
$500, 3%, 3.5%	50¢, 4%, 4%, 4% and 4%

Of course these offers by the city have to be viewed in the context of the 1990 settlements the employer reached with its other unionized employees. These agreements and similar raises for the non-union city employees took place in June 1990.

1990 Settlements

	AFSCME LOCAL 1250 Non-Court Employees (final demand)	AFSCME LOCAL 1250 Court Employees	AFSCME Local 1917
7-1/88:	50¢/hour	.25¢/hr.(bonus $500)	.25¢/hr(bonus $500)
7-1-89:	4%	3.0%	3.0%
7-1-90	4%	3.5%	3.5%
7-1-91	4%	3.75%	3.75%
7-1-92:	4%	4%	4%

2 year FAC effective upon ratification	2 year FAC effective 7-1-91	2 year FAC effec. 9/87
2.5 pension factor effective 7-1-91	2.5 pension factor effective 7-1-91	2.5 pension factor effective 7-1-91

The other two units have a "me too" clause so they will also receive any superior economic gains made in he current Local 1250 negotiations. Noteworthy too is the union's switch to a demand for a five year contract in 1991. They asserted that a three year contract would have already run out and so it made sense to go to a five year contract. The city did give one rationale as to why it reduced its offer to three years in 1991 after having consistently sought a longer contract in all prior offers. That is it wanted to bargain more about pension changes.

The union has made a strong showing about the employer's refusal to follow the minimum rates and the progressive steps to top rate set forth in the collective bargaining agreement. The union's pressures to do away with the present salary structure is tied to the fact that the city has taken this new structure to mean that it can start people at any step which it chooses and it can then progress an employee to top rate at a speed it deems appropriate. Such a method of salary administration undercuts bargained contractual rates of pay. All new employees should start at the minimum rate bargained with the union. If it is too low to attract competent employees, it then should be raised. Similarly, all employees should progress in the same manner to top rate. Uniformity in applying the strict terms of the contract is essential. Any other method breeds favortism

and possible rewards for cronies. The union contract supercedes any civil service system and wages must follow the contractual terms and structure and not the dictates of some agency not a party to the agreement.

It is important to note that all of the employees in this unit receive a cost of living wage increase every quarter based on increases in the consumer price index in the Detroit area. Thus, the recent inflationary trend will already have increased the unit members pay rates in the first half of the year 1991.

4) Factfinder's Recommendations:

The predecessor contract expired on June 30, 1988. The parties have completed three full years without a labor agreement in place. It is reasonable to now negotiate an agreement which will provide labor peace for the next two years. If the city's proposal were adopted the agreement now executed would already have expired. Thus, the factfinder recommends a five year contract (1988-1992).

The employer and the union are not far apart in their positions concerning across-the-board current wage increases. The union's proposed 4% increase in the fifth year is the same as that once proposed by the city. The union's offer comports with comparable communities and the union's proposal seems to best continue the City of Warren's current standing in the pay ranking for various wage classifications. Individual comparisons are not as important here as is the overall thrust. Therefore, the union's five year wage proposal should be adopted with retroactivity to 7-1-88.

The union's proposal on inequity raises (even with an overall 9-1-90 effective date) has much greater increases to more jobs than that proposed by the city. The factfinder believes that the union's proposal would be much costlier (in the long run) and it would push the pay for many City of Warren job classifications well beyond the levels found in comparable communities. The factfinder first recommends that these endless rounds of "equity raises" be discontinued in the future and that general increases for the whole unit be the expected means of handling salary improvement for all employees in the next negotiations. Secondly, the city's equity raise proposal should be adopted by the parties as the factfinder was convinced that it was the most equitable and the one best in keeping with the current trends of municipal employee's compensation.

The starting rates and salary progression steps proposed by management should be adopted, the factfinder concluded. The union's proposal would effectively end the two-tier salary approach which had been implemented in 1988. The city's offer would give the union some improvements while not providing a costly wholesale revamping of the existing salary schedule. The employer must realize, however, that it is not administering a merit pay program. It cannot reward the employees it deems to be better workers by thinly disguised merit raises called "equity adjustments". Such arbitrary pay adjustments violates the very salary structure that the city has negotiated to save costs and to tie wage increases to length of service. The factfinder recommends for entry rates and the salary step schedule be adopted with the caveat shown above.

O. ARTICLE 37 PENSION CHANGES

The wage and pension proposals are inextricably intertwined. Both parties combined their discussions of both of these topics. The factfinder notes that pension benefits are tied to wage levels and the amount of the wage increase effects the availability of money to pay for pension improvements. The employer laid heavy emphasis on the fact that the city of Warren makes the entire pension contribution while most of the cities in which the union compared its pay rates require employee contributions. The city offered these comparisons of contribution rates:

	Employer Rate		Member Rate	
Warren	18.78%	-	0.00%	-
Livonia	16.70%	(17.0%)*	2.50%	(3.1%)*
Detroit	15.32%	-	0.00%	-
St. Clair Shores	14.95%	(16.0%)*	1.76%	-
Troy	14.70%	(14.43%)*	0.01%	-
Roseville	13.39%	(14.0%)*	5.50%	-
Dearborn	11.66%	(18.60%)*	3.00%	(0.00%)*
Ann Arbor	7.31%	(5.0%)*	4.59%	(3.00%)*
Southfield	5.27%	(9.0%)*	5.00%	-
Sterling Heights	4.89%	(4.84%)*	6.50%	(5.00%)*

The employer noted that in comparing net take-home pay these pension contributions must be taken into account. Of course four of the cities listed above have a very low employee contribution rate and the trend is to lower or to eliminate employee contributions.

*(The rates asserted by the union are shown in brackets)

However, the factfinder did take the city's 100% pension contribution into account as he recommended the city's proposals on inequity raises, minimum rates, salary steps, etc.

The city and the union have made several proposals regarding pensions. They are all listed below under the broad heading "pension changes".

a. Pension Board Trustee Compensation:

1) The City's proposal:

An employee elected to the retirement board shall be granted time off without pay from the city to attend retirement board meetings, subject to the approval of his department head.

2) The Union's proposal:

Status quo

3) Discussion:

The employer asserts that this proposal is part of its current effort to eliminate paid time for extra curricular activities. The administration stated that the time spent in the service of the pension board should be paid by that board and not by the city. The union maintained that this proposal is an attempt to deprive its pension representative (the local president) of his pay while he is acting as a trustee. They noted that this trustee is elected to this post by the city employees and other trustees are paid by the city for the time which they spend at the trustee's meetings. The union indicated that only a few hours of pay a month is at stake here but it is another example of the employer's efforts to antagonize the union's leadership.

4) The factfinder's recommendation:

There would be no significant savings enjoyed by the city in this proposal. The employer did not indicate that the other trustees paid by the city would be docked for time spent on pension board business. The bad will generated with the union would far out weigh any benefits derived by the city in this contract change. The factfinder recommends the status quo.

b. Final average compensation:

1) Union's proposal: 2 year FAC

2) City's proposal: status quo

3) Discussion:

The union has asserted that this demand is justified because all other employees of the city of Warren, union and non union, are now covered by a two year FAC. They noted that all city employees are in the same program and the city's contribution rate is the same for all employees but only the Local 1250 non-court employees have lesser benefits because of a less favorable final average compensation calculation. The union stated that the supervisor's bargaining unit has enjoyed this superior benefit rate calculation since 1987 and while they initially made contributions they have since been repaid for all such payments. The union maintains that by not using the two year FAC the city has saved nearly one million dollars in lower pension benefits to recent retirees and a resulting lower contribution rate.

The city argued that the current three year average is fair and it provides a reasonable benefit for the city employees. They noted

that all of the comparable city's have three and five year FAC and so there is no basis to grant the union's demand.

4) Factfinder's recommendation:

The difficulty with all the union's pension demands is that the city of Warren employees already have the best pension plan of all the unionized employees in comparable communities. The union relies heavily on comparing its position with that of employees in neighboring cities until it comes to pensions. Then they can only compare to fellow city of Warren employees. The factfinder has concluded that some pension improvements are justified like the one now under consideration. This benefit has been enjoyed by many city of Warren employees since 1987. It is time that the employees of this bargaining unit also have the more favorable two year FAC for the calculation of their pension benefits. The factfinder recommends that the 2 year FAC be adopted.

c. Buy back provision:

1) The union's proposal:

Local 1250 seeks the same provision to buy back pension time as was gained by the Warren firefighters in a 1987 arbitration award. This provision would exclude any part-time library employment and the individuals involved would pay the cost.

2) The city's position:

Status quo.

3) Discussion:

The city claims that the fire fighters won their 1987 arbitration case because of specific "buy back" language in their labor agreement. The employer noted that the current pension language

in the Local 1250 collective bargaining agreement adopts the State Reciprocal Plan (Mich Comp Laws Ann. Section 38.1104) and under such statute the members of this bargaining unit have virtually the same buy back rights as did the fire fighters after the 1987 award. They noted that only temporary summer employment would be excluded. The union asserts that the fire fighters now have the full buy back right it seeks. They maintained that this benefit would not be costly because the employee involved pays the cost of buying additional casual or part-time employment periods for pension purposes.

4) Factfinder's recommendation:

Only the fire fighters currently enjoy this unlimited buy back privilege while the other city employees to which Local 1250 compares do not have such right. In light of the other pension changes, the factfinder will recommend the status quo here. This proposed change is a low priority which may be addressed at another time.

d) The annuity factor

1) The union's proposal: The current 2.25% rate be increased to 2.50%.

2) The city's proposal: Status quo.

3) Discussion: The union contends that it should get this higher multiplier in pension computations because other city of Warren employees currently receive this greater rate. The union asserted that this change will increase the benefits received by 11%. The city argues that this change would increase its costs by 11%. The employer also noted that the supervisor's gained this benefit in part by agreeing to a wage freeze when the city was in a financial bind. They asserted that Local 1250 now seeks the same gain without making the sacrifice

made by the other bargaining unit. The city showed the following comparisons to other bargaining units:

Roseville	2.3%
Warren	2.25%
Livonia	2.25%
Dearborn	2.0%
Southfield	2.0%
St. Clair Shores	2.0%
Sterling Heights	2.0%
Troy	2.0%
Ann Arbor	1.8-2.5%

4) The factfinder's recommendation:

The factfinder must consider that the members of this bargaining unit make no contribution toward their pension plan and they already enjoy the best pension plan available to local municipal employees. This will be particularly true with the new 2 year FAC. Further the superior benefit rate enjoyed by other bargaining groups was gained through bargaining concessions this unit was not willing to make. The factfinder, therefore, recommends the status quo continue for the annuity factor.

c) Vesting

1) The union's proposal: Vesting to be same as pension plans regulated by federal law.

2) The city's proposal: Status quo.

3) Discussion: The union seeks a five year vesting period and it states that such plans are common in the private sector. The union indicated that this proposal is a reasonable one and it is required by federal law for private industry. The employer noted that the current ten year vesting for Warren city employees is also found in all pension plans for comparable cities and they said that a five year

vesting plan is very rare for Michigan municipal employees. The employer maintained that the union had not shown any justification for this change in status quo.

4) The factfinder's recommendation: The status quo should continue for the pension vesting. The union's proposal was not supported by the evidence presented.

P. ARTICLE 39 UNIFORM ALLOWANCE

1) The union's proposal: Increase from $125 to $150

2) The employer's proposal: status quo

3) Discussion: Neither party spent much time addressing this issue. The union did not justify this change except to note that the AFSCME represented supervisors did get a $25 increase in their uniform allowance in their 1990 settlement.

4) The factfinder's recommendation: There was no showing that there was a need or a reason for a 20% increase in this contract benefit. The supervisor's may have had different circumstances. The factfinder recommends that the status quo continue for the uniform allowance.

Q. ARTICLE 47 TERMINATION

1) The city's proposal: This agreement shall become effective as of its date of execution and shall continue in full force and effect until 11:59 p.m., JUNE 30, 1991. ACROSS-THE-BOARD WAGE INCREASES AND CLASSIFICATION ADJUSTMENTS INCLUDING OVERTIME SHALL BE RETROACTIVE AS PROVIDED HERETOFORE. THERE SHALL BE NO RETROACTIVE ADJUSTMENTS FOR ANY FORMER EMPLOYEE. This agreement shall be automatically renewed

from year to year thereafter unless either party shall notify the other in writing at least NINETY (90) DAYS prior to the expiration date of this agreement. In the event that such notice is given, negotiations shall begin not later than SIXTY (60) DAYS prior to the termination of this agreement.

2) The union's proposal: 1993 This agreement shall become effective as of its date of ratification, _____, 19__, and shall continue in full force and effect until 11:59 p.m. June 30, 1993. Economic benefits shall be fully retroactive for all employees who are currently employed and/or those who were employed by the City as of December 5, 1990. This agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred fifty (150) days prior to the expiration date that it desires to modify this agreement. In the event that such notice is given, negotiations shall begin not later than February 15th prior to the expiration date.

3) Discussion: The union argued that it should be granted a five year contract with full retroactivity. It notes that its proposal would only apply to those employees who are still on the active payroll in the year 1990. The union asserted that more than just the across-the-board wage increase should be retroactive. The employer contended that a three year contract was appropriate here. They argued that for three years the union had sought a three year contract and now that the city adopted that position the union has sought a longer contract.

4) The factfinder's recommendation: For the reasons already discussed the factfinder has recommended the adoption of a five year contract. Most subjects that the city claimed had not been fully discussed have not been recommended for adoption. However, the employer's language concerning retroactivity seems clearer and appropriate under the circumstances. Therefore, the following language is recommended for Article 47:

> This agreement shall become effective as of its date of execution and shall continue in full force and effect until 11:59 p.m., JUNE 30, 1993. ACROSS-THE-BOARD WAGE INCREASES AND CLASSIFICATION ADJUSTMENTS INCLUDING OVERTIME SHALL BE RETROACTIVE AS PROVIDED HERETOFORE. THERE SHALL BE NO RETROACTIVE ADJUSTMENTS FOR ANY FORMER EMPLOYEE. This agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred fifty (150) days prior to the expiration date that it desires to modify this agreement. In the event that such notice is given, negotiations shall begin not later than February 15th prior to the expiration date.

R) ARTICLE 47 (ADDITIONAL LANGUAGE)

1) The union's proposal:

IN THE EVENT THAT NEGOTIATIONS FOR A NEW CONTRACT ARE STILL IN PROGRESS OR NEGOTIATIONS HAVE NOT YET BEGUN ON THE EXPIRATION DATE OF THIS CONTRACT, ITS TERMS WILL CONTINUE IN FULL FORCE AND EFFECT, UNTIL A NEW AGREEMENT IS RATIFIED.

2) The city's proposal: status quo

3) Discussion: The city sees this addition to the contract as a surrender of its rights as an employer under Michigan's case law regarding collective bargaining. They argued that the duty to preserve the status quo during negotiations extends only to mandatory subjects of bargaining (i.e. wages, hours and conditions of work). The union maintained that the city has agreed to the exact language which has been proposed here in its contract with UAW Local 412. The city's practices in the period after the contract expired in 1988 has prompted a need for this change, the union asserted, and they said such language is needed to bring stability and to restore labor peace between these parties.

4) The factfinder's recommendation: The parties must strike their own bargain about changes in contract language in the sensitive area of legal rights following the termination of the agreement. The employer's arguments are largely undermined by its agreement to adopt precisely the same language with another union. On the other hand the city has not agreed to this language in several other contracts it has recently negotiated with other unions. The factfinder recommends the status quo be continued here.

S. NEW ARTICLE - PRESERVATION OF PAST PRACTICES

1) The union's proposal: WAGES, HOURS, CONDITIONS OF EMPLOYMENT AND CURRENT PROPER PRACTICES WHICH ARE BENEFICIAL TO THE EMPLOYEES AT THE EXECUTION OF THIS AGREEMENT SHALL, EXCEPT AS PROVIDED AND IMPROVED HEREIN, BE MAINTAINED DURING THE TERM OF THIS AGREEMENT.

THIS AGREEMENT SHALL SUPERCEDE ANY RULES AND REGULATIONS INCONSISTENT HEREWITH. INSOFAR AS ANY PROVISION OF THIS AGREEMENT SHALL CONFLICT WITH ANY ORDINANCE OR RESOLUTION OF THE CITY, APPROPRIATE CITY AMENDATORY OR OTHER ACTION PERMISSIBLE BY LAW SHALL BE TAKEN TO RENDER SUCH ORDINANCE OR RESOLUTION COMPATIBLE WITH THIS AGREEMENT.

2) The city's position: status quo

3) Discussion: The city asserted that under this vague language the city would be bound by any creeping practice allowed by a lax foreman. Further, they objected to recognizing such practices as having supremacy over contrary rules and regulations promulgated by the city. The city also maintained that this clause would surrender staff level administration of regulations to the vagaries of lower level supervisors. The union contended that the city has sought to eliminate all binding past practices. The union claimed that the city had said that it had used the words "residual rights" in the management rights clause to accomplish this purpose. The union has previously felt that it had been protected by Article 43 against any unilateral change in beneficial working conditions but now it felt that additional language was needed in the contract to thwart further misinterpretations by the employer.

4) The factfinder's recommendation: The factfinder has already recommended that the words "residual rights" not be adopted in the management rights clause to avoid this confrontation over the binding effect of established past practices. The normal

management practice in collective bargaining is to attempt to eliminate offensive or outdated binding practices by announcing their planned discontinuance in contract bargaining and then making the change after a new contract is adopted which does not preserve the practice. Here the employer is attempting to void all past and future binding practices by use of a management's rights clause change and without dealing with the vague maintenance of "benefits" language in Article 43. The factfinder recommends that the status quo be continued and that in the future the employer should deal with specific practices it finds offensive by direct negotiations or by proposing and negotiating a specific zipper clause which clearly eliminates past practices as a binding addendum to the labor agreement.

CONCLUSION

The period from 1988 to date has been one of acrimonious labor relations between the administration of the City of Warren and the leaders of AFSCME Local 1250. It seems a long time ago that all city employees were like a "family" and new contracts were bargained in an atmosphere of mutual trust and cooperation. Part of the change in attitudes has been prompted when hard times caused the city to lay off its employees - just like the reductions in the work force at the auto factories. The city employees lost the sense of security they once had and they urged their leaders to play "hard ball" with their bosses-just like the industrial unions do. Then the management of the municipalities responded with the harsh tastics sometimes employed by the industrial relations people in the private sector. In this way

we have escalated hostile feelings and experienced deteriorating communications. When one side relents and makes a concilliatory gesture, the other side reacts negatively because of the memory of a perceived wrongful act earlier in the parties relationship.

The factfinder urges these parties to adopte the recommendations shown above - or some similar concilliatory accomodation. If the current impasse continues then the employees, the city council, and the citizens will grow exasperated with ineffective negotiatiors and seek a change. The union members deserve a new contract with reasonable improvements but they cannot get <u>everything</u> which has been currently demanded. It is irresponsible to promise too much - especially in the light of the current high level of wages and benefits already enjoyed by the employees of the City of Warren. But similarly, the city negotiators cannot use the bargaining process to crush the local union's leadership and to reverse 30 years of working conditions gains by this local union's negotiations, grievances and practices.

The factfinder has concluded that the employer's negotiators are trying to overemphasize the city's period of financial uncertainty in 1988 and 1989 and to capitalize on the recent changes in union leadership to effect radical contract changes. The union has agreed to several contract changes concerning better controls over excessive absenteeism and it has agreed to clear up some contract provisions. The city's proposed elimination of the union leaders paid time to handle union business, and its proposed end to all established job practices and some of its management rights changes (e.g. job descriptions) are excessive and extreme and they are not recommended for adoption.

The economic recommendations made above are an attempt to produce a balanced wage and benefit program which will continue the City of Warren's leadership as a municipal employer but which will not unreasonably increase the city's cost of rendering services to its citizens. Hopefully, a two year period of labor peace under a new five year contract will return these parties to their former normal and cooperative relationship.

Dated: September 18, 1991

Barry C Brown
BARRY C. BROWN, FACTFINDER