

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION UNDER ACT 312
(Public Acts of 1969, as amended)

—
MERC Act 312 Case No. L01 K-9004
—

IN THE MATTER OF
ARBITRATION BETWEEN CITY OF KALAMAZOO
and
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 394
—

OPINION AND AWARD OF ARBITRATION PANEL

ARBITRATION PANEL

GEORGE J. BRANNICK, Chairman
KEVIN M. McCARTHY, Employer Delegate
ALISON L. PATON, Union Delegate

Signed and Forwarded by the Chairman:
December 15, 2003

Introduction

This matter is before the Panel pursuant to Act 312 of the Public Acts of 1969, as amended, having been certified by the Mediator with respect to the unresolved issues.

The undersigned was appointed Chairman of the Panel by the Public Employee Relations Board and the Hearings were held on July 22, August 4, and August 5, 2003. Executive Session of the Panel was held on October 21, 2003.

The criteria the Panel is mandated to follow in basing its Opinion and Award are set forth in the Act, as follows:

Section 9 of the Act provides:

"The arbitration panel shall base its findings, opinions and order upon the following factors, as applicable...

- (a) The lawful authority of the Employer;
- (b) Stipulations of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the Arbitration proceeding with the age, hours and conditions of employment of other employees performing similar services and with other employees generally.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the Arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary arbitration or otherwise between the parties, in the public service or in private employment. MCLA 423.239; MSA 17.455(39)."

The parties' positions have been competently outlined and presented by their respective representatives, fully documented and argued in highly professional manner.

Introduction

The parties to this mandatory arbitration are the City of Kalamazoo, Michigan, (the "City"), and the Kalamazoo Fire Fighters Association, IAFF Local 394, (the "Union"), at the expiration of the last Labor Contract existing between them which expired on December 31, 2001. Subsequent to bargaining and mediating a new contract there were several remaining issues which have been placed before this Panel. The Panel consists of the following: George J. Brannick, Chairman; Alison L. Paton, Delegate Panel Member representing the Union; and Kevin M. McCarthy of the McCarthy Law Group, Delegate Panel Member representing the City.

Hearings were held on July 22, August 4, and August 5, 2003. A final Executive Meeting was held in the City of Jackson, Michigan, on October 21, 2003.

In the early 1980's the City of Kalamazoo established a Department of Public Safety as a result of negotiations with all parties concerned. Police officers were cross-trained as fire fighters and fire-fighters were cross-trained as police officers.

The majority of the Union fire-fighters chose to cross-train and became Public Service officers. For various reasons five members of Local 394 in this particular case chose not to cross-train, remaining in the Union as "equipment operators". Although little evidence was presented to establish why these men opted out of cross-training it is clear they were properly permitted to remain and retain their status in the Local.

At the opening of the Hearings the parties, through counsel, stipulated, as follows:

- (1) the time set forth in the statute and regulations could be waived;
- (2) that the new Contract duration would run from January 1, 2002 to December 31, 2005;
- (3) retroactivity was stipulated to be dealt with on an issue-by-issue basis, with each party including effective dates in their respective last best offers;
- (4) comparables were stipulated to consist of the following Michigan cities: Battle Creek, East Lansing, Grand Rapids, Jackson, Lansing, Portage, Saginaw, and Wyoming.

Initially, the Union withdrew several issues from consideration. As the hearing commenced, the Union placed the following issues for resolution before the Panel:

- (1) Wages, to be determined on a year-by-year basis through the fourth year of the Contract;
- (2) Sick Leave Accrual;
- (3) Sick Leave Payout on Retirement or Death;
- (4) Vacation Accrual;
- (5) Retiree Dental Insurance;
- (6) Longevity Pay;
- (7) Food Allowance;
- (8) Multiplier/Maximum Benefit for Normal Retirement;
- (9) Inclusion of Sick Leave in Pension FAC; and,
- (10) Employee Pension Contribution.

The Employer submitted the following issues for resolution by the Panel:

- (1) Work Hours;
- (2) Prescription Drug Co-Pay;
- (3) Health Insurance Premium Sharing; and,
- (4) Retiree Health Insurance.

The City submitted an additional fifth issue, "Domestic Partner Coverage", which the panel agreed to consider, although the Chairman makes special comment about that issue below.

The foregoing issues are referred to as "Open Issues", below, to which this Opinion and Award is addressed.

Authorship of Opinion

This Opinion has been written by the Chairman. Its language and the views expressed are those of the Chairman. Each issue will be awarded by the Chairman, concurred in by at least one Delegate in order to reach a majority award as to the issue. The signature of the

Delegate, in such capacity, does not necessarily mean that the Delegate agrees with all of the statements made by the Chairman. At a minimum, however, by signing the Opinion and Award as to each issue a Delegate's concurrence supplies a majority decision on the given issue. A Delegate who has not signed as to each issue has elected not to file a written dissent in the interest of brevity, but by withholding signature notes his or her dissent.

In the opinion of the Chairman, the quality of the written presentations of counsel for each respective party obviates any necessity to expound at length on the basis for the Award on each issue. It is important to understand that the Chairman's opinion is based on the reasoning, credibility of testimony, documentary support, and argument advanced for the positions offered on each issue by each party and the inherent equities the Chairman perceives in rendering opinion on each issue, as set forth below, for the reasons set forth in the respective Post Hearing Brief of each party he has determined to prefer on that issue.

Union Issues

Wages

While the parties stipulated to the duration of the Contract, the wage issue was to be decided on a year-by-year basis for a period of four years beginning January 1, 2002. The Union submitted, as its Last Best Offer (LBO), a 4.9% across the board wage increase. The City's offer, across the board, was 2.85%. During the hearing it was expressed by the Union that its basic position on wage increases was advanced with the understanding that the affected members would all be retiring under the terms of this new Contract. The Union's LBO position, therefore, is seen principally to be taken for the purpose of increasing the retirement compensation of a few at the expense of many. While the testimony indicated that the Union employees do fundamentally the same thing as the Public Safety Officers who, themselves, may be assigned as "equipment operators", nonetheless, they are not required to have the same training or responsibilities as are Public Safety Officers. From time to time they may perform duties ordinarily accomplished by Public Safety Officers such as answering telephone calls but do so on a purely voluntary basis. Since this is an 'economic issue' we are constrained to accept a last best offering. Because the stipulated

comparables and testimony both support the City's position, the LBO of the City of Kalamazoo is, for the most part, the preferred position. However, the Chairman finds the Union LBO as to increase in base pay beginning January 1, 2005, is the preferred position.

Award as to Wages:

An increase in base pay is to be made in the following percentages, effective beginning January 1, 2002:

January 1, 2002, through December 31, 2002: 2.85% across the board;
January 1, 2003, through December 31, 2003: 3.00% across the board;
January 1, 2004, through December 31, 2004: 3.00% across the board;
January 1, 2005, through December 31, 2005: 3.10% across the board.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Sick Leave Accrual

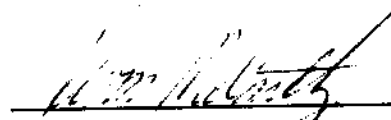
The Chairman finds obvious compatability of the City's 12-hour monthly accrual history with those of the stipulated comparables, coupled with the substantial existing accrued sick leave time presently available to the affected employees, to offset any need the Union expressed based on age of the affected employees, persuasive on this issue.

Award as to Sick Leave Accrual:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

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George J. Brannick

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KEVIN M. McCARTHY, City Delegate

ALISON L. PATON (dissenting as to years 2002, 2003, + 2004)
ALISON L. PATON, Union Delegate

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KEVIN M. McCARTHY, City Delegate

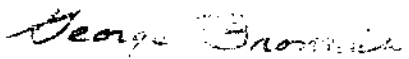
ALISON L. PATON (dissenting)
ALISON L. PATON, Union Delegate

Sick Leave Payout on Retirement and Death

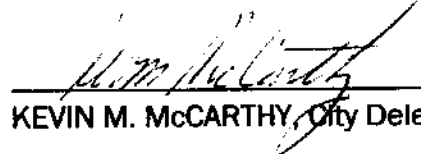
The Chairman finds the City of Kalamazoo has sufficiently demonstrated it is far and away ahead of the stipulated external comparable cities on this benefit and that the City's past position and offer to maintain the status quo is preferred.

Award as to Sick Leave Payout on Retirement and Death:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

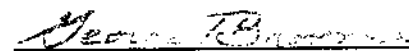
ALISON L. PATON, Union Delegate

Vacation Accrual

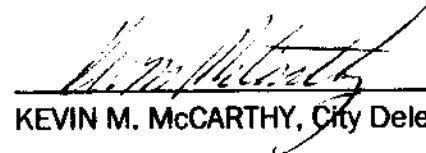
The Chairman finds the differing standards of application of this benefit between the comparison cities to render comparison, per se, an inadequate measure. But the fact that those cities which demonstrate higher vacation accrual rates generally couple this benefit with substantially lower wage rates than the City of Kalamazoo has offered in the past, and which have been awarded by this Opinion, to be of critical significance is upholding the LBO of the City on this issue.

Award as to Vacation Accrual:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Sick Leave Payout on Retirement and Death

The Chairman finds the City of Kalamazoo has sufficiently demonstrated it is far and away ahead of the stipulated external comparable cities on this benefit and that the City's past position and offer to maintain the status quo is preferred.

Award as to Sick Leave Payout on Retirement and Death:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate

 (dissenting)

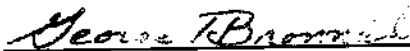
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Award as to Vacation Accrual:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate

 (dissenting)

ALISON L. PATON, Union Delegate

Vacation Carryover

The Chairman finds substantially more days of unused vacation carryover days from year to year are offered to the non-bargaining unit employees, as well as those offered to Union employees in the external comparable cities. The Chairman accepts the LBO of the Union as to this issue.

Award as to Vacation Carryforward:

The Chairman awards an increase from 3 duty days to 5 duty days to carry over from one calendar year to the next. This benefit is not subject to special permission by the Chief.



GEORGE J. BRANNICK, Chairman

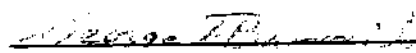

KEVIN M. McCARTHY, City Delegate
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Retiree Dental

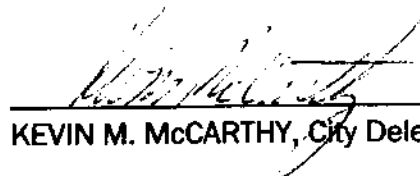
The Chairman finds the Union demand for retiree dental benefits is out of line with the majority of external comparables and that no other union or non-bargaining unit employee in the City of Kalamazoo is presently offered this benefit. Given the increasing costs of such benefit packages, the fact it is not offered by the majority of external comparables, and is being reduced where it has been offered in the past by stipulated comparable cities, it is deemed inequitable to offer this benefit to a single bargaining unit when it is offered to no other City employee.

Award as to Retiree Dental:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman

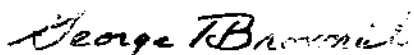

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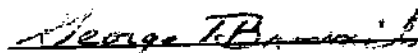
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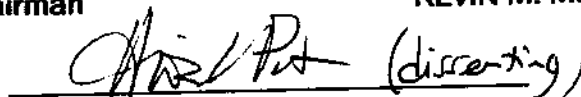
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Longevity Pay

The parties have each, respectively, stipulated that the LBO of either is acceptable on this issue, being substantially the same. The Chairman, therefore, adopts and awards the express longevity pay benefit increase as set forth in the Employer's Post Hearing Brief.

Award as to Longevity Pay:

Effective January 1, 2003:

6-10 years of service = 2% of \$35,000 base salary (maximum benefit of \$700)
11-14 years of service = 4% of \$35,000 base salary (maximum benefit of \$1,400)
15+ years of service = 6% of \$35,000 base salary (maximum benefit of \$2,100)

Effective January 1, 2004:

6-10 years of service = 2% of \$40,000 base salary (maximum benefit of \$800)
11-14 years of service = 4% of \$40,000 base salary (maximum benefit of \$1,600)
15+ years of service = 6% of \$40,000 base salary (maximum benefit of \$2,400)



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Food Allowance

The Chairman finds that both parties support an increase in the food allowance to \$720.00 per calendar year. The City, however, supports that change to become effective only beginning as of January 1, 2003, with the Union opting for the increase to begin in the first year of the new Agreement. Because the Union satisfactorily demonstrates that \$720.00 was compatible with the average food allowance offered in the external comparable cities beginning in the calendar year 2002, the Chairman supports retroactive increase beginning in 2002.

Award as to Food Allowance:

Food Allowance increases to \$720.00 per calendar year beginning January 1, 2002.

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Alison L. Paton
ALISON L. PATON, Union Delegate

Pension Multiplier/Maximum for Normal Retirement

The Chairman finds the City's position equitable and persuasive on this benefit issue for reasons best, and fully, set forth in the Employer's Post Hearing Brief, particularly in its comparisons of both external and internal comparables, Exhibits, and its analysis of the economic benefit of the Post Retirement Adjustment (PRA) factor currently in effect under the previous CBA, and adopts same (exclusive of hyperbole) in its entirety.

Award as to Pension Multiplier/Maximum for Normal Retirement:

The Chairman awards the Employer's LBO as to this benefit issue, increasing the pension multiplier from 2.6% to 2.7%, with a maximum initial benefit of 70.2% of Final Average Compensation (FCA). The PRA is maintained status quo.

George J. Brannick
GEORGE J. BRANNICK, Chairman

Kevin M. McCarthy
KEVIN M. McCARTHY, City Delegate

Alison L. Paton
ALISON L. PATON, Union Delegate

Inclusion of Sick Leave Payout in Pension FAC

The Chairman finds the Union demand for inclusion of 50% of sick leave payments in the Final Average Compensation calculations for pension purposes to be unreasonable, inequitable, and economically unjustifiable. An unreasonably small number of employees in this bargaining unit would gain substantially higher calculations of Final Average Compensation for purposes of pension calculation when compared with all other internal and external comparables and without justification.


GEORGE J. BRANNICK, Chairman

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Award as to Inclusion of Sick Leave Payout in Pension FAC:

The status quo is maintained.



GEORGE J. BRANNICK, Chairman



KEVIN M. McCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Employee Pension Contribution

Although acknowledging that the average percentage rate at which employees contribute to non-defined benefits retirement plans is greatly affected by the fact that employees in the stipulated external comparable city of Wyoming are not required to contribute to their retirement plan, the Union is persuasive in demonstrating that the percentage which employees in this bargaining unit contribute to the pension plan should be reduced from the current 6.5% rate to 6.0%. The Chairman finds an inequity in the reduction of the City's percentage contribution rate in recent years which is not matched, or at least, has not been experienced by relative decreases in employee contribution rates during the same periods to be persuasive.

Award as to Employee Pension Contribution:

The Chairman awards a decrease in the rate of required employee contributions to the pension plan from 6.5% to 6.0%.



GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Award as to Inclusion of Sick Leave Payout in Pension FAC:

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GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate

 (dissatisfied)
ALISON L. PATON, Union Delegate

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Award as to Employee Pension Contribution:

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GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate


ALISON L. PATON, Union Delegate


Employer Issues

Work Hours (Non-Economic)


The Chairman finds that, given the need to train for efficiency and safety, to train as a unit, and to uniformly conform the hours for team training made available to the Department between the divergent bargaining units and non-bargaining employees which now form the unified Department of Public Safety, the employer's position on Saturday and Sunday morning training is, at the very least, more sensible and observant of the public interest than is preservation of the status quo.

Award as to Work Hours (Non-Economic):

The Chairman awards permission to the Department of Public Safety to train on Saturday mornings, and also on Sundays between the hours of 7 a.m. and 11 p.m. for up to four hours.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate
Prescription Drug Co-Payment (Economic)

Substantial evidence was presented that the City's requested increase of prescription drug co-pays from \$5.00 to \$10.00 is unmatched among the stipulated external comparables except for Battle Creek. Simultaneously, it is also clear the City's position that ever-increasing costs of prescription drugs to a 'self-insured' employer requires additional employee support is not borne out when the City gratuitously (i.e., voluntarily) adopted a domestic partner plan for co-pays which could easily tax its 'self-insured' status beyond reason without adequate controls to determine that recipient 'associates' of the employee are truly defined 'domestic partners'. Moreover, under the Union LBO, the benefit is only to begin January 1, 2004. The Chairman prefers the Union position on this benefit issue.

Award as to Prescription Drug Co-Payment (Economic):

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Award as to Prescription Drug Co-Payment (Economic):

Award as to Prescription Drug Co-Payment (Economic):

The status quo is maintained.


GEORGE J. BRANNICK, Chairman

KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Health Insurance Premium Sharing (Economic)

The Chairman appreciates public concern over the increasing costs of health care coverage. This is at least as true for the general public as it is for those whose employment may expose them to excessive risks of injury in line of duty and for whom the availability of reasonably priced coverage is an absolute necessity. It is a national problem and, unfortunately, systemically increasing health care costs little distinguish between those whose health care needs are greater or lesser than others. The change sought by the City on this benefit issue is both reasonable and modest, particularly in light of the counterbalancing increase it is willing to accept in longevity pay. Moreover the change sought from this bargaining unit is exactly the same as that sought from, and approved by, the other Public Safety units. There is a history of modest increases in premium sharing in this bargaining unit, a pattern borne out in national labor negotiation generally. The City seeks the increase effective with the calendar year beginning January 1, 2004, and a subsequent, and modest, increase beginning in January, 2005. It is a position the Chairman must prefer with respect to his responsibility to the public and to the preservation, generally, of affordable health care coverage to public employees, union or non-union.

Award as to Health Insurance Premium Sharing (Economic):

The Chairman awards health insurance premium cost sharing increases as follows:

January 1, 2004	\$26/month for Single coverage
	\$50/month for Double coverage
	\$58/month for Family coverage

Award as to Prescription Drug Co-Payment (Economic):

The status quo is maintained.


GEORGE J. BRANNICK, Chairman

KEVIN M. MCCARTHY, City Delegate


ALISON L. PATON, Union Delegate

Health Insurance Premium Sharing (Economic)

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Award as to Health Insurance Premium Sharing (Economic):

The Chairman awards health insurance premium cost sharing increases as follows:

January 1, 2004	\$26/month for Single coverage
	\$50/month for Double coverage
	\$58/month for Family coverage

January 1, 2005

\$28/month for Single coverage
\$56/month for Double coverage
\$63/month for Family coverage



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Retiree Health Insurance (Economic)

The Chairman perceives that, in some respects, the Employer has advanced economic proposals simply to advance opposition or as a tool to trade-off one benefit against another. That appears to be true with regard to its position on this benefit. As the Union appears to correctly point out, the City's request for an increase in Retiree payments for health insurance coverage from its present \$25/month to whatever active employees are paying for single or double coverage at the time of retirement is not matched by its active proposal or urgent negotiations for this modification with regard to the other internal public safety bargaining units. Newly negotiated contracts, in fact, duplicate the status quo position which the Union urges. The Chairman believes the preferred position is maintenance of the status quo.

Award for Retiree Health Insurance (Economic):

The status quo is maintained.



GEORGE J. BRANNICK, Chairman

KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

January 1, 2005

\$28/month for Single coverage
\$56/month for Double coverage
\$63/month for Family coverage


GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate

 (deputizing)
ALISON L. PATON, Union Delegate

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Award for Retiree Health Insurance (Economic):

The status quo is maintained.


GEORGE J. BRANNICK, Chairman

KEVIN M. McCARTHY, City Delegate


ALISON L. PATON, Union Delegate

Domestic Partner Coverage (Non-Economic)

The Employer proposed so-called "domestic partner" coverage to make a "broad range of Employer-provided benefits available to same-sex couples on the same basis as such benefits are available to married couples". The City's stated reason for advancing this proposal is uniformity between bargaining and non-bargaining city employees, alike, for benefits supporting a political decision by the City government to adopt a non-discrimination policy, and to establish, uphold, and enforce its standards. It now wishes to extend those "benefits" to the only bargaining unit to which, currently, they do not apply. While the Union opposes these benefits, the Chairman finds no justifiable reason for rejecting the City's offer. It should be observed, however, that this "gratuity", although a self-declared non-economic issue, can become a significantly expensive benefit, both directly and indirectly. This is so, in part, because the definition of "domestic partner" is not well confined. It could apply to more than "same-sex" couples. Though not presently applying to many domestic partnerships currently on the city payroll, the benefit may in fact become increasingly costly to maintain. To say this offering is "non-economic" to the City then is, in a word, malarkey. To observe the City's outright statement that it knows it does not benefit any current member of the bargaining unit suggests the offer was a "red herring". To say the goal is uniformity of benefits offered all bargaining and non-bargaining employees questions the City's real motive in negotiating to preserve certain 'other' disparities between some bargaining units on 'economic' issues appearing much less costly than the potential cost of this "gratuity".

Perhaps this writer is simply too old-school, too out of touch with modern reality, or even too naive to appreciate why the City negotiates so aggressively for one thing so cheap and yet be adamant on another so potentially dear. As a matter of sheer negotiation it makes no sense since it appears the City realistically believes it can be afforded. It is for these reasons the Chairman has awarded the Union its LBO on the fourth year of wages.

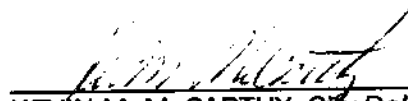
Your Chairman, reluctantly, awards the Employer's LBO on this issue but, for the life of him, knows not why.

Award on Domestic Partner Coverage (Non-Economic):

The City's Domestic Partner Policy, as described in the Employer's Post Hearing Brief, appended as Exhibit 43, and contained in the LBO of the City, is awarded.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

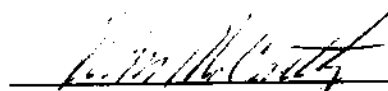
ALISON L. PATON, Union Delegate

Duration

Based upon the parties' stipulation, the duration of the contract will be from January 1, 2002, through December 31, 2005.



GEORGE J. BRANNICK, Chairman



KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

Agreements Incorporated

The parties have reached agreement on a number of issues with they have withdrawn from direct arbitration. These tentative agreements are incorporated in this Award.



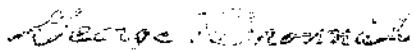
GEORGE J. BRANNICK, Chairman

KEVIN M. MCCARTHY, City Delegate

ALISON L. PATON, Union Delegate

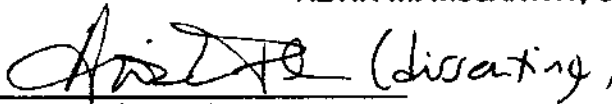
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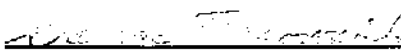
KEVIN M. McCARTHY, City Delegate

 (disputing)

ALISON L. PATON, Union Delegate

Duration

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KEVIN M. McCARTHY, City Delegate



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