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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT NO. 312 ARBITRATION PROCEEDING
BEFORE: GEORGE E. BOWLES, CHAIRPERSON,
AUBREY V. McCUTCHEON Jr, EMPLOYER DELEGATE,
and WILLIAM L. KIRCHER, UNION DELEGATE,
DETROIT, MICHIGAN

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DETROIT, MICHIGAN

IN THE MATTER OF:

CITY OF DETROIT,

Public Employer,

-and-

Act 312 Main Agreement

DETROIT POLICE OFFICERS
ASSOCIATION,

Labor Organization.

OPINION AND AWARD

A collective bargaining impasse having occurred, this matter was submitted to arbitration under Act 312, Public Acts of 1969, as amended, MCL 423.231-247; MSA 17.455 (31-47) (PFAA). The Panel was constituted according to law. Hearings were held on Friday, March 10; Thursday, March 23; Monday, May 1; Tuesday, June 13; Wednesday, June 14; Saturday, June 17; Sunday, June 18; Monday, June 19; Saturday, June 24; Sunday, June 25; Monday, June 26; and Thursday, July 6, 1978. After the submission of Last Best Offers and the filing of post-hearing briefs, a three hour argument was had by and between counsel and the Panel on Friday, November 10, 1978.

The parties entered into a Pre-Hearing Statement, Stipulations and Rules of Procedure in writing, and the same was received in evidence.

The Statement provided: "The Chairman will make all procedural and evidentiary rulings and may consult with the Delegates."

As to Order of Proof, it was provided:

Bowles, George E

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

"a. The proponent of an issue will have the burden of going forward. The hearing will proceed on an issue by issue basis with each party presenting their position, witnesses and evidence before the next issue is introduced.

b. Cross-examination will be conducted on an issue by issue and witness by witness basis.

c. In so far as possible, rebuttal testimony and/or evidence will be offered on an issue by issue basis at the time the issue is first presented.

d. All witnesses will be sworn.

e. The names, biographies and summary of testimony of all expert witnesses will be disclosed to the opposite party at least 24 hours in advance of their testimony."

Under 4, Exhibits, it was provided, among other things,

"b. The parties shall make a good faith effort to stipulate in advance as to the authenticity and admissibility of all exhibits.

c. Exhibits in evidence may be amended as to statistics and other data, as necessary.

d. By Committee or otherwise the parties will make a good faith effort to resolve informally all disputed statistics and other data."

The Stipulations provided, among other things,

"a. The parties stipulated that the Panel has jurisdiction and that it was properly appointed and constituted.

b. The parties stipulated to waive all time limits prior to the pre-hearing conference."

Under 7, Last Offers of Settlement, it was provided:

"a. Last offers on economic issues will be made at the conclusion of all proofs on all issues.

b. Last offers will be made in writing, presented to the Panel, and exchanged simultaneously with the opposite party.

c. At its option, either party may amend its last offer of settlement. Any amended offer shall be presented as set forth in paragraph b. above. No further amendment will be permitted."

In the course of the proceedings, the Panel determined that the parties should submit last offers or interim last offers based upon both a two-year and a three-year contract and these were received.

The parties further stipulated under 9, Mediation and Bargaining,

"The parties agreed to continue mediation and bargaining."

With the encouragement of the Panel, and with the active cooperation of the parties, from time to time, issues were referred back and were settled.

In the course of the proceedings also, the Panel acted, preliminarily, to decide that a three year contract would be awarded, and the last best offers of the parties were received on the basis of such three year contract.

The Panel wishes to commend counsel for the professionalism of their presentations and the restraint with which both parties and counsel addressed the difficult issues in controversy. The parties agreed upon which of the issues were economic issues within contemplation of law.

Extended executive sessions with the Panel have been held and determinations made upon all those issues yet remaining in controversy. It was agreed that the Chairman would file an Opinion, and that both delegates would have the opportunity, if desired, to file concurring or dissenting opinions.

THE ACT

The controlling Act provides in Section 8, in part:

"At or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9..."

Section 9 provides:

"Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

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

Section 10 provides:

"A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration."

COMMENT ON THE ACT

While it is not necessary to decision, the Chairman does wish to recognize that compulsory arbitration for police and fire is not

a perfect public policy by any means. It has been subjected to serious critical study. It represents an alternative to public security strikes. Public employers, rather consistently, have complained that it is impossible to do adequate planning when Act 312 Panels grant increases, as it were, long after the budgetary fact. Public authorities have opined also that since employees can do better through compulsory arbitration, the public employer is placed in a disadvantageous bargaining position with Unions which cannot resort to compulsory arbitration. Others have argued that it frustrates and stultifies collective bargaining since, when the parties know they can resort to Act 312, do not engage in meaningful collective bargaining or mediation. It can be readily observed that if Unions settle which don't have the benefit of compulsory arbitration and then a year or more later there is an Act 312 disposition which is more favorable, the public authority is faced in the next round of bargaining with a demand by the Unions first settling for the greater increments awarded by an Act 312 Panel.

The answer, and it is not a complete and satisfactory answer, is that the legislature has mandated that there be no strikes in the vital security functions, police and fire, and has provided an alternative. A Union of police or fire, such as the DPOA, should not be disadvantaged because it has acted responsibly, has waited long, long months for disposition and has relied upon the fairness of this procedure as an alternative to collective bargaining. The City can hardly say with persuasion that it has no money left for a police or fire Union, having already spent it in other settlements or in other public appropriations to meet other needs.

It is no fault or burden of those employees who must resort to

Act 312 if the proceedings are extended and that the public authority has already spent the money or has not adequately budgeted for it. It is a consequence of the operation of the law and cannot be laid at the feet of the security unions.

This Act 312 Panel does not declare legislative policy. There may be a better alternative, and on the question of what the public might expect, one could urge that such settlements ideally should be submitted to voter referenda. It is noted that there is substantial support for the belief that the general public is ready to spend more money on police and fire functions, even where it has expressed general disapproval of the level of services and amount of public expenditures for governmental functions generally.

THE HISTORY OF THE RELATIONSHIP

The Chairman, in approaching this difficult determination, is reminded of the comment of Lincoln that one cannot escape history. The Panel cannot escape the history of the City in its relations with its Unions, not only as evidenced by contractual undertakings but by actions of the electorate from time to time. For years, there has been a correlation between benefits of police and fire personnel, commonly referred to as security personnel. There is a joint retirement and/or pension system. The electorate itself has voted for proposals for this joint system. After years of debate, both before the general electorate and in collective bargaining, the principle of parity was established between police and fire. Even more interestingly, there is a correlation to a degree between certain positions in the Fire Department and positions among the Lieutenants and Sergeants. Specifically, too, in recent collective bargaining agreements, a differential has been expressed as between Lieutenants and Sergeants and officers of the DPOA. In the recent Award, through Act 312

proceedings, attention was paid to the differential comparisons. Indeed, the Award of the Act 312 Panel in the Lieutenants and Sergeants case was an alternative one, either that which was accepted as the last best offer, namely, that of the Union, or whatever was mandated in this Act 312 proceeding, whichever was the greater.

The legislature, through Act 312 and the Michigan Supreme Court in its interpretations of the scope of mandatory subjects of bargaining, have reposed vast power and discretion in Act 312 Panels.

But that is not to say that an Act 312 Panel responsibly could ignore long-standing collective bargaining relationships. Indeed it would seem to this Chairman that such a Panel should be most loathe to alter not only what the City and its Unions had established by way of collective bargaining practice, comparisons and relationships but also City policy declared at the legislative level and even through the votes of the people on specific measures. That is the central consideration here: This Panel should not attempt to re-write the collective bargaining patterns the parties themselves have seen fit to develop. The Panel, in considering the collective bargaining history, must give very considerable weight and persuasive force to that which was mandated by the Act 312 Panel in the Lieutenants and Sergeants case; that is competent, material and substantial evidence.

So far as the process of collective bargaining, the Chairman also has difficulty with the general proposition that the Panel should in effect, hold that the settlements reached with other Unions should be the settlement that it mandates here. Such an approach does not take into consideration, it is believed, the dynamics of collective bargaining, the particular weaknesses and strengths

of the Unions and managements, and more importantly, the particular needs of those is a given bargaining unit. The variables are considerable. Each bargaining unit is different. Each bargaining agent is somewhat different. Each Union has a separate membership, officers and bargains separately. The whole notion of separate bargaining units is a community of interest among employees within a particular bargaining unit. There are sophisticated differences and subtle nuances of Union size, strength, personality and even public opinion toward that Union. The differences go to the integrity of the identity of the particular Union and the uniqueness of its people. Unions are probably no different from all the rest of us; they do not wish to be "lumped" all together if the process destroys individual identity and uniqueness.

Noted is Section 1 of Act 312 language: "where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternative procedure..." It would not contribute to high morale and to the efficiency of public security personnel to mandate that they are under a legal compulsion, or an "equitable" compulsion to accept that which other Unions have settled for. The City of Detroit, to put it tersely, does not have a City-wide bargaining unit and one bargaining agent with which it deals on behalf of all its employees. The separate identities reflect some differences and uniqueness between and among the several groups.

THE LAST BEST OFFERS AND COLA

The background of the instant proceeding should be examined carefully. From the outset, the DPOA, the Union, insisted upon a two year contract, and the City, with equal vigor, demanded a

three year contract. After due deliberation, the Panel advised the parties that the contract would be for three years, keeping in mind what had already been mandated by the Act 312 Panel in the Lieutenants and Sergeants case.

Traditionally, in collective bargaining, a COLA proposal is most persuasive in a contract of long duration such as this contract, that of three years, which is certainly a long time in the economics at the present time. Had the final ruling been for a two year contract, COLA would not have been appropriate.

The COLA issue is the one that has been most strenuously debated by the parties. It is the central issue in this dispute. First, it should be noted that the COLA, which the Union requests, is that which was gained through collective bargaining. Further, it should be noted that the Union is not seeking an improvement or change in that COLA although it did not offer full protection; it is asking for its continuance. It is estimated that in a three year contract with the expected increase in the cost-of-living from 6% to 8% a year, the COLA requested by the Union will afford protection which might be called 50% for some employees and for other employees, 80%.

The case is also complicated most immediately by the Carter stabilization program, which has not yet been fully delineated. Generally, at the outset, it was stated that the program contemplated increases of not more than 7% a year, inclusive of fringes. But in recent days, there has been an indication that in the computation of the 7% one does not include the "maintenance of existing benefits". Some would argue that since COLA is in the present contract it constitutes an existing benefit within contemplation of the concept of "maintenance of existing benefits". Perhaps this theorization is a bit attenuated. In any event, it is important to note that the COLA here was a subject of collective bargaining and that the Union does not seek a change

or improvement in the formula. It is not something new, as it were, in the relationship between the parties. At the same time, realistically, one must assess its roll-in feature, that is, not only are we talking about a cents per hour increase under wages, but we are talking about an increase in wages achieved through the roll-in of COLA. It would be fatuous to ignore this economic reality.

One need not lecture anyone, particularly those explicitly in collective bargaining, as to the theory of COLA. Stated tersely, it is calculated to protect purchasing power in some way or other and to some degree or other. Here, it protects not fully, but to a degree as written by the parties in their prior contract and as proposed by the Union.

So far as how COLA in contracts already negotiated will fare under federal stabilization principles no one can tell. It should be noted that the settlement of this contract necessarily is long, long delayed by Act 312 proceedings and had this been a normal and traditional collective bargaining case, it is obvious that a settlement would long since have been accomplished much before the stabilization program was declared and put in place. Had there been an earlier settlement here, without Act 312, that settlement arrived at would long since been implemented, and, hence, not subject to controls.

THE LIEUTENANTS AND SERGEANTS AWARD

As indicated earlier, the Chairman is of the opinion that this Panel cannot remake or change history nor can it escape the history the parties themselves have made, that is, of certain internal relationships in comparisons between and among Lieutenants and Sergeants and DPOA members as well as between and among these groups or bargaining units and the fire fighters.

The Lieutenants and Sergeants Panel, whose Award just came down, adopted the Union's last offer which was:

"WAGES AND COST-OF-LIVING ALLOWANCE: The Panel adopts the Association last offer as follows:

1. Base Salary.

A. Effective July 1, 1977, all employees shall receive an increase of 5% of their salary and cost of living allowance being paid effective June 30, 1977. (as currently being paid and rolled in).

B. Effective July 1, 1978, all employees shall receive an increase of 4% of their salary and cost of living allowance being paid effective June 30, 1978. (as currently being paid and rolled in).

C. Effective July 1, 1979, all employees shall receive an increase of 4% of their salary and cost of living allowance being paid effective June 30, 1979. (as currently being paid and rolled in).

2. Cost of Living Allowance: The cost of living allowance provided to employees shall continue in exactly the same form as provided in the collective bargaining agreement between the parties which expired by its own terms on 6-30-77."

The Panel continued the current 122% parity between the base wages of Sergeants and police officers and the 137% parity between the base wages of Lieutenants and police officers and also voted to maintain the base wage differentials for the other job classifications.

I. ECONOMIC ISSUES

1. Wages- At the present time police officers are receiving a top base wage of \$19,271.00 per year.

Union's Last Offer of Settlement: Effective July 1, 1977 salaries for the rank of Police Officer (Class Code #33-10-11) shall be increased by four and one-half percent (4 1/2%) of current base wage.

Effective July 1, 1978 salaries for the rank of Police Officer (Class Code #33-10-11) shall be increased by four percent (4%) of the sum of base wages and any COLA being paid as of June 30, 1978.

Effective July 1, 1978 salaries for the rank of Police Officer (Class Code #33-10-11) shall be increased by three and one-half percent (3 1/2%) of the sum of base wages and any COLA being paid as of June 30, 1979.

Salary differentials between Police Officers and other classifications in the bargaining unit shall remain unchanged.

(For detailed specifications see Issue 1 in Union's Last Offer of Settlement on Economic Issues).

City's Last Offer of Settlement: Plan I: The salaries for employees in the classification of Police Officer (Code 33-10-11) shall be adjusted as follows:

July 1, 1977	4.8%
July 1, 1978	4.0%
July 1, 1979	4.0%

Salary differentials between Police Officer and other classes in the bargaining unit shall remain unchanged from the present contract.

Plan II: See, City's Last Offer on Economic Issues. Plan II is identical to the AFSCME settlement (City Exhibit 13a) and is the 4.8%, 4%, 4% offer rearranged.

The City's presentations also included a comparison or a computation of the future costs of the last best offers of the Union on both wages and COLA, that is, combined. Based upon a 6% annual inflation rate period, during the life, that is, three years of the contract, there would be an increase of \$4,700.00 a year or a percentage increase of 25.65% for the three years; on a computation of 8% annual inflation, the total dollar increase over the three years would be \$5,283 - for the average rate of a DPOA member - or over the three year period, an increase of 28.83%.

It will be seen that considering the wage offers separately, the City wage offer is higher than that of the Union. The Union argues:

1. The base wage is too low when comparables are considered and in such consideration, clothing, cleaning and gun allowance, and educational incentives paid in suburban communities should be added to the base wage since the base wage in Detroit encompasses these items. Chief Bannon testified as many as a third of the in-service police officers or more are in either community college or a four year college program at the time.
2. Pontiac has a base wage of \$19,870 and a \$365 gun allowance for a total of \$20,235; Farmington Hills, \$19,947 with holiday pay of \$882 compared to \$301 in Detroit; St. Clair Shores police are paid more.

3. Less than half the comparable communities have settled contracts for 1978 and 1979, excluding Pontiac, Farmington Hills, St. Clair Shores and Taylor. The Ann Arbor contract for 1978-79 has a base wage of \$20,575 plus \$650 for clothing and cleaning or a total of \$21,225. Warren, where the contract is settled for two years, the base wage is \$20,702 including clothing, cleaning and gun allowance - only \$300 less than the City's offer with superior holiday provisions in the Warren contract and with Warren giving \$400 for an Associates degree after 4 years of service. The Warren base salary for 1979-80 is \$22,185, including clothing, cleaning and gun allowance compared to \$21,843 in Detroit, with Warren offering more in holiday pay and educational incentives.

The City urges: The City's offer is within the pattern previously established with other City Unions. Detroit Police are among the highest policemen in the area, the highest paid of those employed by the largest cities in the country and will continue to be when the entire direct cost of the City offer plus pension rights of an officer are considered. They will remain the highest until June 30, 1980, at least.

With the 4.8% increase July 1, 1977, and the 4% increase July 1, 1978, as proposed by the City, the ranking as to maximum salaries as of October 1, 1978, shows:

	*
Detroit	\$21,005
Washington, D.C.	\$20,964**
Los Angeles	\$20,352
Chicago	\$19,236
San Francisco	\$19,056
Seattle	\$18,684
Houston	\$18,273
Dallas	\$18,108
Kansas City	\$17,712
Phoenix	\$17,514

* Includes 4.8% increase July 1, 1977 and 4.0% increase July 1, 1978 as proposed by City of Detroit in its Last Best Offer.

**It takes sixteen (16) years to reach the maximum rate.

RULING:

As noted earlier as to wages only, the Union's offer is less than the City offer and it is accepted and approved by the Panel as its Award.

2. COLA - At present the Cost of Living Allowance is based on Consumer Price Index for Urban Wage Earners and Clerical Workers, Detroit (1967=100), 1960-61 Consumer Expenditure Survey, calculated quarterly with formula .3 increase in Index = 1 cent per hour. Employees are paid 1 cent per hour up to cap of 20 cents per year. Amounts up to and including 20 cents are rolled in and carried forward each year. Amounts in excess of 20 cents cap, generated by formula but not paid to employees during current quarters, are added to base salary at beginning of next fiscal year.

See Joint Exhibit 2, Collective Bargaining Agreement, pp. 6-9, supplement.

Union's Last Offer of Settlement: The Union proposes that the COLA formula contained in the prior contract be continued. (For detailed specifications see Issue 2 in Union's Last Offer of Settlement on Economic Issues. Any changes made were solely for the purpose of updating and clarifying present language).

City's Last Offer of Settlement: No Cost of Living Allowance unless Plan II above (see Wage Issue) is accepted in its entirety.

So far as history, the City, in 1970, entered into its first contract including COLA, a contract with AFSCME. The first COLA plans were narrowly limited with a very restricted ceiling

(Joseph W. Fremont, for the City, Volume 5, p. 47) Mayor Coleman

A. Young described graphically the 1974-75-76 contract provision:

"We had for those three years, I think we signed a contract in 1975, or 1974, which provided for 5.4 percent the first year, four percent the next two years. We took the cap off of COLA which meant it ran 10, 12 percent for a couple of those years. We adopted a 30 and out; we embraced all the UAW package, the whole damn bit, including new fringes. And that cost us for the various years 13, 14 percent, 12 percent, 12 percent. It was an onerous burden which we could not carry." (Vol. XIV, 42)

Expert testimony described the DPOA COLA as nearly the same as the UAW COLA, except that the UAW formula, of course, has no cap. The UAW formula provides a standard package through wages with

a 3% annual improvement factor each year to protect against inflation. It allows the workers to catch up with inflation which has occurred the previous quarter - to enable the worker to maintain his standard of living and the improved standard of living that the annual improvement factor is supposed to provide.

(Vol. IV, 328,329, George Schwartz, Asst. Director, UAW Research Department).

Harry M. Douty, senior research consultant at the U.S. Bureau of Labor Statistics, when he retired in 1970 and formerly Assistant Commissioner for Wages and Industrial Relations from 1947 to 1963, explained the rationale of COLA:

"...At the same time, we are going through a very difficult inflationary period and a period in which inflation has been prolonged and has been high by historic standards. And in such a period it is simply inevitable that workers will attempt to protect their real income position in one way or another. And the escalator clause is one clear and systematic way of doing this. You can, you can write an escalator clause or develop an escalator clause to provide reasonably complete protection or some lesser measure of protection against future changes in living costs...If we do reach, and I hope we will, a new period of reasonable price stability, interest in escalation, as past experience has indicated, will diminish sharply. And, in any case, the yield of escalator clauses will decline sharply. But, until that period is reached the escalator clause is a defensible means of providing protection or at least a measure of protection to the real wage position and the standard of living of wage and salary workers..."

He opined that the escalator clause is not a major contributing factor to the inflationary episode. (Vol. IV, 305)

So far as the operation of the Detroit COLA in the recently expired contract, he said,

"The Base pay per annum for a 4-year Detroit policeman in July 1974 was \$15,750. Between July 1974 and June 1977, when the contract expired, the cost of living as measured by the Detroit CPI increased 21.2 percent. During this period, the total cost-of-living allowance under the Police contract was \$2,164 or an increase over the base salary of a 4-year officer of 13.7 percent. Put another way, salary escalation under the expired contract compensated for approximately two-thirds (64.4 percent) of the increase in the cost of living."

He explained for full compensation the formula would have had to provide for a 1 cent increase for approximately each .2 of a point

change in the index instead of 1 cent an hour for each 1.3 of a point change in the Detroit CPI.

In comparable suburban cities, over one-half have some type of cost-of-living allowance formula.

It may be found that the present formula provides only limited income protection; with a base salary of \$15,750 the formula protected actually against two thirds of the inflation and with a base salary of \$20,196, the formula will protect against about 50% of inflation. The City then reasons: concerned with the actual operation under the Union COLA, the City, while recognizing the value of COLA, then urges that there are substantial reasons that it be discontinued. The experience has been bad under the present formula with no cap and because of the fold-in provisions. Such non-measurable costs make budget planning impossible; in effect, the COLA would produce greater costs than the wage package. Other City Unions do not have it under their present contract nor do other cities of the type requested by the Union.

The parties have made computations as to experience in the past so far as DPOA members and the cost-of-living. City Exhibit 10B shows that as to the average general city employee, July, 1967-July, 1977, the percentage CPI change was 82.3% and the percentage change in the average general pay rate was 127.82% or on the plus side of 45.52%. In the computation, the July 1, 1977 fold-in of \$624 COLA generated in the 1976-77 fiscal year was added to the July, 1976 pay rate without other adjustments. As to the police officer maximum salary from July, 1967 to July, 1977, the CPI increase was 82.3% and the change in maximum pay was 131.20% or a plus of 48.9% with the July 1, 1977 fold-in of \$624 COLA generated in the 1976-77 fiscal year. The statistics, then, show that the police have fared better than general city employees in this period.

A COMPARISON OF THE THREE YEAR COSTS
OF THE DPOA AND CITY LAST BEST OFFERS
ON AN INDIVIDUAL BENEFIT BASIS

<u>Benefit</u>	<u>Cost of D.P.O.A. Last Best Offer</u>	<u>Cost of City Last Best Offer</u>
Wages	\$32,810,000	\$34,711,000 ^{/2}
COLA	28,130,000	---
Shift Premium	669,000	---
Dental Care	1,003,000	---
Longevity	4,280,000	---
Holidays	1,506,000 ^{/1}	1,456,000
Pension	18,027,000	---
Sick Leave Payoff	<u>1,685,000</u>	<u>---</u>
TOTAL COST	\$88,110,000	\$36,167,000

^{/1} This is the direct cost of the union proposal. In addition to this the City would lose 22 man years of service in 1978-79 and 66 man years of service in 1979-80. If the City hires additional employees to cover this lost time it would cost \$600,000 in 1978-79 and \$1,900,000 in 1979-80.

^{/2} This is the cost of the 4.8%-4.0%-4.0% wage proposal. The 4%-2%-2%-2%-2% plus limited COLA proposal would cost \$33,000,000 dollars.

*

The City's last offer provided for the same cost-of-living allowance if any awarded the police officers in the current arbitration pending between the City of Detroit and the DPOA. Hence, in that proceeding, there was a clear recognition that the relationships between and among police personnel and specifically between Lieutenants and Sergeants and DPOA members. This is an inexorable fact of collective bargaining life that this Panel cannot escape.

To award that which would upset the relationship in a collective bargaining sense would be one thing, but to contemplate the despair, frustration and indeed, hostility that any other disposition would engender in the day-to-day operations of a sensitive security department is a little short of horrendous.

It must be emphasized that under the mandate of the legislature, this Panel can do no more than accept the last offer of one of the parties. The Panel might wish that the parties had framed different offers or offers that were closer to each other. But we cannot mandate what the parties do. Indeed, the Panel recognizes that even after Awards the parties are free to make accommodations different from that which the Panel awards if they wish to do so in their enlightened self-interest.

It is the view of the Chairman, then, that this Panel must recognize the long-standing collective bargaining relationships detailed herein and accordingly, must accept the last offer of the Union.

RULING:

The Panel accepts the Union offer on COLA.

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would In candor and fairness, the Chairman must note that acceptance of the City offer in terms of dollars as compared to the Union offer mean a total expenditure for wages and COLA of \$34,706,000, as compared to the Union last offer for wages and COLA of \$70,673,000. Assuming inflation rate of 8% for 1978-79 and an inflation rate of 6% for 1979-80 and keeping in mind, the flow-through or the roll-in costs for pensions, recognizing a 57.49% pension factor, mean a difference in dollars of \$36,000,000.

*In Lieutenants and Sergeants arbitration

THE CITY AND ABILITY TO PAY

The City did not plead nor did it establish a position of inability to pay. The colloquy on the record makes this clear beyond any doubt.

"Mr. FIEGER: At this point, this testimony is being offered for the purpose of showing the financial capacity of the City to pay increases in cost for its, for the services.

MR. BOWLES: Does it raise an issue, so-called ability to pay issue in this case?

MR. FIEGER: The so-called ability to pay issue--put it another way. The City does not assert an inability to pay any additional sum as may be determined, but that its ability to pay has limits. And, what we're attempting to show is the potential limits and problems that exist with regard to the present financial position of the City." (Volume X, June 20, 1978, p. 35 Tr.)

"... MRS. VAN LOPIK: Mr. Chairman, these figures don't seem to have to do with cost. They seem to have to do with revenues.

MR. FIEGER: Yes, sir. But, may I point out that Act 312 specifically provides that one of the issues to come before you is the financial capacity of the City. That's a specific issue that the statute permits." (Volume X, June 20, 1978, p. 37 Tr.)

In essence, it is, and has been the City position that the financial situation of the City is a "limiting factor" and should be considered by the Panel in assessing the respective last best offers of the parties. The pivotal testimony came from Mayor Coleman A. Young and budget expert MacFarland. This testimony was not supported by the introduction of the budget by the City nor was the Panel afforded any definitive treatment of how the City spent its money, that is, what needs were considered uppermost and what needs were relatively unimportant. The City

presentation, in its essence, made the following assertions, which the Panel Chairman accepts as true. (Volume XIV, p. 40, Volume X, beginning at p. 34 Tr.)

1. There has been a decline in the Detroit population as contrasted with the population of suburbs with an impact on revenues such as utility taxes and income taxes, and with an indirect effect on property taxes.
2. There is a surplus of housing repressing the value of housing subject to taxation.
3. There is a reverse flow of people and assets from the City with consequential effect of the formulae for federal and state aid.
4. The charter requires that the budget be balanced; the City has no alternative.
5. The nature of the population shift is unfavorable since the less affluent remain and they need more services.
6. The tax burden in Detroit is 2 to 1 as opposed to the suburbs.
7. There is a larger per capita expenditure of police needs in the City of Detroit.
8. The tax burden affects the coming in of new businesses.
9. Police and fire budget appropriations for the City are comparatively high.
10. The police and fire retirement systems are expensive with accrued liabilities that are unmet.
11. Retroactive financing is difficult since anything must come out of surplus.
12. There is an effect on bond and debt service.
13. There is police-fire parity, which increases financial pressure.

Mayor Young, on friendly interrogation by City counsel at page 43, testified:

"As a matter of fact, if I had known at the time of the initiation of bargaining with the non-police and fire unions

what I know now, I would have offered no wage increase at all. The situation today is incalculably worse than it was. We opened bargaining with AFSCME, as you know, who went on strike, and with the Teamsters, who went on strike. And, with one other union. I think it was the nurses, who went on strike. We offered four percent as I remember. And, they could take it anyway they wanted: fringes, COLA, straight wage increase. But, four percent is all we had. At that time, we had every reason to believe that a twelve million dollar item, that is, revenue sharing that was due the last fiscal year would pass the legislature. That hasn't passed yet. I believe it will pass, and it's in our budget for this current fiscal year ending June 30. If it does not, we're in a deficit for this year. We know now that by our most optimistic estimate we could be indeed anywhere between ten and twenty million dollars at the end of this next year, assuming we hold the line with this wage increase at 4.8, four and four, as you suggest... We have some twenty-six million dollars, I believe, from the Carter fiscal--it's now called fiscal assistance, but it's the same damn thing, federal money that goes directly into our general fund. That has not passed and it's in trouble in Lansing--Washington. But, most importantly, CETA. Now, we have about 800 police officers on CETA..."

Mayor Young further testified: (p. 49 Tr.)

"...We are at the absolute limit in terms of our ability to impose taxes, both property taxes and the income tax; all taxes. We can't add on additional labor costs, and even if we did it would be counter productive because one of the chief and legitimate criticisms of living in the city of Detroit is the high tax rate."

Budget analysis is most interesting and elusive. Union Exhibit 54 shows deficits for the City of Detroit from the years 1949-50 through 1976-77, except for the years 1952-53, 1953-54, 1964-65, 1965-66, 1972-73, 1973-74, 1975-76 and 1976-77. The surplus for 1975-76 was \$11,300,000 and for 1976-77, \$11,605,000; 6.5 million was a surplus (from FY 1976-77) that is treated as a budgeted revenue (in FY 1977-78). \$4.8 million is an adjustment to the 1975-76 deficit.

FINDINGS AS TO DETROIT POLICE DEPARTMENT AND ITS OFFICERS

1. The Detroit Police Department is increasingly professional with more and more of its officers taking additional training and education.
2. Through innovative programs, and professionalization, there is a turn-around in Detroit in law enforcement and a new citizen sense of participation and cooperation.

3. There is pride and good spirit in the department. So far as the comparisons police officers make in respect to other departments, these are local metropolitan comparisons rather than comparisons with other cities in the United States such as New York. The job of police officer in Detroit is more difficult than that in the suburbs. The Union offered specific proofs in that regard from officers who had worked both in the City of Detroit and in the suburbs. Detroit has a police department that is getting better, with a new determination in Detroit as represented by the Renaissance development and other business initiatives.

ANALYSIS OF CRITERIA

The legislature has not prioritized the criteria of Section 9, nor have the Courts indicated any legislative intention to give greater emphasis or importance to one of the criteria over another or in combination. The evaluations, so far as prioritization, appear to rest in the sound discretion of the Panel so long as its findings, opinion and order are based upon the applicable factors (Section 8), and so long as there is "competent, material and substantial evidence on the whole record" in support of such determinations (Section 10). Written findings of fact and an opinion and order are requisite (Section 8). The proceedings are informal and technical rules of evidence do not apply (Section 6).

Arguably, the legislature could have been more precise and definite and could have placed additional limitations upon arbitration panels; it has not done so.

Analyzing the criteria set forth in Section 9 of the Act, the following is found:

(a) The lawful authority of the employer.

The City emphasized the limitations of the tax authority of the City to meet costs as an item for consideration under this sub-

section. It is undisputed that there are such legal tax limits. However, so far as jurisdiction of the Panel, Section 10 does make it clear that the commencement of a new municipal fiscal year after arbitration proceedings are instituted, but before the decision or its enforcement, doesn't impair the jurisdiction or authority of the Panel, and that increases in rates of compensation or other benefits may be ordered retroactively.

This has to be the case if justice is assured police and fire personnel. The language of Section 10 is particularly strong, "any other statutes or charter provisions to the contrary notwithstanding". This would seem to express clearly legislative intent that the legality of an arbitration Award under the Act is not affected by the fact that the municipal authority has not budgeted enough money to pay for an increase or increases.

(b) Stipulations of the parties.

The Panel has considered and accepted all the helpful stipulations of the parties, on both economic and non-economic matters, and wishes to express its appreciation to the parties and to counsel; they have simplified or disposed of issues and have made the work of the Panel much easier.

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

The interest and welfare of the public are uppermost in the minds of the Panel but the question is what constitutes in this context the interest and welfare of the public. Certainly, it is more than money considerations and that is indicated by the latter portion of (c). The interest and welfare of the public, in the judgment of the Chairman, would include, of course, the quality of services delivered; a disposition which would place the members of the DPOA at a disadvantage as compared with Lieutenants and Sergeants clearly would not conduce to the interest and welfare

of the public. It would be so patently unfair^{as} to imperil morale and effective performance for the protection of the public. As to the financial ability of the unit of government, the City has not plead nor has the City proved in the traditional sense an inability to pay, but has, very specifically said, it is not pleading inability to pay but rather the financial condition of the City as a "limiting factor". The difference may be subtle, but the difference is fundamental since the Panel was not in a position, the budget not having been introduced and debated, to ascertain what other needs of the City were met by those funds already spent in relation to the importance and the amounts necessary for funding of the future award of this Panel.

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

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

This is a central section on which the main reliance of the Chairman has been placed. The comparison which is most appropriate is that of the Lieutenants and Sergeants as explained. In the next comparison, with the salaries and benefits of similar police officers in the metropolitan area, it has already been noted, and it is held again, that a comparison of that which is awarded for DPOA members is in direct relation to and is compared with specifically that which was granted in the recent Award for the Lieutenants and Sergeants. That is the most compelling comparison and on that issue, there is competent, material and substantial evidence in support of the Panel's determination. As compared with the salaries and benefits of employees in the immediate adjacent metropolitan area, members of DPOA will remain high as they are now. We do not consider comparisons with officers of equal rank in other large metropolitan areas such as New York as

persuasive as the comparisons with the neighboring suburbs. But if comparisons were made, Detroit officers would be top as they are now. However, it must be said that all we have with respect to other metropolitan departments is the naked salary figures without any delineation in respect to working conditions or other factors that might bear upon either benefits or the quality of the service delivered, or the problems to be faced by an officer in such cities. An exact comparison, therefore, is difficult under the proofs.

It should be pointed out, under (d), there are no other employees of the City performing similar services except other police officers, namely, Lieutenants and Sergeants rank*. So far as other employees generally in the City, the Award is higher than that negotiated with Unions representing other employees. But these are separate bargaining units entitled to different assessment, and not alone controlling in disposition here. The more apt and more persuasive comparisons are with other security personnel.

The comparisons that have been made are those in public employment in comparable communities and the comparables most persuasive to the Chairman are adjacent metropolitan communities. On these comparisons, the Detroit officers will be highest in the area but with more difficult job responsibilities and less favorable community factors.

In private employment and comparable communities, the Chairman has not considered and does not consider comparisons by private employment persuasive and does not base any conclusions that he has reached upon such comparisons.

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

This has been central in the consideration of the Chairman in disposition, not only because of the traditional philosophical

* that is, unionized employees

appeal of COLA but principally too, because of the previous Award of the Lieutenants and Sergeants and the bargaining history between the parties; (e) alone with (d) are central to the conclusions reached.

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

The Chairman has attempted to set forth fully from estimates made by the City costing of both the last offer of the Union and the last offer of the City. The overall compensation has been evaluated and set forth as completely as possible.

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

Central in disposition are changes that have occurred during the pendency of proceedings including the Lieutenants and Sergeants and the Award stabilization program as detailed above.

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

The parties have not delineated in their presentations "such other factors" and the Chairman has placed no reliance upon considerations other than those set forth in (a-g) other than having noted several times that the factor of morale cannot be overlooked and in the declaration of the public policy in Section 1, it is recited:

"It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes..."

Central to conclusion and determination have been the morale of the employees in the delivery of high quality police services on the one hand and the comparisons most persuasive when considering compensation for members of the DPOA; the effect of the disposi-

tion upon the protection of the public in the delivery of security services by police is given very considerable weight.

3. SHIFT PREMIUM

The present provision is: Shift premium is awarded to all sworn members of the department whose regular tour of duty begins within the hours prescribed as follows: if the tour of duty begins between 11:00 a.m. and 6:59 p.m., the rate of shift premium pay is twenty-five (25) cents an hour, and, if the tour of duty begins between 7:00 p.m. and 3:59 a.m., the rate of shift premium pay is thirty (30) cents an hour. The shift premium is paid to a member in addition to his basic rate of pay for the regular tour of duty starting within the hours designated above and any overtime hours worked in conjunction with an afternoon or midnight shift.

When a member starts his shift and does not complete that particular shift due to illness, compensatory time, etc., premium pay will be awarded only for the actual time worked.

See, Detroit Police Department General Order 77-37, p. 10.

Union's Last Offer of Settlement: Effective July 1, 1978, the shift premium of twenty-five (25) cents an hour shall be increased to thirty-five (35) cents an hour, and the shift premium of thirty (30) cents an hour shall be increased to forty (40) cents an hour.

City's Last Offer of Settlement: No change from current policy

The Union was able to produce few comparables, namely, Warren, Livonia, Royal Oak and Taylor. In Livonia and Royal Oak, no shift premium is paid and in Taylor, 15 cents for afternoon and 25 cents for midnight with a contract ending June 30, 1978. The Union urges that the Warren contract practice as persuasive, "25 cents an hour for afternoon, 27.5 cents for split shift and 30 cents an hour for the midnight shift". In effect, the Warren settlement gives an afternoon shift differential of 41 cents and 62 cents an hour midnight shift differential. Its offer really means an increase of about \$84 a year for each officer subject to limitation.

RULING:

The Panel holds that insufficient evidence was offered in support of the requested Union change and the City's last offer is accepted.

4. DENTAL EXPENSE BENEFIT PLAN - There is no present provision.

Union's Last Offer of Settlement: City to pay full cost for a Delta Dental Plan for all employees, their spouses and dependent children. The plan shall pay 100% for Class IA Treatment, 50% for Class IB Treatment and 50% of Class II Treatment. Combined Class IA, IB and II benefit shall be limited to \$600 maximum per person per year. (For detailed specifications see Issue 4 in Union's Last Offer of Settlement on Economic Issues).

Dental Expense Benefit Plan to be effective July 1, 1979.

City's Last Offer of Settlement: No provision for prepaid dental care paid by the employer.

Union Exhibit 33B shows the dental expense benefit plan for police department employees in all but one comparable community. As buttressed by the testimony of Edward Kelly, Assistant Sales Manager, Delta Dental Plan of Michigan, now over 80% of municipalities with roughly a circle that would encompass Pontiac and Detroit, have such plans. For example, 400,000 people are covered in the City of Detroit; 600,000 in Wayne County; 800,000 in the tri-county area. There are now 4,000,000 people covered in the State of Michigan including all civil service personnel for the State of Michigan. It is becoming now a common fringe benefit. In brief, the Union wants a plan effective July, 1979. The plan is the Class IB coverage plan from 90% to 50% reducing the maximum too, from \$750 to \$600 per person per year and eliminating the orthodontic coverage. The Union split its demand for Class I coverage into 100% for Class IA, the preventive program and 50% for Class IB. The preventive program makes sense. It should save money in the long run.

A dental plan has much appeal to the Chairman, and it has the advantage of being a solid and progressive family benefit. It is a program whose time has come, generally, as shown by the economic data which is unassailable. It is a plan that not only is practicable in its operation, but brings a high degree of employee satisfaction, including family satisfaction, which should never

be overlooked in the employment relationship, in the judgment of the Chairman. The cost of installing it is not horrendous either, approximately \$1,000,000.

So far as the Chairman is concerned, the only difficulty really lies in the fact that if the Panel were to grant this benefit, it would be granting it for the first time to employees of the City of Detroit, a benefit that was not granted, though requested, in the Lieutenants and Sergeants Award. Standing on its own merits alone, it should be granted but considering the internal relationship, it cannot be granted.

RULING:

The Chairman votes for the City last offer, which is a rejection of a dental plan.

5. LONGEVITY

Present longevity benefits are:

After 11 years - \$150.00

After 16 years - \$300.00

After 21 years an additional 1% of base salary.

See, Detroit City Code 16-11-1 et seq.
(Union Exhibit 5C) and Fox Panel Arbitration Award dated February 2, 1973, p. 16 (Union Exhibit 5D)

Union's Last Offer of Settlement:

	<u>Percent of Base Salary</u>
After completion of 5 years	2%
After completion of 10 years	4%
After completion of 15 years	6%
After completion of 20 years	8%

Otherwise to be identical to current practice.

City's Last Offer of Settlement: No change from current policy.

Union exhibit 23A shows all comparable communities recognize longevity pay, and it is higher than that paid in Detroit, including most of the cities shown in City Exhibit 5D. In brief, of

15 comparable communities, only five have longevity programs less favorable than that which the Union asks here. So far as the claimed cost of \$1,000,000, the Union says that actual costs might be very little if one considers the expenses involved in recruiting and training 250 new officers to those who quit in 1977. That can be over \$1,000,000 in itself with the cost of a new recruit over \$25,000 per year. Fourteen weeks over a quarter of a year are spent in the police committee academy which is a non-productive time so that that is the total loss of \$1,562,500. Standing alone, the Chairman would consider that the Union had made a case for a change but measured by the Lieutenants and Sergeants Award, the grant of the Union demand would create a kind of internal inequity or benefit to the DPOA not enjoyed by Lieutenants and Sergeants and for that reason, the Chairman would vote for denial of the Union request and for acceptance of the City last offer.

RULING:

Acceptance of the City last offer and a denial of the Union request.

6. HOLIDAYS

Present: Premium Holidays - Seven holidays plus one election day each year. If required to work on holiday employee shall receive an additional 150% of a day's pay.

Swing Holidays: One each year plus an additional day if there is no scheduled election.

Excused Time: 4 hours before Good Friday; 8 hours before Christmas Day and 8 hours before New Year's Day. If required to work, employee shall receive compensatory time off or straight time cash at option of department.

See: Collective bargaining agreement (Joint Exhibit 2) p. 11 of supplement. Detroit Police Department General Order 73-37, p. 17, 18 & 19 (Union Exhibit 5F)

Union's Last Offer of Settlement:

Effective July 1, 1978 there shall be two additional premium holidays, Martin Luther King's birthday (January 15) and Easter Sunday.

Effective July 1, 1979, there shall be a third additional premium holiday Law Day (May 1).

Effective July 1, 1979 the employee's birthday shall be an additional swing holiday.

Effective July 1, 1979 excused time on Good Friday shall be increased by four (4) hours to eight (8) hours.

(For detailed specifications see Issue 6 in Union's Last Offer of Settlement on Economic Issues)

City's Last Offer of Settlement: The holiday premium rate shall be changed so that an employee who works on a premium holiday shall receive double time (2x) premium in addition to regular day's pay. All other provisions shall remain unchanged.

The testimony fairly showed that police officers do not look forward to working holidays - days when they may have extraordinary stresses and difficulties when people are home, particularly in the domestic scene and have differences. The testimony and exhibits showed a wide variety of holidays. The Union request would increase premium holidays from 7 3/4 to 9 3/4 days in 1978-79 and 10 3/4 days in 1979-80, so that in result, the holiday pay would be \$408.72 substantially below the average of the other communities for the preceding fiscal year and with the unpaid excused time partially compensating the officers for the difference.

In view of the Award on wages and COLA and particularly in the light of the Lieutenants and Sergeants Award, the Chairman accepts the City last offer of settlement as the Panel's Award.

RULING:

Acceptance of the City's last offer and a denial of the Union request.

7. PENSIONS - CREDIT FOR MILITARY SERVICE PRIOR TO EMPLOYMENT

No present provision.

Union's Last Offer of Settlement: A member who has military service prior to his employment may claim service credit as a member of the retirement system for up to three years spent in the military service, upon the payment of specified sums into the system. (For detailed specifications see Issue 7 in Union's Last Offer of Settlement on Economic Issues)

City's Last Offer of Settlement: No change from the current Police-Fire Retirement System.

PENSIONS - CONTRIBUTION TO SURVIVOR'S BENEFIT FUND

Present: Each member of the retirement system with less than 25 years of service contributes 1% of his compensation to the Survivor's Benefit Fund.

See: Joint Exhibit 3, Policemen and Firemen Retirement System p. 28 et seq. and p.32.

Proposed: The contributions, required by Article VII, Sections 8(b) and 8(c) of the Policemen and Firemen Retirement System, to the Survivor's Benefit Fund shall be reduced from 1% to .75%. The City shall contribute any additional money required to fund the Survivor's Benefit Fund on a sound actuarial basis.

This reduction shall become effective July 1, 1978.

City's Last Offer of Settlement: No change from the current Police-Fire Retirement System.

PENSIONS - ELIMINATE AGE REQUIREMENT FOR ELIGIBILITY TO RETIRE - 1969 PLAN

Present: Employees who became members of the retirement system after 1968 (members as defined in Article IV, Section 1(d)) shall attain age 55 and have 25 years of service to be eligible for a regular retirement.

See, Joint Exhibit 3, Policemen and Firemen Retirement System p. 17.

Union's Last Offer of Settlement: The requirement that a member as defined in Article IV, Section 1(d) of the Policemen and Firemen Retirement System shall attain age 55 to be eligible for retirement shall be eliminated. All employees shall be eligible for retirement after 25 years of service.

City's Last Offer of Settlement: No change from the current Police-Fire Retirement System.

PENSIONS - DUTY DISABILITY RETIREMENT - 1969 PLAN

Present: Under 1969 plan and pre-1969 plan, a duty disability retirement benefit of 66 2/3% of final compensation is payable to eligibility age for regular retirement. After eligibility age for regular retirement, benefit is computed as a regular retirement.

The difference is in the post-retirement cost of living adjustments.

Pre 1969: Benefits increase in proportions to active member earnings for the corresponding rank.

1969 Plan: Benefits increase annually in the amount of 2% of the original benefit.

See: Joint Exhibit 3, Policemen and Firemen Retirement System p. 19.21.

Union's Last Offer of Settlement: Any member as defined in Article IV, Section 1(d) of the Policemen and Firemen Retirement System who becomes entitled to a duty disability retirement will automatically become a member as defined in Article IV, Section 1(b) and entitled to all the benefits of a member as defined in Article IV, Section 1(b).

City's Last Offer of Settlement: No change from the current Police-Fire Retirement System.

The Panel has made a careful examination of the presentations on these issues and sub-issues. Military credits is a subject that is being addressed increasingly by state legislatures, including Michigan. It is not unlikely that further progress will be made through the legislative process. The Panel is also conscious that differences between two systems operating side by side create friction among members. It is difficult to rationalize to a policeman conscientiously performing why he is being treated less advantageously than a fellow officer. There is also an appeal to the proposal as to duty disability.

On the issue of contribution of survivor's benefit fund, the Union has the better of the demographic argument in that officers holding the rank of sergeant and above will always be an older group than the DPOA members; in 1976, the average police officer was 31 years old and had 7 years of service and the average sergeant was 41 years old and had 17 years of service.

Too, the trend is toward reducing the retirement age. Only 5 of the 15 comparable communities in Union Exhibit 42B require age 55 for retirement, one, 52, and seven, 50 with 25 years of service. There are two that specify 25 years of service regardless of age.

The difficulty lies in the fundamental consideration that the Panel has faced and must face on each of the issues of an economic nature, namely, the Award already handed down for the Lieutenants and Sergeants. The pension and retirement system of the City of Detroit for policemen and firemen is a costly

system. A grant of anyone or all of the requested changes would create inequity as viewed by members of other organizations of security personnel. Therefore, the City's last offer is accepted.

RULING:

The City's last offer is accepted on all pension issues.

8. SICK BANK ACCUMULATION

Present: Sick Banks: There are two sick banks, current sick bank and seniority sick bank.

- a. Current sick bank is designated as that sick time accumulated at the rate of one day for every calendar month in which a member has been credited for not less than eighteen paid time days, excluding overtime. The accumulation of the current sick bank is limited to 125 days.
- b. Every member who has a current service status for a full fiscal year shall be credited with five days in his seniority bank on July 1 of each year. The accumulation is limited to 125 days also in this bank.

See, Joint Exhibit 9.

Union's Last Offer of Settlement: Increase current sick bank accumulation to 175 days. (For detailed specifications, see Issue 11 in Union's Last Offer of Settlement on Economic Issues)

City's Last Offer of Settlement: None.

The Union has not offered persuasive evidence that would meet the test of competent, material and substantial evidence to justify its requested change, and the City's offer is accepted.

RULING:

City's last offer is accepted.

9. PAY OFF OF ACCUMULATED SICK DAYS

Present: Retirement Sick Leave Payment. Immediately preceding the effective date of a member's retirement, exclusive of duty and non-duty disability retirement, he shall be entitled to pay for his unused accumulated sick banks as follows:

- a. If his total unused accumulated sick banks amounts to sixty (60) days or less, he will be paid for half of it.
- b. If his total unused accumulated sick banks amounts to more than sixty (60) days, he shall be paid thirty (30) days plus 1/4 of his entire total of unused accumulated sick banks in excess of sixty days, but in no case shall the total paid out exceed sixty days.

If a member is granted a duty or non-duty disability retirement, he shall be entitled to a reimbursement of unused sick time, according to the preceding formula, upon attaining his normal full duty retirement date and petitioning the commissioner for such reimbursement.

See, Joint Exhibit 9.

Union's Last Offer of Settlement:

1. Upon the death of any employee, seventy-five (75) percent of his or her accumulated sick time shall be paid, at the current rate of pay, to the employee's beneficiary. Current rate of pay shall be that in effect at the time of death.
2. Upon the retirement of any employee, fifty (50) percent of his or her accumulated sick time shall be paid to the employee at the current rate of pay. Current rate of pay shall be that in effect at the time of retirement.
3. Upon the separation of any employee, for any reason whatsoever, except death or retirement, twenty-five (25) percent of his or her accumulated sick time shall be paid to the employee at the current rate of pay. Current rate of pay shall be that in effect at the time of separation.

City's Last Offer of Settlement: Payment for unused sick leave shall remain as per current policy. On retirement only, an employee will receive payment for unused accumulated sick leave as follows: 50% of the first 60 days and 25% of the next 120 days. The maximum payment shall not exceed 60 days.

The stronger argument can be made for pay-off on retirement as reflected in the City offer. The Union rationale is that these days are earned through faithful service, and, therefore, in the nature of a vested benefit to which the employee is entitled.

There is temptation, it is said, to use sick time unnecessarily if it is never going to be recognized as a vested benefit for pay-off.

The City views sick time as time for use during sickness and not a reward for being healthy.

The Union does have the better of the battle of the comparables citing Pontiac, Dearborn, Sterling Heights and Royal Oak.

Although the Lieutenants and Sergeants Panel partly improved this benefit, ^{*}here, a full grant of the Union request would create an

¹⁰
* The Union demands the two arbitrations were different, in this case the demand including pay-off upon separation for any reason except death or retirement at 25%.

internal inequity, and the City last offer, therefore, is accepted.

RULING:

The City last offer is accepted.

10. SICK TIME - INABILITY TO FINISH SHIFT BECAUSE OF ILLNESS

Present: When a member starts his shift but is unable to finish the shift because of sickness, sick time will be deducted in the following manner. If less than four (4) hours has been worked the member will be charged half a sick day and credited with half a work day. If four (4) or more hours have been worked the member will be credited with a full work day.

See, Joint Exhibit 9.

Union's Last Offer of Settlement: Continue current practice.

City's Last Offer of Settlement: Effective on the date that the contract becomes effective when an employee starts his shift but is unable to finish the shift because of sickness, sick time will be deducted in the following manner. If less than four (4) hours have been worked, the employee will be charged a full sick day. If four or more hours have been worked, the employee will be charged one half (1/2) day of sick leave.

The Panel has carefully reviewed this question and while it is not recommending any change in the language, it believes that through computerization the City could make a computation, hour by hour, that would be advantageous to the City and fair and equitable toward the individual officers. The Panel, therefore, is referring this matter back to the parties with a recommendation that through computerization a system of hour by hour computation be effected.

RULING:

The Panel accepts the Union's last offer, a continuation of the present practice and recommends hour by hour computation by computerization.

11. PERSONAL DAYS

This issue has been settled and is withdrawn.

12. LEGAL REPRESENTATION AND INDEMNIFICATION

Through debate before the Panel and negotiations between the parties, this issue fundamentally has been resolved and the Panel makes no recommendation.

13. RETROACTIVITY

Union's Last Offer of Settlement: Each economic item shall be retroactive to July 1, 1977 except as otherwise indicated on the individual offers.

City's Last Offer of Settlement: All economic items shall become effective thirty (30) days after the award except wages (#1) which shall become effective on the dates specified and holidays (#6) which shall be retroactive to July 1, 1978.

RULING:

Adjustments or increases shall be retroactive as to wages, COLA and holidays.

14. DURATION OF CONTRACT

The Union requested a two year contract and the City a three year contract. The Panel, keeping in mind the disposition of this issue in the Lieutenants and Sergeants case, decided to award a three year contract.

II. NON-ECONOMIC ISSUES

1. SENIORITY - This issue has been withdrawn.
2. SENIORITY - ASSIGNMENTS AND TRANSFERS - The parties have settled this issue and the Panel adopts the agreement as its Award on the issue.
3. FURLOUGH ALLOCATIONS

Present: In a given precinct, section or unit, normally not more than nine percent (9%) of the total number of police officers shall be absent on furlough at the same time. During July and August this limit shall be raised to twelve percent (12%).

See, Collective Bargaining Agreement, Joint Exhibit 2.

City's Proposal: In a given precinct, section or unit, normally not more than ten percent (10%) of the total number of police officers shall be absent on furlough at the same time.

Union's Proposal: Continue current contract language.

The only question for decision by the Panel relates to the number of officers who may be on furlough at any given time. All other differences between the parties on this matter have been resolved by collective bargaining.

The present contract provides:

"In a given precinct, section or unit, normally not more than nine percent (9%) of the total number of police officers shall be absent on furlough at the same time. During July and August this limit shall be raised to twelve percent (12%)."

The Union proposes to continue this language. The City wishes to modify the contract to provide that not more than ten percent (10%) of the total number of police officers shall be absent on furlough at the same time.

The unrefuted evidence of the City shows an increase in violent crime during the summer months, an increased demand for service and an increase in sick leave during these months. The Union, on the other hand, claims that the present practice has been in effect for many years and elicited from a City witness on cross examination that there is no evidence that a crime was perpetrated that went uncorrected because a police officer was on vacation.

The Panel finds that there is an increase in crime and an increased demand for service during the summer months and that the City proposal is a reasonable effort to alleviate the problem.

The Panel awards the change requested by the City. The language shall read:

"In a given precinct, section or unit, normally not more than ten percent (10%) of the total number of police officers shall be absent on furlough at the same time."

4. POLICE RESERVES

The City has had a police reserve program for many years. There are approximately 900 to 1000 police reserves. At the present time there is no contract language governing the use of reserves.

The Union has proposed the following language:

"1. Police reserves may be used only for declared emergencies, such as natural disasters and major civil disturbances and in support capacity for public or charitable functions such as the Christmas Carnival, Independence Day, Fire Works, Ethnic Festivals, State Fair, March of Dimes Bike-A-Thon, Walk-A-Thon and for station security and security for dignitaries, in accordance with present practice. In no event shall police reserves be used to do normal work of bargaining unit members nor used to circumvent the holiday, overtime and/or any other provisions of this agreement.

2. Police reserves may accompany bargaining unit personnel only with the consent of the employee or employees involved."

The City requests there be no contract language and that present practice be continued.

A witness for the Union testified that paragraph one of the proposal reflected present practice. Witnesses for both parties testified as to the expanded use of reserves over a period of years. The City claims paragraph one is too restrictive on its use of reserves. And, a City witness testified that reserve officers had never been "used in a way which would circumvent the rights of a regular officer so far as his regular assignment, his right to get overtime, his right to get holiday pay, or in times of lay off". (Vol. IX, 78)

The Panel finds that the Union has a reasonable concern about the loss of bargaining unit work in view of the expanded use of reserves. Based on the testimony of City witnesses the Panel also finds that it is not the intention of the City to divert bargaining unit work to reserves. The Panel also finds that it is impractical if not impossible to attempt to pinpoint the precise areas in which reserves will be used.

The Panel awards part of the contractual language requested by the Union. The language shall read:

"In continuing its policy on police reserves, the City will in no event use police reserves to do normal work of bargaining unit members or to circumvent the holiday, overtime and/or any other provisions of this agreement."

With respect to the second paragraph a witness for the Union testified that this is the practice in the 16th Precinct. City witnesses, on the other hand, testified that it is important in the training of reserves to assign them to work with regular police officers. There was no evidence as to practices elsewhere than the 16th Precinct. Because of an insufficient record as to practices throughout the department, the Panel believes there should be no contract language on the assignment of reserves to work with regular officers but that the status quo should be maintained.

5. MEMBERS RIGHTS

Present: There are some provisions in the current collective bargaining agreement which protect police officers during the course of a department investigation of alleged criminal matters or non-criminal matters which might lead to discipline. None of these provisions is as comprehensive as the proposals made by the City and the Union in connection with this matter. (See City Exhibit 31 and Union Exhibit 55) The proposals are identical except for a few clauses which directly relate to investigations by the Board of Police Commissioners or its agents. Only the precise clauses in controversy will be set forth and discussed herein.

City's Proposal: 3.d The employee under questioning shall be informed prior to such interview of the name of the person in charge of the interview, the interviewers and all persons present during the interview. If any of the interviewers

are sworn police officers, at least one shall be present during the interview who is of a rank of sergeant or above.

4. The Investigative Staff of the Board of Police Commissioners shall have the right to interrogate and investigate members under the procedures in this agreement to which any interrogating officer is subject and such right shall in no way abridge or change the rights of a member under this agreement or under any local, state or federal law or the Constitution of the United States, or State of Michigan.

The second paragraph under 4, is identical to that proposed by the Union.

The third paragraph under 4. although not proposed by the Union is acceptable to the Union.

Union's Proposal: 3d. The employee under questioning shall be informed prior to such interview of the name of the person in charge of the interview, the interviewers and all persons present during the interview.

3f. The interview shall be conducted by a department member holding the rank of sergeant or above.

This matter was debated most vigorously before the Panel by the parties and in executive session a careful review was made. We do understand the frustration from the standpoint of the Union and its members in that the Board of Police Commissioners has not stepped forward to clarify and settle this issue. This inaction must end if the issue is to be settled; the Board must decide what it is going to do. The Panel is of the opinion that rather than the Panel itself drawing language resolving the issue by Award it is wiser that this matter be referred back with an instruction and recommendation that within 30 days the Board of Police Commissioners promulgate an appropriate rule or order definitively resolving this issue. In order that the issue will not remain forever hanging, the Panel will reserve jurisdiction for 60 days on this issue.

6. DEPARTMENT FILES

On this issue there was vigorous debate before the Panel and careful analysis in executive session by the Panel.

There has been legislation which has been called to the attention of the Panel. The Panel is referring this issue back and recommending that the parties explicitly provide that the interpretations of the present contract language be consistent with Sections 9 and 10 of the subject Act providing:

"Sec. 9.(1) If an employer has reasonable cause to believe that an employee is engaged in criminal activity which may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, then the employer may keep a separate file of information relating to the investigation. Upon completion of the investigation or after 2 years, whichever comes first, the employee shall be notified that an investigation was or is being conducted of the suspected criminal activity described in this section. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it shall be destroyed.

(2) If the employer is a criminal justice agency which is involved in the investigation of an alleged criminal activity or the violation of an agency rule by the employee, the employer shall maintain a separate confidential file of information relating to the investigation. Upon completion of the investigation, if disciplinary action is not taken, the employee shall be notified that an investigation was conducted. If the investigation reveals that the allegations are unfounded, unsubstantiated, or disciplinary action is not taken, the separate file shall contain a notation of the final disposition of the investigation and information in the file shall not be used in any future consideration for promotion, transfer, additional compensation, or disciplinary action.

Sec. 10. This act shall not be construed to diminish a right of access to records as provided in Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, or as otherwise provided by law."

7. SICK LEAVE (HOUSE ARREST)

Present: An employee unable to perform police duties because of injury or while recuperating from an illness may absent himself from his home while sick.

Source: Current Contract, Memorandum of Understanding, dated April 1, 1975, Section IV on page 4.

City's Proposal: An employee unable to perform police duties while on sick leave may absent himself from his home only with the permission of the officer in charge of the unit to which he is assigned or if his unit is closed the precinct in which he resides. (City Exhibit No. 12C)

Union's Proposal: Continue current contract provision and present practice.

The Panel does not favor either the philosophy or practice of house arrest and rejects it as a method of sick leave control. Accordingly, the present language, which is the Union proposal, is awarded.

RULING:

The Panel awards the Union proposal.

8. RESIDENCY

Present: The parties agree that the award of the Arbitration Panel, Harry Platt, Chairman, on the City's residency requirement shall be in full force and effect until June 30, 1977.

See, Collective Bargaining Agreement, page 12 of supplement, Joint Exhibit 2.

The Platt Panel Arbitration Award, dated September 5, 1977 provided:

"All members of the bargaining unit shall be residents of the City of Detroit." (Joint Exhibit 11)

Union's Proposal: Members of the bargaining unit shall not be required to be residents of the City of Detroit. (Union Exhibit 50A)

City's Proposal: All members of the bargaining unit shall be residents of the City of Detroit. Residence shall be construed to be the actual domicile of the member. A member can have only one (1) domicile. (City Exhibit 26a)

A review of the evidence presented by the parties, particularly the record made before the Platt Panel and the Award of that Panel (see Joint Exhibit 11) support the position of the City on this issue in all pertinent areas except one. Some provision should be made for the exercise of reasonable discretion by a City official designated by the Mayor (or even the Mayor himself) to exempt persons with hardship circumstances.

The Panel acknowledges the difficulty inherent in the development and application of such exemption policy, but does not deem the task beyond the capacity of competent persons committed, or be it by direction, to such accomplishment. The record supports

the need and demonstrated the time is now ripe for such exemption policy (see testimony of Officer Toner, Vol. IX, 99-110).

RULING:

As suggested by the Association in its brief, that portion of the residency issue related to a hardship exemption policy is remanded to the parties for resolution. If, within 30 days of the issuance of this Award, the parties have not resolved the matter, this Panel will do so.

The City's position is adopted by the Panel on all other portions of the residency issue.

9. WORK AREAS

Present: The City will provide and maintain clean, sanitary work facilities.

See, Collective Bargaining Agreement (Supplement page 4) Joint Exhibit 2.

Union's Last Offer of Settlement: The City will provide and maintain safe, clean and sanitary work premises, facilities and equipment.

City's Last Offer of Settlement: The City will provide and maintain safe, clean, sanitary and healthful work premises, facilities and equipment. Determinations of whether work premises, facilities and equipment are safe shall be made by the management of the Police Department.

To be effective thirty days after the award.

As clearly revealed in the final briefs and during post-brief final arguments, the parties take virtually the same position on this issue but yet maintain their inability to conclude an agreement. The Panel believes further reflection by the parties will clear the issue.

RULING:

If, within 30 days of the issuance of this Award, the parties have not resolved the issue, this Panel will provide a procedure for final and binding resolution of such disputes.

ACT 312 COMPULSORY ARBITRATION PANEL*

William L. Kircher, Union Delegate

Aubrey V. McCutcheon, Jr., City Delegate

George E. Bowles, Chairman

Dated: December 20, 1978
Detroit, Michigan

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* (As the Panel has recognized the Lieutenants and Sergeants Award filed in October, so the Panel notes the Order entered by the Honorable Patrick J. Duggan on December 18, 1978, an Order of Remand. It is specifically noted that Judge Duggan's Order did not set aside the Award in that case.)