

10/18/78 ARB

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
Arbitration pursuant to Act 312, Public
Acts of 1969, as amended (MCL 423.231-247;
MSA 17.455 [31-47])

In the Matter of the Arbitration
between

THE CITY OF DETROIT

OPINION AND AWARD
OF ARBITRATION PANEL

and

DETROIT POLICE LIEUTENANTS &
SERGEANTS ASSOCIATION

* * * * *

ARBITRATION PANEL:

Robert G. Howlett, Chairman

Samuel Baker, Delegate selected
by the City of Detroit

Armand Bove, Delegate selected by
the Detroit Police Lieutenants
& Sergeants Association

LABOR AND INDUSTRIAL

RELATIONS

A p p e a r a n c e s:

For the City:

Michael A. Hurvitz, Esq.

For the Association:

Bernard A. Friedman, Esq.

Michigan State University

A collective bargaining impasse was submitted to arbitration
pursuant to the Police-Firefighter Arbitration Act (Act 312
Public Acts of 1969, as amended; MCL 423.231-247; MSA 17.455
[31-47] [PFAA]).

Samuel Baker was selected as delegate to the arbitration
panel by the City of Detroit; Armand Bove was selected as a delegate

Detroit, City of

to the panel by the Detroit Police Lieutenants & Sergeants Association; and the Michigan Employment Relations Commission appointed Robert G. Howlett as chairman of the panel.

Hearings were held at the office of the Michigan Employment Relations Commission, Detroit, Michigan on August 23, 1977; February 21, 1978; February 22, 1978; April 13, 1978; May 1, 1978; May 2, 1978; May 4, 1978; May 25, 1978; June 12, 1978; and June 14, 1978.

During the course of the hearings, a number of issues originally presented to the panel were resolved by the parties. This opinion and award will deal only with the issues which were not settled by the parties.

The Detroit Police Lieutenants & Sergeants Association is the collective bargaining representative for the police sergeants and police lieutenants of the Detroit Police Department. There are ten separate classifications among the sergeants and lieutenants.

Following the hearing, the City and the Association each submitted "its last offer of settlement on each economic issue" as provided in Section 8 of PFFA. There is no disagreement between the parties as to which issues are economic and which are non-economic.

In determining the economic issues, the panel has given consideration to the factors specified in Section 9 of PFFA

in each issue to which one or more of said factors are applicable. Comparable data with respect to economic working conditions in cities in Michigan and large cities throughout the country was submitted in evidence by the parties. The parties agreed as to the survey cities which have been considered by the panel. The cities in Michigan for which data was submitted are:

- Ann Arbor
- Dearborn
- Flint
- Grand Rapids
- Livonia
- Southfield
- Warren

The national cities for which data was submitted are:

- Baltimore
- Chicago
- Houston
- Los Angeles
- Milwaukee
- New York
- Philadelphia
- San Francisco
- Washington

The City and the Association entered into a Collective Bargaining Agreement which became effective November 30, 1974 and expired June 30, 1977. Prior to the expiration of the 1974-77 contract, the City and Association commenced collective bargaining. When bargaining did not produce agreement, they were assisted in their efforts by a mediator assigned by the Michigan Employment Relations Commission. When agreement on all issues

was not secured, the remaining issues were submitted to arbitration, as above noted.

The 1974-77 Collective Bargaining Agreement does not include a number of working conditions frequently found in such agreements. These working conditions are applicable by departmental rule, City charter or are included in the Detroit City Code adopted by the Detroit City Council. In a number of instances, the Association proposes that these working conditions be incorporated in the collective bargaining contract. In the opinion of the panel chairman, there is merit in this suggestion, in order that members of the bargaining unit may have, in one document, a full statement of the conditions of their employment. However, it is not practical to include every applicable rule, charter or city code provision, e.g., the retirement program. The contract should, however, refer to the applicable rule, charter provision or ordinance.

Originally, the Association proposed a two-year contract commencing July 1, 1977; the City requested the panel to direct a three-year contract, dating from July 1, 1977. Prior to the conclusion of the hearing, counsel for both parties requested the panel chairman to state whether he favored a two-year contract or a three-year contract. The panel chairman stated that he would vote for a three-year contract on the ground that:

1. A three-year contract will afford stability to the labor relations of the City and the Association.

2. It is fair to the taxpayers of the City who are entitled to that stability.

3. It seems likely that the panel in the Detroit Police Officers Association case will decide that the DPOA contract will extend for a three-year period rather than a two-year period.¹

The panel has met and considered the last offers on the economic issues and the positions of the parties on the other issues; and after applying the factors specified in Section 9 of PFFA, where applicable, has determined the award for each of the issues.

The City avers that its last offer is "generous, realistic and more in keeping with the wages and overall economic packages provided police personnel of similar rank and functions locally and nationally" than are the last offers of the Association. The City says this is particularly true "in light of the economic straights" of the City. In support of its position, the City further asserts:

1. It is currently at its taxing maximum.

2. The tax burden inflicted on the citizenry and businesses is forcing much of its business and self-supporting citizens out of Detroit.

1. Subsequent to the chairman's statement, the panel has been advised that the panel in the DPOA case has or will direct a three-year contract.

3. There has been little increase in the value of Detroit property over the past 14 years compared with surrounding communities, a loss due primarily to citizens and businesses leaving the City for the suburbs.²

4. The population of the City has declined between 1950 and 1975 from 1.845 million to 1.335 million, whereas the suburbs have increased from 3.061 million to 4.151 million. The City's population decline has accelerated during the past five years.

5. While losing citizens the need for City services for the remaining City dwellers has increased.

6. The City continues to lead the state in total tax burden among cities over 50,000.

7. The City's high tax burden is detrimental to the City's efforts to compete for and hold businesses.

8. The City can expect little or no increased revenue in the next few years via property taxes.

9. The City's per capita expenditure of police and fire exceeds Philadelphia, Milwaukee, Los Angeles, Houston and Chicago.

2. The City offered one exhibit (No. 18) which discloses that property values have increased more than 50% faster in the suburbs than in Detroit during the last 14 years.

10. The total police department budget of \$232.1 million exceeds by nearly \$70 million the amount of total property taxes received by the City.

11. Although the City emerged with a slight surplus in fiscal 1978 and expects to have a similar surplus in fiscal 1979, the surplus is small.

The Union countered with testimony by a professor from the University of Michigan. However, as the City noted in its brief, most of his testimony dealt with economic conditions--present and future--in the State of Michigan rather than Detroit as an entity.

This opinion will first discuss the economic issues and then the non-economic issues. In each instance the present practice and the last offers of the City and Association will be quoted or summarized.

The Association seeks "three distinct and separate improvements in the Collective Bargaining Agreement", as follows:

1. It seeks to preserve the economic and non-economic benefits which it has acquired through years of negotiation and discussion with the City, including, but not limited to, wages, cost-of-living allowance, sick leave benefits, promotional opportunity, command authority, longevity, court time, holidays and vacations.

2. It wishes to place into contractual language many benefits and working conditions upon which there has been no contract language.

3. It proposes certain improvements in benefits, both economic and non-economic, for the employees in the bargaining unit in specified areas where the economic package proposed by the City was deficient when compared to that of other police departments throughout the state and nation.³

1. LONGEVITY

CURRENT PRACTICE.

Longevity pay is established by the Detroit City Code (Section 16-11-1 to Section 16-11-6) as "a reward based on length of service". It is applicable to all City employees and officers, except contractual part-time employees, elected officers, members of part-time boards and commissions and consultants. It may be applicable to employees in the Department of Street Railways, the Public Library Commission and the City Recorder's Court by resolution of the governing boards of those entities. Current payments are as follows:

0-10 years	= \$ 0
11-15 years	= 150
16-20 years	= 300
21 years and over	= 1% plus \$300

3. As noted above, the parties agreed on the surveyed cities.

CITY LAST OFFER.

Longevity benefits shall continue unchanged, as provided in the Detroit Code.

ASSOCIATION LAST OFFER.

"Members covered by this agreement shall receive, on the first pay period in December, a longevity bonus to be computed by the following formula:

<u>Service in Department</u>	<u>% of Annual Base Salary</u>
10 years	1%
15 years	2%
20 years	3%"

The City estimates the cost of the Association's last offer as \$662,595.

The Association urges that the Association's primary argument for an increase in longevity payments is that "longevity payment under the current longevity system of the City of Detroit, leave [sic] Detroit police officers either on the bottom or near the bottom when compared to all 16 other comparable communities, both local and national."

The Association offered evidence on longevity payments by both the national cities and the Michigan cities. The evidence discloses a wide range of variance from no longevity payments to substantial payments such as the \$3,828 received by Chicago lieutenants after 25 years of service and the \$4,332 received by Washington lieutenants after 30 years of service. The maximum payment by Michigan cities is in Warren where lieutenants and sergeants receive 10% of their base wages after 25

years of service. Wayne County deputy sheriffs receive \$200 from 5 to 9 years, \$350 from 10 to 14 years, \$500 from 15 to 19 years and \$650 after 20 years.

Based on current salaries, 3% would amount to \$701 for sergeants and \$785 for lieutenants.

The mean payment (not average) for sergeants in Michigan excluding Detroit is between \$900 for 25 years of service paid by Livonia and \$1,162 paid by Flint. Comparable figures for a 20-year employee discloses a mean between Livonia's \$600 and Flint's \$757.

The average is \$1,134 for 25 years and \$770 for 20 years.

It is true that Detroit longevity payments are low as compared to payments in other cities. However, Detroit is near the top in salaries and the panel's award will retain that position for Detroit. In view of the panel's salary award and the City's financial condition, the panel has determined that an increase in longevity payments for police lieutenants and sergeants is not warranted.

PANEL DECISION.

The panel adopts the last offer of the City of Detroit that there be no change in the current longevity policy.

2. SICK LEAVE

CURRENT PRACTICE.

The current practice is included in Detroit Police Department General Order 73-37, summarized as follows:

1. Sick-time credit: Sick time, which is defined as absence due to illness of an employee or of a person in his household (the latter limited to three days in each illness of a household member) is accumulated at the rate of one day for each calendar month during which an employee has been credited with not less than 18 paid time days, excluding overtime. The maximum accumulation is 125 days. Additionally, each employee who has service status for a year is credited with five days in his seniority bank on the anniversary of his employment to a maximum of 125 days.

2. Deductions from the sick bank: Sick banks, both current and seniority, are used for non-duty connected illnesses or disability. Sick time is charged first to the current sick bank and secondly, to the seniority sick bank, both in periods of not less than a half day.

3. Depletion of sick banks: If an employee is unable to perform police duties after his sick banks are exhausted, he shall be dropped from the payroll unless he is eligible for non-duty connected retirement benefits.

4. Unused sick time: On an employee's retirement, exclusive of duty and non-duty disability retirement, an employee is entitled to pay for his unused accumulated sick banks, as follows:

a. If his total unused accumulated sick banks amount to 60 days or less, he shall be paid for half of it.

b. If his total unused accumulated sick banks amount to more than 60 days, but less than 180 days, he shall be paid 15 days plus 1/4 of his entire total of unused accumulated sick banks.

c. If his total unused accumulated sick banks amount to 180 days or more, he shall receive 60 days' pay.

CITY LAST OFFER.

The City proposes to continue the present program, with the following two exceptions:

"1. Effective on the effective date of the award of the arbitration panel, when an employee starts his work shift but is unable to finish the shift because of sickness, sick time will be deducted from his sick banks in the following manner -- If less than four (4) hours have been worked, the employee's sick bank will be charged a full sick day -- If four (4) or more hours have been worked, the employee's sick bank will be charged a half of a sick day.⁴

2. An employee unable to perform police duties because of injury or illness may absent himself from his home only with the specific permission of his commanding officer."

The City further proposes that the Bonus Vacation Days' benefit shall continue unchanged.

4. The text is as stated in the City brief.

ASSOCIATION LAST OFFER.

Continuation of the current system with the change in retirement and death sick leave payment as follows:

"Retirement and Death Sick Leave Payment.
Immediately preceding the effective day of a member's retirement, exclusive of duty and non-duty disability retirement, or at the time of a member's death, he or his estate shall be entitled to pay for his unused accumulated sick banks as follows:

a. A member shall receive a full pay for 50% of the unused accumulated sick bank amounts not to exceed 180 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."

The Association explains its offer as follows:

"Currently Detroit police officers receive a maximum of 60 days payoff upon retirement from the Detroit Police Department. The proposal submitted by the Association would provide a maximum of 90 days payoff at retirement or death. The current sick leave plan of the City of Detroit provides no payoff whatever on the death of a [sic] Association member [employee]."

The Association notes that "[a]lmost all other communities surveyed pay substantially more than the City of Detroit with respect to sick leave payoff."

The national survey cities vary from no payoff at either retirement or death (Baltimore and Chicago) to unlimited accumulation with 100% payoff on retirement but apparently not death (Houston) and a maximum accumulation with 180 days payoff on death or retirement at 100% (San Francisco). The Michigan survey cities also disclose variation although in every instance there appears to be a payoff on death of an employee.⁵

The City estimates that the Association proposal will cost \$3,286,119.

The City's first proposal, i.e., the reduction from sick banks, is economic and subject to the last offer. The second City proposal is not economic. With respect to the second proposal, Acting Deputy Police Chief Rebel Brawner testified that until April, 1975 the Police Department had the right to insist that a police officer remain at home when he was off work because of injury or illness. By agreement, in April, 1975, the practice was discontinued.

The City offered Exhibit 39 which shows an increase in sick leave days in 1974, 1975 and 1976, as follows:

Lieutenants:

1974 - 7.8 sick leave days per lieutenant
1975 - 12.6 sick leave days per lieutenant
1976 - 10.7 sick leave days per lieutenant
1977 - 9.5 sick leave days per lieutenant (The City notes that this is a decrease from 1976 but an increase over 1974.)

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5. Union Exhibit 12 is unclear as to whether unused sick leave is paid off in case of death in Flint and Grand Rapids as the exhibits refer only to "payoff".

Sergeants:

1974 - 6.6 sick leave days per sergeant
1975 - 9.6 sick leave days per sergeant
1976 - 9.5 sick leave days per sergeant
1977 - 11.06 sick leave days per sergeant.

The statistics do not necessarily establish that the elimination of the requirement that an employee secure permission before he may leave home while on sick leave is the reason that more sick leave days were used in 1975 and 1976 than in 1974. The City proposal is not, to the chairman's knowledge, common in the private sector; and no evidence was offered by the City to disclose its use in other police departments in Michigan or throughout the country.

If the Police Department management is of the opinion that any police officer--lieutenant, sergeant or rank and file patrolman--is malingering, the City has the right (as occurs in private industry) to send a supervisor to determine whether the absent employee is, in fact, ill. Requiring an employee to secure permission to leave home is, the chairman believes, an affront to the dignity and integrity of police officers, and could damage police morale. The City's first proposal is reasonable and will effectuate administration of the sick leave program.

PANEL DECISION ON ECONOMIC ISSUES

As noted above, the evidence discloses that most of the national survey cities and apparently all the Michigan survey cities provide for payment of accumulated sick leave at death

of an employee, and that most cities provide a higher payoff than the City of Detroit pays to police lieutenants and sergeants on retirement.

The panel adopts the Association last offer on payment of retirement and death benefits.

The panel adopts the City last offer on sick leave payment for partial days. The panel further adopts the City last offer that the Bonus Vacation Days' benefit shall continue unchanged.

PANEL DECISION ON NON-ECONOMIC ISSUE.

The panel denies the City proposal that an employee unable to perform police duties may not absent himself from his home without permission of his commanding officer.

3. COURT TIME

CURRENT PRACTICE.

The current practice is included in Article 19 of the 1974-77 Collective Bargaining Agreement and in Police Department General Order 74-19.

CITY LAST OFFER.

None.

ASSOCIATION LAST OFFER.

The Association proposes a continuation of the current practice modified by changes to which the City of Detroit has already agreed in its negotiations with the Detroit Police Officers

Association. Additionally, the Association proposes that the agreement be included in the collective bargaining contract to become effective July 1, 1977.

PANEL DECISION.

The City did not present evidence to counter the Association last offer, and apparently has no objection to it. It will, therefore, be adopted, including the proposal that it become part of the collective bargaining contract.

The chairman suggests, however, that because of the difficulty in applying a provision of this type retroactively, the City and Association make it effective at the time the contract is executed.

4. HOLIDAYS

CURRENT PRACTICE.

The current practice is enunciated in Police Department General Order 73-37, as amended by General Order 74-19, and Article 24B4 of the 1974-77 Collective Bargaining Agreement. The agreement grants four hours "excused time" on Good Friday or the last scheduled work day prior to Good Friday, and eight hours "excused time" on the last scheduled paid day before Christmas, and before New Years, provided employees are on the payroll through the specified holiday.

The General Orders provide for the following holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day and election day or an eighth holiday in years when there is no election. A ninth holiday is granted to employees who have been employed 90 days or more and who are entitled to regular holidays under the ordinance. This holiday may be taken at any time during the fiscal year which is mutually acceptable to the employee and the Police Department.

CITY LAST OFFER.

Retain the existing practice.⁶

ASSOCIATION LAST OFFER.

Add Washington's Birthday and Lincoln's Birthday as two additional "excused days".

In the case of the "excused days", employees who are required to work any portion of such day receive equal time off for hours worked or straight-time cash at the option of the Chief of Police. No holiday premium is paid for work on an excused day.

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6. The City's brief states: "The City has withdrawn all its demands in this area and wishes only to continue existing practices." However, the document entitled "City of Detroit Final Last Best Offer to the Detroit Police Officers Association on Economic Issues" states: "The holiday premium rate shall be changed so that an employee who works on a premium holiday shall receive double time (2 X) premium in addition to regular day's pay. All other provisions shall remain unchanged." The panel assumes that the City last offer is to continue existing practices.

The Association offered evidence of holiday pay practices in the national cities and Michigan cities, which discloses a low of 10 days and a high of 14 days. The Association notes that under its proposal "no additional holiday premium need be paid". The proposal is "only to increase excused time which is the equivalent of additional compensatory time".

The answer to the Association argument is that cost will undoubtedly increase because it will be necessary to add police officers to provide adequate police protection for the City of Detroit.

The City estimates the cost of an increase of two excused days as \$948,024.

PANEL DECISION.

The current practice of 9 holidays is below the number of holidays in the comparison cities, which range from 10 days (Flint and Southfield) to 14 days (Baltimore and Philadelphia). However, when the award of other economic conditions is considered, the panel finds it appropriate to adopt the City last offer.

5. VACATIONS (FURLONGHS)

CURRENT PRACTICE.

The current practice is included in Police Department General Orders 73-37 and 73-45 and Article 17 of the 1974-77

Collective Bargaining Agreement. Vacations (furloughs), scheduled in accordance with seniority with some exceptions, consist of "20 work days for each year of active service".

CITY LAST OFFER.

Retain the current practice.

ASSOCIATION LAST OFFER.

Employees from date of hire to 20 years
of seniority - 20 vacation days per year;
Employees with 21 to 25 years of seniority -
22 vacation days per year;
Employees with more than 25 years of seniority -
24 vacation days per year.

The City estimates the loss by the Association proposal as 8,016 man days per year.

The Association evidence discloses that vacations in the comparison cities range from a low of 10 days to 20 days for the first 5 years of service, and from 20 days to 30 days (1) for 20 years of service.

PANEL DECISION.

It is apparent from the evidence that as compared to both the national and Michigan cities Detroit is high for low seniority employees, and slightly low for high seniority employees. The evidence does not disclose any disparity which requires correction by the panel. The City last offer is adopted.

6. WAGES AND COST-OF-LIVING ALLOWANCE

CURRENT PRACTICE.

Article 24A1 of the 1974-77 Collective Bargaining Agreement provides:

"24. ECONOMIC PROVISIONS

A. Wages and Cost of Living Allowance:

1. Base Salary - The salary improvement provided herein recognizes that a continuing improvement in the standard of living of employees depends upon technological progress, better tools, methods, processes and equipment, and a cooperative attitude on the part of all parties in such progress. It further recognizes the principle that to produce more with the same amount of human effort is a sound economic and social objective. Accordingly, all employees covered by this Agreement shall receive salary increases as follows:

a. Effective July 1, 1974 all employees shall receive an increase of 5% of their salary in effect on June 30, 1974.

b. Effective July 1, 1975, all employees shall receive an increase of 4% of their salary and cost-of-living allowance being paid effective June 30, 1975.

c. Effective July 1, 1976 all employees shall receive an increase of 4% of their salary and cost-of-living allowance being paid effective June 30, 1976."

There is a 22% differential between the base wages of sergeants and police officers and a 37% differential between the base wages of lieutenants and police officers under Section A3 of Article 24 as follows:

"3. In no event shall the percentage differential between the salaries of Police Sergeant and the maximum salary of Police Officer be less than 22%; and the differential between the salary of Police Lieutenant and the maximum salary of Police Officer shall not be less than 37%. Cost of Living Allowances shall be considered as part of salaries for this purpose."

The article also includes a cost-of-living allowance providing for increases in compensation based on the official Detroit Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI) published by the Bureau of Labor Statistics (1967=100) based on one cent per hour for each 0.3 adjustment in the CPI.

CITY LAST OFFER.

Maintain 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; also maintain base wage differentials for the other job classifications.

Provide the Association with the same cost-of-living allowance--if any--awarded the police officers in the current arbitration pending between the City of Detroit and the Detroit Police Officers Association (DPOA).

ASSOCIATION LAST OFFER.

"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 Association further proposes to increase the differential for the contract year July 1, 1978 to June 30, 1979 to 23% between sergeants and police officers and 38% between lieutenants and police officers; and during the July 1, 1979 to June 30, 1980 contract year, to a differential of 24% between sergeants and police officers and 39% between lieutenants and police officers.

The Percentage Differential Proposals of the City and the Association are presented separately from the Wage and Cost-of-Living Allowance proposals.

The Association avers that to tie the compensation to be received by the lieutenants and sergeants to the arbitration proceeding pending between the City of Detroit and the Detroit Police Officers Association is not "within the scope of Act 312" and the panel "will have a difficult time determining by competent evidence that this Association's wages should be a certain percentage more than an unknown amount to be awarded to the Detroit Police Officers Association members".

The Association seeks to continue its current position as compared with other national and local communities. The Association cites a part of Article 24A1:

" . . . The salary improvement [the percentage increases in the 1974-77 agreement] recognizes that a continuing improvement in the standard of living of employees depends upon technological progress, better tools, methods, processes and equipment, and a cooperative attitude on the part of all parties in such progress. It further recognizes the principle that to produce more with the same amount of human effort is a sound economic and social objective. . . ."

The Association asserts that the panel in determining the salary issue is to consider the cost of living. The Association cites the testimony of Professor Saul Hymans of the University of Michigan, who testified on the expected rise in the cost of living over the next two years, and concludes that the wages and cost of living adjustment which the Association has proposed "would not even equal the cost-of-living increases projected for the near future".

The City notes that the 1974-77 contract provides that the percentage differential between the salaries of police sergeants and the maximum salary of a police officer will not be less than 22%, and the differential between the salary of a police lieutenant and the maximum salary of a police officer will not be less than 37%, with cost-of-living allowances considered as part of salaries for that purpose.

The City calls attention to the fact that most of the comparison cities do not have cost-of-living provisions in their contracts; and that "civilian" city employees have not received cost-of-living allowances in the most recent contracts.

The City estimates the total cost of the Association last offer as \$20,990,000.

PANEL DECISION.

Wages:

The Association last offer on salaries for members of the bargaining unit is reasonable and not out of line with other settlements in other police departments in the comparison cities. It is also not out of line with private sector settlements during the past year. No persuasive evidence was offered to the panel to warrant that the settlement to which the parties agreed in the 1974-77 contract not be continued during the 1977-80 contract.

The panel adopts the Association wages proposal.

Cost-of-Living Allowance:

In the panel's opinion, employees under a three-year contract are entitled to a cost-of-living allowance. The panel therefore adopts the Association proposal on cost of living.

It is our understanding that the City will receive credit for the cost-of-living amounts which have heretofore been paid pursuant to the order of the Circuit Court for Wayne County in Detroit Police Lieutenants and Sergeants Association v City of Detroit, Civil Action No. 77-731924-CL.

Differential:

No persuasive evidence was offered to warrant changing the current differential between the base wages of sergeants and police officers and the base wages of lieutenants and police officers as provided in Section A3 of Article 24 of the contract. The City and the Association have agreed that the issue of the differential is separate from wages and cost of living. Consequently, consistent with the concept of the City last offer, the panel directs that Section A3 of Article 24, which is quoted above, be continued in the 1977-80 contract.

7. LIFE INSURANCE

A. Death Benefits

CURRENT PRACTICE.

Membership in the death benefit plan is mandatory for all regular employees. Each employee contributes 25¢ per week; the City contributes \$20.70 per year per employee. This plan provides a death benefit of \$4,900.

CITY LAST OFFER.

Maintain same benefits.

ASSOCIATION LAST OFFER.

Maintain same benefits.

B. \$10,000 Duty Death Benefit.

CURRENT PRACTICE.

A lump-sum duty death benefit of \$10,000 is paid to the beneficiaries or the estate of each deceased employee whether

the employee is killed or dies as a direct result of injuries sustained in the actual performance of duties. A lump-sum payment of \$10,000 is also paid to an employee who is totally and permanently disabled from illness or injury arising solely out of the performance of his duties. "Totally and permanently disabled" is defined in Article 24B2.

CITY LAST OFFER.

Adopt the same rules and procedures for police lieutenants and sergeants as may be negotiated by or awarded to the employees represented by the Detroit Police Officers Association.

ASSOCIATION LAST OFFER.

Maintain the current program.

The Association notes that other City employees receive the identical benefit as stated in the Association last offer.

C. Life Insurance.

CURRENT PRACTICE.

Group life insurance is provided by the City of Detroit with employees' contribution and employer's contribution determined by the Employee Benefit Board. Participation in the program is optional. The total benefit for each lieutenant and sergeant is \$12,500.

CITY LAST OFFER.

Maintain the present program.

ASSOCIATION LAST OFFER.

Benefits shall be paid under the group life insurance policy equal to the nearest \$1,000 of salary of each employee. Premiums are to be paid in full by the employer.

The Association urges that the cost for the increase in life insurance will be modest. The comparable cities disclose a wide variation in insurance, ranging from no insurance in Los Angeles, New York and San Francisco to \$30,000 in Southfield, with the City paying the entire premium.⁷

The Association further avers that it is "neither extravagant nor unreasonable to provide one year's salary to the survivor or beneficiary of a police officer who is killed in the line of duty or otherwise dies".

PANEL DECISION.

A. Both the City and the Association propose that the current death benefit program be continued.

B. \$10,000 Duty Death Benefit. We have awarded salary increases to the police lieutenants and sergeants which differ from the salary and wage increases to which the City and labor organizations representing other employees have agreed. Hence, we are not persuaded that the employees represented by the Association necessarily need to receive "the identical benefit" received by

7. In Milwaukee lieutenants may secure \$34,221 insurance, but the employee pays a portion of the premium.

other City employees. We are of the opinion, however, that there should be consistency with respect to death benefits between the employees represented by the Association and the employees represented by the Detroit Police Officers Association. Therefore we adopt the City last offer.

C. The increase in group life insurance to equal the nearest \$1,000 salary paid to an employee is not unusual and not unreasonable.

The City estimates the cost of this proposal as \$660,135.

In view of the salary increase and cost-of-living allowance which we have awarded, it is the opinion of the panel that the increase requested by the Association is not warranted.

The panel adopts the City last offer.

BONUS VACATION DAYS

(This is included in "Sick Leave". See Sick Leave proposal of Association and City.)

8. LEGAL COUNSEL

(The parties have treated this issue as economic, although it is not of direct benefit to all unit employees.)

CURRENT PRACTICE.

Chapter 16 of Article XIII of the Detroit City Code provides for the retention of counsel for employees who need legal representation in connection with their official duties, including employees who have retired. Official duties are defined as all acts:

- (1) performed pursuant to authority conferred by law;
- (2) within the scope of employment;
- (3) in relation to matters committed by law to the officer or employee's control or supervision; or
- (4) committed to the department or office under whose authority the officer or employee is acting, whether or not there is negligence in the performance of such acts.

Wilful misconduct or lack of good faith does not constitute performance in good faith of the official duties.

Whenever an employee is of the opinion that he may be sued by reason of, or as the result of, the performance in good faith of his official duties, the officer must promptly notify the Corporation Counsel of all the facts and circumstances; and upon receipt of any claim, demand, notice, summons or complaint, to promptly forward the same to the Corporation Counsel. Employees must promptly file a written request that he or she be represented by the Corporation Counsel's office; and the employee must cooperate with the Corporation Counsel in defense of any action. Following a report by the Corporation Counsel to the Common Council, the Common Council determines whether or not the claim, demand or suit arises out of or involves the performance in good faith of the official duties of the employee. Pending such determination, the Corporation Counsel represents each

employee making a request for representation provided the representation has been approved by the head of the department. A finding and determination by the Common Council as to whether or not any claim, demand or suit arises out of or involves the performance in good faith of the official duties of such officer or employee is binding and final. The provision is applicable only to civil actions.

CITY LAST OFFER.

Existing practices as described in the Municipal Code of the City of Detroit, Chapter 16, Article XIII, shall remain unchanged.

ASSOCIATION LAST OFFER.

The City shall provide legal counsel and pay any costs and judgments that arise out of lawsuits filed against members of the Association which allege any act committed while said officer was performing his duties, or in the alternative, shall provide insurance in the amount of at least \$2,000,000 to provide alternate protection for members of the Association.

Evidence was offered that on April 14, 1978 the Police Department unilaterally altered the existing practice by requiring that police officers, including lieutenants and sergeants, retain their own lawyer pending a decision of the City with regard to representation.⁸

8. This unilaterally adopted requirement may be an unfair labor practice.

The Association urges that the unilateral change requires officers to expend their own funds and is detrimental to both police officers and City government. The evidence, the Association avers, reflects the need for a well-defined procedure which does not impose unfair burdens on either party.

The Association notes that lawsuits against police officers have increased.

PANEL DECISION.

The evidence discloses that prior to the chief of police unilaterally changing the existing practice, the Corporation Counsel's office immediately represented each employee who made a request for representation. Pending a determination as to whether the employee's action for which a lawsuit had been brought against him was a good faith action which warranted representation, the Corporation Counsel's office filed an answer for the employee and took other required action in the lawsuit.

It is our understanding that the Association has advanced its proposal with respect to legal counsel for employees because of the unilateral action by the police department.

In our opinion the Association proposal that the City provide legal counsel and pay costs and judgments of lawsuits filed against members of the Association arising out of good faith performance of their duties is reasonable. We reiterate that

it is our understanding that the Association proposal does require that the duties for which an employee is sued must have been performed in good faith before such employee is entitled to representation by the City. We are of the opinion, however, that the City should promptly undertake the defense of an action on behalf of an employee pending determination of the "good faith" question. It is our further understanding that such is consistent with the Association proposal.

The panel adopts the Association last offer.

9. SHIFT DIFFERENTIAL

CURRENT PRACTICE.

Shift differential of 25¢ per hour is paid to police officers required to work the afternoon shift; a shift differential of 30¢ per hour for the night shift.

CITY LAST OFFER.

The shift differential for members of the police lieutenants and sergeants' bargaining unit shall be the same as for police officers in the Detroit Police Officers Association bargaining unit.

ASSOCIATION LAST OFFER.

Shift differential of 35¢ per hour shall be paid for the afternoon shift; and 45¢ per hour for the midnight shift.

The Association avers that its demand is reasonable and compensates employees for the inconveniences which they and their families are required to live with as a result of monthly shift changes.

The City notes that an employee who works one-third of his time on days, one-third of his time on afternoons and one-third of his time on nights receives, under the present program, a total of \$381.15 per year (\$173.25 for afternoon; \$207.90 for the night shift).

PANEL DECISION.

The Association has not offered persuasive evidence to establish that the shift differential is unfair. However, in the event the panel in the Detroit Police Officers Association should award a shift differential higher than the current differential, the lieutenants and sergeants should have the same differential. For this reason, the City last offer is adopted.

10. DENTAL INSURANCE

CURRENT PRACTICE.

No dental insurance is provided to Detroit City employees.

CITY LAST OFFER.

There shall be no dental insurance provided by the City.

ASSOCIATION LAST OFFER.

The City shall pay the full premium for the Delta Dental Plan or its equivalent for all full-time employees, their spouses

and their dependent children under the age of 19. The proposed Delta Dental Plan provides 75% of treatment costs paid on Class I benefits, 50% of all treatment costs on Class II benefits, with an \$800 maximum per contract year. The Association avers that employer-paid dental insurance plans have gained, and are continuing to gain, wide-spread acceptance in both the public and private sectors as more and more employers recognize the practicality and advantages of covering their employees with a dental benefit plan. The panel should take judicial notice of the heavy concentration of auto industry employees found in the Detroit metropolitan area which are covered by dental plans.

The 75-25 insurance plan proposed in the Association last offer "is not nearly the most expensive nor is it the cheapest" of the dental plans which may be adopted. The cost of the proposal is, as Association witnesses testified, \$24.86 per month.

The City estimates the cost of the dental plan proposed by the Association as \$1,088,271.

PANEL DECISION.

Although a dental plan is desirable for employees, it is a costly fringe benefit. In view of the City's financial condition and the other economic awards, the City last offer is adopted.

11. PENSIONS--MILITARY SERVICE CREDIT

CURRENT PRACTICE.

Time spent in the military prior to an employee's employment by the City is not counted as service credit.

CITY LAST OFFER.

The policemen and firemen retirement system shall remain unchanged.

ASSOCIATION LAST OFFER.

Provisions of MCL 38.581 shall be applied to the current pension system of the City of Detroit to provide the opportunity for Association members to claim military service credits toward the years in the retirement system, not to exceed three years' credit.

MCL 38.581 provides that a city with an independent police or fire retirement system (as is the case with Detroit) may provide for military service credit not to exceed five years, to a member of the retirement system employed subsequent to his service in the military.⁹ An employee who elects to claim the service credit must pay the retirement system an amount, together with interest, equal to the annual contribution rate in effect at the time of his election, multiplied by the period of military service claimed.

9. MCL 38.556(1) authorizes a city to provide a maximum of six years' service credit for employees who have been hired subsequent to military service. This provision is not applicable to the City of Detroit retirement program.

The City estimates the cost of the Association last offer as \$1,971,817.

PANEL DECISION.

The City estimates that one-third of the employees are entitled to claim three years of military service and bases its cost estimate on that fact.

Inquiry discloses that bargaining unit employees are entitled to pre-employment military service credit as follows:

Three year credit	145
Two year credit	102
One and one-half year credit	50
One year credit	30
Six month credit	20
	<u>347</u>

Thus, less than one-third of the employees are entitled to military service and of the 347, 145 or less than half are entitled to three years credit. There is, also, no way of knowing whether all of the employees would pay in the amounts which they are required to pay in order to secure the credit.

However, in view of the salary increases and cost of living which have been awarded by the panel and the sick leave death payment which has also been awarded, the panel, considering the City's economic situation, has determined that the Association proposal should not be adopted for the 1977-80 collective bargaining contract. In reaching this decision we are mindful of the substantial payments which the City is now required to pay to the pension funds for City employees.

12. PENSIONS--25 YEARS OF SERVICE

CURRENT PRACTICE.

Pursuant to City Charter provision, employees employed prior to January 1, 1969 are eligible for retirement and pension on accumulating 25 years of service. Employees employed subsequent to January 1, 1969 must attain the age of 55 and have 25 years of service to be eligible for retirement and pension.

CITY LAST OFFER.

Retain the present practice.

ASSOCIATION LAST OFFER.

Return to the prior system, i.e., any employee who has attained 25 years of service is eligible for pension and retirement benefits.

The Association avers that the imposition of the 55-year-old requirement "cannot be justified and is an arbitrary act"; and that the Association proposal is not only fair and equitable to all employees of the Police Department, but does not impose an unduly harsh financial burden upon the City.

The City avers that the current benefit levels of the City's pension program are "extremely generous", noting that currently the City is required to contribute 57.09% of its payroll into pensions. The large contributions are required because the amount contributed by the City to police and firemen turned out

to be insufficient to cover the pensions because following retirement larger than expected wage increases occurred and pensions of pre-1969 members are indexed to the wages of the persons still working.

The City estimates the cost of the Association last offer as \$1,725,340.

PANEL DECISION.

The January 1, 1969 change in eligibility was adopted after significant citizen complaint at the liberal retirement provision for police officers. The new program was also consistent with the growing recognition that employers who have adopted a retirement age not connected with chronological age frequently lose their most experienced employees, thereby decreasing the efficiency of the operation. The Association has not offered evidence to persuade the chairman that the current program is unfair to the Detroit Police Lieutenants and Sergeants. The City last offer is adopted.

13. PENSION--SURVIVORS' BENEFITS

CURRENT PRACTICE.

Each active and retired employee contributes 1% of his compensation annually until he has acquired 25 years of credited service to the survivors' benefit fund. The accumulated amount is deposited for the employee in an annuity savings fund and

bears interest (Article VII, Paragraph 8 of the Police and Firemen Retirement System). Upon the death of an employee the accumulated contributions in the annuity savings are transferred and become part of the survivors' benefit fund.

CITY LAST OFFER.

The present provision of the Police and Firemen Retirement System shall remain unchanged.

ASSOCIATION LAST OFFER.

The Association proposes that the 1% annual contribution required by each employee with less than 25 years seniority in the Police Department be reduced to 1/2 of 1%.

The only change proposed by the Association is a reduction in the amount of employee contribution. Benefits would, under the Association proposal, remain the same.

The City estimates the cost of the Association last offer at \$374,645.

PANEL DECISION.

While the employees' desire to reduce their annual contribution from 1% of salary to 1/2% of salary is understandable, the panel, after considering the wages and cost-of-living awards which it has made and the City's economic condition, is of the opinion that the Association proposal should be rejected.

The City last offer is adopted.

The Association has proposed that the contract include a reference to the pension program. The panel directs that appropriate language referring to the pension plan be included in the contract.

NON-ECONOMIC ISSUES

14. COMMAND AUTHORITY

CURRENT PRACTICE.

The current practice was established by agreement of the Association and the City at a fourth-level grievance hearing held January 14, 1977. The following guidelines were adopted by the parties' representatives, and issued by Acting Executive Deputy Chief James Bannon:

"RULES GOVERNING THE USE OF POLICE OFFICERS I.R.U. DUTIES

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Police officers are to assist sergeant investigators as directed with:

1. Interrogating and processing prisoners.
2. Interviewing complainants and witnesses.
3. Preparing P.C.R.'s and assisting in obtaining search warrants.
4. Preparing cases as directed for presentation in court.
5. Assisting with other necessary and related duties when directed by a sergeant investigator.
6. When the sergeant investigator is on furlough or leave, their police officer partner will be teamed temporarily with another sergeant investigator. Said sergeant will assume the responsibility for supervising any investigations the police officer is assisting on at the request of his normally assigned sergeant.

"NOTE: All case assignments are to be the sole responsibility of the assigned sergeant investigator."

The Association proposal is described in the Association brief:

"No person shall perform the duties of the members of this bargaining unit who is not a member of the bargaining unit. Some of the duties of members of this bargaining unit, include but are not limited to, the following: (1) Investigative functions, including all follow-ups; (2) case assignments and necessary follow-up; (3) interrogation of prisoners, and the processing of prisoners; (4) crime scene investigation; (5) court case preparation and presentation; (6) others.

No person other than members of the bargaining unit shall perform any of the above listed functions, nor any other duties which have traditionally been performed by Sergeants and Lieutenants.

In support of its position, the Association avers:

"Traditionally, members of the Association performed exclusively all functions which the Association is currently basing its Last Best Offer upon. In 1976 and 1977, the police department unilaterally reorganized several areas including investigative response units.

The obvious intent of the Department is that reorganization was to erode the Association's bargaining unit by assigning members of another bargaining unit to functions performed by this Association.¹⁰

10. No evidence was offered by the Association to support this contention.

"Evidence presented to this hearing indicated that police officers assigned to the functions which this Association has historically done have received no special training whatever. On the other hand, Sergeants and Lieutenants who perform investigative functions are especially trained in those areas and attend school to acquire requisite knowledge. Of particular importance in Association Exhibit #2 is the statement by Executive Deputy Chief James Bannon that 'no case assignment will be given to police officers and all responsibility for case assignment is entirely that of the Sergeant investigator.' The Association's position is that additional functions performed by members of this bargaining unit should remain functions of this bargaining unit. Members of this Association are especially trained to perform the functions of investigator and detective. The duties of members of the bargaining unit, which have been listed above, all come within those traditional functions."

The City requests that the panel deny the Association request and that the current practice as outlined in the letter of Acting Executive Deputy Chief Bannon on January 24, 1977 be retained.

In support of its position to retain the current practice, the City points to the testimony of Deputy Chief Reginald Turner who testified that investigative work has been performed by police officers in areas of homicide, sex crime, armed robbery, auto theft, vice, narcotics and organized crimes for many decades. Police officers have also performed the following: interrogation of prisoners, crime scene investigations, prisoner processing and case preparation and presentation.

The foregoing have been performed without the supervision of a sergeant.

The alleged problem which the Association seeks to correct appears to have risen, in part, because of the transfer in 1968 of all detectives to sergeants. Prior to the transfer, detectives ranked below sergeants, and were in the bargaining unit represented by the Detroit Police Officers Association. As detectives, they performed investigative work, as did police officers in precincts and headquarters bureaus.

Deputy Chief Turner testified that (1) the needs of the Police Department and the City can only be met by police officers continuing to perform these investigative duties; (2) to limit investigative work to sergeants and lieutenants will not improve the department's ability to fight crime; (3) but, to the contrary, may detract from such ability. Deputy Chief Turner further testified that sergeants are not afforded any special training in handling investigative work, hence are not better qualified for such activity than police officers. Deputy Chief Turner's testimony was not refuted.

The City further points out that the letter issued by Deputy Chief Brannon refers only to investigative response units. This unit, which was established in 1975-76, does not include all types of police work or all types of investigative units.

PANEL DECISION.

The evidence does not establish that the City has removed investigative work from the lieutenants and sergeants'

bargaining unit, or that the investigative activities of the Detroit police would be improved by requiring that a sergeant participate in each investigative situation.

The panel denies the Association proposal.

15. DURATION OF CONTRACT

As stated above, the panel chairman announced during the hearings that he favored a three-year contract commencing July 1, 1977 and terminating June 30, 1980.

As its award, the panel directs that the contract entered into by the City and the Association remain in effect for the three-year period commencing July 1, 1977 and terminating at the end of the day on June 30, 1980.

16. PROMOTIONS

Both the City and the Association propose changes in the promotional system established by Personnel Order 77-106, as amended. The panel has determined that additional evidence is required before a decision on the issue of promotions may be made. Consequently, the panel reserves jurisdiction on said issue; and will issue an award at a later date following a hearing.

SUMMARY OF AWARDS ON ISSUES

1. LONGEVITY. The panel adopts the last offer of the City that there be no change in the current longevity policy.

2. SICK LEAVE. The panel adopts the Association last offer on payments of death benefits.

The panel adopts the City last offer on sick leave payment for partial days.

The panel denies the City proposal that an employee unable to perform police duties may not absent himself from his home without permission of his commanding officer.

3. COURT TIME. The panel adopts the Association last offer to which the City apparently has no objection. The Association last offer is the current practice modified by changes to which the City has agreed in its negotiations with the Detroit Police Officers Association. The panel further directs that the court time procedure be included in the collective bargaining agreement to become effective July 1, 1977.

4. HOLIDAYS. The panel adopts the City last offer that the current practice of nine holidays not be changed.

5. VACATIONS. The panel adopts the City last offer that the current vacation program not be changed.

6. 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 directs that the provision of the current contract be continued.

7. LIFE INSURANCE.

A. Death Benefits. The City and Association are in agreement on the death benefit program.

B. \$10,000 Duty Death Benefit. The panel adopts the City last offer that there be no change in the current \$10,000 duty death benefit program.

C. Group Life Insurance. The panel adopts the City last offer that there be no increase in the group life insurance coverage.

8. LEGAL COUNSEL. The panel adopts the Association last offer that the pending practice of the City in providing legal counsel for members of the bargaining unit be continued, i.e.,

an employee against whom a lawsuit has been filed is to be defended by counsel provided by the City, pending a determination as to whether the employee's action which caused the lawsuit arose out of good faith performance of the employee's duties. In the alternative, the City may, consistent with the Association proposal, provide insurance in the amount of at least \$2,000,000 to provide alternate protection for members of the Association.

9. SHIFT DIFFERENTIAL. The panel adopts the City last offer that there be no change in the shift differential.

10. DENTAL INSURANCE. The panel adopts the City last offer that it not provide dental insurance.

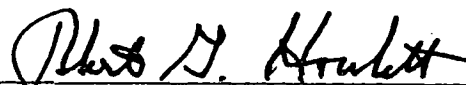
11. PENSIONS--MILITARY SERVICE CREDIT. The panel adopts the City last offer that the City not provide military service credit for military service prior to employment.

12. PENSIONS--25 YEARS OF SERVICE. The panel adopts the City last offer that there be no change in the 25 years of service program.

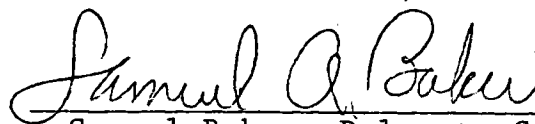
13. PENSIONS--SURVIVORS' BENEFITS. The panel adopts the City last offer that there be no change in the 1% paid by employees for survivors' benefits.

14. COMMAND AUTHORITY. The panel denies the Association proposal that there be a change in command authority in investigatory functions.

15. DURATION OF CONTRACT. The panel adopts the City proposal that the contract cover the period from July 1, 1977 to June 30, 1980.



Robert G. Howlett, Chairman



Samuel Baker, Delegate Selected by the City of Detroit, Dissenting on Issue Nos. 2*46**



Armand Bove, Delegate Selected by Detroit Police Lieutenants and Sergeants Association, Dissenting on Issue Nos. 10 and 11.

October 18, 1978

* dissenting on sick leave retirement and death benefit; concurring on remainder.
** concurring on retention of current differential