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IN THE MATTER OF THE ARBITRATION BETWEEN

CITY OF DETROIT

and

DETROIT POLICE OFFICERS ASSOCIATION,  

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POLICE RESIDENCY: COMPULSORY ARBITRATION

PURSUANT TO ACT 312, MICHIGAN PUBLIC

ACTS OF 1969, AS AMENDED

OPINION AND AWARD

ARBITRATION PANEL

Harry H. Platt, Arbitrator/Chairman

Allan W. Davis, City of Detroit  
Delegate

Jack Wood, DPOA Delegate

September 5, 1975

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Compulsory Arbitration  
Pursuant to Act 312,  
Michigan Public Acts  
of 1969, as amended

OPINION OF THE CHAIRMAN

This matter was submitted to binding arbitration under Act 312 of the Michigan Public Acts of 1969, as amended, which provides for compulsory arbitration of labor disputes in municipal police and fire departments. As originally enacted in 1969, Act 312 was to expire June 30, 1972. In 1972, an amendment extended the expiration date to June 30, 1975, with the provision that cases pending or under negotiation at that date would be completed under the provisions of the Act. Act No. 3 of the Public Acts of 1975, approved and ordered to take immediate effect March 25, 1975, repealed Section 15 of Act 312, eliminating the expiration date altogether. The parties have stipulated the matter is properly before this arbitration panel, that all procedural aspects of Act 312 have been complied with, and that the time for issuing the panel's order is extended beyond the 30-day limit (after conclusion of the hearing) prescribed in the Act.

The Detroit Police Officers Association (DPOA) is the recognized and exclusive bargaining representative of all sworn police officers of the Detroit Police Department, below the rank

of Sergeant. Upon their inability in 1972 to resolve a number of economic and non-economic disputes at the expiration of their last previous collective bargaining agreement, the City and the Association entered into compulsory arbitration under Act 312. The Order of the 1972 arbitration panel, which was chaired by the Honorable Bruce A. Fox, established an economic agreement effective July 1, 1972 and expiring June 30, 1974. The non-economic aspects of the contract were given effect by the Detroit Common Council on June 26, 1973, and, according to the terms of the Order, were to expire three years after such effective date. However, one significant non-economic aspect of the parties' 1972 dispute was not resolved by the Fox panel, which declined to rule on the question of police residency. Although recognizing this question as "probably the single most controversial and emotional issue to arise out of (that) arbitration proceeding," it took note of a decision by the Michigan Court of Appeals that residency was not a mandatory subject of bargaining.

That case was then on appeal to the Michigan Supreme Court, which reversed the ruling of the Court of Appeals with respect to residency in February, 1974, declaring residency to be a mandatory subject of bargaining under the state Public Employment Relations Act (PERA). Detroit Police Officer's Association -vs- City of Detroit, 391 Mich. 44; 214 NW 2d 803 (1974). Shortly after this Supreme Court decision, the DPOA, on February 20, 1974, made a formal demand upon the City to "meet and bargain in good faith regarding the residency of police officers." The parties were unable to resolve the residency dispute through negotiation,

however, nor could they come to terms for a new economic agreement to succeed the 1972-74 contract. Accordingly, on June 14, 1974, the Association requested binding arbitration under Act 312.

Act 312, known as the Police and Fireman Compulsory Arbitration Act, was enacted by the Michigan Legislature in recognition of the fact that where, as in this State, policemen and firemen are prohibited by law from striking, it is necessary and in the public interest to provide an effective, equitable means of dispute settlement as an alternative to strikes or job action by those public safety employees. In conformance with the Act, the arbitration panel selected to hear and decide this dispute is comprised of a delegate chosen by each party to the dispute and an impartial third person serving as arbitrator/chairman. The City's chosen delegate is Allan W. Davis; the Association's is Jack Wood, the latter having been a member of the 1972 panel as well. When the parties' delegates were unable to agree upon an impartial third person to chair the panel, the Michigan Employment Relations Commission (MERC) was requested to appoint an arbitrator and Robert G. Howlett, Chairman of MERC appointed Harry H. Platt as arbitrator and to serve as chairman of the arbitration panel. Thus constituted, the panel met on January 8, and again on January 16, 1975, with the parties' attorneys and representatives, to determine the nature of the issues in dispute and to agree upon hearing schedules and procedures. The panel commenced hearings on February 3, 1975, in the City-County Building in

Detroit. Subsequent hearings were held on February 4, 5, 6, 7, 24, 25, and 26; March 8, 9, 18, and 22; April 14, and 15; and May 9, 1975. Both parties were afforded full opportunity to present evidence and argument during the course of these hearings, in which they were represented, respectively, by George C. Edwards III, Special Counsel to the Mayor and Attorney for the City; and Gordon A. Gregory and Nancy Jean VanLopik, of the law firm of Gregory, VanLopik and Higle, Attorneys for the DPOA.

The record of these hearings consists of fifteen volumes of transcript containing 2,029 typewritten pages of testimony and discussion and 88 exhibits; 23 Joint exhibits, 47 City exhibits, and 18 submitted by the Association. In addition, the parties filed extensive briefs in support of their respective positions. The panel met in executive sessions at various times during and after the hearing and finally on August 24 and September 5, 1975, at which the entire record was painstakingly reviewed and a decision reached.

The panel was informed at the January 16 organizational meeting that a number of economic issues were also in dispute and that they would be submitted for determination by the panel. It was stated that the economic issues concerned wages, hospitalization insurance, pension improvements, vacation and holidays, life insurance, overtime and week-end differentials, etc. Midway through the hearing schedule, it became apparent there was a possibility the parties might be able to resolve the economic issues without an Order by the panel. Accordingly, the panel chairman, being of the opinion that it would be beneficial to do so,

remanded the economic issues to the parties for further collective bargaining pursuant to Section 7 (a) of Act 312. The parties settled the economic issues and entered into a Memorandum of Understanding, dated April 1, 1975, which extended the non-economic agreement until midnight, June 30, 1977, and added new economic provisions effective July 1, 1974, through June 30, 1977. As a result, the only issue remaining in dispute before this arbitration panel is the question of residency, a fact of which the parties took note in Article IX of the April 1, 1975 Memorandum of Understanding which states that "The award of the Arbitration Panel, Harry H. Platt, Chairman, on the City's residency requirement shall be in full force and effect until June 30, 1977."

Simply put, the question to be decided is whether the parties' collective bargaining agreement, effective until June 30, 1977, shall contain a requirement that police officers of the Detroit Police Department be residents of the City of Detroit. It may be conceded that the issue involves essentially a legislative - public policy determination which, but for the means provided in Act 312 for impasse resolution in policemen and firemen collective bargaining, would be determined by elected public officials. Under Act 312, if a municipal employer and the police officers or fire fighters' bargaining unit fail to agree in collective bargaining on "wages, hours and other terms and conditions of employment," either party may request binding arbitration of the differences by a 3-member panel, who must decide the issue or issues under the specific standards prescribed in the Act. The panel's task is

to determine a fair, rational, objective solution of the dispute. In this connection, as D.P.O.A. counsel correctly point out in their brief, "the panel, in contrast to the courts, which cannot substitute their judgments for that of a legislative body, has both the authority and obligation to exercise its expertise and judgment on the basis of the record and statute. In issuing its findings of fact, opinion and order upon the issue presented, the panel is acting for the parties and the general public."

As stated, the panel in resolving this dispute, is to base its findings, opinions and orders, pursuant to Section 9 of Act 312... upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the 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 of Act 312 provides that a majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding on the parties. Read together, Sections 9 and 10 leave no room for doubt that the legislative intent was to allow the panel the broadest scope in considering what factors among those specified in Section 9, are "applicable". Furthermore, although required to support its determination by the evidence of "record", the panel may take judicial notice of certain kinds of information which are a matter of public record. As is customary in tripartite arbitral proceedings, this Opinion explaining the panel's Order has been written by the Chairman.

#### RESIDENCY: FACTUAL AND LEGAL BACKGROUND

Section 2-1-1.2 and 2-1-1.3 of the Detroit City Code (Ordinance No. 327-G, Section 1, enacted in June, 1968) provide:

Sec.2-1-1.2. Residence construed to be actual domicile. Residence shall be construed to be the actual domicile of the individual where he normally eats and sleeps and maintains his normal personal and household effects.

Sec.2-1-1.3. Residency requirement for certain employees; waiver of residency requirement. All police officers, appointees in the unclassified service, except the director of the zoo and superintendent of the House of Correction, and all persons working in any branch of the classified service of the city shall reside in the city. The civil service commission may waive the residency requirement for employment in the classified service upon a finding that such waiver would serve the best interest of the city. When waiving the residency

requirement, the civil service commission shall base their determination upon:

- (1) The nature of the work.
- (2) The location of the work, and
- (3) All other pertinent facts concerning employment.

The commission shall promptly report any waiver of residency requirement to the mayor and the common council.

This ordinance was a codification of long-standing City policy, under which nearly all City employees have been required to reside in the City of Detroit. According to City witness Charles A. Meyer, a member of the Personnel Department who served for 41 years with the Detroit Civil Service Commission, the residency requirement was one of the first rules adopted by the Commission when it was established in 1913. According to the City's brief, the history of the residency requirement extends all the way back to the City Charter of 1886. Under the City Charters in effect before Ordinance 327-G was enacted, Police Commissioners had authority to make rules for the Police Department and they granted applications from police officers for waiver of the residency rule upon a showing of unusual necessity or hardship. According to the evidence, the last Police Commissioner who granted requests for waivers of the residency rule was Commissioner Ray Girardin in March, 1968. There are at present thirteen members of the Police Department, eight police officers, four lieutenants and one sergeant, who live outside Detroit under waivers granted by Commissioner Girardin.

The DPOA mounted a challenge to the residency requirement after it was legally recognized as the collective bargaining agent

for City police officers in January, 1966, following enactment by the Michigan legislature of the Public Employment Relations Act (PERA) six months earlier. Initially, this challenge took the form of discussion and negotiations with City officials. Negotiations for the first collective bargaining agreement between the Association and the City eventually broke down and mediation was undertaken by a Detroit Citizens Committee which appointed a three-member fact finding panel consisting of arbitrators Russell A. Smith, Ronald W. Haughton, and Charles C. Killingsworth. This panel made certain findings and recommendations, which have been introduced into evidence in this case, including a recommendation on residency. The panel noted that although it had heard no evidence on the question, it believed the Association's demand that the requirement be eliminated was not unreasonable. Additional negotiations ensued, from which the Association gained the impression that the City would agree to lift or substantially relax the residency requirement. Acting upon this impression, it advised its members they had an "...absolute right to move outside the City." (TR III, p. 84) Approximately a month later it became apparent the Association's impression was not well founded, for Detroit Common Council enacted Ordinance 327-G. In the meantime, however, approximately sixty-five police officers had relocated, and shortly after Common Council adopted the ordinance the Association brought suit in Wayne County Circuit Court to test its constitutionality. That case eventually reached the Supreme Court, where it was decided that Common Council had the constitutional authority to enact

Ordinance 327-G. Detroit Police Officers Association -vs- City of Detroit, 385 Mich. 519; 190 NW 2d, 97 (1971). The Court based this finding upon the following considerations:

The job of a policeman does have 'natural distinguishing characteristics' from all other city employees. There is a special relationship between the community policed and a policeman. A policeman's very presence, whether actually performing a specified duty during assigned hours, or engaged in any other activity during off-duty hours, provides a trained person immediately available for enforcement purposes.

Police are required by department order to be armed at all times, and why is this? Simply because by such requirement they are, no matter where they are or what they are doing, immediately prepared to perform their duties. They are charged with law enforcement in the City of Detroit, and obviously must be physically present to perform their duties.

The police force is a semi-military organization subject at all times to immediate mobilization, which distinguishes this type of employment from every other in the classified service. (Supra, p. 522-523)

In the meantime, the Association had filed a Complaint with MERC in July, 1968, alleging the City had refused to bargain in good faith on the residency question. The Commission issued a decision and order, in March, 1971, that the residency ordinance, despite its constitutional legitimacy, did not remove the subject of residency "from the arena of collective bargaining." The Court of Appeals subsequently reversed the Commission's decision on that point. But when the matter came before the Michigan Supreme Court, it found that:

The enactment of an Ordinance...despite its validity and compelling purpose, cannot remove the duty to bargain under PERA if the subject of the Ordinance concerns the 'wages, hours, or other terms and conditions of employment' of public employees. If

the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of collective bargaining negotiations, the Ordinance would be in direct conflict with the State law and consequently invalid. Detroit Police Officer's Association -vs- City of Detroit, 391 Mich. 44, 58; 214 NW 2d 803 (1974)

The Court affirmed MERC's decision that the residency requirement was a term and condition of employment, as understood in Section 58 of PERA, and therefore a mandatory subject of bargaining. As such, it falls within the compulsory arbitration provisions of Act 312.

Ordinance 327-G remains in effect today, and the parties agree the residency requirements set forth therein apply to approximately 25,000 City employees. In addition, the residency question recently has been a subject of negotiation between the City and collective bargaining representatives of two other groups of City employees. The City entered into an agreement with the Detroit Police Lieutenants and Sergeants Association in October, 1974, to be effective July 1, 1974, through June 30, 1977. Section 8 of that agreement, entitled "Residency" provides: "The parties agree that all members of the bargaining unit shall be residents of the City of Detroit." Section 9 of the agreement entered into between the City and the Detroit Fire Fighters Association in January, 1975, the effective dates of which match those of the Lieutenants and Sergeants contract, contains the same stipulation. Each contract also has a Savings Clause, which states, inter alia, that, "the residency provision (hereof) shall

be of no effect in the event that said section is prohibited by law or regulation, local, state, or federal."

At the end of 1974, there were 5,418 sworn officers on the Detroit police force. Based on 1973 percentages, the DPOA estimates approximately 4,000 of them were below the rank of lieutenant or sergeant and thus within its membership. According to the City, 923 of the 5,418 sworn officers on the force at year-end (approximately 17% of the total) were black officers. Included among the Association's membership are eight police officers who are known to live outside the City pursuant to permission granted by Police Commissioner Ray Girardin and four lieutenants and one sergeant. The City has "red circled" these officers and agrees it will not insist that they resume residency within its boundaries. This position was formally stated in a letter to the Chairman from the Honorable Coleman A. Young, Mayor of the City of Detroit, dated March 17, 1975, in which the Mayor stated:

...while I heartily disapprove of the official sanction given to those thirteen police officers who currently reside outside the City with permission of a past police commissioner, wisdom and fair play dictate that they be allowed to remain out. Thus, as far as I am concerned, the residency requirement has been forever waived as to them.

City records indicate that another ninety-three officers admit living outside Detroit. (TR VIII, p. 85-87; City Exhibit 30) In addition, it has received complaints concerning another 211 officers who are alleged to live outside the City, such complaints having been received since the residency unit of the department's

internal affairs section was created in 1972 through February 6, 1975. Police Chief Tannian testified "it would be reasonable to assume that some of those do not live outside the City; but there are also a number who live outside the City and against whom we have not had any complaint from anybody yet." (TR VI p. 54)

#### THE ASSOCIATION'S POSITION

The DPOA contends that Detroit police officers and their families have a fundamental right, as does every citizen of this country, to live where they choose. Such right may be subjected to reasonable work-related requirements by the municipal employer, it agrees, and in this sense is not constitutionally protected. But it argues the City has failed to present any clear and compelling reasons to justify the serious restriction of this right which is inherent in the police residency requirement. The Association agrees the City has a justifiable interest in assuring that its employees get to work on time, that police officers be able to respond within a reasonable time to call-out for emergency duties, and that their choice of residence location not interfere in any other manner with the performance of their duties. However, it argues these interests can be satisfied without requiring police officers to reside within the corporate limits of Detroit.

In support of this contention, the Association presented testimony from Mrs. Judy Kostera, the wife of a Detroit Police Patrolman, who testified as to her belief that the residency rule denies police families a basic right which is available to

every non-City employee, despite her own preference to remain a resident of the City of Detroit even if the residency requirement were eliminated. Similarly, Detroit Police Patrolman Karl Holliday testified that even though he is relatively content to live where he does, in a racially-integrated middle-class neighborhood in northwest Detroit, he would choose to reside outside the City in order to exercise a personal preference for raising animals which he cannot keep under City ordinances. (It should be added, in anticipation of subsequent discussion, that Officer Holliday is black.) Other witnesses testified to what the Association has termed "a myriad of personal desires" which highlight the fundamental nature of "the right to freedom of travel and relocation."

Also testifying in support of this contention was Edward J. Kiernan, President of the International Conference of Police Associations, which officially endorses DPOA's stand on residency. Kiernan also told of his background as a police officer in New York City, and said he believes there are no compelling work-related reasons for requiring a police officer to live in the city where he works. Much more important, Kiernan testified, are a police officer's basic skills, attitude, and dedication to police work, and the organizational and operational structure of the police department for which he works.

Also testifying for the Association was Eugene C. Mathivet, Jr., former Personnel Director and Civil Service Commissioner for Wayne County. During his term of office with the County, its previous residency requirements for county employees were



relaxed. In his opinion, this enabled the County to obtain and retain better qualified employees than had previously been the case. He believes the residency requirement for police officers bears no reasonable relation to their ability or competence, or to the effective operations of the department, a position which was repeated by Association witness Carl Parsell, former DPOA President and now Executive Director of the Police Officers' Association of Michigan. Parsell testified that the official position of the state Association is that an officer should be able to live wherever he chooses, subject only to the requirement that he be responsible for getting to work on time.

The DPOA also contends the residency rule is unreasonable in view of the regional, metropolitan nature of the Detroit area. It points out that Detroit is not a "walled city", but the central part of a multi-county geographical area in which there are innumerable commercial, cultural, and governmental interconnections. By way of example, the Association points out the cooperative inter-municipal relationships involved in the Southeast Michigan Council of Governments (SEMCOG), the Southeast Michigan Transportation Authority (SEMTA), the Wayne County Organized Crime Task Force, and the City of Detroit's own Water Board, which provides water for municipal water systems throughout southeastern Michigan and includes representatives from several communities in addition to the City of Detroit. Dr. Allen A. Hyman, a member of the SEMTA Board and Michael M. Glusac, Executive Director of SEMCOG testified as to the organization and functions of those agencies.

The DPOA also argues the residency requirement is at odds with one of the most crucial aspects of a modern police officer's personal and professional life. It urges the panel to recognize that a modern police officer has one of society's most responsible, difficult, and sensitive jobs, with awesome responsibility and risk, both in terms of the officer's own personal safety and his potential to affect the lives and well-being of great numbers of his fellow citizens. As a natural consequence of these responsibilities and risks, it says, police work involves a remarkably high degree of personal stress. In recognition of the stressful nature of modern police work, the Association says, the municipal employer should do everything within its power to enable police officers to live normal, stress-free lives during off-duty hours. To accomplish this, it argues, a police officer must be able to retire to his home as a place of peace and stability, isolated from the demands and pressures of the job. This, in turn, may make it necessary for some officers to put geographical as well as psychological distance between their home and professional lives. To deny them this opportunity by requiring all police officers to live "on the beat", as it were, the Association concludes, may be dangerously counter-productive for both the officers and the City as a whole, because the additional stress induced by the officer's inability to get away from his job may seriously affect on-the-job performance.

In support of this contention, the Association relies heavily upon the testimony of Dr. George L. Kirkham, an Assistant

Professor of Criminology at Florida State University. The Association suggests Professor Kirkham is uniquely competent to testify on this subject, not only because of his academic training as a research criminologist, but because of his first-hand experience as a sworn police officer in Jacksonville, Florida Police Department as part of a participatory observation research project. Dr. Kirkham went through a law enforcement training program and served as a Jacksonville Police Officer for approximately five months, during which he resided in a small inner-city apartment, away from his family. He testified that he found police work to be extremely stressful, frustrating, and demanding, and that his inability to leave the scene of his police work during off-duty hours was particularly stressful. In his opinion, a police officer's performance could be enhanced by residence outside the city in which he is employed, although he has found no empirical evidence, either in his field work or in the criminology literature, to suggest that a police officer's dedication or performance will be affected either positively or negatively by his place of residence.

Professor Kirkham's testimony was supported by that of Dr. Bruce L. Danto, a Detroit psychiatrist who has counselled with a number of Detroit police officers and widows of deceased officers. His professional opinion is that residency requirements for police officers are objectionable psychologically because they can cause a police officer to feel he is captive in a community in which he has become highly stigmatized and is often the target of hostility

and controversy. Dr. Danto suggests the most important challenge in law enforcement is to professionalize police officers in terms of their basic skills and motivation for police work, rather than focusing on their choice of residency and forcing them to live in a stressful and often hostile environment. The testimony of witnesses Kiernan and Parsell reinforced this position from their point of view as former officers.

Taking note of the factors set forth in Section 9 (d) of Act 312, the Association points out that residency requirements for police officers have been relaxed or eliminated in many Michigan cities, and that only three other large metropolitan cities in the country have such requirements. With respect to other city employees subject to the residency requirements of Ordinance 327-G, the Association argues none of them has bargained realistically with the City about the requirements since they were declared a mandatory subject of bargaining by the Michigan Supreme Court. Therefore, it argues, none of them, including firefighters and police lieutenants and sergeants, are proper objects of comparison under Act 312.

The Association also contends the City has failed to bargain with the DPOA in any realistic fashion on the subject of residency. It points out that the City's position has been "take it or leave it" from the very start, whereas it has made a good faith effort to negotiate. As evidence of such effort, the Association reiterates its compromise offer to accept a modified residency requirement under which police officers would be permitted to live anywhere

within a 25-mile radius of the City-County Building in Detroit. It argues this requirement would meet the only compelling interest the City has in police officers' place of residence: to-wit, that they be able to get to work on time and respond quickly to emergency call-out.

During the hearings, DPOA Vice-President David Watroba made another compromise proposal, later reduced to writing, as follows:

The offer is that any police officer having the right to live outside the City who elects to exercise this right would agree to contribute to the City an amount equivalent to the difference between resident and non-resident City income tax on his or her police gross salary. This would, of course, not be a tax under the statute but in the nature of a charitable contribution.

The requirement to make the charitable contribution would be a condition precedent to the right to reside outside the Corporate limits. An employee would be required to execute appropriate forms, including payroll deduction of the contribution.

The procedure set forth above, and any other residency provisions determined by the Arbitration Panel, would become a part of the collective bargaining agreement.

In opposition to several of the City's arguments, which are summarized below, the Association says the City has failed to prove that:

- 1) Large numbers of police officers actually would move if given the opportunity;

- 2) The City would suffer significant financial harm due to lost income and property tax revenue from police officers who would move; (Such revenue losses as there might be would be offset in any case, it says, by its compromise offer that any officer who moves outside the City will pay the difference between the

2% resident income tax and the 1/2% income tax on non-residents working within the City in the form of a voluntary, albeit contractually mandatory, contribution.)

3) Continuation of the residency requirement is necessary for stable community relations, there being no empirical evidence of any kind to support such an assertion, and there being a strong possibility that eliminating the residency requirement would enhance community relations by easing the officers' stress and consequently improving their attitude and effectiveness on the job;

4) Significant operational considerations mandate continuation of the residency requirement, particularly in view of the geographical configuration and size of the City and the fact that officers actually might be closer to their precinct if their residence were outside the corporate limits of Detroit than if they lived within the City;

5) Off-duty officers living within the City have a major deterrent effect on criminal activity, or have the opportunity or necessity to take off-duty police action with any appreciable frequency;

6) Cities with police residency requirements have better law enforcement and police-community relations than the majority of cities which have a more liberal residency rule or no residency requirement at all; or

7) The residency issue is a matter of real concern or importance for the citizens of Detroit.

#### THE CITY'S POSITION

The City readily admits that police officers, like other

citizens, have the fundamental right to choose their place of residence. However, it says, they do not have a concurrent right to insist upon employment as a Detroit police officer no matter where they choose to reside. In this respect, it attaches considerable significance to the first Michigan Supreme Court decision cited above, contending that continuation of a residency requirement for Detroit police officers is a reasonable and legally valid exercise of its constitutional powers, consistent with long-standing policy which has been consistently and uniformly applied to virtually every City employee. The residency requirement is no less justified for police officers than for any other City employee, the City suggests, nor is it any less appropriate today than it was when the residency rule was first established or when the Supreme Court upheld the constitutionality of the residency ordinance in 1972. To the contrary, the City contends the continuation of the requirement is constitutionally mandated, indirectly, to avoid the promotion of de facto residential segregation, and that a number of compelling public interests which are particularly applicable to police officers make the residency requirement even more important for them than for other City employees and more crucial to the City's well-being now than ever before.

First among these, it says, are certain factors inherent in the residency requirement which contribute to the efficient and effective operation and administration of the Police Department. The City argues that continuation of the residency requirement will ensure fast, flexible response by the Department to crisis situations requiring immediate large-scale mobilization of off-duty police

officers. In particular, the City believes the Department will be better able to respond to and quell civil disturbances if all police officers reside within the City than if members of the Department were geographically dispersed beyond the City limits. While admitting that in some instances an officer might be closer to his work assignment even though he lived in a nearby suburb, it argues that as a general rule more officers are certain to be closer to their work assignments if they all live within the City than would be the case if large numbers of them reside beyond its boundaries. Forceful testimony was offered in support of this contention by former Detroit Police Commissioners George C. Edwards, Jr., now a Judge of the 6th Circuit U.S. Court of Appeals, and Patrick V. Murphy, now President of the Police Foundation in Washington, D.C.

From the individual officer's standpoint the City contends any municipal employee will be more effective in his job if he is a resident of the community in which he is employed and has a stake in it comparable to that of other citizens whom he is paid to serve, because he will know more about the community, be more familiar with its citizens and their needs, and have a more positive attitude toward his job than one who lives elsewhere.

Other more mundane operational factors inherent in the residency requirement, according to the City, involve the efficient day-to-day operation of the Police Department. An example pointed out by former Commissioner Murphy has to do with unannounced verification checks on officers who have phoned in sick. Often supervisory officers will be dispatched to the homes of such officers



and the former Commissioner said the time and expense of continuing such an administrative practice would be increased greatly were officers permitted to live outside the City. Drawing on his experience as Chief of Police in New York City, which has a more liberal residency rule, Murphy also predicted that non-resident officers' effectiveness during on-duty hours may be limited by the mere fact of non-residency. As an example of this problem, he suggests that non-resident officers dependent upon scheduled public transit or car pools for transportation to and from work will be disinclined to make last minute arrests which might cause them to miss a ride home.

The City also points out that police officers technically are on duty twenty-four hours a day, no matter what shift they are assigned to, and are required to carry their identification card, badge, and side-arm at all times. The additional risks and responsibilities inherent in this requirement have been recognized and taken into account in the officers' compensation, the City says. Yet this benefit would be lost if officers resided outside the City, where they have no law enforcement jurisdiction or arrest powers. The City believes the public is entitled to the added security afforded by the round-the-clock presence of police officers who are sworn to uphold and enforce the law at all times. This is particularly important in a police officers' own neighborhood, the City maintains, even though the officer may be called upon by his neighbors very seldom while he is off-duty. The loss of this sense of security would contribute substantially

to loss of confidence in the City of Detroit on the part of its remaining middle-income residents, the City argues, and to the further emigration of many such citizens.

Present Detroit Chief of Police Phillip A. Tannian offered testimony generally consistent with that of the two former Commissioners. Chief Tannian added another administrative concern, in light of the continuation of a residency requirement in the Lieutenants and Sergeants contract, about transfers and promotions. If the residency requirement were eliminated or relaxed with respect to non-supervisory officers, Tannian fears a serious limitation on the number of candidates for promotion to supervisory positions for which the residency requirement remains in effect. At the very least, he testified, this conflict in residency rules would create administrative confusion; at worst it could deny many highly-skilled police officers the opportunity for promotion.

The City argues elimination of the police residency requirement also would cause dire financial consequences. If a large number of police officers moved outside the City, it says, there would be a substantial direct loss of income tax revenue. The City admits this loss could be offset by mandatory contributions from non-resident police officers, but it doubts the legality and enforceability of such a scheme. Even more significant than the direct loss of income tax revenue, the City believes, would be the indirect loss of millions of dollars from the economic cycle of commercial activity within the City of Detroit. In this respect, it points out that nearly every police officer who moved would be accompanied by a spouse and children. In addition to removing a substantial

sum from the economic life-blood of the City, it predicts that such an exodus would endanger the already depressed Detroit real estate market, which in turn would reduce property tax revenues and general citizen confidence in the City's future.

Perhaps more important in this respect, the City contends, is the fact that it would be next to impossible to continue the residency requirement for other city employees if it were eliminated for police officers. The multiplier effect of subsequent elimination or relaxation of residency requirements for other City employees as a consequence of such an action with respect to police officers would mean not merely that two or three thousand police families might leave the City, which in itself would cause an indirect loss of revolving funds to the City of Detroit of over \$90 million, according to Wayne State University economist John M. Mattila. Far more serious to its economic future, the City says, is the very real possibility that more than ten thousand other City employees' families might depart, leaving behind a malaise of financial depression, social dislocation, and shaken confidence on the part of those who remain in residence there.

As to the likelihood that significant numbers of police officers would move if the residency requirement were eliminated, the City argues there is every indication that would be the case. It commissioned an opinion survey by the Market Opinion Research Corporation on the subject, and of the five hundred police officers, fire fighters, and/or spouses surveyed, more than fifty per cent said they would choose to live outside the City if the residency requirement were lifted. Significantly, more than sixty per cent

of all whites surveyed would choose to relocate. In addition to the results of this survey, the City advances the common sense argument that the Association must have a very strong reason to challenge the residency requirement with such fervor and tenacity. The only reason which logically comes to mind, it suggests, is that a large number of the Association's members strongly desire to take up residence outside the City of Detroit.

It has also been suggested that City employees have a financial obligation to support the municipality which provides their livelihood, both directly in the form of taxes paid, and indirectly in the form of money spent in the flow of commerce within the City. According to City witness Meyer, this was one of the principles upon which the residency rule originally was enacted. It is even more important today, the City suggests, because of the financial pressures which already have been imposed upon the City by the departure of a substantial number of upper- and middle-class citizens to the suburbs.

Equally important, according to the City, is the effect continuation or elimination of the residency requirement for police officers would have on police-community relations. A number of witnesses -- among them Mayor Coleman A. Young, Chief Tannian, former Commissioners Murphy and Edwards, former Mayor Jerome Cavanaugh, City Personnel Officer Meyer, and Cooley Law School Professor Donald P. LeDuc (former administrator of the Criminal Justice Program) -- testified that police-community relations are far and away the most crucial law enforcement concern

in large American cities today. Good police work is always dependent upon citizen cooperation and support, the City points out, and can be almost impossible if the citizenry manifests hostility and distrust toward police officers. Yet distrust, hostility, and lack of cooperation between citizens and police officers have been all too evident in the City of Detroit in recent years, it says, particularly in those areas of the central city in which most of the victims as well as the perpetrators of crime are black. Detroit's changing racial characteristics obviously have played a large part in these developments, the City argues, noting that more than 50% of the total population is black, while over 80% of Detroit police officers are white. Under these circumstances, it says, everything possible must be done to alleviate racial tension and promote closer police-community relations, in the mutual interests of effective police work and the City's general health and stability.

The City offers no empirical evidence to support these contentions, but points out that there is ample evidence for the proposition that good police-community relations are an essential component of effective police work. Likewise, it suggests that the facts of racial tension and mistrust and hostility toward police officers by black Detroit citizens are so firmly established and understood as to require no empirical documentation. The City argues it may be logically, even unavoidably, inferred from the conditions of life in Detroit that conflict, tension, and hostility between black residents and white police officers would be sorely exacerbated if large numbers of police officers took up residence

outside the City. The ramifications of such heightening of tension and hostility would extend not only to police-community relations and police work in general, it asserts, but into the personal and professional lives of the officers. In the latter respect, the City argues the stress and anxiety experienced by Detroit police officers would be magnified, rather than alleviated, if they were to move out of the City of Detroit. It claims the stress and anxiety an officer feels is produced by his on-the-job experiences in far greater degree than the geographical location of his residence, and the increase in tension and hostility which could be expected to occur if the residency requirement were eliminated would make every police officer's job more difficult and stressful.

The City offered two expert witnesses to comment upon the opinion testimony of Association witnesses Kirkham, Danto, and Dr. Edward C. Dorsey. Dr. Orian Worden, a consulting psychologist, and Dr. Joseph E. Lenzo, a psychiatrist, both Detroit residents, testified that the relationship between Detroit police officers and large numbers of Detroit residents is fraught with tension and negative feeling on both sides. They further testified that relaxation or elimination of the police residency rule would heighten these tensions and make the police officer's job more difficult. A similar opinion was offered by Albert J. Reiss, Jr., Professor of Sociology at the Institute for Social Policy Studies and Lecturer in Law at Yale University. The panel also heard testimony from criminology professor Jerome Skolnick, Chairman of the Center for the Study of Law and Society at the University of California in Berkley, who said that racial tension is the

most salient issue in the area of police-community relations in America. Every major commission or investigation into violence and police work in America has emphasized this fact, Professor Skolnick said, and has found a significant degree of hostility between the police and inner-city black communities. In his opinion, abolishing the residency requirement for Detroit police officers would seriously exacerbate existing racial hostility, thus impairing police officers' work performance, causing them increased danger, and magnifying the psychological stress of police work.

Professor Skolnick also commented that in his opinion Dr. Kirkham's analysis of stress in police work was scientifically unsound, because he extrapolated from a personal situation which was inapplicable to most other police officers. In particular, Skolnick focused on the artificial stress introduced into Kirkham's personal life during his stint as a police officer by the fact of his separation from his pregnant wife and children in a small apartment in a deteriorating inner-city neighborhood for which his prior experience afforded him no preparation.

As to the Association's contention that the police residency requirement is artificial and unreasonable in view of the regional and metropolitan character of the Detroit area, the City suggests such a view is totally inaccurate. It points out that there is little if any meaningful inter-connection between the Detroit Police Department and law enforcement agencies in surrounding communities on a day-to-day basis. Neither of the regional

governmental entities cited by the Association, namely SEMCOG and SEMTA, has anything to do with law enforcement, the City points out, nor have they created any significant practical bonds between the City and suburbs as of this writing.

Finally, the City denies the Association's assertion that there is no good reason to believe the residency question is of intense concern to large numbers of Detroit citizens. The Association itself has caused the issue to become a matter of paramount public concern, the City points out, by its continued public stand on the question. Likewise, Mayor Young has stated publicly that no issue is more crucial to the future of the City of Detroit, and public attention has been focused upon these arbitration proceedings by local news media. As a result, there can be no doubt that the citizens of Detroit are fully aware of the continuing controversy over police residency, the City concludes, and it would be unreasonable to assume they are not concerned about it.

#### OPINION AND FINDINGS

As noted at the outset, this panel has before it a wealth of evidence, including statistical information, learned opinion from academicians, researchers, and professional law enforcement personnel, past and present, and testimony of others vitally interested in the outcome of this case. The panel has been aided substantially in digesting and analyzing this material by the excellent oral arguments and written briefs of counsel for both



parties. In reaching a conclusion of the issue of police residency, the Chairman has considered and analyzed the evidence and the contentions of the parties within the framework of the pertinent factors set forth in Section 9 of Act 312. Specifically, those factors are the following:

(a) The lawful authority of the employer.

\* \* \*

(c) The interest and welfare of the public...

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

(i) In public employment in comparable communities.

\* \* \*

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

It should be noted that the Opinion and findings that follow are those of the Chairman. Concurrence in the Order and Award by any other member of the panel does not necessarily indicate complete agreement with all aspects of the Chairman's Opinion.

#### LAWFUL AUTHORITY OF THE CITY OF DETROIT-(Sec. 9a)

This factor has particular significance in view of the extensive litigation between these parties on the subject of residency, other litigation throughout the country concerning the

constitutionality of similar residency requirements, and the DPOA's continued insistence that police officers have a fundamental right of travel and relocation which is abridged by the residency requirement without sufficiently compelling justification. The primary focus of this discussion, of course, must be upon the decision of the Michigan Supreme Court, in Detroit Police Officers Association -vs- City of Detroit, 385 Michigan 519; 190 NW 2d 97 (1971), that the Detroit Common Council had the constitutional authority to enact Ordinance 327-G requiring all sworn police officers to be residents of the City of Detroit. The Association appealed that decision to the United States Supreme Court. The appeal was dismissed for want of a substantial federal question. 405 U.S. 950; 92 S. Ct. 1173; 31 L. Ed. 2d 227 (1972). As the City correctly points out, dismissal by the United States Supreme Court on those grounds had the force of a decision on the merits, affirming the findings of the Michigan Supreme Court.

Although the central language of the Michigan Court's opinion has been quoted earlier, it is worth noting again that the specific considerations cited by the Court in finding the residency requirement constitutional closely parallel the City's position in this case. The Court found that:

The job of a policeman does have 'natural distinguishing characteristics' from all other City employees. There is a special relationship between the community policed and a policeman. A policeman's very presence, whether actually performing a specified duty during assigned hours, or engaged in any other activity during off-duty hours, provides a trained person immediately available for enforcement purposes.

Police are required by department order to be armed at all times, and why is this? Simply because by such requirement, they are, no matter where they are or what they are doing, immediately prepared to perform their duties. They are charged with law enforcement in the City of Detroit, and obviously must be physically present to perform these duties.

The Michigan Court's decision, including this specific language, has been cited with approval in several other state and federal courts which have considered the constitutionality of similar residency requirements. One particularly notable such case was Krzewinski -vs- Kugler, 338 F. Supp. 492 (1972), which was decided by a three-judge panel in Federal District Court in New Jersey. In Krzewinski, the Plaintiffs challenged the constitutionality of a New Jersey Police and Firemen's Tenure Statute which provided that police and firemen must reside "in the municipality wherein they are respectively employed" as a condition of continuing employment. Plaintiffs argued this requirement violated the equal protection guarantees of the 14th Amendment of the United States Constitution, in that it established a state-enforced classification differentiating between resident and non-resident police and firemen, without the necessary justification of a compelling state interest.

The Court accepted Plaintiff's contention that the statute must pass the "compelling state interest test", but found that such interests did exist. It stated that:

The truly important interests to be realized by the residency requirement demand recognition by the Court of the modern pattern of urban disruption and dissipation prevalent today...A substantial

number who have studied the problem (of rioting and looting in major cities) attribute much of this lawlessness to a deeply-rooted disrespect for an absentee police force which governs by day and resides afar at night. According to the proponents of this view, a policy of requiring fire department and police force residency would tend to increase the presently low degree of community cooperation uniformly observed by law enforcement. While this Court would not impute a conscious or deliberate neglect of duty to a policeman or fireman living apart from his municipal employer, we recognize that reasonable men could conclude that a total disengagement between work hours and personal life could detrimentally affect his attitude toward the community and the people he serves...The mutual advantages of residency ...and similar laws was noted by The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report, The Police (1967).

Aside from convenience, local residence avoids the impression that the police come from the outside world to impose law and order upon the poor and minority groups and also avoids the risk of police isolation from the needs, morals, and customs of the community...

Perhaps, more effectively than any amount of training, off-duty contact between police and the people they service prevents the stereotyping of police by citizens and of citizens by police...

Wherever possible, police officers should be encouraged to live within city limits, for it is important officers have a feeling of commitment to the city, above and beyond the obligation to police it.

\* \* \*

Two additional considerations magnify the need for direct community association by these uniformed employees. Residency places the off-duty officer physically within the municipality in which he is authorized to perform his duties. The immediate discharge of duties is not to be confused with the exigencies of quick, emergency recall, for it is not the call from the station house, but the chance observations of a neighbor or of the officer himself

which will prompt his off-duty actions...The added presence of off-duty policemen in an urban municipality to the on-duty force, even if the off-duty police are rarely called upon to act, would undoubtedly have a deterrent effect on crime. Additionally, the chance associations and encounters which follow from residence and which may lead to invaluable sources of information will go far toward making each resident policeman a more knowledgeable, qualified officer. (Supra, pp. 499-500)

Both the DFOA -vs- the City of Detroit and Krzewinski were cited in a recent decision by the Fifth Circuit U.S. Court of Appeals. Wright -vs- City of Jackson, Mississippi, 506F. 2d 900 (1975). In Wright, however, the Court rejected the compelling State interest standard adopted by the Krzewinski court, stating simply that the residency requirement must bear "a rational relationship to one or more legitimate State purposes...the traditional equal protection test." The Court in Wright cited the Michigan case with approval, and went on to say "there are a number of rational interests in municipal public policy to justify such a requirement", citing a decision by the California Supreme Court in which a number of "rational purposes advanced in various adjudicated cases" were enumerated:

Among the governmental purposes cited in these decisions or now urged by amici curiae are the promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city's conditions and by a feeling of greater personal stake in the city's progress; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries. Ector -vs- City of Torrance, 10 Cal 3d 129, 514P 2d (1973).

The California Court in Ector also cited with approval the following language from an earlier New Jersey case: "The question is not whether a man is free to live where he will. Rather the question is whether he may live where he wishes and at the same time insist upon employment by government." Kennedy -vs- City of Newark, 29 N.J. 178; 148A 2d 473 (1959).

In its brief, the Association reviews a "myriad of personal desires", upon which testimony was offered by police officers and their spouses, which highlight "the fundamental nature of the right (to freedom of travel and relocation)." While admitting this right has not achieved constitutional standing, either in Michigan or elsewhere, the Association nonetheless contends that it may be restricted only "for clear and compelling reasons." (Association Brief, p. 17) Given the length and learned quality of the Association's brief and the numerous citations appended thereto, one must assume this choice of language, with its obvious parallel to the compelling state interest test used in Krzewinski, was not accidental, and that, despite its admissions to the contrary, it considers the so-called fundamental right "to travel and relocate" to be a constitutional right. This observation gains further credence from the following language in the Conclusion of the Association's brief, at page 84:

Despite almost consistent losses in the Courts, public employees have continued to challenge such legislation (restricting the right of a public employee to choose his place of residency)...The Constitutional challenge to the validity of such legislation will continue in the Courts, and it will be won.

The Association's dedication to this constitutional challenge notwithstanding, there can be no question that the City has the lawful authority to require Detroit police officers to reside within the City. However, the Michigan Supreme Court has also declared that the City's continued imposition of such a requirement is a mandatory subject of bargaining. Therefore, the question is not merely whether the City has the legal and constitutional right to require police officers to reside in Detroit, which it clearly does, but whether it is reasonable and justifiable for the City to insist upon the exercise of this right as part of the total collective bargain between it and the Association.

In finding an answer to this question, one must be mindful of the longevity of the residency requirement, the consistency and uniformity of its application to police officers and virtually all other City employees, and the several forms in which it has been expressed over the years. According to the City, the residency requirement first appeared in the City Charter of 1886, and has been continuously applied ever since, either in Charter provisions, departmental rules and regulations, or City Ordinance. Most recently, of course, the requirement was enacted into law by Detroit Common Council's unanimous adoption of Ordinance 327-G. This history in itself, combined with the volume and clarity of judicial opinion on the subject, lends substantial weight to the City's case for continuation of the residency requirement.

It must be understood that the duty to bargain is not tantamount to a duty on the part of the City to abandon a long-

standing condition of employment it considers fair, reasonable, and necessary to effective operation of the police department. The City has an obligation to justify its continuation as a reasonable condition of employment within the framework of Section 9 of Act 312, of course. But even though the technical rules of evidence do not apply in Act 312 arbitration, it is reasonable and proper that the Association should bear the responsibility to produce such "competent, material, and substantial evidence" as may be necessary to support its contention that a continuation of the residency requirement is unjustified. This it has failed to do with respect to Section 9(a).

#### INTEREST AND WELFARE OF THE PUBLIC - (Sec. 9c)

According to the City, there are three important ways in which the residency requirement directly and substantially affects the interest and welfare of the citizens of Detroit. In general, they may be classified as follows: first, the effective operation and administration of the police department; second, the likely economic consequences of relaxation or elimination of the residency requirement; third, police-community relations and citizens cooperation with the law enforcement efforts of the police department. After exhaustive analysis of the whole record, the conclusions of the Chairman with respect to the factors in Section 9(c) of Act 312 may be summarized as follows.

#### I. Operational Considerations

The first and probably the most important impact of the residency requirement upon the effective and efficient operation



of the police department has to do with the fact that a sworn police officer is technically on duty 24 hours a day. This long-standing departmental policy is codified in departmental General Order 72-17(R), which provides that:

Although certain hours are designated for the performance of duty, a member is considered to be on-duty at all times. Except when on sick leaves or furlough, he must be properly equipped with his firearm, badge, and identification card, and respond immediately upon notice that his services are required.

Similarly, General Order 72-30 (R) prohibits an off-duty police officer to drink alcoholic beverages to such an extent that he will be incapable of performing his duties. And General Order 72-50 (F) requires that:

When on or off-duty and away from their respective homes, members shall carry their regularly assigned or privately owned department approved sidearm, except when on sick leave or furlough. Failure to be properly equipped shall be deemed prima facie evidence of neglect of duty.

The DPOA contends there is no empirical evidence Detroit police officers are called upon to discharge their law enforcement obligations during their off-duty hours with any frequency. To the contrary, it points out that police officers must be and are chary of involving themselves in law enforcement situations when out of uniform, lest they be sanctioned by the department for acting improperly. Association witnesses testified that they had seldom, if ever, been called upon to make arrests or otherwise perform law enforcement functions while off-duty. On the other hand, Chief Tannian testified about three occasions on which he was called upon by his neighbors to involve himself in activities

related to law enforcement during non-working hours. While it is true no statistical evidence was introduced by the City to show the frequency with which police officers engage in law enforcement activities during off-duty hours, Chief Tannian's experiences are at least as significant as those of officers who claim not to have had such involvement. Nor can it be doubted that the fact every sworn police officer in the City is available and on duty at all times, whether or not individual officers are ever called upon to act during off-duty hours, provides an obvious and important benefit to the citizenry, both in dealing with and deterring criminal activity. Equally obvious is the fact that the public would be deprived of this benefit in the case of any officer who lived outside the City, where Detroit police officers have no law enforcement jurisdiction or arrest authority.

As a corollary to the above, it must be remembered police officers' salaries reflect the special risks and responsibilities inherent in this 24-hour duty requirement. In view of the fact that the parties have already settled their economic contract, which includes percentage increases based on rates of pay in previous contracts, elimination of the residency requirement would create an economic windfall for those officers who chose to exercise their new-found right to reside outside the City. For each of these reasons, it must be concluded that for the 24-hour duty policy to have continued vitality, and for the public to continue to receive the benefits it is designed to promote, preservation of the residency requirement is necessary.

Closely related to the 24-hour duty policy is the necessity for the department to be able to mobilize effectively and immediately in emergency situations. The relationship between the department's capability for emergency mobilization and the interests and welfare of the public are all too obvious particularly in view of the civil disorders which the City of Detroit has experienced in the past decade. It may be said, of course, that the fact a police officer resides within the city limits is no guarantee he will be close to his duty station in the event of emergency mobilization. It is also possible any given officer actually might be closer to his duty station if he lived outside the City in a nearby suburban community. However, as a general proposition, there can be no doubt that the department's capability for emergency mobilization will be greater if all police officers live inside the city than if a substantial number of them reside elsewhere. Even the Association's proposed compromise 25-mile limit, although preferable to unlimited residency in this respect, of necessity would place some officers further from their duty stations than will be the case if the City residency requirement is continued.

There is also persuasive force to the City's contention that elimination or relaxation of the residency requirement would be likely to impair the job performance of those officers who resided outside the City, because resident police officers will have greater knowledge and awareness of the community, be more sensitive to the needs and desires of its citizens than will non-resident officers. Again, the DPOA responds that there is

no empirical evidence in the record to support this contention, although the proposition may be too fundamental to require such documentation. Despite the absence of direct documentation, however, the City has cited the following statement from the Report on Police by the National Advisory Commission on Criminal Justice Standards and Goals:

Once a police officer has accepted employment... the value of his living within the community in which he works should not be overlooked or underestimated. Mutual understanding between the officer and other citizens results from the officer's assuming an active private role in addition to his professional role in the community. This rapport, in turn, helps the officer understand local problems and needs, while destroying the faults and damaging stereotyped image many people have of their police.

Douglas A. Fraser, Vice-President, International Union, United Automobile Workers of America and first Chairman of the Detroit Police Commission, agrees with this conclusion and adds another perspective to it:

I also think that when you live in a City, you support or have an attachment to the community that you don't otherwise have...what I do suggest is that you have an added dimension. If you actually live in the City, you are more deeply concerned, you are more sensitive to the City's needs, you are more worried about its very survival. And, these things I don't think you can fully comprehend if you don't live in the City. (TR XI p.96)

Similar testimony came from other acknowledged law enforcement experts. Former Police Commissioner Murphy, testifying on the basis of his experience as Police Commissioner of New York City, stated that non-residency there affected police performance in a number of ways:

When officers don't identify with the city where

they work, I think their attitude about their job is very much influenced and, I think the officer who is a resident of the city identifies more with that city and he performs better; he understands the problems of the city. And, frequently today the problems of the city and suburbs, the interest of the city and the suburbs are in conflict and an officer who lives in the suburbs often identifies with the suburban side of the issue. I think these things, which are very difficult to qualify, are a very important part of police services because as I said earlier, the officer's attitude has very much to do with the kind of performance he gives on the job. (TR VII p. 38)

Murphy also testified, as did Chief Tannian, that the administration of the department would be adversely affected in other ways by elimination of the residency requirement, such as verifying sick calls, communicating with and visiting bereaved members of deceased officers' families, and assuring full-shift attention to duty by officers who need not be concerned about meeting car pools and public transportation in order to get home after work. Each of these factors, while obviously less significant than the ones discussed above, contributes to the effective and efficient operation of the police department. And there can be no question an effective and efficient police department contributes to the best interest and welfare of the public, both in terms of prudent use of their tax dollars and the department's efforts in combating and deterring crime.

## II. Economic Considerations

It is an indisputable fact that the City of Detroit is in a precarious financial position. City Financial Director Dennis Green testified the City's operating deficit for 1974-75 might run as

high as \$40 million and that local tax revenues have declined steadily over the past several years despite the fact that local property and income taxes are higher than in any other municipality in the State of Michigan. In large measure, this decline in tax revenues has been a consequence of the heavy migration of middle- and upper-income families from the City to the suburbs, and the resulting reduction in the total assessed value of real property on the City tax rolls. Green pointed out that since 1969,

...there have been 17,000 residential properties torn down in the City of Detroit. The assessed value of those 17,000 properties is some \$98 million. That represents, to the City of Detroit, in taxes, \$7.6 million...Last year, there were only 15 building permits in the City of Detroit for residential construction. It is going down at an annual rate of \$6 million in assessed valuation. So our property taxes are declining because of the abandonment of properties. (TR IX, p. 115-116)

Green also pointed out that other significant City revenues are directly dependent upon property values and population, most significant of them being federal revenue sharing, which is computed by a three-part formula, based on "tax effort... property level, and...population." (TR IX, p. 117) He projected a \$91 million deficit for the 1975-76 fiscal year, based on projected appropriations and revenue as of March, 1975, and predicted that the only realistic means available to the City to reduce this deficit was to lay off large numbers of city employees. This being the case, it is axiomatic that anything which reduces City tax revenues appreciably will deleteriously affect the interest and welfare of the public by reducing essential city services.

The City argues elimination of the residency requirement for police officers would lead inexorably to an exodus of white middle-income families, both city employees and otherwise, which would result in a crippling loss of revenue to the City. City witness Dr. Barbara Bryant, extrapolating from the results of the Market Opinion Research survey of police officers, fire fighters, and their spouses, testified that 3,700 public safety officers and their families would choose to live outside the city if the police residency requirement were eliminated. Not only would this cause a direct loss of tax revenues, the City says, but also an indirect loss of millions of dollars from the City's general economic cycle. Economist John H. Mattila testified that the economic impact of City police officers moving could be measured by a so-called "multiplier effect," which in this case would be double the annual income of each family. Taking \$15,500 as the average annual income for public safety officers, he predicted an annual loss to the general economy of the City of \$114,700,000 upon the departure of 3,700 such employees and their families. If, as the City contends, elimination of the police residency requirement would have a domino effect for all other City employees, the economic consequences could be catastrophic. Using an average annual salary of \$11,500 for such employees, Mattila projected an annual loss to the City's economy of \$276 million upon the departure of 12,000 employees. (TR IX p. 132-137)

The DPOA contends the prediction of an exodus of police officers and other City employees is not substantiated by the

evidence presented. It claims the Market Opinion Research survey is unsound because the sample of white police officers, who the City agrees are those most likely to move, was too small to yield dependable statistical results. It further argues that, even if the projections of Dr. Bryant and Dr. Mattila are correct, the real economic loss is so insubstantial as to be de minimis in view of the total economy of the City and the magnitude of its total operating budget.

On the basis of the evidence presented, it is indeed impossible to calculate with exactitude what the actual economic consequences would be if the residency requirements were eliminated. Nor can one confidently predict, with any precision, how many police officers and their families actually would move outside the City of Detroit, or when. Through the mere force of logic and common sense, however, it must be assumed that a significant number of police officers will move as soon as conveniently possible, given the duration and depth of the Association's commitment to have the residency requirement eliminated. This assumption is supported by the opinion of City Planner Yale Rabin. He testified that the annual rate of departure of Detroit's white citizens in recent years has been approximately five percent. He further noted that the restrictions imposed by Ordinance 327-G have created a situation of "pent-up demand" for relocation on the part of white City employees. Combining that phenomenon with his knowledge of non-residency in other cities, Rabin predicted that "during the first year or so after the relaxation of residency ordinance...at least twenty



per cent of white City employees would take advantage of the opportunity to leave the City." (TR X p. 104) The Chairman also is inclined to give credence to the results of the Market Opinion Research survey, even though it contained a cross-section of public safety employees rather than concentrating only on those police officers most likely to relocate, and even though it did not measure officers' actual intentions to relocate (for reasons which were explained to the panel by Dr. Bryant), but merely whether they would choose to live outside the City of Detroit if they had that opportunity.

Given the fact that parity historically has been observed between police officers and fire fighters in the City of Detroit in terms of wages and some conditions of employment, it must be assumed that the residency requirement would eventually be eliminated for fire fighters as well. And there is every reason to believe the City's prediction that it could not maintain such a requirement for non-public safety employees thereafter. Therefore, it must be concluded that the City would suffer negative direct and indirect economic consequences of sizable proportions if the residency requirement for police officers were eliminated. Although the exact dimensions of such economic consequences cannot be predicted, they will not be de minimis. Based on recent history, as explained by City witness Robert D. Knox, real estate broker and former Detroit Housing Commission Director, the housing market would likely become further depressed. There would also be a substantial loss in general economic and commercial

activity in the City, which in turn would affect the confidence of business people, investors, and the public at large. It can hardly be argued these economic consequences would favorably affect the interest and welfare of the citizens of Detroit. And the mere fact that the negative impact upon the public interest and welfare cannot be measured precisely is no reason for it to be ignored. On balance, therefore, the foregoing economic considerations clearly support a continuation of the residency requirements for police officers.

### III. Community Relations

It is generally recognized and accepted that good police-community relations and effective cooperation between the police department and the public are essential to effective law enforcement in a large metropolitan city. It has also become widely accepted that in those so-called "core" cities having a large black population, there has been and continues to be wide-spread hostility and distrust between black citizens and largely white police departments. The report of the National Advisory Commission on Civil Disorders, which was convened following the 1967 riots in Newark and Detroit, emphasized this fact. Although no statistical evidence was presented to substantiate the existence of such hostility and conflict between black citizens of Detroit and the Detroit Police Department, the existence of such problems in the City of Detroit must be recognized. Likewise, it must be recognized that such hostility, and the resultant tension and lack of cooperation between citizens and police officers, significantly hampers the City's law enforcement

activities.

Professor Skolnick testified that he had found "no study on the police today or the police in urban America that has found anything but a degree of hostility between the police and the inner-city black communities." (TR VI p. 106) Drawing on his familiarity with literature and research in criminology and race relations, Professor Skolnick offered the opinion that:

...there is deep resentment felt in the black community by having officials of all kinds, but particularly police, who are regulating the black community. There is a feeling that this is a kind of white racial dominance...this was brought out most straightforwardly...in the report of the National Commission on Civil Disorders. (TR VI p. 107-108)

There is a good deal of hostility between the non-white communities and the police in particular and particularly white police...If police were visibly able to leave the community, especially where you had a history of residency in the community, I think this would be taken as a kind of slap in the face by the black community. And, I think that would increase the hostility toward the police. That would make their job tougher. It would increase the kind of stress that is a normal part of the policeman's job...I cannot see how it would, in any way, improve it, and I can see all kinds of ways in which it would make it much tougher." (TR VI p. 111-112)

Similarly, Dr. Orian Worden, a consulting psychologist in Detroit, characterized the relationship between the police and "large numbers of people in the City of Detroit...as a relationship fraught with tension, negative feelings, perhaps on both sides." (TR XV p.7) In Dr. Worden's opinion, elimination of the residency requirement "definitely...would affect that level of tension by raising it." (TR XV p.14)

Former Mayor Jerome Cavanaugh testified that, in his opinion, "...it is a fact of life that there are numbers of people in this City that would feel that if police officers who served them... lived in the suburbs (they) would not be as responsive or concerned about their needs and about the community." (TR XI 34)

Criminologist Albert J. Reiss, Jr., who has done field observation research with the Detroit Police Department, also testified for the City on the basis of his personal research and familiarity with the literature in the field. He too said there is abundant evidence of hostility between black citizens and predominantly white police forces in major American cities. In particular, he cited evidence compiled by the National Crime Commission and the National Advisory Commission on Civil disorders, emphasizing that such studies "...show there is considerable suspicion, hostility, and so on, on the part of the black and other minorities...toward the police and at the same time, a great deal of suspicion and hostility toward the minority on the part of the, say white, especially white police officers." (TR VIII 11) Reiss further testified that the attitudes and expectations of both citizens and police have the potential "for escalating conflict between the police and the public or de-escalating it." In view of the mutual suspicion and distrust which already exists, he believes that eliminating the residency requirement for Detroit police officers would dangerously exacerbate those negative attitudes and expectations.

Former Commissioner Murphy testified that:

...one of the great challenges facing the urban police in the United States for the next generation will be to overcome an attitude which persists in

the black community that the police have been a force of oppression...I think good police administration dictates understanding that and working to resolve the problems that have grown from that attitude, the tension and hostility very often between black communities and predominantly white police departments. I think permission for officers to live outside of the City could only exacerbate that problem and support...this attitude which continues to exist, that the police are not part of the community and don't understand the community's problems. (TR VII p. 15-16)

Don P. LeDuc, formerly State Administrator of Michigan's Law Enforcement Assistance Act Programs, has worked with every major police department and organization in Michigan, local, state, and federal. He testified that:

The only effective community relations program is the same thing as the only effective crime program...if people are not willing to work with, and seek the help of, and assist the police officers in their activities...the department is going to be unlikely to perform effectively.

As a part of that, I do not see how it can be logically consistent with the theory that the department is reaching out to the citizens and trying to make its officers available, approachable, open to the citizens, to have them not be a part of the City. In effect, to live in the City. I can see that it is detrimental to the philosophy, in my opinion, if the very agents that the City sends out on behalf of this philosophy are not in fact, residents of the City. That seems to be antithetical to me. (TR IX p. 82-83)

In opposition to these views, the DPOA contends the real tension and hostility about which this panel should be concerned is not that which the City alleges to exist between black citizens and white police officers, but between criminals, of whatever color, and the city's law enforcement agents, black or white. It argues there is no empirical evidence to support this contention that

effective law enforcement is enhanced by a residency requirement or impaired by non-residency. In this respect, it asserts that the key to good police-community relations and effective citizen cooperation with law enforcement activities is the officer's on-the-job performance, which is a product of his attitude toward his job, his training and professionalism as an officer and the organization and operation of the department as a whole, not of his place of residence. The Association also suggests the City's entire community relations argument is inherently political in nature, and as such has no proper place in these proceedings.

No doubt the issue does have political overtones, but this is virtually unavoidable in view of the manner in which it has been thrust into public view through the protracted legal challenges to the residency requirement and other court actions. Indeed, some would say that the entire question of race relations in the City of Detroit, of which hostility between black citizens and the white police officers is only one aspect, is political in character. But that hardly strips it of practical significance. Nothing could be further from the truth, and one only need look back to the Detroit riots of 1967 to discern the reason why. There, the initial conflict was in fact between "criminals" and the police. But, as matters developed, great numbers of previously law-abiding citizens were swept along in a tide of criminal activity which one must assume, in normal circumstances, would have been completely alien to them. Certainly, anything that heightens hostility between citizens and the police, exacerbates already

existing tensions, or further diminishes public cooperation with the City's law enforcement activities must be said to be harmful to the interest and welfare of the public. In view of the notoriety which the issue before this panel has gained in the past decade, and the public attention it has attracted at this point, it also must be assumed that elimination of the residency requirement for Detroit police officers and the subsequent relocation of a significant number of such officers would have such harmful effects.

This is not to minimize the seriousness and importance of the stress which is an integral part of a modern police officer's job. To the contrary, the Chairman has the highest possible appreciation and respect for the risks and responsibilities inherent in modern police work, and shares the Association's opinion that everything possible must be done, consistent with the public interest, to reduce the stress which officers undeniably experience. However, there is no clear and convincing evidence before this panel that the mere elimination of the residency requirement would significantly diminish such stress. To the contrary, it would appear the stress an officer experiences is most often a direct consequence of his on-the-job experiences, and of his training, motivation, and attitude toward the job. It is unlikely any of these factors would be appreciably improved by the mere geographical relocation of the officer's home. If anything, as has been noted earlier, his on-the-job experiences and attitude toward his work are likely to be negatively affected if he gives up residence within the City.

Certainly if citizen cooperation decreased and tension between the public and the police increases, the police officer's job will become more difficult, hazardous, and stressful. Those problems cannot reasonably be expected to disappear simply because a police officer is able to retire to the supposed tranquility of a suburban residence.

It may well be that some police officers feel they are captives within the City of Detroit, as has been suggested by Dr. Bruce Danto, a psychiatrist who testified on behalf of the Association. It may even be that for some officers, as suggested by Association witness Robert Lutz, residence outside the City would improve job performance. But again, on the whole record of this case, it must be concluded that the interest and welfare of the public in alleviating racial tensions and improving cooperation between citizens and police officers far outweigh the possible personal benefits which might accrue to some police officers were they allowed to live outside the City of Detroit.

#### COMPARISONS WITH OTHER EMPLOYEES - (Sec. 9d, 9h)

Section 9(d) of Act 312 suggests comparison with conditions of employment of other employees in comparable communities. Such comparisons are difficult if not impossible in this case, because in the State of Michigan there really are no communities comparable to the City of Detroit, at least insofar as has been indicated by the evidence presented to the panel. The only comparable communities one might find are other large metropolitan cities in



the United States. But all that has been presented in this respect is a list showing which of the other large American cities have police residency requirements and which do not. As noted earlier, only three of the ten largest cities other than Detroit (Chicago, Philadelphia, Indianapolis) have such a requirement. Witnesses for both parties have told of their experiences in such other cities as New York, Kansas City, Washington, and Jacksonville. But the Association correctly points out there is no evidence that those cities with residency requirements have more effective law enforcement than those cities which do not; nor is there any indication that the contrary is true.

A great deal is known about other public employees in the City of Detroit itself, however. Ordinance 327-G applies to virtually all City employees, the only meaningful distinction between sworn police officers and employees in the classified service being that the Ordinance allows the latter to obtain waivers of the residency requirement in individual cases. This was also possible for police officers for a time prior to enactment of the ordinance, but there was unanimity among the witnesses before this panel that it would be a mistake to vest such discretion in the Chief of Police or the Police Commission at this time. If the residency requirement were eliminated for police officers, therefore, they would be the only City employees immunized from Ordinance 327-G. Yet, as the Michigan Supreme Court noted in deciding its constitutionality there are a number of reasons why the residency requirement is more, not less, justifiable for police officers than for other City employees.

Of special significance, of course, are the residency requirements contained in the recent collective bargaining agreements negotiated between the City and the Fire Fighters Association and the Police Lieutenants and Sergeants Association. The DPOA argues such provisions were not the product of meaningful bargaining; but there is no evidence to support that claim. And it must be remembered the DPOA has already obtained the same economic benefits which were negotiated by the Fire Fighters and the Lieutenants and Sergeants. Thus it hardly can be argued that the continuance of the residency requirement as a condition of employment for police officers represented by the Association would render their overall collective bargain with the City unreasonable. The contrary is true, for to eliminate the residency requirement for police officers who have obtained the same economic benefits as fire fighters and police lieutenants and sergeants would be to enhance the bargain between the DPOA and the City unreasonably in the Association's favor.

#### OTHER FACTORS

It should be noted briefly in closing that the City has established to the Chairman's satisfaction that there is an abundant supply of adequate, reasonably priced housing available within the City of Detroit. The City has also established that there is a more than adequate pool of candidates for positions as Detroit police officers, although the department is well below authorized strength. In fact, the only restriction upon the hiring of new police officers

is a budgetary limitation, which might well become more severe if the residency requirement were eliminated.

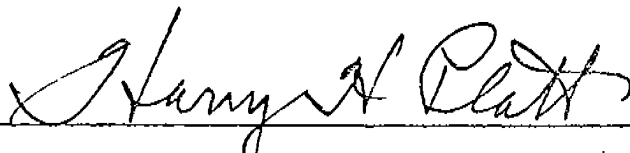
One final matter. The DPOA has declared its willingness to agree to a contract provision binding its members who may choose to live outside Detroit to make a "charitable" contribution to the City of an amount equal to the difference between the 2% resident and .5% non-resident city income tax on his or her police gross salary. The City has expressed reservations about the efficacy and legality of this proposal, noting that the Association's offer to commit its non-resident members to charitably contribute moneys to the City in amounts equivalent to the difference between resident and non-resident city income tax on their police gross salaries raises serious concerns and problems, among which are:

Should there be recalcitrant employees who refuse to "execute appropriate forms" what procedure is available to the City to enforce collection? Must the City sue in civil court under the bargaining contract? May the City terminate the employment of an offender found to be living outside the City and refusing to execute the proper forms? If so, may this termination take place outside the grievance procedure?

The Chairman shares the City's concerns and is also unpersuaded as to the legality and binding nature of the Association's proposal upon individual police officers who may choose to move from the city. Furthermore, even if the proposal could be adopted and enforced it would be at best a partial solution to the economic problems which would ensue from elimination of the residency requirement.

## CONCLUSION

After the most thoughtful and painstaking consideration of the whole record in this case in light of the several factors set forth in Section 9 of Act 312, as discussed at length above, it must be concluded that there is competent, material and substantial evidence to support the City's position that police officers should continue to be required to reside in Detroit as a condition of their employment. It should be noted that this finding continues a long-standing, uniformly applied policy which bears a reasonable relationship to the valid objects of municipal government, promotes the interest and welfare of the public, and which the City had lawful authority to enact and apply. The DPOA has been unable to produce clear and convincing evidence that the interests and welfare of the public would be better served by eliminating the residency requirement, that the City lacks the lawful authority to impose such a requirement as a condition of employment, or that any of the other factors enumerated in Section 9 of Act 312 require its elimination.



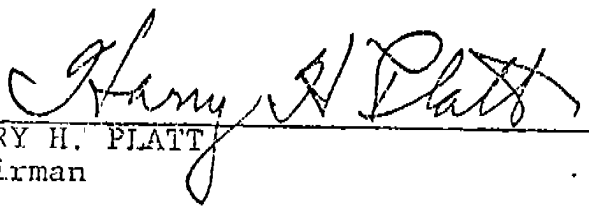
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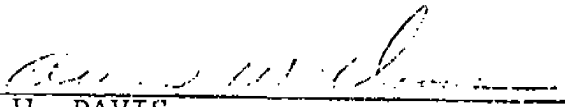
HARRY H. PLATT,  
Arbitrator/Chairman

AWARD AND ORDER OF ARBITRATION PANEL

The current collective bargaining agreement between the City of Detroit and the Detroit Police Officers Association, effective June 26, 1973 until June 30, 1977, shall contain the following provision with respect to the residency requirement for Detroit police officers:

"All members of the bargaining unit shall be residents of the City of Detroit."

  
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HARRY H. PLATT  
Chairman

  
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ALLAN W. DAVIS  
City of Detroit Delegate

\_\_\_\_\_  
JACK WOOD  
DPOA Delegate

September 5, 1975