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OF COUNSEL
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February 21, 1995

James M. Moore
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3727 Cadillac Tower
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Brian S. Ahearn
Attorney at Law
650 First National Building
Detroit, MI 48226

Re: Act 312 Arbitration Proceedings Between
City of Detroit and Detroit Police Officers Association

Gentlemen:

Following a meeting of the Panel, the Panel Majority hereby clarifies the following points in its Award:

1. It is noted that there was a typographical error at page 66, as the figure is 10.5% (10.9% cumulative).
2. In regard to the discussion of health care insurance beginning at page 87, and particularly at pages 94 and 95, and the rates set forth at page 100 and 101, it is the understanding of the Panel that said rates are guaranteed by Bankers for a one year period from the date of implementation of the C.O.P.S. Trust pursuant to the Award, it being understood that the implementation target date is May 1, 1995 and that the provisions as to further increases, if any, noted at page 101, will not be effective until the conclusion of said one year. If there are any disputes concerning this issue, said disputes are to be addressed to the Panel for resolution.
3. The Panel Majority elected not to award any provisions for pension buyback for periods of layoff, and the Award does not so provide.
4. As to the PAL, officers in the position now will be grandfathered in that position through June 30, 1996.

Very truly yours,

George T. Roumell, Jr.
GEORGE T. ROUMELL, JR.
Chairman

GTR.Jr/bs

cc: Roderick Gillum
Richard Weiler

Retreat, City of

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February 21, 1995

OF COUNSEL
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Maris Stella Swift, Chairman
Michigan Employment Relations Commission
1400 State of Michigan Plaza Building
1200 Sixth Avenue
Detroit, MI 48226

Re: Act 312 Arbitration Proceedings between
City of Detroit and Detroit Police Officers Association

Dear Chairman Swift:

The enclosed letter, dated February 21, 1995, is part of the Award in the above matter. I have enclosed eight copies for the Commission's files.

Very truly yours,


GEORGE T. ROUMELL, JR.

GTR.Jr/bs
Enclosure

cc: Shlomo Sperka, Executive Director
Michigan Employment Relations Commission

RECEIVED
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FEB 21 1995

RILEY AND ROUMELL

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February 22, 1995

Ms. Maris Stella Swift, Chairman
Michigan Employment Relations Commission
1400 Michigan Plaza Building
1200 Sixth St.
Detroit MI 48226

Re: Act 312 Arbitration Proceedings
between the City of Detroit and
the Detroit Police Officers Association

Dear Chairman Swift:

I enclose herein an original and seven copies of the
Disability Program which is incorporated by reference in the
above Award.

Very truly yours,


GEORGE T. ROUMELL, JR.

GTR/abt
Enclosures

cc: Shlomo Sperka, Exe. Director
Michigan Employment Relations Commission

STILL IN PROCESS
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

1995 FEB 23 AM 9 47

THE PROGRAM

1. As applicable to all current employees who file applications for disability retirements on or after July 1, 1995, and to all future employees, the definition of "total disability" and "total incapacity" in the Policemen and Firemen Retirement System pension plan will be changed to read as follows:

Own Occupation: During the first 24 months of benefits, total disability exists when, due to injury, illness or disease, an employee is unable to perform, for wage or profit, the material and substantial duties of the employee's occupation.

Any Occupation: After the first 24 months of benefits, total disability exists when, due to injury, illness or disease, an employee is unable to perform, for wage or profit, the material and substantial duties of any occupation for which the employee is suited, based on education, training and experience.

2. (a) The duty disability retirement benefits payable to an eligible member shall consist of the amount derived from the sum of the applicable following factors and annual escalators in accordance with the definitions of "own occupation" and "any occupation" as set forth in paragraph (1) above.

(1) Part A. A basic duty disability benefit amount which is fifty percent (50%) of the member's final compensation at the time his duty disability retirement began.

(2) Part B. A supplemental duty disability benefit which is sixteen and two-thirds percent ($16 \frac{2}{3}\%$) of the member's final compensation at the time his duty disability retirement began.

(3) Escalators. On July 1st each year, the amounts of Parts A and B then payable will each be increased by adding to said amounts the product of 2.25% times the initial amount

of the said Part A or B benefit which was computed at the time the duty disability retirement began.

(b) For the first 24 months that a member is on duty disability retirement his benefit shall be the sum of Parts A and B plus applicable escalators.

(c) After 24 months, a member who is disabled from any occupation shall continue to receive a duty disability retirement benefit which is the sum of Parts A and B plus applicable escalators. After the expiration of the period when the member would have attained twenty-five (25) years of creditable service had he continued in active service, payment of Part B will cease.

(d) After 24 months, a member who is not disabled from any occupation shall only receive Part A plus applicable escalators as his duty disability retirement benefit.

(e) Conversion. Duty Disability retirement benefits shall continue to be paid to a member on duty disability retirement after the member has attained 25 years of credited service, to the earlier of (i) the member's attainment of age 65, or (ii) termination of disability as determined by the TPA. Upon termination of disability or attainment of age 65, a member with 25 years of credit service shall be eligible to receive a service retirement benefit. The amount of such service retirement benefit shall be the same amount which would have been payable if the conversion from duty disability retirement to service retirement had occurred at the date of attaining 25 years of service credit.

(f) If a member on duty disability retirement returns to active service and within a twenty-four (24) month period requalifies for duty disability retirement for the same or related reasons he had been retired, then the disability shall be deemed a continuation of the prior disabling condition and the period of the return to work will not have caused the employee to be entitled to a new initial determination of Part A and B benefit amounts as set forth in sub-paragraphs (2)(a)(1) and (2) above. Instead, such employee will return to retirement at the point he had reached in sub-paragraphs (2)(b), (c), or (d) above as if there had not been a break in his period of placement on duty disability retirement.

(g) Non-duty disability benefits will continue to be calculated as provided by the City Charter.

(h) As in the past, disability retirement benefits shall continue to be considered Charter benefits which are paid instead of and not in addition to any benefits under the State Workers' Disability Compensation Act.

(i) Survivor Benefits. Survivor benefit coverage applicable to active members shall be continued during the period a member is eligible for a duty disability benefit. Upon conversion to a service retirement benefit as provided in 2(e), automatic survivor benefit coverage shall terminate. At that time, the member shall have the right to elect an optional form of payment in the same manner as if he had retired from active membership on the conversation date.

3. Pension Credit While on Duty Disability Status.

(a) While eligible to receive disability benefits, regular defined pension service credit shall continue to accrue.

(b) The accrual of regular defined benefit pension service credit will cease when the member has 25 years of credited service.

4. Earnings Offset.

(a) In the event that a recipient of a duty disability retirement benefit receives earned income from gainful employment during a calendar year, the amount of the member's disability benefit payable during the next subsequent fiscal year will be adjusted so it does not exceed the difference between (i) the member's base salary at the date of disability, increased by 2.25% times the number of full years from the date of disability to the year in which the earnings offset is applied, and (ii) the amount of remuneration from gainful employment during the prior calendar year.

(b) The earnings test shall be based on information the TPA may periodically require from a duty disability benefit recipient or have secured from other reliable sources. Furnishing such information shall be a condition for continued eligibility for a duty disability benefit.

5. Annuity Withdrawal. The current withdrawal provision of the retirement system will continue. If a duty disability recipient elects annuity withdrawal after attaining 25 years of credited service, the applicable benefit reduction will offset the duty disability benefit until the conversion date, after which it will offset the converted service retirement benefit.

6. The disability retirement procedure will be revised as follows:

- a. Medical Boards of Review will no longer be used. The function now performed by Medical Boards of Review with respect to the determination of whether an applicant is disabled will be performed by a qualified physician or surgeon in the appropriate specialty at Detroit Receiving Hospital or such other medical facility as may subsequently be mutually determined by the Union and the City. If either the Union or the City desires to terminate the services of the medical facility, it shall give notice in writing to that effect to the other party, specifying the date of termination. The parties shall then send a joint written notice to the medical facility of its termination. Neither party may terminate the services of a medical facility unless it has heard at least one (1) case. Once the medical facility has received written notice that its services are terminated, it shall hear no further cases. However, the medical facility shall render decisions on all cases where the applicant has been examined and evaluated prior to receiving such notice. The medical facility will select the doctor who will perform the examination and evaluation. The medical finding of this physician or surgeon as to whether the applicant is disabled shall be final and binding on all interested parties.
- b. If the applicant is determined to be disabled, the Board of Trustees or its designee will examine the pension file, including the submissions of the applicant and the Police Department, to determine if there is any dispute as to whether the disability "resulted from the performance of duty" within the meaning of the pension plan. If it is undisputed that the disability did result from the performance of duty, the Board of Trustees will grant duty disability retirement benefits. If it is undisputed that the disability did not result from the performance of duty, the Board of Trustees will grant non-duty disability retirement benefits, provided the applicant meets the other conditions of eligibility, e.g., five years of creditable service. If the performance of duty issue is in dispute, the Board of Trustees will refer the matter to arbitration by a member of the Disability

Retirement Review Board. The decision of the Disability Retirement Review Board Member as to whether the disability resulted from the performance of duty shall be final and binding upon all interested parties. The Disability Retirement Review Board shall consist of 3 qualified arbitrators who will be individually assigned in rotating order to decide the matters referred to arbitration by the Board of Trustees. Within thirty (30) days after the issuance of the Act 312 award, the Union and the City shall convene and select 3 disinterested persons qualified as labor arbitrators to serve as members of the Disability Retirement Review Board. The procedure for the termination of umpires and selection of new umpires found in Article 8 shall apply to the termination and the selection of new DRRB arbitrators.

- c. The hearing before a member of the Disability Retirement Review Board (DRRB) will be conducted in accordance with the following procedures:
1. The applicant and the City will have the right to appear in person or otherwise, may be represented by counsel if they wish and will be afforded an equal opportunity to present evidence relevant to the issues;
 2. A court reporter will be present and make a stenographic record of the proceeding;
 3. The hearing will be closed to the public, except that the applicant may select one (1) person to be with him in the hearing room; provided, however, that person may not testify;
 4. The witnesses will be sequestered;
 5. The witnesses will be sworn by the court reporter and testify under oath;
 6. The applicant may not be called by the City as an adverse witness;
 7. The DRRB Member will apply the rules of evidence and follow the procedures

which are customarily applied and followed in labor arbitration cases;

8. If the applicant wishes to have an employee of the City released from duty to appear as a witness on his behalf, the applicant may so inform the Board of Trustees in writing which, in turn, will submit a written request to the appropriate Department executive for the release of the employee for the purpose of so testifying;
 9. The DRRB Member will afford the parties an opportunity for the presentation of oral argument and/or the submission of briefs; and
 10. The DRRB Member will issue a written decision containing credibility resolutions as necessary, findings of fact and conclusions with respect to all relevant issues in dispute. The decision of the Disability Retirement Review Board Member shall be final and binding upon all interested parties;
 11. The authority of the DRRB Member is limited to deciding whether or not the Applicant's disability "resulted from the performance of duty" within the meaning of the Pension Plan. The DRRB Member shall have no authority to add to, subtract from, modify or disregard the terms of the Pension Plan.
 12. The costs associated with the hearing, including the arbitrator's fees and expenses, and the court reporter's fees and expenses, shall be paid by the Board of Trustees.
- d. A third party administrator (TPA) mutually selected by the Union and the City shall provide all ongoing duties of administering the disability benefits after initial eligibility has been determined. These duties shall include:
1. Monthly payments of benefits;
 2. The former duties of the Medical Director for conducting investigations to assure continuing

eligibility for disability retirement benefits, including the annual re-examination of disability beneficiaries;

3. Conducting investigations to determine any earnings the disability beneficiary may have for offset to system benefits; and
 4. The TPA shall have reasonable powers to insure compliance with re-examination and proof of earnings requirements including withholding of monthly payments until compliance is achieved.
- e. If a disability beneficiary is determined by the TPA to no longer be disabled, he may appeal that determination within 7 days thereof by filing a written request with the TPA for a re-examination by a qualified physician or surgeon at and selected by the medical facility identified in paragraph 6(a) above whose medical finding will be final and binding. The TPA shall promptly arrange for such re-examination. The applicant's disability benefits will be continued pending that final and binding medical finding, and if the finding is that the applicant is no longer disabled, his disability benefits will be further continued while the Police Department is conducting such examinations and/or investigations as necessary to determine whether the applicant is qualified for reappointment as a police officer.
- f. In the event that the Union and the City are unable to reach agreement upon the medical facility to perform the functions described in subparagraph (a) or the third party administrator (TPA) to perform the functions described in subparagraph (d) of this section, within thirty (30) days after a vacancy occurs, each shall nominate one choice as its selection and after reviewing any materials submitted and considering any arguments advanced by the parties in support of their respective nominations, a member of the Disability Retirement Review Board shall decide which of the two nominees shall serve as the medical facility or TPA.

7. The Board of Trustees shall not act upon or grant the application filed by an officer who, although he is not capable of performing the full duties of a police officer, has not suffered any diminishment of his base wages or benefits because he is either:

- a. regularly assigned to a position, the full duties of which he is capable of performing; or
- b. assigned to a restricted duty position, unless the Police Department advises that it intends to seek a disability retirement for the officer in the foreseeable future.

8. The provisions in paragraph 7 above are not intended to and will not:

- a. affect the officer's right to seek a disability retirement when no restricted duty position is available; or
- b. restrict in any way the existing authority of the Chief of Police to seek a duty or non-duty disability retirement for an officer or for that officer at that time to request a duty or non-duty disability retirement.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION UNDER ACT 312
(PUBLIC ACTS OF 1969, AS AMENDED)

In the Matter of:

CITY OF DETROIT

and

DETROIT POLICE OFFICERS
ASSOCIATION

ACT 312 CASE NO. D 92-C-0554

D-0917

OPINION AND AWARD OF ARBITRATION PANEL

ARBITRATION PANEL

George T. Roumell, Jr., Chairman
Roderick D. Gillum, City Delegate
Richard R. Weiler, Association Delegate

Appearances

City:

Brian S. Ahearn, Attorney

Association:

James M. Moore, Attorney

Michigan State University
Library
Detroit, Michigan 48206

Michigan State University
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Detroit, Michigan 48206

NOTICE TO ALL

During the July 1, 1992 - June 30, 1995 period, over 9,300 civilian employees of the City of Detroit in 40 bargaining units took pay cuts by working fewer regular hours or otherwise, or were laid off. Even the command in the police department above the rank of lieutenant took pay cuts. No employee of the City received a pay increase during this period. Any Detroit police officer who expected a retroactive pay raise for the July 1, 1992 - June 30, 1995 period, as a result of the Act 312 Award, was not realistic.

Detroit police officers are fortunate. They were not forced to take pay cuts. They were not subject to layoffs, which have not occurred in the Police Department since March 29, 1991, when 300 police officers were laid off.

Detroit has amassed a deficit of about \$347 million over the past five years. The cupboard was bare; the checking account was overdrawn. No more checks could be written. This was not business as usual.

In 1989, the Act 312 Chairman (Nathan Lipson) awarded Detroit police officers raises for the July 1, 1989 - June 30, 1992 period. In 1993, the same Nathan Lipson, after reviewing the City's financial situation at that time, recommended that civilian employees take pay cuts. In 1994-95, this Act 312 Award reflects the City has no money for raises for the July 1, 1992 - June 30, 1995 period.

The Association leadership has emphasized to the Panel the difficulties of police work. The City has emphasized the need to maintain and improve services to its citizens while living within its financial means.

The economic package that follows has been carefully developed. It provides for needed wage improvements for police officers, while recognizing the short and long term financial health of the City. In doing so, this could reduce the possibility of layoffs of police officers in the future.

The Award provides for a 10.5% (cumulative 10.9%) pay increase for police officers covering a three-year period commencing July 1, 1995. This is a competitive wage increase, recognizes the dangers of police work, and takes into account the City's limited financial resources.

As to health care, the Association has persuaded the Panel majority to continue health care benefits with the provider preferred by most officers. This was not an easy task because concerns as to health care cost containment had to be addressed.

This Act 312 Award provides for permanent shifts at the precincts and in certain units. This is a major breakthrough for Detroit police officers. In the past three Act 312 awards, permanent shifts have been rejected for numerous reasons. As the Department over the years continued to raise questions about permanent shifts, the Association's gain of permanent shifts was far from a certainty. The breakthrough came about only through the efforts of the Association's leadership over an extended period of time.

The Award also addresses certain non-economic operational concerns expressed by both the Association and the Department.

This is not a time for second-guessing on the part of either party. This is a time for realism. This is a time when

Detroit must pay its police officers competitively, due to the nature of their work. Police officers must recognize they can only be paid within the financial means of the City. Under all of the circumstances, neither the City nor the Association and its police members could expect different results than here.

OPINION OF PANEL

Introduction

The Detroit Police Officers Association is recognized by the City of Detroit "as the exclusive representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other terms and conditions of employment for all Police Officers of the Detroit Police Department, below the rank of Investigator"^{1/}

For a number of years, the parties have had collective bargaining agreements. The last collective bargaining agreement was effective July 1, 1989 and expired on June 30, 1992. It was the result of an Act 312 Panel Opinion and Award authored by the Chairman of that Panel, Nathan Lipson, during various periods in the fall and early winter of 1989, and the spring of 1990.

Prior to the June 30, 1992 expiration, the parties engaged in two mediation sessions on June 16, 1992 and June 29, 1992. Thereafter, the Detroit Police Officers Association ("Association") petitioned for Act 312 Arbitration pursuant to Act 312, Public Acts of 1969, as amended, MCLA 423.231 et seq. As required by Section 13 of said Act, the 1989-1992 Agreement has continued in effect.

Based upon the petition of the Association and the response of the City of Detroit ("City") and statements made at the opening hearing before this Panel, each party presented

^{1/} See Article 2, 1989-1992 collective bargaining agreement between the Detroit Police Officers Association and the City of Detroit.

demands to the Panel for review and decision by the Panel. The City presented the following demands:

1. Discipline - Discovery
2. Discipline - Probationary
3. Discipline - Increase Penalties
4. Discipline - Arbitration Appeals
5. Discipline - Reprimands
6. Discipline - Commander's Actions
7. Discipline - Penalty Implementation
8. Bonus Vacation Liquidation
9. Seniority Leave Days Reduced to 2
10. Assigned Out Time Limits
11. Canine Care
12. Recall Pay
13. Exempt Transfer Units
14. Address Change
15. Attendance Control
16. Limitation of E Days on Att. Control
17. Administrative Counseling
18. Limited Duty
19. Civilianization
20. Rep. & Indemn. - Reimbursement
21. Rep. & Indemn. - Cooperation with counsel
22. Rep. & Indemn. - Withdrawal procedure
23. Rep. & Indemn. - Settlement procedure
24. One person cars
25. Service Weapon
26. Americans with Disabilities
27. Arbitration Panel

28. Notice for interviews
29. Furlough accrual
30. Restricted duty limitations
31. Promotions
32. Wages
33. Hospitalization Insurance
34. Contract Duration
35. Longevity Pay
36. Vacation (Furloughs)
37. Sick Leave
38. Service Connected Disability Time
39. Survivors' Benefit
40. Liquidation of Banked Time
41. Optical plan
42. 2% Retiree COLA
43. Minimum Retirement Age
44. Optional annuity withdrawal
45. Pension Board administration
46. Pay for Union Representatives
47. Pension changes

In all, the City presented 47 demands.

The Association presented the following demands:

1. Drug Screening
2. Contract Duration
3. Tuition Reimbursement
4. Guaranteed Employment
5. Holidays
6. Hospitalization
7. Legal Defense Plan

8. Lump sum payment banked time
9. Stress Study
10. Outside Employment
11. Permanent Shifts
12. Personal Leave Days
13. Promotions
14. Residency
15. Restricted Leave Days
16. Senior Police Officer classification
17. Service Handgun
18. Shift differential
19. Sick leave payout
20. Minimum staffing
21. Limits on one person cars response
22. Additional vacation days
23. Wages
24. Deferred compensation
25. Medical - appointment compensation
27. Medical - miscellaneous
28. Sick time - Bonus Vacation reduction
29. E Days - Bonus Vacation reduction
30. Non-duty disability insurance policy
31. Pension Buy Back
32. "Contract cleanup"

In all, the Association presented 31 demands.

Thus, the Panel must face the 47 demands presented by the City, and 32 presented by the Association.

Section 8 (MCL 423.238) Identification of Economic Issues

Pursuant to Section 8 of Act 312, the Panel is required to identify economic issues. The Panel has designated the non-economic issues of each of the parties demands, with the remaining demands being designated economic issues. For the City, demands 1 through 31 are non-economic; demands 32 through 47 are economic. For the Association, demands 1, 9, 10, 11, 13, 14, 17, 20, 21, 24, 27, and 31 are non-economic; the remaining are economic issues.

Withdrawals of and Agreements on Demands

Subsequent to presenting demands, and before the hearings were completed, each party withdrew some of its demands, and said demands are therefore not a part of the Award of the Panel. Below are two columns setting forth the demands that were withdrawn by each party:

Withdrawal by City:

1. Canine Care
2. Recall Pay
3. Address Change
4. Administrative Counseling
5. Americans with disabilities
6. Notice for interviews
7. Restricted duty limitations
8. Longevity pay
9. Vacation (Furloughs)
10. Sick leave
11. Service Connected Disabled Time
12. Survivors' Benefit

Withdrawn by Association:

1. Lump sum payment
banked time
2. Stress study

13. Liquidation of Banked Time
14. 2% Retiree COLA
15. Minimum Retirement Age
16. Pay for Union Representatives

In summary, City withdrawals - 16; Association withdrawals - 2.

In addition, the parties reached agreement on two issues, namely, drug screening and deferred compensation. Therefore, the Panel will not address these issues.

Stipulations

The parties have stipulated that all time lines provided for in Act 312 have been met by virtue of the fact that the parties have extended the appropriate time lines. This Opinion and Award is being issued in accordance with the applicable time lines as extended by mutual agreement of the parties.

The parties have agreed that the Chairman of the Panel will write and sign the Opinion and Award; that their respective delegates have participated in the process; that the Awards that follow as to each proposal or issue is supported by a majority of the Panel, with dissents being registered during the process of the Opinion writing and preparing the Award by the respective Delegate. But, as to each proposal or issue raised, the Opinion and Award represents a majority vote; that the Panel members, with the consent of the parties, for the purposes of expediting the publishing of this Opinion and the Awards, have waived their signatures and publishing of any dissent, recognizing that the

signature of the Chairman will represent that there is a majority on each proposal or issue presented.

Organization of Opinion

The Opinion addresses the statutory criteria to be applied by the Panel in arriving at the Awards. After discussing the criteria, the Opinion is divided into two major categories: Economic Issues and Non-Economic Issues. The economic issues are introduced by a discussion of "the ability to pay" and "comparables". The Opinion then addresses the issues of wages, which will include a discussion of the duration of the agreement, health care issues, and then other economic issues, followed by the non-economic issues. The Opinion ends with the Awards.

The Criteria

Section 9 of Act 312 (MCL 423.239) provides for the criteria that an Arbitration Panel is to apply in reaching an award. Section 9 reads in its entirety:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

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

Section 9(c) and (d) represent the basic economic driving force in any collective bargaining for a contract, whether it be in the public or private sector. Section 9(c) addresses financial ability. Section 9(d) addresses comparables. In negotiations, an employer, in this case the City of Detroit, in providing wages and other economic benefits to employees, is driven by its financial ability to do so. A

Union, here the Association, is driven by its desire to receive wages and other economic benefits comparable with other similarly-situated employees employed by other employers, particularly in the geographical area involved.

The Section 9(e) criteria, the consumer cost of living, also drives negotiations, with the employer assessing whether its revenues, and therefore its financial ability, are rising consistent with the cost of living, and the employees assessing whether they are being offered wages and economic benefits consistent with the cost of living.

Section 9(f), overall compensation, is always a factor, coupled with a point very carefully noted in that section, "the continuity and stability of employment." Though members of the Association have experienced layoffs in the past, layoffs have not occurred in the past several years and probably will not be a factor in the near future, because of the existence of the provisions of the City Utility Users Tax Act, MCLA 141.1151, which is directed primarily toward Detroit. Based on the language of the statute, particularly "the first \$45,000,000 of revenue generated from this tax shall be used exclusively to hire and retain police officers", the parties have suggested that the present police force cannot be reduced. This follows because in Section (2)(b), the following language appears:

The governing body or any other official of the city shall not intentionally lay off any police officers in anticipation of rehiring the officers with the additional revenue from this tax nor shall the general fund contribution towards the police budget be reduced from the prior year.

Thus, despite some history of layoffs, the police officers can expect "continuity and stability" of employment.

Such a fact can influence the economic considerations because in the end, it is the employees' annual income and benefits that are crucial in contrast with employees who may expect, at points during a year's time, not to have income because of layoffs.

Section 9(h) is a "catch-all" criteria. It recognizes that in reaching collective bargaining agreements, parties have developed certain guides or criteria in mutually arriving at collective bargaining agreements, grounded in the application of the common sense approach. One of such criteria is the bargaining history of the parties. Collective bargaining is not done in a vacuum, but against a historical background. Such history can guide the parties toward a current agreement.

Bargaining history criteria takes on considerable significance between the City of Detroit and the Detroit Police Officers Association, both as to economic and non-economic issues. Since the advent of Act 312 in 1969, all but two of the collective bargaining agreements between the parties have been the result of Act 312 Opinions and Awards. A number of the economic and non-economic issues now before the Panel are issues that surfaced as far back as the early 1970's, and have been considered by previous arbitration panels. The awards of those panels, because of this reason, will be particularly persuasive when the party advocating a change has not been able to present persuasive evidence that, in 1994, there are compelling reasons to deviate from previous opinions and awards and the resulting collective bargaining agreement, over and above the desire of one or the other party to make a change.

Since 1970, the parties have negotiated, without the aid of Act 312, two agreements - July 1, 1974-June 1975, and

July 1, 1981-June 30, 1982. These two agreements were negotiated in periods where the City was experiencing economic difficulties. The actions of the parties at the bargaining table in such circumstances could be persuasive because, as will be explained below, the contract here is being considered against a background of the City having serious financial difficulties.

The bargaining history would also include considering over the years, either through collective bargaining or through Act 312, the relationship that has emerged between wages and economic benefits provided the Detroit police officers as compared to certain national comparables and suburban comparables. This gives some indication of where bargaining history, if applied, would lead the parties in resolving the contract now under dispute.

Negotiators in collective bargaining apply common sense in arriving at collective bargaining agreements. This concept of "common sense" includes the "art of the possible" criteria. What is possible under the given circumstances of the negotiation situation? The aim is to reach a collective bargaining agreement. The "art of the possible" is a criteria encompassed in Section 9.H. For example, in this case, the City desires to cut labor costs by expecting the officers to provide wage concessions. The officers, through their negotiating team, expect pay increases. Somewhere between these opposite positions there is the "art of the possible," in formulating a collective bargaining agreement.

Encompassed in Section 9.H. is the strike criteria. Strikes in the geographical area which have been settled may

offer some clue of what a settlement might be in a given situation, if one recognizes that interest arbitration is a substitute for a strike. Thus, settlements following strikes in the area can give some guidance. The strike criteria can be utilized in assessing whether the parties, if a strike was an option, would permit an issue to cause a strike, particularly if all other issues were settled. Such an assessment can be a guide to resolving the dispute.

Section 9.H as well as Section 9.C., "the Interests and Welfare of the Public," encompass the concept that bargainers consider the nature of the work of the employees involved in arriving at collective bargaining agreements. This concept is a factor here, because of the nature of police work and the public's expectations as to police performance.

The above discussion explains the criteria that the Panel has followed in arriving at the Awards.

I. ECONOMIC ISSUES

The Ability to Pay

A. The Economics of the Situation

This interest arbitration is being conducted in unique circumstances. Detroit, once a city of over 1,800,000 in its post-war heyday, has become a city of a little more than 1,000,000 persons. This population change, plus shifts in the automobile industry, has caused an eroding tax base. By the time the current administration took office, because of circumstances beyond the control of the previous and current administrations, the City was facing a debt structure that was a challenge to the ability to manage and provide basic city services.

Edward Rago has spent a lifetime, namely, 35 years, working in various financial capacities in the Budget Department of the City of Detroit. For the last three years, until his retirement on October 20, 1994, he was Director of Budget for the City of Detroit. (Vol. IV, Tr. 42-43)^{2/} Mr. Rago served as Budget Director under both Mayors Coleman Young and Dennis Archer.

Exhibit 40, prepared under Mr. Rago's direction, is a document depicting the economic history of Detroit, the budget history of Detroit, current budgetary conditions, and the budget plan for the fiscal year 1994-95.

Between the period 1970 to 1992, the property valuation of the City of Detroit, adjusted to 1967 figures, increased

^{2/} Throughout this Opinion, references in the text or in footnotes to Vol. is to the volume of the transcript of the testimony before the Act 312 Panel; Tr. is to pages of the transcript in the given volume.

6.89%. In Wayne County excluding Detroit, the increase was 223.10%; in Livingston County, 787.99%; in Macomb County, 379.94%; and in Oakland County, 492.35%. In the State of Michigan as a whole, property valuation increased over the 22 year period 299.05%. There is only one conclusion - in Detroit, property valuations - which form a basis for tax revenues for municipalities - have not kept up with the state-wide average or the metropolitan six-county area average, which, including Detroit, had an average 278.42% increase. This only exacerbates the financial situation in Detroit.

Other figures highlight the declining tax base of the City. In 1972, the City had 23,465 business establishments. By 1987, this number had been reduced to 10,012, or a loss of 57.33%. This occurred despite the efforts to build a new General Motors plant in the City of Detroit (Poletown) and the new Jefferson Avenue Chrysler plant. Though real estate tax abatements were given to both corporations as an incentive to build these plants in Detroit, these efforts were helpful because of the income tax produced.

The labor force in Detroit in March, 1980 was 641,725. By March, 1994, this force had been reduced to 384,675, a reduction of 40.06%. The employment rate in Detroit in 1980 was 545,325. By March, 1994, it had fallen to 339,700, a reduction of 37.71%. From the period 1974 through 1993, in Wayne County and surrounding counties, 80% of the building demolitions were in Detroit, namely, 95,842 demolitions.

Among the 24 largest cities in the State of Michigan, Detroit by far has the highest index of tax effort. For the fiscal year 1993-94, Detroit had a tax effort index of 6.70170.

This is to be compared with the next highest, Pontiac, of 3.12365, and such surrounding communities as Dearborn, 1.19784, and Troy, with 0.71638. With the exception of Saginaw (2.34621), Lansing (2.29444) and Flint (2.12983), no other compared community approaches Pontiac's 3.12365, and Pontiac does not approach Detroit's tax efforts at 6.70170. The tax effort in Detroit is based upon a 3% income tax on residents, 1 1/2% on non-residents and 2% on corporations, a 5% utility tax, a 20-mil property tax, a 3-mil property garbage tax, and a debt service tax on property of 7.827 for 1994-95, as well as a property library tax of 2.640. Mr. Rago testified that Detroit had the highest resident and non-resident income tax in the state. Many of the 24 compared cities do not even have an income tax.

Demographer Patricia Cousens Becker, in her testimony beginning at Vol. VII, Tr. 99, and particularly in Exhibits 54 and 55 (prepared by Ms. Becker), echoed the economic trends in the City of Detroit, indicating the unfavorable comparables with the metropolitan Detroit area and nationally. A report prepared by Dr. Malcolm S. Cohen, former Director of the Institute of Labor and Industrial Relations, University of Michigan and now on the faculty of the University of Minnesota, if anything, agreed with both Mr. Rago and Ms. Becker that Detroit does have a declining economic base.

These economic trends impact on the City's ability to raise revenue. In addition to the utility tax which is based upon usage by both business and residences, and can be affected by housing and business activity in Detroit, the demolitions affect state equalized value for property tax assessments, and

the reduction of employment and work force affects income tax collections.

The history of the City of Detroit General Fund underscores the financial difficulty of the City. The economic benefits including wages for police officers come from the General Fund. In Exhibit 40, The City presented the following chart depicting General Fund history:

CITY OF DETROIT GENERAL FUND

<u>Fiscal Year</u>	<u>Total Expenditures</u>	<u>Final Operating Results</u>		<u>Surplus/(Deficit) as a Percent of Total Expenditures</u>
		<u>Surplus</u>	<u>Deficit</u>	
1949-50	\$ 141,181,240	\$	\$ 1,634,726	- 1.16%
1950-51	142,003,718		4,120,932	- 2.90%
1951-52	157,093,911		2,612,585	- 1.66%
1952-53	159,647,177	563,119		0.35%
1953-54	167,221,750	1,128,446		0.67%
1954-55	185,483,198		3,037,555	- 1.64%
1955-56	188,638,235		2,698,698	- 1.43%
1956-57	208,453,913		5,323,062	- 2.55%
1957-58	220,194,730		7,291,135	- 3.31%
1958-59	229,535,839		852,351	- 0.37%
1959-60	235,479,921		4,731,593	- 2.01%
1960-61	228,380,535		8,983,770	- 3.93%
1961-62	236,746,828		34,573,824	-14.60%
1962-63	229,899,184		19,444,564	- 8.46%
1963-64	254,343,789		8,334,815	- 3.32%
1964-65	254,567,247	2,309,454		0.91%
1965-66	280,985,602	5,485,103		1.95%
1966-67	307,007,521		10,944,199	- 3.56%
1967-68	315,800,274		15,373,380	- 4.87%
1968-69	347,402,347		14,666,271	- 4.22%
1969-70	384,883,428		19,810,943	- 5.15%
1970-71	405,127,389		20,459,407	- 5.05%
1971-72	447,602,394		22,566,341	- 5.04%
1972-73	496,094,036	11,978,304		2.41%
1973-74	533,688,484	14,445,768		2.71%
1974-75	562,987,349		16,352,461	- 2.90%
1975-76	519,731,442		36,884,556	- 7.10%
1976-77	556,966,511	11,564,185		2.08%
1977-78	676,713,483		8,532,542	- 1.26%
1978-79	700,590,447		19,884,806	- 2.84%
1979-80	777,021,749		80,866,366	-10.41%
1980-81	756,194,956		115,692,131	-15.30%
1981-82	790,246,129	3,178,339		0.40%
1982-83	794,880,525		45,682,445	- 5.75%
1983-84	819,084,824		27,320,553	- 3.34%
1984-85	834,741,185	47,934,576		5.74%
1985-86	937,323,396	58,306,015		6.22%

<u>Fiscal Year</u>	<u>Total Expenditures</u>	<u>Final Operating Results</u>		<u>Surplus/(Deficit) as a Percent of Total Expenditures</u>
		<u>Surplus</u>	<u>Deficit</u>	
1986-87	1,050,432,547	14,572,263		1.39%
1987-88	1,088,892,618	24,430,492		2.24%
1988-89	1,118,524,899	6,813,959		0.61%
1989-90	1,275,764,588		46,515,815	- 3.65%
1990-91	1,187,721,203		105,928,296	- 8.92%
1991-92	1,151,648,623		106,089,304	- 9.21%
1992-93	1,066,685,029		26,203,882	- 2.46%
1993-94			63,300,000 (projected)	

According to the above chart, in a 44-year period, Detroit has had a surplus in 13 fiscal years, with the remaining years being deficits. Beginning with the fiscal year 1977-78, with the exception of the 1981-82 fiscal year, the City ran a deficit for each consecutive year through 1983-84. Two of those deficits, 1979-80 and 1980-81, represented 10.41% and 15.30% respectively of the General Fund budget. Until that time, there had only been one fiscal year where the percentage deficit reached these heights, namely, in 1961-62, where the deficit was 14.60%. Most of the deficits ran under 5% of the General Fund budget.

In the 1979-80 fiscal year, when the City was experiencing an \$80,866,366 deficit, 400 police officers, along with 433 civilians and 16 fire fighters, were laid off. In the next fiscal year, 1980-81, when the City was experiencing \$115,692,131 deficit, 690 police officers and 180 civilians were laid off. In the fiscal year 1983-84, where again there was a deficit of \$27,320,553, 224 police officers were laid off, along with 244 civilians.

After the aforementioned periods of extensive layoffs, by 1984-85 through fiscal year 1988-89, the City had brought its finances under control, consistently running budget surpluses.

There were no layoffs during this 1984-89 period. Then, the experience of the late 1970's and early 1980's erupted again, so that beginning with fiscal year 1989-90 through 1993-94, the City experienced annual deficits, including two years, 1990-91 and 1991-92, where the deficits approached 8.92% and 9.21% of the budget.

In the current developing fiscal crisis, i.e., beginning with the 1989-90 fiscal year, 300 officers, along with 202 civilians, were laid off during the 1990-91 fiscal year on March 29, 1991, a year in which the deficit was \$105,928,296. Following March 29, 1991, there were no further layoffs of police officers. But from August 30, 1991 through October 16, 1992, on six separate occasions, August 30, December 6, 1991, May 31, July 16, August 28 and October 16, 1992, civilian employees were laid off. During this period, a total of 1,440 civilians were laid off.^{3/}

Though Mr. Rago testified that the Budget Department monitors the budget during a given fiscal year in an attempt to avoid deficits, it is obvious that these efforts beginning in 1989-90, although reducing the percentage of deficits, were not successful. It would seem that in 1992-93, some moderate success was achieved, relatively speaking, in terms of keeping the deficit to 2.46% of the budget. But, by 1993-94, the deficit began creeping up again, from \$26,203,826 in 1992-93 to a projected deficit of \$63,300,000, about 5% of the budget.

With such deficits exceeding any surplus that had been accumulated from 1984 through fiscal 1988-89, the City was

^{3/} There is an indication that a number of the civilians laid off on October 16, 1992 were subsequently recalled.

experiencing a debt impacting on its ability to provide economic benefits to its employees and to provide service to the people of the City of Detroit.

The City's fiscal year runs from July 1 through July 30; Mayor Coleman Young retired from office on December 31, 1993; Mayor Dennis Archer became mayor on January 1, 1994. This transition in administrations occurred in the middle of the 1993-94 fiscal year, a year producing a \$63,300,000 projected deficit. One of the early obligations under the Archer administration was to formulate a budget for the 1994-95 fiscal year. Taking into consideration the financial history as outlined above, this task presented a daunting challenge.

The budget process begins in early January, before the end of the fiscal year. By February, 1994, the initial projected budget showed that the City was short \$103,000,000 from balancing the budget. (Vol. IV, Tr. 140). After trimming budget requests, the projected deficit for 1993-94 was \$63,000,000. To finance the deficits from 1989 through 1992, the City had opted for issuing five-year term bonds, of which \$82,000,000 was still outstanding in the 1993-94 fiscal year.

These economic factors suggested to Budget Director Edward Rago, and he so advised Mayor Archer, that any attempt to include the \$63,000,000 deficit into the 1994-95 budget would mean drastically cutting City services. As Mr. Rago described the situation:

That to make a cut of that magnitude on top of everything else, we felt would have been just totally devastating to service levels. It would have virtually made Detroit, I think, most unliveable. We would just not be cleaning or fixing up or doing anything in

the city. It would have been a disaster.
(Vol. IV, Tr. 141).

Thus, the City adopted a bonding proposal designed to prevent "totally devastating . . . service levels." Mr. Rago testified as to the techniques adopted by the City to address the financial dilemma, when he noted at Vol. IV, Tr. 141-144:

There were impediments to that. We had chosen the bonding route in 1992. Traditional logic would tell you that while you have outstanding indebtedness for a deficit financing bond, you don't go back to the market and ask to do it again. It's almost like an unwritten understanding that if you say let me borrow until I get myself out of debt and I won't do it no more, the market accepts that and you can market a deficit funding bond. To come back and do it again before those bonds are repaid is somewhat novel, I'd say.

But we were in a position where, while we had bonded out the deficit in 1992 and still had three years remaining on the debt service for that, we couldn't rebalance the budget in any sensible fashion without stretching that \$63 million deficit that we were looking at. We decided that we would stretch it over a longer period of time than we had chosen in 1992. In 1992 we opted for a 5-year term bond. We said this time around we're going to make it a flexible bond anywhere from 5 to 10, but we targeted everything on a seven-year retirement on the debt.

And besides paying for the \$63 million deficit as we were required by law, we also opted to defease the 1992 issue, the remaining principal of which was about 81 or \$82 million. We would pay off that \$82 million of outstanding principal and refinanced the \$63 million deficit, a total of \$145 million.

There's a state law that says you can't float more than \$125 million worth of deficit funding bonds. We thought rather than attack Lansing and try to get them to change that law, we would live by the existing statute and pay for the other 420 million of our goal out of current revenue. That's essentially what this year's plan was.

Back to this exhibit, then --

MR. ROUMELL: So how much are you paying out of current?

THE WITNESS: 20. Of the total of 145, the prior sins that we were trying to cover, we would pay 125 of it out of a new debt issuance and 20 of it out of current revenues.

So having then made that decision that that's how we're going to handle it, then we make the entries in the mayor's proposed budget that will implement it. And that's what this first grouping of numbers is. These are the things you put in the budget to represent the fact that you're going to bond out the deficit.

The first thing you do is say, well, we're going to get \$125 million of revenues from the sale of the bond, bond proceeds. So you put a revenue in of 125. Then you say, since we're defeasing the '92 bond issue, we won't have any debt service on it next year. That was going to be \$30 and a half million. Take that appropriation out of the budget.

MR. ROUMELL: Although that will have to go back in next year.

THE WITNESS: New debt service will have to go in next year, exactly. And we're going to come back to that in just a second.

One thing that you have to do to offset those revenues, or those good things happening to your budget, because we're going to defease the '92 bond issue, the remaining principal of it, you have to put an appropriation in to pay it off. So we had to put in an \$82 million appropriation to pay that old bond off.

And we also determined that for this, let's say, seven-year new bond issue, that we would structure it in such a way that for the first year we'll pay interest on the balance only and then principal and interest over the remaining six years. So we put in a \$5.6 million new appropriation for interest on 125.

Indeed, as described above by Mr. Rago, the current City administration is attempting to be creative in addressing a

difficult financial situation. The bonding proposal only highlights that the fiscal situation cannot be viewed by the rank and file of the Detroit Police Officers Association, or its leaders, as the "same old tune." As noted, in 44 years, the City has experienced deficits for 31 years. Yet, during this period, the Detroit Police Officers Association has achieved, primarily through Act 312 since at least 1970, a pattern of wage increases, with the exception of the wage freeze during the July 1, 1981 - June 30, 1982 period.

There came a point, beginning in 1984-85, that the City "fixed" the tendency toward deficits and had five successive years of surpluses through careful budgeting and cost containment. During those five years, the City accumulated a surplus, namely, from 1984-85 through 1988-89, of approximately \$151.5 million. This may have explained the reason why the Act 312 arbitration awards during this period provided for police officers' wage increases.^{4/}

In the five subsequent years beginning 1989-90 through 1993-94, the City projected deficits of \$347.9 million. The difference is a deficit of approximately \$196.4 million. This explains the previous debt bonding and the difficulty in creating a current bonding package so that for the upcoming 1994-95 fiscal year, services will not be devastated because of a need to budget for the \$63 million 1993-94 deficit.

The deficit pattern recycled. This recycling was not the fault of the previous administration and was inherited by the current administration. Economic downturns, lost

^{4/} See Ex. 70A.

businesses, reducing population and property demolition caused a loss of tax revenues, including State shared revenues. (Vol. IV, Tr. 65-67). In addition, as a result of Executive Order cuts by the Governor of Michigan, Detroit, in the last five years, lost approximately \$96 million of State shared revenues. (Vol. IV, Tr. 79). Federal revenue sharing has ceased to exist, as well as other federal programs which impacted on revenues for the general fund. (Vol. IV, Tr. 75).

In the 1977-78 fiscal year, the percentage of the budget generated from local taxation was 63.86%. In 1993-94, the percentage rose to 68.54%. State shared revenues increased as a percentage of the budget, from a low of 14.39% in 1977-78 to 21.37% in 1993-94. In 1989-90, however, the percentage of the budget from state shared revenues was 25.09%. But, as noted, this has been reduced for the reasons discussed above. In 1977-78, federal aid contributed 21.75% of the budget. In 1993-94, federal aid only contributed 10.09% of the budget, emphasizing the point just noted.

There are two revealing figures when one reviews the local tax efforts as applied to general funds. The property tax generates approximately \$110 million per fiscal year. (Vol. IV, Tr. 60-61) In the fiscal year ending June 30, 1993, income tax generated \$279.7 million. Thus, 71.7% of the local tax revenues come from income tax on corporations, residents and non-residents, and 28.3% comes from property tax.

Edward Rago testified that the \$110 million generated from property tax assessments in Detroit is only enough to either pay for the City's costs of providing health insurance for its employees, or the annual cost of pension contributions

for its employees. The City, therefore, must rely on sources beyond property tax to generate revenues to pay wages and economic benefits to its police officers.

The City has attempted to bring its employee staffing in line with its income. In 1977-78, there were 10,170 civilian employees. In fiscal year 1993-94, there are 6,052 civilian employees, or a drop of 40.5%. There were 5,758 uniformed police officers employed in fiscal year 1977-78. In the fiscal year 1993-94, there were 3,874 uniformed police officers, or a drop of 32.7% from the 1977-78 high. In fiscal year 1977-78, there were 1,572 uniformed fire personnel; in 1993-94, there were 1,325, or a drop of 15.7%. The total percentage drop of employees financed by the City's General Fund is 35.7%, from the high in fiscal year 1977-89 of 17,500, including police and fire personnel, to 1993-94's 11,251.

In response to the City's presentation as to its financial situation, the Association introduced a report prepared by Edward J. Fennell, who has analyzed the fiscal condition of approximately 2,000 counties, cities, towns, villages and school districts, as well as serving, at one time, as the comptroller of a municipality. As one reads Mr. Fennell's report, he obliquely and perhaps reluctantly supports the City's concerns as to its fiscal problems.

At page 3 of his report, "Introduction", Mr. Fennell writes in part:

Evidence submitted by the City (C 40-table 17) demonstrates the long term and short term history of the City's fiscal problems. The most probative of all those exhibits is number 17. It is a 45-year history of the City's ability to balance its General Fund budget. It has been balanced only 13 times in the 45 year period covering 1949-1990

through 1993-1994. The totality of the surplus dollars generated in the 3 years of surplus adds up to \$203 million as compared to the combined deficits of \$907 million during the remaining 32 years, with 42.5% of these deficiencies occurring during the past five years.

And this is just the point. In the 34 year history of the City of Detroit General Fund, from 1949-1950 through fiscal year 1983-1984, the City only had 8 years of surplus, as compared to 27 years of deficits. By the 1983-84 fiscal year, it seemed imperative that for the future of Detroit, the City was obligated to rein in its deficit. For five years, the City did so, producing surpluses beginning in 1984-85. Beginning in 1989-90, the City began operating with deficits. Mr. Fennell acknowledged that during the last five years, the amount of these deficits represented 42.5% of the total amount of deficits that the City had run for the past 44 years. Ergo, there is no doubt that the City has "fiscal problems" which, according to former Budget Director Edward Rago, required creative financing vis-a-vis the bonding of its debt to the tune of upwards to \$140 million to avoid a financial collapse.

Mr. Fennell does suggest that the City, in adjusting "...their structural financial problems...the City had reduced the police department significantly while other agencies had become the beneficiary." In this regard, Mr. Fennell noted at page 3 of his report:

In an Official Statement upon the sale of bonds (\$26,770, 000 General Obligation bonds, Series 1993, pg 14, attached as "A"), dated December 13, 1993, the City made the point that the amount of funds budgeted for Police services had decreased significantly. Specifically the City pointed out that the percentage of budgeted appropriations for Police fell from 27% of General City agency

appropriations in 1990 to 22% in 1994. This disclosure is confirmed by an examination of the audited Annual Financial Reports for the same years, which reflect the actual expenditures.

The expenses of the police department had been reduced from \$341.4 million in 1990 to \$309.9 million in 1994-95, while the general city agency expenses had risen from \$1,275.8 million in 1990 to \$1,398.9 million in 1994-95. Thus, the percentage of expenditures for the police department dropped from 26.76% in 1980 to 22.15% in 1995.

Significantly, from 1990 to 1993, the percentage of the general city budget allocated to police department expenses increased, from 26.76% to 29.14%. This is despite the fact that on March 29, 1991, 300 police officers were laid off. Even when the percentage was reduced to 22.15% without any police layoffs, it should be noted that since August 30, 1991, 1,440 civilians have been laid off. It is possible that of these 1,440 civilians laid off on October 16, 1992, some may have been recalled as part of the layoff with AFSCME.^{5/}

It may be that during fiscal year 1989-90, there were 4,753 police officers, as compared to 3,834 in fiscal year 1993-94. In fiscal year 1989-90, there were 7,379 civilian employees. But by fiscal year 1993-94, there were only 6,052 civilian employees, a drop 1,394. For the fiscal year 1988-89, there was 4,816 uniformed police officers; by fiscal year 1993-94, there were only 3,874, or a drop of 942, 21.5%, compared to the drop of civilian employees of about 19%.

^{5/} See, discussion at page 18 of this Opinion. Percentagewise, therefore, the number of police officers has dropped higher than civilian employees.

Percentagewise, therefore, the number of police officers has dropped higher than civilian employees.

However, in terms of the totality of numbers, while there were 942 police officers laid off or not replaced since 1988-89, during the same period 1,394 civilian employees were either laid off or not replaced. Since 1976, the percentage of civilians laid off is 44.5%, compared to the percentage of uniformed police officers of 32.7%.

It also should be noted that in the 1992-93 fiscal year, when the police expense as a percentage of general city expenses rose to 29.14%, civilian employees were experiencing a reduction in hours or other techniques designed to reduce their wages by 10%. This did not occur with the police.

On page 4 of his report, Mr. Fennell suggests:

It could be asserted that the funds appropriated within the General City Budget to pay for deficit finance bonds and prior year's deficits account for the reduction in Police Department appropriations. However, this is not borne out by a discreet analysis of prior financial statements and the current budget.

Although an interesting observation, the basic reason for this percentage of the budget factor is not because the City, with its limited resources, is diverting resources from the Police Department to favor other City departments, but, rather, as Edward Rago testified, is a result of the necessity to include in the general budget the repayment of debt reduction bonds that had to be sold as a result of the City's deficit.

Based upon the analysis just made, Mr. Fennell's premise "is not borne out by a discrete analysis..." is not persuasive. There has been a reduction of police expenses as a

percentage of the general expenses. Yet, police expense for the year 1994-95 is budgeted at approximately \$7 million more than for the previous fiscal year, namely, \$309.9 million vs. \$302.5 million in 1993-94. It may be that the general city expenses are up approximately \$108 million, from \$1,290.2 million in 1993-94 to \$1,398.9 million in 1994-95, but this is certainly not as a result of hiring more civilians receiving a pay increase. Remember, the civilians, since July 1, 1992, have taken two years of pay cuts and a year of what amounts to a wage freeze.

On page 5 of his report, Mr. Fennell also acknowledged that the City's contribution from the general fund to the police budget has increased over the past fiscal year by almost \$16 million, from \$223,966,000 to \$239,165,000.

It may be, as Mr. Fennell points out, that since 1991, there has been a reduction of \$41 million from the general fund's contribution toward police expense, or a reduction of 14.7%. But this does not explain the growing deficit since 1989-90, which is there to behold. Even the analysis of the Utility Tax revenue, which goes to police services, shows 52.5 million in projected revenue for 1994-95. But this is less than in 1993-94, and certainly does not represent the high of 1989-90, \$56.295 million. And the Utility Tax depends on population, industry and businesses' utility usage, and with the declining base, there are concerns of whether the Utility Tax can continue to produce the projected revenue.

Mr. Fennell points out that, beginning with the fiscal year 1989, the assumption for the Police and Firemen Pension System has changed so that the City's contribution to that

System has been reduced following each year. He argues that from 1983 the reduction in contributions reached a total of some \$192 million, which he claims would have been made if the reductions had not been made if the assumption reductions had not been changed. He then concludes:

The proportion of Police to Fire employees is approximately 76% to 24%, therefore the savings attributable to the Police is approximately \$146.9 million.

The changes made to the system were made with the collaboration of the Police and Fire unions, and as such, considerations were received. However, this does not diminish the magnitude of the benefit received, nor does it diminish the fact that actuarial changes will continue into the future. It is obvious that the magnitude of the considerations received by the unions left plenty on the table, and those assets are contributing to a healthier pension system.

Though Mr. Fennell refers to "the accumulated payments are dramatic over this period," he does acknowledge in the above statement that the police receive consideration, as did the fire fighters, namely, they received pay raises. It is doubtful, without these assumptions reflecting on the City's contributions to the Police and Firemen's Pension System, that officers would have received any pay raises, or pay raises of the type they received as a result of the 1989 312 Award.

Despite this change in assumption, the City, beginning with the assumption change, continued, even in the period of layoffs of civilian employees and employee wage reductions, a \$347.9 million deficit over five years. And deducting the \$151.5 million surplus accumulated in 1984-85 through 1988-89, there still is a \$196.4 million deficit that must be accounted for.

This is the point that Mr. Fennell reluctantly admitted, as previously noted. It is a point that cannot be ignored. The City is in financial difficulty.

Regardless, there is the stark reality that the City has incurred about \$347 million in deficits over the past five years, which after considering the surpluses of the 1984-85 - 1988-89 years, leaving a deficit for the current years approaching \$196 million.

The financial situation faced by the City of Detroit, as described above, has impacted on the City's ability to borrow funds. Among the major rating firms, both Standard & Poor's and Moody's have rated the City's general obligation bonds at the lowest rating for investment grade rating. Standard & Poor's rates the City's bonds as "BBB", or triple-B rating; Moody's rates the bonds at a "B-1" rating. These ratings mean that if the City is relying on the financial markets for borrowing funds, its costs of borrowing will be substantial.

The Panel is also aware of a story that appeared in The Detroit News Metro Section C on Sunday, January 1, 1995, with the headline "City May Possibly End '94 with Surplus Cash", and a sub-headline "As he begins his second year in office, the Mayor sees fiscal recovery and economic growth as attainable goals for the City. He predicts action soon on the stadium issue." One must not be too impressed with headline writers.

In this story, Mayor Archer was quoted as saying, "I don't care if it's one dollar, I'd like to have a surplus." This story does suggest that the projected deficit for the 1993-94 fiscal year might be reduced from \$63 million to \$58 million. But this story does not change the obvious facts as to

Detroit's financial troubles and the need to address the City's fiscal health for both the benefit of its citizens and its employees, including the police officers.

B. City Bargaining Patterns and the Economic Situation

As described above, with the growing deficit, the City was addressing ways to control the deficit. Beginning with the 1992-93 fiscal year, the City proposed that its bargaining units take a 10% wage reduction for a two-year period. With the exception of the Amalgamated Transit Union (bus drivers) and the Uniformed Services, such concessions, in one form or another, began on July 1, 1992 and ended on July 1, 1994. The American Federation of State, County and Municipal Employees, the largest bargaining unit of City employees, resisted the concession contract. As a result, approximately 800 AFSCME layoffs took place during the 1992-93 fiscal year. AFSCME and the City went to fact finding. Fact Finder Nathan Lipson, on May 29, 1993, had made recommendations which Mr. Rago described as "the City was justified in requiring the 10% . . . - or demanding a 10% wage cut. He agreed with us." (Vol. IV, Tr. 138). This was the recommendation that was "then imposed on AFSCME" in June, 1993. (Vol. IV, Tr. 138).

According to Mr. Rago, these reductions were a factor in causing a reduction in the deficit in 1992-93 to 2.46% of the budget, as compared to 8.92% in 1990-91, and 9.21% in 1991-92.

Mr. Rago noted that if the uniformed groups had agreed to a 10% reduction, the City would have saved, during the 1992-93 and 1993-94 fiscal years, some \$56 million, which he described as "almost as much as our current deficit." (Vol. IV,

Tr. 137). Mr. Rago also noted that the City is in fact-finding with the Amalgamated Transit Union, and is still seeking concessions from that Union. (Vol. IV, Tr. 139).

C. The City Is In Financial Trouble (Financial Conclusions)

The Lipson 1993 fact finding opinion and recommendation is particularly significant.

Arbitrator Nathan Lipson was Chairman of the Arbitration Panel that in the fall of 1989-spring of 1990, awarded the Police a 5%, 4% and 4% increase for the three years ending June 30, 1992. As already noted, in the first year of that Award, 1989-90, the City began its deficit decline, having its highest monetary deficit that year, and its second highest monetary deficit since the 1949-50 fiscal year. Only 1979-80, was higher. The deficits continued.

By May 1993, almost four years had passed from the issuance of the 1989 Act 312 award. During this period, there were four years of mounting deficits. The same Nathan Lipson, in May 1993, agreed with the City that the City's financial condition had dramatically changed for the worse, i.e., growing deficits.

This conclusion caused Arbitrator Lipson, in his May 1993 Fact Finder's Report and Recommendations, to note:

It is your Fact-Finder's view that the propriety of a 10% reduction for Detroit's AFSCME employees should be determined, not only in terms of circumstances that faced the present parties in 1992 and 1993, but by considering the matter from a perspective that includes all relevant factors, including the future. Indeed, the collective bargaining agreement now to be established is not the first, nor will it be the last between the parties.

* * *

What is presently appropriate should be decided by considering, not only the City's present financial situation, but that of its past and probable future. While the Union attributes part of the City's fiscal difficulties to lack of efficiency and waste of resources, it does not deny that Detroit's budget must be balanced and that expenditures must be reduced to accomplish same. Detroit's difficulties, which are based on many factors that the City administration cannot control, have been known for a long time, and, unfortunately, there is little basis for future optimism. In sum, everybody, even AFSCME, agrees that the City is in trouble and that reductions in expenditures are necessary.

As a result, neutral Arbitrator/Fact Finder Nathan Lipson, who a little over three years earlier had recommended pay increases for the Police, recommended pay reductions for the civilian employees represented by Council 25, American Federation of State, County and Municipal Employees, when he wrote:

For all of the above reasons, it is recommended that the new collective bargaining agreement between the City of Detroit and AFSCME Council 25 should include a 10% reduction in compensation for the employees.

Based upon the analysis as set forth in this Opinion, a majority of the Panel reaches the same conclusions as Fact Finder Lipson. The only fact before this Panel, that may not have been before Fact Finder Lipson, was knowledge of a fifth year of continuing deficits, i.e., another \$63 million. The City is in financial trouble.

The City must review its entire financial picture, including the services it can offer, the number of employees it can employ, as well as to review its ability to increase

revenues such as reviewing its income tax collection efforts, including, as it has, entering into agreements with the United States Internal Revenue Service for assistance in exchanging information concerning income tax collections.

The City's serious financial situation must be considered in crafting awards. This is the point that the previous Act 312 Arbitrator, Nathan Lipson, made in his May 19, 1993 fact finding opinion and award, when he noted at page 23:

Also of concern is the impact on City-wide labor relations if the present matter is not reasonably resolved. Most of the other City unions have accepted the administration's compensation position, but subject to change on the basis of 'me-too' provisions. Moreover, at the present time, the City unions covered by Act 312 (the Police and Fire Unions) have not settled. If these labor agreements are not concluded with due consideration for the City's financial situation, an even greater crisis for the City of Detroit will ensue. (Emphasis added).

Two neutrals have now concluded, within a period of one year of each other (1993 to 1994, early 1995), that the City has financial troubles. These financial troubles cannot be ignored. The City's ability to pay is a serious issue in this Act 312 proceeding. Although the City is now balancing its checking account by borrowing, the City must be careful not to again have an overdrawn bank account and must pay back its loans.

There are those that may claim that this is "business as usual," noting that there have been pay increases awarded by Act 312 panels during periods of deficits. But this all ended with the wage freezes of July 1, 1981 - June 30, 1983. To repeat, the checking account cannot be again overdrawn, for

there will be no money to put into the account. It is just that simple.

The Comparables

A. External Comparables

Comparables are a driving force behind employees' economic aspirations in collective bargaining.

The parties are in dispute as to comparable cities to be used. As Detroit is a central city of a consolidated metropolitan statistical area, some national comparables are in order. Detroit police officers also compare their wages and economic benefits with police officers employed in the Detroit suburban communities in the metropolitan Detroit.

As to national comparables, the Association suggests that the comparison should be with the central cities of the 10 largest consolidated metropolitan statistical areas of the United States, namely:

Boston	Los Angeles
Chicago	New York
Dallas	Philadelphia
Detroit	San Francisco
Houston	Washington D.C.

The Association has also suggested in Exhibit 50, prepared by Dr. Frank P. Stafford, of the Department of Economics, University of Michigan, that the following cities surrounding Detroit be used for comparable purposes:

Ann Arbor	Dearborn*
Dearborn Heights*	Farmington Hills
Livonia	Pontiac

Roseville

Royal Oak

St. Clair Shores

Southfield*

Sterling Heights

Taylor

Troy

Warren*

Westland

As to those cities marked with an asterisk, Dr.

Stafford makes the following comment:

The cities denoted with an asterisk (*) share a common border with Detroit. The other cities are both larger and in sufficient proximity that one can expect some of the police recruits to be choosing between employment in Detroit or one of these cities.

Exhibit 50 contains a number of comparables between Detroit, the above-mentioned national cities, and the suburban communities listed above. These comparables include not only wages, but health insurance, longevity, vacations, and similar economic benefits.

Although Exhibit 50 included analyses of the number of police officers per square mile employed by the communities and the crime index of the various communities, the concerns here are the driving economic forces leading to a collective bargaining agreement. Police officers look at wages and economic benefits paid to other similar employees to formulate their respective aspirations. Employers must analyze the comparables and address these economic aspirations consistent, of course, with the given employer's economic situation. Though the comparables refer to a number of economic benefits, for reasons that will be explained later in this Opinion, the Panel majority has emphasized wages and health care benefits.

The Association's comparables on the national level, as of July 1, 1994, was set forth in Table 18 of Exhibit 50:

TABLE EIGHTEEN
ANNUAL BASE SALARY LEVELS
AS OF 7/01/94

<u>Jurisdiction</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Years</u>
Boston	\$33,938	\$44,762	3
Chicago ¹	32,862	50,544	30
Dallas	25,845	32,986	9
DETROIT	27,856	36,795	6
Houston	22,630	35,520	14
Los Angeles	33,820	50,646	4
New York	25,977	45,679	5
Philadelphia	23,748	33,828	5
San Francisco	43,957	50,891	4
Washington, D.C.	26,604	40,968	16

Source: Contracts and telephone contacts.

¹ Officers receive an additional \$1,800 as Duty Availability Pay.

The Association, in Table 31, as of Summer, 1994, lists the following wage information as to the suburban communities compared:

TABLE THIRTY-ONE
SALARY BASE FOR POLICE OFFICERS
LOCAL COMMUNITIES
Summer, 1994

<u>Community</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Years to Maximum</u>	<u>Notes</u>
Ann Arbor	\$28,288	\$40,394	5	3% raise 1/1/95
Dearborn ¹	28,674	38,263	4	
Dearborn Hts.	24,741	41,235	4	2% raise 7/1/95 & 1/1/96

<u>Community</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Years to Maximum</u>	<u>Notes</u>
Detroit	27,856	36,795	5	
Farmington Hills ²	28,714	41,340	3	
Livonia	30,160	40,206	4	
Pontiac ³				
Roseville	26,774	42,067	4	
Royal Oak	34,731 29,055	40,984 40,984	3.5 5	Hired pre-6/1/91 post-6/1/91
St. Clair Shores ⁴	\$27,591	\$39,415	5	
Southfield ⁵	27,674	40,004	5	
Sterling Hts.	28,491	45,704	5	3% raise 7/1/95
Taylor ¹	25,712	37,527	3.25	
Troy	25,585	41,817	4	
Warren ⁴	30,835	43,469	5	
Westland ¹	31,222 27,552	39,361 39,361	4 5	Hired pre-11/1/90 post-11/1/90

Source: Contracts and telephone contacts.

¹ Dearborn, St. Clair Shores, Taylor and Westland wages effective 7/1/93; contracts expired 6/30/94.

² 1994 subject to wage reopener - 7/1/93 4% increase.

³ In Act 312 currently; contract expired 12/31/90.

⁴ There is an additional COLA provision.

⁵ Expired June 30, 1993.

The City suggests that the national comparables are Cleveland, Pittsburgh, St. Louis, Baltimore, Chicago, and Philadelphia. The City's theory is that since 1960, based upon the 1990 census, Detroit has lost 38% of its population; Cleveland, 42%; Pittsburgh, 39%; St. Louis, 47%; Baltimore, 22%;

Chicago, 22% and Philadelphia, 21%. Since 1970, based upon the 1990 Census, Detroit has lost 25% of its households; Cleveland, 19%; Pittsburgh, 14%; St. Louis, 23%; Baltimore, 4%; Chicago, 10% and Philadelphia, 6%.

Based upon these economic indicia plus others, the City's expert, Patricia Couseñs Becker, concludes that Cleveland, Pittsburgh, St. Louis, Baltimore, Chicago and Philadelphia are more appropriate comparables to Detroit. Ms. Becker suggests that the Michigan comparables should consist of Bay City, Flint and Saginaw, noting that those cities have had substantial drops in population since 1960, as has Detroit. Bay City, for example, dropped 27%; Flint, 29% and Saginaw, 29%.

The City's in-state comparables become frayed when a comparison is made to drops in households. As compared to Detroit's drop from 1970 to 1990 of 25%, the drop in Bay City is only 2%, in Flint, 12%, and in Saginaw, 8%.

The City criticized the Association's Alleged Michigan Comparable Cities because the comparisons were not made on drops in population. Cities like Ann Arbor, Farmington Hills, Livonia and Southfield, Sterling Heights and Troy have experienced substantial increases in population since 1960, running as high as 685% in Sterling Heights to 64% in Ann Arbor. Farmington Hills has had a 176% increase, Southfield, 137%. Yet, Dearborn has had a drop of 20%, which is not too far below the drop, for example, in Bay City.

The inclusion of New York fails to recognize that New York City has among the highest cost of living index in the country, which certainly would reflect upon the salary of a police officer. Los Angeles and San Francisco are the highest

paid police departments among the national comparables. They are located on the west coast. Their rates of pay are a phenomena of the economics of California. For this reason, these two cities do not represent valid comparables with a midwestern community.

Similarly, the comparisons of Dallas and Houston are not well taken, because both those cities are in the southwest part of the United States, and not in the same geo-economic sphere as Detroit.

If the Association wishes the Panel to compare east coast cities, excluding New York City, the comparisons with Boston and Philadelphia are a mixed bag, with Philadelphia being low as compared to the national average, and Boston being similar to New York City. The comparable with Washington D.C. is interesting, but Washington is an anomaly because, being the seat of the federal government, there is an infusion of federal funds that impacts on its ability to provide wages and economic benefits.

St. Louis and Cleveland would be appropriate national comparables because they are located in the midwestern part of the country, sometimes known as the "Rust Belt", which is experiencing a declining industrial base. St. Louis is influenced by the auto industry, as is Detroit. Cleveland similarly is influenced by the automobile industry, as is Chicago to a limited extent, although Chicago has a broader economic base.

The City also suggested Pittsburgh and Milwaukee as comparables, which would be appropriate because Pittsburgh approaches the midwest and Milwaukee is located in the midwest.

But it is questionable whether Baltimore and Philadelphia should be compared, because Philadelphia and Baltimore are not in the same geo-economic sphere as midwestern cities.

If comparables are made with midwestern cities, based upon City Exhibit 80, the following comparables would be noted:

<u>CITY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>	<u>EFF. DATE</u>	<u>YRS. TO MAX.</u>
Chicago	\$34,884	\$42,738	01/01/94	5
Cleveland	\$33,919	\$36,512	04/01/94	5
DETROIT	\$27,856	\$36,795	07/01/91	6
Milwaukee	\$26,955	\$36,501	07/01/92	5
Pittsburgh	\$26,645	\$38,065	01/01/94	5
St. Louis	\$26,191	\$37,028	07/01/94	30

Detroit, at the maximum, is about even with Milwaukee and Cleveland, and behind both Pittsburgh and St. Louis, as well as Chicago.

City Exhibit 80 reveals bargaining patterns in terms of wage increases. For each of the above noted midwestern cities, the following pattern is noted:

Chicago	1/1/92 3%	1/1/93 4%	1/1/94 4%	1/1/95 2%
Cleveland	4/1/92 0%	4/1/93 2%	4/1/94 4%	
Milwaukee	In negotiations			
Pittsburgh		4/1/93 2.5%	4/1/94 4.5%	4/1/95 4.5%
St. Louis	Annual negotiations			

The parties have presented conflicting information about Chicago. In Exhibit 15, the Association maintains that the maximum in Chicago is \$50,544, reached after 30 years. The City suggests the maximum is \$42,738 reached after five years.

What is of more interest is the pattern of wage increases in Chicago, including the fact that in 1994 Chicago police officers received a 4% increase and, effective January 1, 1995, in a contract that expires on June 30, 1995, will receive a 2% increase. In Cleveland, as set forth in City Exhibit 69,

with the interest arbitration opinion of Charles F. Ipavec, dated July 28, 1992, between the City of Cleveland and the Cleveland Police Patrolmen's Association, provided that in the first year of the contract, there was no increase, in the second year, April 1, 1993, there was a 2% increase; on April 1, 1994, a 4% increase. Cleveland is faced with similar economic problems as Detroit. Pittsburgh, in 1993, received a 2.5% increase, in 1994 a 4.5% increase, and will receive, on April 1, 1995, a 4.5% increase.

These comments note the pattern of bargaining among major cities.

Police officers in Detroit do compare themselves with officers in communities in the metropolitan Detroit area. An attempt to include Bay City and Saginaw in the comparables is a tribute to advocacy. Bay City and Saginaw are considered part of the Saginaw Valley and have different economic forces than the metropolitan Detroit area. The same could be said for Flint.

Even though the Panel majority suggests that Saginaw is not an appropriate comparable, in City Exhibit 80 the following information as to Saginaw is noted:

<u>CITY</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>	<u>EFF DATE</u>	<u>YRS.</u>	<u>ADD'L INFORMATION</u>
			<u>TO MAX.</u>		
Saginaw	\$27,850	\$36,099	07/01/94	5	7/1/93 3.25% plus \$500 bonus; 7/1/94 3.25%; 7/1/95 3.25%

The Panel has not listed this information concerning Bay City and Flint, simply because in Flint the contract is in Act 312 and, in Bay City, the contract expired on December 31, 1994. But note Saginaw, where the maximum pay as compared to Detroit,

is about \$700 less. Nevertheless, on July 1, 1995, the officers in Saginaw will receive a 3.25% increase, illustrating the bargaining patterns.

As noted by Dr. Stafford, Dearborn, Dearborn Heights, Southfield and Warren share common borders with Detroit. The other compared suburban communities are in close proximity to Detroit. Police officers in Dearborn, after four years, earn \$38,263. After five years, a Warren police officer is earning \$43,469; after five years, a Southfield officer is earning \$40,004; after four years, a Dearborn Heights officer is earning \$41,235. These wages are to be compared with a Detroit officer earning \$36,795 after five years.

It could be argued that Warren and Southfield are not reasonable comparables because Warren has been blessed with an industrial base and Southfield continues to be a growing community, particularly as to the development of commercial property. Dearborn Heights, on the other hand, seems to be an anomaly because it is basically a bedroom community that may bring into question the extent of its tax base.

The Panel did note that though there were a number of suburban communities that paid in excess of \$40,000 at the maximum, there also are suburban communities with limited tax bases which pay under \$40,000, namely, St. Clair Shores at a maximum of \$39,415, and Taylor at \$37,527. Then there is Dearborn at \$38,263. Even if one were to compare Detroit officers with the more moderate paying suburban officers, such as, for example, Taylor, the difference between Taylor's \$37,527 and Detroit's \$36,795 is still \$732. The difference with Dearborn is \$1,468 and with St. Clair Shores, \$2,620.

A Detroit officer begins at \$27,856. The Chairman notes that there are a number of suburban communities that start at least this high. But there are also a number who are below, namely, Dearborn Heights, Roseville, St. Clair Shores, Southfield, Taylor, and Troy. In Royal Oak and Westland, the parties have negotiated a change from previous minimum starting salaries to a lesser amount.

When viewed in connection with City Exhibit 80, Table 31 of Association Exhibit 50 reveals the bargaining pattern that is emerging in the current economic climate. Pittsburgh has reached the \$38,065 maximum after a three year bargaining wage increase of 11.5%. Cleveland reached the current \$36,512 in a two year 6% bargaining pattern following a one year wage freeze.

The pattern in Detroit suburbs suggests that those suburbs who are paying wages over \$40,000 at the maximum are beginning to slow down the annual wage increase. Ann Arbor, at a maximum of \$40,394, is providing a 3% wage effective January 1, 1995. Dearborn Heights, at \$41,235, has opted for a 2% raise on July 1, 1995 and a 2% raise on January 1, 1996. Sterling Heights, which is a leader and a growing community, at \$45,704, is opting for a 3% pay raise on July 1, 1995.

The Panel appreciates that, except for Cleveland, there is no indication that the communities compared took wage freezes. But this bargaining history among the suburbs and the national comparables indicates the pattern. A community such as Baltimore, which seems to be substantially below even national comparables, opted for a 5.25% increase, but communities where wages may be hitting a plateau hovered in at annual increases between 2% to 3%. Cleveland, experiencing a financial situation

having similarities to Detroit, followed a pay freeze with a 2% increase. Pittsburgh may be an example of a city that has sprung from its financial troubles so that it is becoming a leader, which may explain the upcoming 4.5% that its officers are about to receive.

The point is that, without considering ability to pay, the comparables, both nationally and particularly suburban-wise, dictate that Detroit police officers are entitled to wage increases in some proportion to remain competitive, particularly in the Metropolitan Detroit area.

It should also be noted that even if Detroit were to be compared with Taylor, for example, or with Dearborn and St. Clair Shores, those communities' contracts expired on June 30, 1994. Absent anything unusual, the wage rates in said communities will probably go up, even if the moderate wage pattern, as experienced in Sterling Heights, Dearborn Heights and Ann Arbor, is followed.

The bargaining pattern would suggest, both at the national and local level, over a three year period of increases hovering between 8-11%, with some variations.

B. The Internal Comparables

From the 1992-93 and 1993-94 fiscal years, all of the civilian unions except the Amalgamated Transit Union, took wage concessions, or experienced layoffs or reduced work weeks. (Vol. IV, Tr. 137-138). It could be argued that despite the external comparables supporting a wage increase for police officers, the internal comparables have recognized the City's financial constraints. The civilian employees were reluctant to

participate in concessions. The best example of this are the local unions represented by Michigan Council 25 of the American Federation of State, County and Municipal Employees, upon whom the concession agreement was imposed following fact-finding and negotiations, and who experienced, for a period of time, a layoff of 800 members. In the case of the Amalgamated Transit Union, the matter is still in fact-finding.

The two core criteria are financial ability and comparables. They go hand in hand. They represent economic reality, the driving forces of the marketplace. And, Section 9E, coupled with 9H of Act 312, recognize that internal comparables are a factor.

The reason the members of the Detroit Police Officers Association and the other uniform groups did not experience concessions during the 1992-94 period is because of the prohibition of Section 13 of Act 312. However, the members of the Association's bargaining team have consistently pointed out to the Panel that police officers have not received a pay increase since 1991.

Yet, the police officers did not experience a 10% wage concession for two years, which the City maintains cannot be ignored in arriving at an award. The City emphasizes the point by suggesting that of the \$63 million projected deficit as of the end of the 1993-94 fiscal year, \$56 million of that deficit could have been eliminated if the uniform groups had participated in the concessions.

The elimination of \$56 million could very well have impacted upon the future economic health of the City by not forcing it to budget for repayment of the additional debt loan

resulting from the 1993-94 fiscal year, including the interests and costs thereof. These factors cannot be ignored by the Panel. The Panel also cannot ignore the fact that police officers in the large cities of the midwest, as in the Detroit suburbs, are receiving annual increases. This means that if police officers in Detroit do not receive raises at some point, the Department will be falling further behind the comparables, whether nationally or locally, which could impact on recruitment, retention, police morale, and perhaps the quality of performance.

Despite the national and suburban comparables, the Panel majority cannot overlook the fact that, internally, for the period of July 1, 1992 through June 30, 1995, both the non-organized and the organized civilian employees of the City took wage cuts and a wage freeze over a three year period. This is a fact.

Even recognizing the dangers of police work and what is expected of police officers, the ability to pay, coupled with the comparisons within the City itself, leads to the conclusion that, under the circumstances presented here, for the period of July 1, 1992 through June 30, 1995, there cannot be a pay increase.

However, the inherent danger in police work is not present, to the same degree, as in civilian employment, coupled with the skills that a police officer is expected to exhibit in his/her day-to-day duties, which leads to the conclusion that there should not be a wage reduction for police officers during the July 1, 1992 - June 30, 1995 period. In the end, the type

of work done by an employee is a factor in any collective bargaining agreement.

As a test of these conclusions, reference is now being made to the Cleveland experience, as well as the history of bargaining, both of which establish that a wage freeze for police officers in this situation is appropriate, whereas wage reductions may not be.

The Cleveland Experience

There has been at least one major city where there has been interest arbitration between the police and the city, namely, Cleveland, that results similar as here have evolved. On July 28, 1992, neutral arbitrator Charles F. Ipavec issued an opinion and award in an interest arbitration involving the City of Cleveland and the Cleveland Police Patrolmen Association. In that opinion at pages 8-10, Arbitrator Ipavec analyzed the fiscal condition of the City of Cleveland, which he found to be "in a financial crisis."

Arbitrator Ipavec's financial analysis has similarities to the analysis in this Opinion, including loss of population, high unemployment, and loss of businesses. The only difference between the Ipavec findings and the findings of this Panel is illustrated by the statement found at page 10 of the Ipavec opinion, namely, "The fact of the matter is that the 1992 preliminary budget shows a deficit in excess of \$10 million." This is to be compared with the current \$63 million deficit in Detroit, and a cumulative deficit for the last five years, after deducting a surplus of the previous four years, of some \$196.4

million. Obviously, the situation in Detroit is far more critical than that of Cleveland.

Arbitrator Ipavec, at pages 11-12, concluded:

...The arbitrator is also restrained because of the poor financial condition of the City, to not grant an increase in the first year, and one year without an increase in salary should be sufficient and should give the City an opportunity to get its financial condition in order. The arbitrator awards that for the first year effective April 1, 1992, there would be no increase. For the second year effective April 1, 1993, bargaining unit employees would receive a 2% increase, and the third year, effective April 1, 1994, bargaining unit employees would receive a 4% increase.

The key language in the above quotation is the statement "one year without an increase in salary should be sufficient and should give the City an opportunity to get its financial condition in order." The significance of this language is to recognize that, in financial crises, a community such as Detroit must be given the opportunity to bring the crisis under control. With the financial crisis in Detroit being far more severe than in Cleveland, and recognizing that the civilian unions took pay cuts, there is, both internally and externally, precedent for wage freezes. However, for the reasons suggested herein, Arbitrator Ipavec also concluded that the Cleveland police, despite the financial crisis, should not take a pay reduction for, as he wrote at page 11 in part:

...in the opinion of the arbitrator, this arbitrator should not reduce the wages of the bargaining unit, because the Police Department has to be considered as one of the most critically needed services which the City can give to its citizens;...

In this case, based upon the internal comparables, and the necessity to bring Detroit's financial crisis under control, the freeze should be for three years, July 1, 1992 - June 30, 1995.

The History of Bargaining

Particularly where there has been a long history of Act 312 arbitrations, the bargaining history between the parties can be an aid in analyzing the relationship between the ability to pay and the comparables in arriving at a wage package.

Exhibit 40, Chart 17, the History of the City of Detroit General Fund, reveals that for the period beginning July 1, 1970 through July 1, 1977, involving seven fiscal years, five resulted in deficits, two in surpluses, with the deficits exceeding the surpluses. Yet, in four of those years, there were arbitration awards providing for pay increases. In three, July 1, 1974 through June 30, 1977, there were negotiated pay increases. However, following the situation where, as early as in the 1949-50 fiscal year, where there were only six years of surplus up to June 1975, as compared to 20 years of deficits which were escalating by 1974, and reaching amounts in 1975 not previously reached by the City, the City had announced massive layoffs. As a result, union members agreed to work 14 days without pay and would receive 10 extra days off with pay over the next 18 months, known as "Coleman Days," which amounted to a pay reduction.

For the period July 1, 1977 through June 30, 1981, an Act 312 panel (the Bowles award) resulted in a wage increase of approximately 4.5%, 4% and 3.5% and a continuation of COLA until

there was a final COLA beginning July 1, 1988. The average wage increase with COLA during the period of the Bowles award was approximately 8.85%. During the four year period of the Bowles award, the City accumulated a deficit of \$224 million.

As a result, with the deficit continuing, by July 1, 1981, the parties negotiated a two-year pay freeze from July 1, 1980 through June 30, 1982, with a one-year ban on layoffs. Though the City did manage, for the July 1, 1981 - June 30, 1982 fiscal year, a \$3,178,339 surplus, in the second year of the wage freeze the City experienced another deficit of \$45,682,045.

An arbitration panel was convened, chaired by Daniel Kruger, to address a collective bargaining agreement for the period July 1, 1982 through June 30, 1986. Though there was a deficit for the July 1, 1983 - June 30, 1984 period of \$27,320,553, Arbitrator Kruger concluded that there would be a three year agreement ending June 30, 1986 with the annual increases being 3% the first year, 0.3% the second year, and 4% the third year, for a total of 7.3% for a three year contract, with no COLA formula.

Beginning with the fiscal year July 1, 1984, the City experienced five years of surplus, with the fiscal year ending June 30, 1989. It was during this period, beginning July 1, 1986, that the Kiefer award took effect through June 30, 1989, representing annual increases of 5%, 4% and 4%, respectively.

The Lipson award covered the fiscal year July 1, 1989 through June 30, 1992, and represented annually a 5% increase for each of the first two years and 4% for the last year. It was in the first year of the Lipson award that the deficits and the current sequence began.

Immediately before the July 1, 1974 negotiated agreement, there was the Fox award covering the period July 1, 1972 through July 1, 1973, which represented an average of a 4.45% increase per year.

This history, beginning as early as 1972, suggests that when there is a relatively substantial wage increase, this has been followed by a reduction in effect (14 unpaid days) in the 1974-76 period, followed by a substantial wage increase, and then the necessity of a two year wage freeze because of the growing deficits. The Kruger award suggested that even if the deficit continued, as it did in the first year of that award, namely, \$27,320,553, there should be a modest wage increase coming off a wage freeze. As it turns out, the Kruger award provided the wherewithal for the City to bring its deficit under control for five years, permitting the increases represented by the Kiefer award, and even the increase represented in the first year of the Lipson award.

This history suggests that a multi-year wage freeze has occurred before involving the Association; that at one point the Association could be construed of having taken a reduction in wages, as compared to the negotiated contract, i.e., the 1975 period.

Certainly, with the massive deficits and the need for the City to bring its financial situation under control, particularly where other employees have experienced both wage reductions and a wage freeze, this history supports the contention that there should be a wage freeze.

But once a wage freeze has been experienced, even if a deficit continues for a year, as in the Kruger situation, then,

particularly if the comparables so dictate, there must be at least a modest wage package. The package must be designed to assure that the repeating cycle of wage increases, then either reductions or wage freezes, does not recur. It is not reasonable to have officers experience such a situation which, since 1975, they have experienced at least twice.

There is no basis for extending a wage freeze beyond three years. There is indication that the City has been able to perhaps stem the hemorrhaging of its financial situation. No doubt, if more is not done, a point to be further discussed in this Opinion, this hemorrhaging could continue. Yet, there comes a point when the police cannot be expected to fall behind any reasonable comparable. On the other hand, bargaining history suggests that there should be a balance between the Bowles approach and the Kruger approach, so as not to bring about, by July 1, 1998, a situation requiring another wage freeze.

In other words, coming off a wage freeze that was necessitated by the inability to pay, requires moderation in the wage package, considering the comparables, so as to assure some reasonable financial stability.

The Work of a Police Officer

In the documents submitted by Dr. Stafford in Exhibit 50 and by Dr. Cohen in Exhibit 63, it is noted that citizens expect police services. The economic growth of Detroit depends on the perception that it is a safe place to work and live. This expectation is not unique to Detroit, but is common to urban areas throughout the United States.

There is a limit to making comparisons between Detroit police officers and Detroit civilian employees as there is a difference in the jobs.

Being a police officer, without detracting from the work of civilian employees, takes skill that may not be demanded of others. Police officers work daily with the public in a number of situations. The public's experience with police officers is not always in the most positive modes, in the sense that citizens are being apprehended or stopped for traffic violations, and therefore, in many cases, have unwelcome encounters with the police. Such encounters test the patience of police officers, and in some cases, cause the police officers to be abused. Yet, the citizens, as well as the Department, demand that police officers be trained so that they can act with the skill of the most seasoned diplomat and the patience of Job.

Then, there is the need to be trained in the use of firearms, crowd control and in general, to make split second decisions in dangerous or potentially explosive situations. As the President of the Association made clear, there are the instances which occur much too often where police officers are obliged to attend the funeral of a comrade slain in the course of duty.

The point is that police work creates certain economic value that drives economic considerations.

The City's Administration recognizes the value of police officers and do not detract from the skill needed on the job and the danger of the job. But what is of concern to the Administration is the economic crisis facing the City and the need to follow procedures that will bring economic stability so

as to benefit both the citizens and the employees of Detroit. These crosswinds have weighed heavily on the Panel.

Blending the Ability to Pay, the Comparables,
and Considering Bargaining History

The City's ability to pay, coupled with the internal comparables, requires that, for the period July 1, 1992 through June 30, 1995, the Detroit Police Officers must accept a pay freeze. There is no other conclusion. As indicated, the officers are fortunate that they were not required during this period to take a pay cut.

However, the comparables dictate that in order for Detroit Police Officers to remain competitive, there must be reasonable pay increases for the period beginning July 1, 1995. Otherwise, Detroit Police Officers will experience a retreat in relation to the comparables as presented both by the Association and the City. It is just too much to expect police officers to undertake a wage freeze of more than three years during the period when officers in the comparable national cities or in the surrounding communities are continuing to receive wage increases.

The bargaining history, with particular reference to the 1981-82 wage freeze, indicates that following a wage freeze, moderate wage increases have followed.

Detroit's financial situation cannot be ignored. As any police officer will recognize, when the checking account is overdrawn, certain economic restraints take place even in the family unit. The checking account is overdrawn in Detroit, as illustrated by the need to bond in excess of \$140 million of

indebtedness. Financial stability must be obtained.

It may be that by the use of bonding techniques and careful management, the July 1, 1994 - June 30, 1995 budget will be balanced. The City has no choice. The deficit cannot continue. Otherwise, the wage freeze would have to be continued or layoffs be considered.

Even if the budget for the July 1, 1994 - June 30, 1995 fiscal year is balanced, any surplus would be minimal, and only came about because the police and all other employees were at a wage freeze. The City needed the July 1, 1994 - June 30, 1995 period to address a situation that had resulted in a net \$196.4 million deficit over five years. This debt has to be repaid and any modest surplus would have to address, to some extent, the indebtedness and forge a foundation for financial stability to permit future wage increases.

It should also be understood that if the Panel opted for a three year contract, July 1, 1992 - June 30, 1995, the underlying issues could not be addressed and there would not be any pay increases. It is just that simple.

The question then becomes, how may one attempt to accommodate the competing criteria - the ability to pay and comparables?

The problem here is that, for five straight years, the City of Detroit has suffered substantial deficits. The City must have the ability to undertake a program to stabilize its economics. If this is not done, then it would be difficult to set the foundation for reasonable wage increases and economic benefits for police officers.

Recognizing the City's economic situation and the fact that many of the benefits in the contract have been the result of a long series of Act 312 arbitrations, the emphasis in this Award should be on wages and health care. These are two issues of primary concern, both to the City in terms of cost, and to the officers in terms of their economic well being. Money is scarce and must be placed where it is most beneficial to all officers. To place money in other than wages would mean that the money would not be available for wage increases. This is the reason for the wage emphasis.

To achieve economic stability and accommodate a reasonable wage increase, there is a need to reallocate the City's financial resources now being directed toward the police and the other uniformed services. In addition, it may be that the City, over the period of a contract, will be obliged to reallocate its resources in general to accommodate the services which it can afford to give the citizens of Detroit, including police services.

To blend the ability to pay, the comparables, and considering bargaining history, it is also necessary to consider the duration of the agreement in order to reach a reasonable economic package.

Duration of Agreement

The current Collective Bargaining Agreement between the Association and the City expired on June 30, 1992 by its terms. Because of the City's financial troubles, and the internal comparisons, whereby other employees experienced income reduction and wage freezes, police officers could only expect,

at the best, a wage freeze for the July 1, 1992 - June 30, 1995 period, a period that for the most part has passed. Under the circumstances here, if the Panel had opted for a three year contract (July 1, 1992 - June 30, 1995), the underlying financial issues could not be addressed. There would not be any provision for pay increases. It could also be speculated that without the wherewithal, namely, a reasonable time period to reallocate resources, something less than a wage freeze may have been in order. It is just that simple. To repeat, any person who suggests that the financial situation of Detroit was "business as usual" would have to ignore the 14 days of work without pay in 1975 and the two year wage freeze (June 1, 1980 - June 30, 1982), and would have to ignore the fact that civilian employees took income reduction and wage freezes.

Thus, the only option that was open to the Panel, if a reasonable wage package was to be crafted for the Police Officers, was to provide for a six year agreement, commencing July 1, 1992 and ending June 30, 1998. This would mean that the wage freeze would be in effect for the July 1, 1992 - June 30, 1995 period; that to obtain a reasonable wage package, that package would be over the remaining three year period commencing July 1, 1995 and ending June 30, 1998. Opting for a six year period, recognizing that the first three years represented a wage freeze, was the only way that the Panel could reach a reasonable economic package that considers the bargaining patterns that are emerging, both nationally and among the suburban comparables, as to police officers, as well as consider concerns over health care insurance, and at the same time permits the City to address its financial situation.

As noted at page 22 of this Opinion, in the five years beginning 1989-90, the City's projected deficit was \$347.9 million, including the \$63 million projected for the fiscal year ending June 30, 1994. It takes time to overcome such dramatic deficits for they represent an extremely overdrawn bank account. Three years into the future is needed to make the adjustments and provide reasonable wage increases.

The failure to provide for an agreement ending June 30, 1998 and to opt for a shorter term would lay the foundation for further wage freezes, if not outright reductions. Only a six year approach could attempt to provide the foundation for the financial wherewithal to provide a reasonable economic package.

Wages

Based upon the comparables, and considering the bargaining history, that coming off a wage freeze there has in the past been wage increases, the majority of the Panel concluded that the following shall be the wage award for Police Officers commencing July 1, 1995:

July 1, 1995	4%
July 1, 1996	2%
July 1, 1997	2.5%
January 1, 1998	2%

This represents an 10.5% increase over three years for a cumulative three year increase of 10.91%.

With the exception of Cleveland, none of the comparables proffered were situations where police officers came off a three year wage freeze. In Cleveland, when the police officers came off a one year wage freeze, officers received a 2%

wage increase, followed a year later by a 4% wage increase. In addition, there was a provision in the Cleveland award for privatization, as well as some health care premium sharing.

As discussed previously, the bargaining pattern at both the national and local levels suggest that in today's economic climate wage patterns among municipalities hovers between 8 and 11 percent for a three year period. The range that is reached in each situation depends on previous bargaining and previous economic benefits. It therefore would seem, that because of the three year wage freeze, in order to remain comparable with Midwest and suburban comparables, the Detroit Police would expect to be in the range of wage increases provided herein.

Historically, as under the Kruger Award, when there was a two year wage freeze, the first year was a 3 % increase, followed by the second year of a .03% increase.

Yet, to continue to be comparable, the majority of the panel has opted, though continuing to follow the Cleveland pattern, has reversed that pattern with a first year wage increase for the Detroit police officers being a 4% increase on July 1, 1995, and the second year increase commencing July 1, 1996 be 2%. Comparables dictated such an approach because of the length of the wage freeze, which was longer than the previous two year freeze. Although the comparables dictated such a result, this 4% could only be accomplished because of the ability of the panel to provide mechanisms for the reallocation of City resources. If this was not possible, the 4% would not be forthcoming.

In the second year, the wage increase is 2%, basically on the same approach as Cleveland. The second year permits the

City to continue to address it's finances to avoid future wage freeze situations. Yet, when combined with the first year, the cumulative effect of the two years increase continues to move Detroit police officers into the range of pay increases they should be experiencing by the comparables.

In the final year, the wage increase is 4.5% on a bifurcated basis with 2.5% the first six months and 2% the second six months. This is designed to provide the officers a reasonable increase, while providing the City with the opportunity to continue to adjust its financial situation. The combination comes to a cumulative increase of 10.91%, which is consistent with the range of increases, recognizing that this has been an unusual situation.

There is no mystery to arriving at this wage package. Commencing July 1, 1995, Detroit Police Officers will be receiving \$38,266.80 at the maximum. On July 1, 1996, Detroit Police Officers will be receiving \$39,032.14. By January 1, 1998, Detroit Police Officers will be receiving \$40,808.00. It must be remembered that, as of July 1, 1991, Police Officers in Detroit, at the maximum, were receiving \$36,795.

This bargaining pattern is consistent with the approach in Cleveland and still provides that Detroit Police Officers will be compare favorably pay-wise with the Cleveland police because of the pattern of the three year wage increase forthcoming that will include the first year a 4% increase, caused by the fact that there had been a three year pay freeze. In addition, the third year of the contract here will again protect Police Officers comparable-wise by providing in that year a total of a 4.5% increase. There will not be the same

civilianization as in Cleveland and the approach to health care will be somewhat different.

Similar comments can be made about such Midwest cities as St. Louis and Milwaukee. It is suggested, with the wages provided herein, that Detroit will continue its historical comparable with those cities. Pittsburgh seems to be on the increase, perhaps because of its financial situation there. Nevertheless, what is suggested is that, considering the various economic factors that pay today in urban cities in the Midwest, the 10.91 cumulative percent increase provided herein was needed in order to keep Detroit Police Officers comparable in connection with the historical, national comparables, namely, major cities in the Midwest.

As to the local comparables, the pattern would not seem to go beyond approximately 9.7%. Dearborn Heights, for example, seems to be hovering around 8%, while it might be argued in Saginaw that it is a questionable comparable, they have a 9.75%, whereas other communities, for a variety of reasons, seem to be hovering over three years at nine percent. When each wage rate was reached, they depended on a variety of circumstances, but it would seem that one of the circumstances here, as emphasized, is, considering the wage freeze, there must be a three year wage package that keeps Detroit Police Officers in a relatively comparable position.

Despite the City's finances, a minimum of a 10.5% percent increase is needed, so that by any comparison, either nationally or locally, Detroit officers would keep pace comparably and not fall behind.

A wage package of 10.5%, cumulative 10.9%, certainly is in the bargaining range that is emerging in the suburban areas and in the Midwest. And this is the marketplace that the City must meet.

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Reallocation of Resources

Think of it! In the five year period with the fiscal year ending June 30, 1994, the City had accumulated an approximately \$347.9 million deficit and, offsetting the previous surplus, this deficit remained at approximately \$196.4 million. The deficit has to be paid back. Yet, the marketplace dictates the 11% (11.4% cumulative) pay raise over a three year period set forth in the Award.

The necessity to repay the \$194 million of deficits and to provide wages dictated by market forces put the Panel between a rock and a hard place. The enormousness of the problem faced by the Panel can only be recognized when it is considered that the Lieutenants' and Sergeants' wages are tied to the wages of the Police, as are the Fire Fighters. This fact impacts on the financial analysis. The total payroll during the 1994-95 fiscal year for Police and Fire non-civilian personnel was approximately \$268,127,721. The 10.5% award, by the end of the fiscal year June 30, 1998, will have cost the City, recognizing the rollovers implicit in such an award, of approximately \$53 million. There is always a cost associated with wage increases. The point is, in order to provide a wage increase during the three years, when the City must bring its financial situation under complete control or there will be future wage freezes,

resources must be reallocated through a variety of techniques, which may even include downsizing, and hopefully, new revenue.

One area of reallocating resources is to review the expenditures of present resources for uniformed services to determine whether those resources can be reallocated and funds made available to fund part of the wage increase set forth herein. This is not new between the parties. As Edward J. Fennell wrote in his report, beginning in 1988, there was a readjustment in the actuary assumption for the Police and Firemen's Pension System so that the City was able to reduce its contributions. Probably, without the readjustments, the wages that were experienced following the Kiefer and Lipson awards would have not been forthcoming.

To put it another way, if a family is driving a luxury car, but, because of budget problems and there is still a need for automobile transportation, the family certainly could drive a Caprice, as compared to a Cadillac, or a Crown Victoria as compared to a Lincoln Mark VIII. Wages increases are needed. Resources must be rearranged, both in terms of resources made by analogy similar to a luxury car and are being furnished as services of the uniformed groups.

There are three areas of economic resources attributable to the Police Department, as well as the Fire Department, that can be reallocated so as to provide the wherewithal to provide reasonable wage increases, coupled with other City actions in reallocating resources. These three areas involve reducing the starting wages for employees hired after the date of this Award, to control health care costs, and to reevaluate duty and non-duty disability pensions to obtain a

more realistic cost in providing such disability pensions.

The attempt was made in this Award to utilize these three avenues of financial resources to assist in providing the financial wherewithal to reach the economic package set forth in this Award. Without such utilization, the results here could not be reached.

Though the Association expressed concern over the approach of the majority of the Panel, the Panel majority reviewed, as an area of resource reallocation within the Department, the starting wages of new recruits.

Because of a hiring freeze in the past, the City will have a number of retirements in the near future necessitating the replacement of the retiring police officers because of the need to keep the minimum force dictated by the Utility Tax. It is estimated that about 750 new police officers will be hired from January 1, 1995 through June 30, 1998, to replace retiring officers. The minimum salary comparables suggest that Detroit, at \$27,856, is certainly not the lowest national city, although not the highest. In reviewing surrounding suburban communities, there are police departments that have higher starting wages than Detroit. But there are other suburban communities that have lower starting wages, such as Dearborn Heights at \$24,741, Taylor at \$25,712, and Troy at \$25,580.

Although the minimum salaries vary and can go as high as Warren's \$30,835, it would seem that by changing the entry level salary, but still providing that the maximum would be reached after six years, there can be some intra-Department financial reallocation without interfering with the recruiting ability of the department. Other departments have utilized such

techniques to adjust entry level salaries to the marketplace so as to provide current officers with a realistic salary. Royal Oak in 1991 and Westland in 1990 adopted this approach in reallocating their respective financial resources. It is an absolute necessity to make such intra-Department reallocations so as to provide a reasonable result in these proceedings. See, Vol. X, Tr. 6-13.

Under such an approach, it would take newly-recruited officers six years to reach the maximum salary, with the officers beginning at a \$25,000 salary, for the Panel has concluded that the starting wage of recruits that may be employed after the date of this Award should be reduced to \$25,000 annually so that the starting rate will be \$25,000. The second year rate of the recruits will be increased by \$1,788, as well as the third rate increasing \$1,788. Beginning with the fourth, and into the fifth and sixth years, the increments should be in equal amounts so as to reach the maximum salary provided in this contract by the sixth year. In other words, an officer hired on January 1, 1995 would reach the maximum salary for a police officer on January 1, 2001, as set forth in the Collective Bargaining Agreement at that time. However, the salary for the first three years should, for the life of this agreement, be frozen at \$25,000 the first year, \$26,788 the second year, and \$28,576 the third year. The Award will so provide and incorporate these new employee wages by reference.

So that there will be no misunderstanding, from the date of this Award, February 20, 1995, through June 30, 1998, a police officer whose first day on the payroll commences after the date of this Award shall be paid \$25,000 annually. Such an

officer' reaching the second year of employment will be paid \$26,788; such an officer reaching the third year of employment will be paid \$28,576. This means that the rate of \$25,000 for the first year, \$26,788 the second year and \$28,576 the third year shall be frozen for the life of the contract. However, after the third year, the increases for the fourth, fifth and sixth year will be in equal increments so that by the sixth year, such a police officer will be making the same maximum as officers who were on the force prior to the date of this Award.

According to City Exhibit 81, during the period from January 1, 1995 through June 30, 1998, the City expects to gradually hire 750 police officers. Based upon this fact, the City suggests that for said three years, the \$3,855,600 that would be spent on employees who will only reach the third year of longevity in the Department during that period could be reallocated, all other things being equal, for possible wage increases.

This approach does not hinder any officers. By the sixth year of their employment, they will be at the maximum as other police officers. It only affects officers to be employed after the date of this Award. This means that in the first year beginning July 1, 1995, that the cost of new officers that are expected to be hired as replacements to be \$428,000 less; in the second year, \$1,285,000; in the third year, \$2,142,000. The \$3,855,000 over three years are necessary to assist in funding the pay raise. Without this help, there could not be a majority of the Panel to provide for the wage increase. To repeat, this does not put new officers at a disadvantage for they are being

treated no differently than the treatment in Royal Oak and Westland, for example.

But in terms of the cost for providing a wage increase, the technique of reduced entry level salaries has only caused a small amount of the resources to be reallocated. Additional techniques were necessary to reach the wage award here.

There will be an extensive discussion in this Opinion concerning pensions. The pension system is left intact, even though there were proposals to make changes. However, in the area of disability pensions, there was a need to accommodate those officers who became disabled and provide them pensions, and yet control the cost to release funds that could be available for wage increases. The Association argued strongly against any changes in the disability pension system. But the majority of the Panel insisted that there be modifications, while protecting police officers, so that actuary assumptions could be modified, reducing the amount that the City is obliged to contribute to the Police and Firemen's Pension System. These changes awarded as to the disability pension, on advice of the actuaries, will result, at least in the year July 1, 1995 - June 30, 1996, with a 3% of payroll, including Police, Lieutenants and Sergeants, and Fire Fighters, of making available about \$6 million that can be reallocated for wages. If the experience thereafter is consistent with the assumption over a course of three years, this could cause approximately \$18 million to be reallocated. This is a reasonable approach and is necessary to get wage increases.

As a majority of the Panel will emphasize, the officers have been protected in the modifications. And those who are

disabled will receive pensions.

The majority of the Panel recognizes that the Association resisted these changes, but it was a matter of balancing interests. Hard situations make hard choices.

Finally, a review of health care costs, considering the need of the officers to be protected, and their interest in continuing to be insured by Bankers' Trust, was reviewed by a majority of the Panel. This will be discussed in more detail under the health care discussions. But the approach followed by a majority of the Panel, with modifications in the health care program, will result in a reduction in the City's cost. If current retirees join in the new Bankers' Trust program, the cost reductions could be upward, depending on the number participating, to \$5 million annually.

Even if the cost reallocations in a reduced starting salary, the changes in the pension disability system, and the cost containment as to health insurance are realized in total, there will be a shortfall that must be addressed by the City. And herein lies the rationale for the wage pattern. The 4% addressed market conditions and probably is higher than settlements that will be realized by comparables for the fiscal year beginning July 1, 1995. Yet, there is little reason, particularly with the reallocation, that the City, with careful budgeting, cannot provide for this increase.

In the second year, there is a 2% increase so that the City can reassess its financial resources. In the final year, there is a 4.5% increase, based on 2.5% the first six months and 2% the second six months. It may be approaching this final year that may cause financial difficulties. But, by that time, the

current administration will have had three years, including the just past year, to readjust and address living within the City's means.

And if it comes to pass that the fiscal situation continues to hemorrhage or commence again, then this will be a matter to address at that time. Hopefully, this will not come to pass. Furthermore, this pattern of wage increases is consistent with what happened under the Kruger award, except a majority of the panel believed that under all the circumstances and the comparables, and the attempt at reallocation, that a wage package of 10.5% (cumulative 10.9%) could be supported on this record.

The Other Uniformed Groups
(Lieutenants and Sergeants and Fire Fighters)

As already noted, the wages of the Lieutenants and Sergeants are tied into the Police contract. The same is apparently true with the Fire Fighters. It would be presumptuous on the part of this Panel to make any comments as to issues that may appear in negotiations between the City and the Lieutenants and Sergeants and the Fire Fighters, or in any Act 312 that may involve those units and the City.

However, all the world should know that the analysis of the reallocation of resources, as well as the cost of the wage package, included the cost of the Lieutenants' and Sergeants' and Fire Fighters' wages, and the projection of the reallocation as affecting the Lieutenants and Sergeants and Fire Fighters were considered.

It may be that both groups might resist this reallocation. But if both groups expect the wage improvements, they will have to convince somebody that the \$347.7 million deficit never happened; that the necessity for bonding for the debt is a mirage; and that the civilian employees never took a pay cut or a wage freeze. In other words, the world should know, and those who may review those negotiations, that the wage increases here came about after carefully considering reallocation of resources. There is no other way it could have happened.

Other employees may review this Award and raise questions. But the focal point of this Award was the police comparables, as well as reallocation of resources already earmarked for police work, as well as considering the size of the previous change in pension assumptions. All these were factored in arriving at the Award here.

Pension Issues

A. Introduction

As discussed under Reallocation of Resources, a review of pension costs was the subject of testimony and proposals to reduce the City's costs in providing pensions. The City had proposed instituting a defined contribution, as contrasted to the current defined benefit plan, for new hires, stating that in the short and long range this could be a savings in City pension costs. There was also a discussion of a proposed deferred retirement option plan (DROP).

After listening to the testimony, the majority of the Panel is convinced that the deferred retirement option plan does

not represent any savings over certain current costs, but in fact could possibly add unnecessary costs.

As to a defined contribution pension plan for new employees, the Association protested such change, even though it may affect only new employees. Considering, as will be explained below, the Award will provide for changes in disability pensions, defining the art of the possible criteria, it is doubtful that in one negotiations the parties, if left to their own devices, would have reached agreement as to a defined contribution plan for new employees. For this reason, a majority of the Panel declined to change the current status quo as to the nature of the pension plan or consider DROP.

What now follows is a discussion in detail of other pension issues that were raised.

B. Early Pension Annuity Withdrawal

The City has proposed the elimination of the pension annuity withdrawal. This proposal was explained by City Labor Relations Director Roger Cheek at Vol. IX, Tr. 96-97, when he testified:

- Q. Mr. Cheek, I'd like to direct your attention to the City's proposal with respect to optional annuity withdrawal. Would you please explain what the City's position is and why?
- A. Yes. The City is -- our goal there is to return the issue of the -- or return the pension's asset accumulation formula, yeah, asset accumulation formula to what was originally intended when the system was put in place. That's our goal.

We feel that the City has suffered a reduction and a -- a negative reduction, or a negative impact with regard to the cost for providing for pensions because

of the changes -- a couple of changes that have been made in the optional withdrawal feature of the pension, and we would just like to return it to the system that really provides for a full 5 percent realization in the pension funds, and that is no longer occurring because of the change with regard to optional annuity withdrawal.

Q. What change are you referring to?

A. Well, right now the employees do not have to -- I shouldn't say that. The pension benefits they are to receive are not credited -- there is not a credit taken against those benefits to the full extent that they used to be and should be, in our judgment, when they withdraw their optional annuity after they've reached their 25th year of employment and continue to remain an employee.

The Association has pressed for this annuity benefit and has been able to obtain it through Act 312. It is doubtful that the Association would ever have voluntarily agreed to this change. This particularly follows when elsewhere in the Award, the majority of the Panel is going to modify provisions as to disability penalties.

As one reviews the record as quoted above, it would seem that there is no compelling evidence (except the City's desire for a change) that suggests to a majority of the Panel that it should deviate from the aforementioned bargaining history. This particularly follows when one considers the art of the possible.

Under all of the circumstances, the bargaining history, the art of the possible, and the awards of this Panel as to other issues, the majority of the Panel will not award a change in the current language as to Early Pension Annuity Withdrawal.

C. Pension Board Administration

The City proposed to modify the composition of the Police and Fire Pension Board by adding one more City representative to the Board. The rationale for such a change was presented by Roger Cheek, the City's Director of Labor Relations, who suggested that the focus of the proposal was to monitor the number of disability pensions granted by the Board. According to Mr. Cheek, the City's actuarial experts have indicated that "the City's duty disability rate is at least double" the rate for other comparable cities. Mr. Cheek blamed part of this on voting patterns by the Pension Board Trustees. See Vol. IX, Tr. 94-95.

The makeup of the Pension Board is the Mayor, a City Council designee, the Treasurer of the City of Detroit, the Chief of Police, and the Fire Commissioner. In addition to these five ex-officio positions, there are six elected positions which are elected by members of the Police Department (three positions) and the Fire Department (three positions). See Article 42. The proposal of the City is to add one more City representative on the Board. As Mr. Cheek testified at Vol. IX, Tr. 93-94:

...There is currently an 11-member board, and the -- a number of the positions on the board are elected beneficiaries of the system, non-City -- in other words, people who are going to receive the benefits of the system. It's our belief and our experience that the voting that has been done by the trustees appears to be skewed, considering everything, if you can try to hold I guess subjective things constant, if there is such a thing, and we think there is, but that the voting has been contrary to the -- what? -- the welfare of the City with regard to certain decisions the pension board makes.

An equal number, in our judgment, is a fair way to go. Clearly the City charter provides if there is going to be some change, an equal number is the way it should go, an equal number between management and union employees.

Our goal is to have that equal number and to expect a better experience with regard to some of the decisions that we feel are causing waste in the system, abuse in the system.

On cross-examination, Mr. Cheek noted:

- Q. I mean the purpose of this is to have a super majority of this board so that you can deny a lot of duty disabilities. That's what I hear you saying.
- A. Well, deny undeserving duty disabilities.
- Q. Ah, okay.
- A. Now, there is no -- and I have been very careful not to suggest anything other than that. Obviously anybody who is disabled as a result of true employment, the way that it was intended, I fully, I'm one of those who want them to get everything they're due, everything they're due as duty disability. We believe that there have been undeserved duty disabilities that have been granted.
- Q. So the solution to that is to give the City a super majority over and above the fact that it now has a managerial rank member on the police -- from the police sector?
- A. Mr. Moore, we believe that if we can add another management member, that that will reduce the number of undeserved, what we consider undeserved duty disabilities. That's our goal, not to reduce deserving ones.

Combining the bargaining history and the art of the possible criteria, the majority of the Panel have concluded that there is no basis to make the change proposed by the City.

The bargaining history criteria has two aspects: the historical bargaining pattern, whereby over the years and through numerous Act 312 arbitrations, there has not been a change in the composition of the Pension Board, and the current bargaining pattern, wherein the City has also been urging a modification as to disability pension provisions to address some City concerns on the issue. Although the Association has vigorously resisted any such modifications, the Panel majority will award some disability pension modifications as explained below in this Opinion.

With this bargaining history, there is nothing on this record, except merely a desire, to support changing what has come to pass through years of bargaining. And if this was not enough of a criteria, the art of the possible and even the strike criteria for the reasons just noted leads the majority of the Panel to conclude that if the parties were bargaining without Act 312, the City would not be able to obtain this request.

It is for these reasons that the majority of the Panel will not honor, by an award, any request to change the composition of the Police and Fire Pension Board.

D. Disability Retirement

In analyzing the financial resources of the City and the need to provide a reasonable economic package for the Police Officers, the Panel has reviewed the system of disability retirements among the Police and uniformed groups. There is no question that officers who become truly disabled are entitled to retirement benefits. On the other hand, there are those who

seek a disability retirement who may not actually be disabled, or at a point in time, may cease to be disabled in the sense that they are not prohibited from obtaining gainful employment.

These two positions must be balanced in order to conserve financial resources. The issue here is not merely the current contract, but for future contracts, if financial resources are placed in areas where not needed, then the parties may very well in future find themselves in the situation now facing this Panel.

Though the Association disagrees that there should be any change in the current disability retirement, a plan must be developed that permits fair medical evaluation, fair review by neutrals in the event there are disputes, and certain time limitations.

Balancing the interests of both parties, the need to reallocate and conserve financial resources, and yet protect the officers, it would seem that a plan that provides for a third party administrator to review claims as well as a definition of disability must be developed.

To understand the genesis of the Award as to disability retirement, the operation of Act 312 must again be reviewed. Under Act 312, there is a panel consisting of a neutral, a delegate from the employer and a delegate from the union. The award of the panel is based upon a majority. In the situation as to disability retirement, the Association Delegate has vigorously dissented. The City's Delegate has agreed with some reluctance to the award for, though his vote constituted a majority for the award as to disability retirement, there were two areas, namely, non-duty disability retirements and denial of

certain medical insurance coverage that he believes should have been included, which were not. This should be understood.

The Award that follows replaces the current disability program for all current employees who file applications for disability retirements on or after July 1, 1995 and to all future employees. The City acknowledged that employees whose applications were filed before that date (or who were receiving benefits prior to that date) would have their eligibility or continued eligibility judged under the substantive standards existing at the time of their applications and/or receipt of benefits. While the third party administrator (TPA) might be used as subsequently described in the Program, for example, to process monthly payments or to perform re-evaluations the administrator's actions must be taken under the prior substantive standards. Similarly, benefits for those applicants would be calculated and paid pursuant to the prior substantive standards. Vol. XI, Tr. 23-24.

It was also acknowledged by the City that except as specifically set forth in the City's proposal there was no intention to affect any other benefits associated with disability. In particular, the City's proposal -- and the Panel's award -- should have no effect on medical benefits currently enjoyed by duty and non-duty retirants. Vol. XI, Tr. 26-27. Finally, there was discussion of the use of the term "final compensation" in paragraph 2 of the City's proposal. The Association's advocate represented that this phrase, which is found in the City Charter, has been interpreted by the Board of Trustees as top base salary of a police officer. This distinction would impact officers who had not yet reached top

base salary. The City's counsel stated, without conceding the accuracy of the Association's attorney's representation, that it was the intention of the City to interpret "'final compensation' ...in the way it's currently being used." Vol. XI, Tr. 25-26.

Such a program is fair to the officers, providing for their protection, while conserving the finances of the City. It is anticipated that the City will be able to reallocate certain financial resources as a result of this program.

Three points about the program should specifically be discussed. First, the City proposes that non-duty disability benefits should cease after 24 months unless the recipient is unable "to perform, for wage or profit, the material and substantial duties of any occupation for which the employee is suited, based on education, training and experience." (Emphasis added.) This represents a modification of the City's original proposal that non-duty disability benefits should cease after 24 months without qualification. The City argues that its revised proposal, which could result in annual savings of approximately .25% of payroll, should be adopted for a number of reasons, that may be summarized as follows:

1. The "any occupation" limitation proposed for non-duty disability benefit recipients is the same as will be applied for duty-disability benefit recipients, thus achieving consistency within the Retirement System;
2. The proposal is consistent with the effort to find savings within the System through the elimination of expenditures that are unnecessary or potentially abusive;
3. The change would only eliminate benefits for those capable of reasonably gainful employment after a 24 months period of potential retraining, while preserving benefits for those truly disabled; and
4. This is a common provision in the private sector which is gaining acceptance in the public sector

in light of the struggle to efficiently dedicate limited financial resources to real need.

The Association has steadfastly opposed any change in the disability plan as it currently exists. That position includes vigorous opposition to any change in the plan as it applies to members who suffer non-duty related disabilities. The Association cites a number of reasons for maintaining the status quo for non-duty disabilities:

1. Non-duty benefits are substantially less than duty-related benefits;
2. The Retirement System's actuary has expressed the opinion that the City's proposal does not constitute good benefit design;
3. The City's position is inconsistent with the need based nature of a disability benefits;
4. Many if not most members who are approved for non-duty disability benefits will not be able to return to the work force; and
5. Most members who are approved for non-duty disability benefits will not be eligible for the rather generous Social Security benefits available to private sector employees.

After carefully considering the respective arguments and supporting evidence presented by the parties, the Award will make no change in the benefits available to members who incur non-duty disabilities.

The second point is that the City proposed a provision, "if a duty disability benefit is completely offset by any earnings from gainful employment, the recipient shall not be eligible for City financed medical benefits during the offset period." The Award will not adopt this provision.

Regarding the third point that should specifically be mentioned, the Panel majority does not believe that the applicant's attorney fees and expenses should be paid by the Retirement System in connection with the hearings. The Panel

majority is also of the view that the Association is not obligated to provide legal counsel to applicants who appeal terminations and makes this statement as part of this Opinion.

The reasons why the Award does not change the non-duty disability benefits or accept the City's proposal as to medical benefits is that it was not clear on the record what the value would be as to the medical benefit proposal and the proposal as to the non-duty disability change amounted to approximately .25% of the payroll. Because the opposition to any change as to disability pensions was keen, the Chairman, in casting his vote, concluded that the essential need to make changes that would be most cost effective, and that those changes had to be made, there was a practical limit, based upon the opposition, to the extent of the changes. The changes that are being made represent the greatest potential for reallocating scarce financial resources.

The Panel appreciates that there may be some question as to the savings this program might generate in terms of reallocation of resources. The City's representatives and advocates are not bound by any statements herein concerning potential savings. It is difficult to predict what the savings may be until there is the experience.

Nevertheless, the Panel did ask for and received an actuary study from the actuary for the Police and Firemen Pension Board, which report was dated January 27, 1995, and included in this record as City Exhibit 99. The actuary advises that he will recommend to the Board of Trustees of the Policemen and Firemen Retirement System that the City's contribution rate

for the 1995-96 fiscal year, because of the Award herein, would be reduced by 3% of covered payroll rate.

The report then concludes, "As actual experience emerges, contribution rates will be adjusted commensurately in subsequent years." This recommendation will be part of the Award. It is also the intention of the Award that the Police representatives on the Board of Trustees will support the change.

The summary of the restructured disability retirement provisions of the pension, as set forth in the Award, is as follows:

Applicable to disabilities applied for on or after July 1, 1995.

"Own occupation" definition applicable during the first 24 months of disability.

"Any occupation for which the employee is suited, based on education, training and experience" definition applicable after 24 months of disability.

Duty disability benefit equals

Basic benefit equal to 50% of final compensation (FC), payable during entire eligibility period,

plus

Supplemental benefit equal to 16-2/3% of FC payable for (i) 24 months, plus (ii) any remaining period to the date the member would have completed 25 years of service, provided that the "any occupation" condition continues to be satisfied.

Disability benefits adjusted annually in accordance with a 2.25% escalator.

Duty disability benefits continue to the earlier of (i) attainment of age 65, or (ii) termination of disability as determined by the TPA. Upon termination of duty disability a member with 25 years of service is eligible to convert to a service retirement benefit.

The amount of the service retirement benefit is the same amount that would have been payable if the conversion had occurred at the date of attaining 25 years of service credit.

If a disabled member returns to work and is again disabled within 24 months, the subsequent disability will be considered a continuation of the prior disability.

Disability benefits may not exceed the difference between final compensation (adjusted annually in accordance with 2.25% simple escalator) and any remuneration received from gainful employment.

Medical Boards of Review are replaced by a single doctor at a medical facility mutually agreed upon by the Union and the City for the purpose of determining if a member is disabled.

The Board of Trustees of the retirement system and the Police Department each make a duty vs. non-duty judgement. Undisputed cases are then approved. Disputed cases are passed on to a Disability Board of Review consisting of 3 qualified arbitrators and an agreed upon hearing procedure is followed.

A third party administrator (TPA) is mutually selected by the Union and City to administer disability benefits, including:

- Payment of benefits

- Re-examination of recipients

- Application of earnings limitation test

Pension service credits continue to accrue while a member is eligible for duty disability benefits until the member has 25 years of service credit.

Survivor benefit coverage continues while a member is eligible for duty disability benefits.

The Award incorporates the above summary, as well as the statements as to actuary recommendations to the Board of Trustees of the City of Detroit Policemen and Firemen Retirement System and the expectations of adoption of same, as well as the

provisions of the disability retirement program which will be subsequently issued by the Chairman on behalf of the Panel majority.

Health Care Insurance

Health care costs have been a burden on the City of Detroit. The phenomenon that Detroit's property tax revenue, \$110 million annually, is only enough to pay for either the health care benefits or the pension contributions, emphasizes this point.

It was no surprise that, in these proceedings, the City was insisting on health care cost containment, which in its view would involve the elimination of Bankers Life, and employee contributions to health care premiums.

The midwest national comparables reveal the following as to police health care contributions by police employees:

	<u>City Payment</u>	<u>Employee Payment</u>
Chicago	partial	contribution + co-pay
St. Louis	100% of HMO for employee only, i.e., City monthly contribution \$117.20	For family: \$236.17 per month
Cleveland	partial	\$10.00/month - single \$20.00/month - family
Pittsburgh	PPO Plan paid 100%	

Table 36 of Exhibit 50 sets forth the suburban Detroit comparables as follows:

TABLE THIRTY-SIX
HOSPITALIZATION
LOCAL COMPARABLES

	<u>Employer</u>	<u>Employee</u>	<u>Deductible</u>	<u>Prescription</u>
Ann Arbor	100%			

	<u>Employer</u>	<u>Employee</u>	<u>Deductible</u>	<u>Prescription</u>
Dearborn	80%	20%		
Dearborn Heights	Officer pays up to 1% base toward premium			
Farmington Hills	100%			
Livonia	100%			
Pontiac	Contract under negotiation			
Roseville	100%		\$100 officer \$5 \$200 family	
Royal Oak	100%			\$5
St. Clair Shores	100%			
Southfield ¹	100%			
Sterling Hts.	100%		If BC/BS then \$100 ded. or \$200 family	
Taylor	100%			
Troy	part	\$20/mo officer, City pays rest		
Warren	100%			
Westland	100%			\$3

The national comparables favor the City's position as to premium contributions. The suburban communities favor the Association's position for most of the suburbs are paying for the health care premiums. However, three suburban communities provide that the employees pay some part of the insurance premiums.

Internally, the City, with various bargaining units and its non-represented employees, has contained health care insurance costs by offering a variety of health care plans in

addition to containing contributions toward health care insurance premiums.

City Exhibit 79A lists the various carriers and the percentage of the amount of the City's contribution toward the various categories of premiums, as well as that of the employee, including the percentage of employees in the particular plans. City Exhibit 79A reveals that approximately 97% of the non-uniformed employees of the City of Detroit, in varying amounts, are making contributions toward health care insurance. The contributions are reduced as the employee's elect to join health maintenance organizations. The highest contributions are made by employees enrolled in traditional Blue Cross-Blue Shield. There is one HMO plan that has a rate making it possible for the employees not to contribute, namely, THC. The same observation in effect would apply to the Wellness Plan, whose annual contribution for a family is only \$33.00.

On a weighted average, 20% of the active civilian employees are paying \$1,397 per year toward traditional Blue Cross and 3% are paying \$1,260 per year for Blue Cross Preferred Provider Organization. It is understandable that 20% are opting, for example, for Omnicare at a \$190 contribution per year, 36% are opting for HAP, with a \$394 contribution per year.

The majority of the police officers are in a plan where the insurance carrier is Bankers' Life. The rate referred to in Exhibit 79A for Bankers Life is a combined rate for both active employees and retirees.

Premium sharing is not new to the police officers. At page 35 of the 1989 Act 312 Opinion and Award, Chairman Nathan Lipson wrote:

It is noted that while the City and DPOA second offers use different approaches, the result in both proposals is approximately the same assuming that premiums rise as estimated by the City - i.e., premium sharing is established for active employees and retirees with about the same premium sharing for the City and persons in both categories. The City estimated 3-year savings of \$5,945,000 for active employees if the original offer of settlement were adopted and about \$645,000 for retirees on the basis of the first offer. Assuming that either of the second offers will effect half of the original savings, the City's offset would be approximately \$3.3 million.

The Panel Chairman observes that, while the results are similar, the City's second offers of settlement for actives and retirees follow more closely the recommendations that were made on the remand of this issue. Moreover, the City's language will make clearer to the employees that premium sharing -- half for the City and half for the employees -- will begin at 2/3 of the increase (actual or estimated) for each of the three years of the contract. In addition, the City's language will bring the DPOA contract format closer to other City collective bargaining agreements with regard to premium sharing.

It is hoped that the change in Article 21-G, the establishment of premium sharing, and the new Cost Containment Committee language will cause increased consciousness of the costs of hospitalization insurance and will lead to cost containment or control of this expensive coverage during the term of the forthcoming collective bargaining agreement.

Thus, in the 1989-92 Agreement, in paragraph 21, "Hospital, Medical, Dental and Optical Care", there were provisions for premium co-pay as set forth in Paragraph 21.C. As a result, the police did have premium co-pay for one year of that contract. Paragraph C provided in part:

For periods of coverage beginning as of August 1, 1990 and thereafter, the City will increase its contribution for all component rates currently paid by the City by eight

percent (8%) over the prior year's levels. Fifty percent (50%) of any premium charges that exceed the above amounts will be paid by the retirees, and the other fifty percent (50%) will be paid the City.

Recognizing the aforementioned provision, the leadership of the Association, working with Bankers, developed a program to contain health care costs through various techniques, including monitoring usage as well as reviewing charges of the various health care providers. As a result of this careful monitoring, the Bankers plan premiums have been less than other equivalent insurance plans provided by the City. This monitoring function was motivated by the desire of the Association leadership to have its members avoid the necessity of premium co-pays, which police do not now pay if they are covered by Bankers.

Nevertheless, the cost to the City to provide health care insurance to most of the police officers is higher than to the civilian employees because of premium co-pays, and the fact that a number of civilian employees have opted for health maintenance organizations, driven, in part, by the reduced premium co-pays of HMO's.

The name of the game is to reduce health care costs, as such costs could reflect on resources available for wages. This point could not be overlooked by the Panel.

In evaluating methods of containing health care costs, one must not only consider the cost for active employees, but likewise, the cost for retirees. This particularly follows because police usually retire substantially before they are Medicare-eligible, meaning that the City is responsible for carrying police retirees for an extended period of time at

relatively high cost. Thus, in considering the adoption of a plan, it was imperative that the plan provide for realistic retiree health care cost containment while providing reasonable health care protection to said retirees.

The City proffered a provider plan from Blue Cross Blue Shield which produced potential savings for active employees over current premium cost and has the potential for additional premium savings as to retirees, if said retirees elected to join the Blue Cross Blue Shield plan.

The Association, along with other police unions, have developed a Public Safety Trust Plan known as the C.O.P.S. with Bankers. The plan would provide both active and retirees reasonable health care benefits and accomplish necessary cost containment.

The key to the Association's approach was to maintain Bankers Life as an insurance carrier choice for police officers. Bankers Life has had a long history of servicing police officers and their families. Police officers seem to be satisfied with the service provided by Bankers Life. Thus, the Association was insisting that Bankers Life be continued as a carrier.

The C.O.P.S. plan separated premiums for active employees and retirees, and offered similar savings as to active employees over current premiums, as did the City's proffered Blue Cross Blue Shield plan, except the City's plan may have offered more savings.

The key is cost containment. It is paramount that retiree health care insurance premiums be contained. This can only be done by persuading the retirees to switch to a plan that

has cost containment features. The Association proposed a plan through Bankers Life to do just this, which would be a major breakthrough.

The Association has suggested that, so long as the C.O.P.S. health insurance plan is adopted as proposed, it can persuade a large proportion of the current police retirees to join the plan. This represents a necessary savings.

The difficulty with the Blue Cross Blue Shield plan proposed by the City is that there is a history of the vast majority of police officers opting for Bankers' Life coverage, even though Blue Cross Blue Shield has been an option available to police officers. This historical fact under the art of the possible criteria would suggest that the City could not realize savings on retirees' health care unless the Bankers' Life option was available.

The loyalty factor among the police officers to Bankers Life is there to behold. It is this loyalty factor that holds the best possibility for accomplishing the needed cost containment.

The cost containment figures presented to the panel were not fixed as such. The potential savings over certain costs varied from \$1.7 million per annum, if no retirees switch to the C.O.P.S. program, to upwards of \$5.4 million if 100% of the retirees switch. Obviously, these figures are only estimates.

As stated above, the adoption of the C.O.P.S. program, through the efforts of the Association, will provide a vehicle by which retirees, who have been satisfied with Bankers, can switch and continue reasonable benefits with cost containment.

It was represented to the Panel that the Association will make strong efforts to persuade the retirees to switch to the C.O.P.S. program. The Panel majority has relied upon these representations in reaching its conclusion as to health care. The Association also should make an effort as to those retirees who are covered by Blue Cross to persuade said retirees to join the C.O.P.S. plan. This will benefit the retirees, the Association, and the City, and should and must be pursued.

Based upon this reliance, the Panel majority did not opt for any additional premium co-pays during the life of this contract, except as provided in the previous contract, namely, Article 21.E from the 1989-92 contract. In other words, there will be an 8% cap on premium increases over those that have been proffered by Bankers under the C.O.P.S. plan, beginning with the introduction of the plan, presumably May 1, 1995, through July 31, 1996. The cap will keep costs down. The conversion over to the C.O.P.S. plan will result in savings over current premium costs over the life of this contract, which savings have been factored into the wage settlement.

But for the representation as to the substantial savings, coupled with the reallocation of resources regarding pension disability and newly-hired officers, this health care package would not have been forthcoming. If it turns out that the representations are not as they were made, then this matter will be reviewed in the future, for health care cost containment is essential, and is part of the economic restructuring necessary to provide the basis for an economic package.

It is only because the police were able to offer the wherewithal for substantial savings that no additional premium

co-pay has been added at this time. But, if the representations as to the savings here are not forthcoming, then, using the old proverb, "the handwriting is on the wall." It would behoove Bankers to do everything possible to keep premium costs as close to current levels established in this Award as possible. There is an incentive for Bankers to do so. The City has questioned whether Bankers should be continued as a carrier. Bankers can continue to establish its credibility as a carrier by cooperating in keeping costs contained. Otherwise, there will be a betrayal on its part to a major constituent.

The Association membership should understand that only through the efforts of its leadership was Bankers able to be continued, as this was not a given during these proceedings.

There is no reason for the retirees to be concerned as they will be receiving the same insurance benefits that active employees.

Thus, the current Bankers Plan will be eliminated in the Award and the C.O.P.S. plan will be substituted, at the premium rates as set forth herein, which the Panel understands have been guaranteed through July 31, 1995. If this is a misunderstanding, then the matter should be called to the attention of the Panel for further consideration.

It shall be part of the Award that all current police retirees covered by the current Bankers plan and Blue Cross Blue Shield shall be offered coverage at their option in the Coalition of Public Safety Trust Plan (C.O.P.S.) It is also understood that once a current retiree elects to join the C.O.P.S. plan, it will become the retiree's plan.

As in the past, active police officers will have every opportunity, if they elect, to join one of the other plans offered by the City, but the premiums to be paid by the City will be limited to the premium cost under the C.O.P.S. plan.

As the Panel majority viewed the situation, there must be continued efforts at health care cost containment. There are techniques that have been developed elsewhere whose time has come to be developed in Detroit. These techniques are the opt-out for active and retired employees, the payment for health care insurance for retirees employed elsewhere, the elimination of duplicate coverage, or, akin to duplicate coverage among employees who are in the same family unit who are both employed by the City, or one or both of whom are City retirees, or one is retired and one is an active City employee.

As to active employees, there may be employees whose spouses work for employers other than the City of Detroit who provide for health care insurance coverage. There should be a method of encouraging such employees to opt-out of the City's provided health insurance in such case, so long as the employees are covered by health insurance. But, to encourage employees to opt-out, there should be a monetary incentive, an incentive that will result in a net savings to the City, i.e., paying an opt-out stipend and yet not being responsible for the employee's health care premium.

It should be clear, however, that this opt-out feature is not applicable if the spouses or family members are working for the City of Detroit in the same or different departments or areas. This provision would only apply where the spouse or

family member work for an employer other than the City of Detroit.

This opt-out shall be based upon a payment on an annual basis. The amount of the opt-out will be at the discretion of the City, which amount may vary annually at the discretion of the City. Presumably, the City will attempt to make the opt-out stipend attractive enough to encourage this method of cost containment. As a condition of the opt-out, the employee must establish that the employee is covered with health insurance elsewhere. The idea is not to encourage employees not to be covered. Consistent with this goal, if the employee opts-out during a given year and loses coverage elsewhere during said year, then there will be a method of allowing the employee to opt-in, even during a year where there has been an opt-out, providing that the employee reimburses the City, pro rata, for the stipend the employee has received for opting-out.

An opt-out technique also could be applied to retirees.

There are at least three scenarios where retired police officers might have coverage now provided to them by the City, who, if given an opt-out provision, might elect for a monetary stipend to opt-out. This would have the same cost containment feature as suggested above for active employees.

The retiree may be employed by another employer during retirement, or may have a spouse employed by an employer other than the City of Detroit who is furnishing health care coverage, or the employee may have gone to work for another employer, retired from that other employer, who in turn provides retiree health care coverage. In each of these scenarios, it would seem, as in the case of active employees, that the City, at its

option, on an annual basis, could offer such retirees a stipend for opting-out of the City's health care insurance plans for the year involved, provided that the retiree establishes that he or she has other health care insurance coverage. The stipend would be set by the City at its sole discretion and may be adjusted at the City's discretion on an annual basis.

The cost containment features of these opt-out scenarios are obvious. Even with payment of the stipends, the City can expect substantial savings as to each retiree opt-out.

The Award will also provide that for officers who retire after the date of the Award who become employed by another employer offering medical-hospitalization insurance with substantially the same coverage and benefits as that offered by the City and at no greater premium co-pay than exists at the time of retirement, shall not be entitled to the City's coverage during the period of such employment, but said officer will receive any applicable opt-out stipend as might be made available for retiree opt-outs.

As the Panel Majority has emphasized throughout the above discussion, the opt-out provisions are annual opt-outs and are conditioned upon the employee establishing that he or she has other health insurance coverage, and that an employee can opt in and out on an annual basis, and even within the opt-out year, can opt back in by repaying, pro rata, the stipend, if the alternative coverage ceases to be available during the opt-out year. These provisions are necessary to assure that the employee is covered by health care insurance.

The purpose of the opt-out is to allow employees the opportunity to choose what available coverage they wish to take,

and to receive a stipend for making such a choice. As part of the Award, if there are any questions about these techniques, the parties will be able to come to the Panel for clarification or to resolve any dispute resolving the statements made herein.

As these opt-out provisions are designed to have a net savings over premium costs to the City, the City, at its option, during the life of the contract resulting from this Award, may discontinue all or any of the above option plans. Nothing in the Award will prevent the City from rejecting any or part of the opt-outs discussed above.

There is another technique that has potential cost containment effects. There are, within the workforce of the City of Detroit, spouses who are working for Detroit. There is no reason why the City should furnish more than one health care insurance benefit for such persons and their families. The concept is to provide insurance coverage, not to present an insurance bonanza.

This provision can also apply if both spouses are retired from the City of Detroit or if a spouse is continuing to work for the City, as to those who retire after the date of this Award. This last provision is not intended to change the health insurance benefits herein for retirees, but only to suggest that, in a family unit, the City should not pay for two insurance programs, but the family unit should select which program to opt for.

What follows is language that will be incorporated into the Award by reference as well as the explanation set forth above. This language is intended to replace the current Article 21. The Panel will reserve jurisdiction as to any disputes over

the clarity of the language, or as to any item not covered by inadvertence.

It should also be understood that there was a dispute over optical coverage, which the Panel has resolved by the language set forth below.

21. HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE

A. The current health care plan for active and retired employees will remain in effect until April 30, 1995.

B. Effective May 1, 1995 or before, if possible, the current hospitalization plan will be replaced by the Coalition of Public Safety Trust for all active employees and future retirees. Coverage shall be provided for active employees and their legal dependents, duty death beneficiaries and their legal dependents and duty disability retirees and their legal dependents. Dependents shall include all 19 to 25 year olds who are dependent on the employee for support and maintenance and who were reported as such on the employee's most recent Federal tax return. Deferred vested retirees and their spouses are included in this coverage.

C. 1. For the initial period of coverage (May 1, 1995 through July 31, 1995), the City shall make the following monthly payments to the C.O.P.S. Trust:

Active Employees

One Person	\$188.66
Two Person	421.93
Family	439.43
Family Continuation	97.46
Sponsored Dependent	219.25

Retirees and spouses under 65 not Medicare eligible:

One Person	\$257.18
Two Person	575.18

Retirees and spouses over 65 who are Medicare eligible:

One Person	\$185.31
Two Person	366.53

D. For the period of coverage beginning as of August 1, 1995, the City will pay any future premium increases up to eight percent (8%).

Fifty percent (50%) of any premium charges that exceed the above amounts will be paid by the employee, and the other fifty percent (50%) will be paid by the City.

E. Employees who retire after the effective date of this Agreement, and who are qualified to receive the City's hospitalization-medical insurance as a retiree shall at any time the retirant is receiving said coverage, be entitled to the same coverage opportunities then available to the active employees and utilizing the same co-premium calculation formula to determine amounts payable by retirees for the retiree and their spouse.

F. Spouses of persons who retire on or after July 1, 1985 and who elect the straight life retirement allowance or cash refund annuity (option 1) shall be eligible for health, dental and eye care insurance paid by the City as long as the retiree receives a pension.

G. Employees and regular future retirees, including deferred vested retirees, shall have the option of choosing alternative hospitalization medical coverage from any plan or program selected by the Union or made available by the City. The City's contribution to the alternative plans or programs shall be limited to the City's portion premium cost for the COPS

program; the employee and retiree paying all additional costs. If at the end of any fiscal year an alternative hospitalization plan or program has failed to enroll 50 employees in the entire City, the City shall have the option of removing that plan from the list of eligible plans or programs.

H. The City will pay to the Dental Plan or Program selected by the Union an amount per employee equal to the premium cost for the Blue Cross/Blue Shield program which provides Class I benefits on a 25% co-pay basis and Class II and III benefits on a 50% basis with Class I, II and III benefits not exceeding \$1,000 per person per year and also Orthodontic coverage on a 50% co-pay basis with a \$1,000 life time maximum. Coverage shall be provided to all employees including duty disability retirees, except that newly hired employees shall not be eligible for these benefits until they shall have worked 1,040 straight time hours.

I. Effective July 1, 1987, the City will pay to the optical plan or program selected by the DPOA an amount per employee equal to the premium cost for the Blue Cross/Blue Shield A-80 Optical Plan.

K. No insurance carrier shall be allowed to underwrite City Health Care Benefits unless it offers coordination of benefits. Employees are to fully cooperate and participate in all of the enrollment and administrative procedures, including coordination of benefits administrative efforts, which the City implements.

L. A Joint Health Care Cost Containment Committee made up of two members from the City and two members from the Association will, from time to time, review cost containment

programs and other health care issues for both active employees and future retirees during the term of the Contract. In determining different alternatives to health care benefits, the Committee will review the benefits structure, utilization analysis and the provider network. The Committee may also utilize the services of a health care consultant whose expenses shall be borne equally by the parties.

M. The City shall have the right to change the Blue Cross/Blue Shield hospitalization plan by entering into preferred or exclusive provider arrangements to reduce cost, provided such changes do not cause a material change in health care benefits.

N. Any employee premium sharing, if any, will be withheld on a bi-weekly basis, before payroll taxes are applied.

O. Employees who are on the active payroll of the City, covered by a health care plan offered by an employer other than the City, and, can establish such coverage, who do not elect to take hospitalization-medical coverage offered by the City, may, each enrollment year, at the time of the enrollment period, opt out from City coverage and for said enrollment year receive the applicable payment being offered by the City as payment in lieu of the hospitalization-medical coverage. Once an employee opts out for a given year, the employee will not be able to receive the City's coverage until the next enrollment period, unless the employee loses his/her eligibility for the alternate coverage, unless, and in such case, the employee will be permitted to resume coverage with the City the month following his/her completion of a health application and transfer form. The provisions of this section shall be

applicable to an employee who is or does retire and is eligible to receive hospitalization-medical insurance coverage. If the employee returns to the City's coverage under the conditions just stated, the employee shall pay back pro rata any payment provided herein. The opt-out stipend will be paid for each enrollment year that the employee elects to opt out under this provision. This payment will not be included in the definition of compensation for determination of pension or any other benefits.

In order to be eligible for the incentive payment, employees must bring their identification card that shows other coverage to the Police Personnel Office and submit a signed enrollment form electing "no coverage" on or before the City's open enrollment deadline. A copy of the identification card will be kept on file. All employees are required to sign an election form, either enrolling or declining coverage, as a condition of employment.

The provisions of this section shall be applicable to an employee who retires and is eligible to receive the City's hospitalization-medical insurance coverage.

These opt-out provisions may be offered at the discretion of the City, which shall have the sole discretion to determine the amount of the stipend for each year. Such stipend, at the City's discretion, may be modified each year and for each category of opt-out. These opt-out provisions may be terminated by the City at any time.

P. C.O.P.S. Trust shall be required to respond to any reasonable requests from the City for statistical data regarding claims for active employees, retirees and dependents. The City

of Detroit will be provided with a report of the earned premiums and paid claims by line of coverage for actives and retirees separately within thirty (30) days after the end of a quarter during the term of the contract. Furthermore, the future rates shall be stated separately for active employees and retirees.

Q. There shall be no duplicate hospitalization-medical insurance coverage or payments in lieu thereof provided employees or future retirees of the City. If the City employs more than one member of a family, or the family unit includes a retiree of the City, all of whom could be eligible for coverage under one hospital-medical insurance policy or plan as a spouse or eligible dependent, the spouses or eligible dependents of that family shall be covered by only one spouse or the other. It is the responsibility of the family to select a single hospitalization carrier. Under no circumstances shall the City be obligated to provide more than one hospitalization-medical policy or plan.

R. For an employee who retires after March 1, 1995 under a retirement which makes him or her eligible to receive the City's hospitalization-medical insurance coverage for himself and his family, but who is, subsequent to such retirement, eligible to receive a medical-hospitalization insurance plan from another employer that provides substantially the same coverage and benefits as offered by the City and at no greater premium co-pay than exists at the time of retirement, shall not be entitled to the City's coverage during the period of other employment. He/she shall be entitled to receive any applicable payment in lieu of hospitalization-medical insurance then being offered by the City pursuant to the provisions of

Article 21, Section O above, recognizing that for each year the retiree is subject to this provision, the other insurance offered must meet the substantial coverage-benefit, including co-payment, test.

II. ECONOMIC ISSUES OTHER THAN WAGES, HEALTH CARE INSURANCE AND PENSIONS

Overall View of Economic Demands other than Wages, Health Insurance and Pension

As set forth at pages 5 through 7, in City Exhibit 67 and Association Exhibit 3, the parties presented numerous economic issues. Such City proposals as longevity pay, vacations, sick leave, and 2% retirement COLA, were attempts to modify economic benefits that have been gained by police officers through negotiation and Act 312 in the past.

The Panel majority made its views known during the course of the proceedings that the Panel did not agree with a number of the City's economic proposals. Presumably, the Panel's views were factors influencing the City's withdrawal of a number of its economic proposals.

There have been economic proposals presented by the Association which the Panel will address but not award.

There is a long bargaining history stemming back at least to July 1, 1970, involving seven Act 312 proceedings. A number of the Association's economic proposals such as holidays, holiday pay, tuition reimbursement, legal defense plan, changes in shift differential, additional vacation days, sick time bonus vacation reduction, E Day bonus vacation reduction, non-duty disability insurance policies and guaranteed employment have

been a result of the pattern of bargaining or Act 312 awards over the years.

Though one could argue, if there is a picking and choosing of comparables, that officers in some municipalities are given more favorable treatment on some issues as compared to areas than Detroit police officers. But this does not always follow. The comparables do not compel, based on the bargaining history, a change in the contract as to a number of the Association's economic proposals.

Each of these economic proposals involves cost to the City. Yet, there is the reality of the financial situation of the City, which cannot be ignored. Faced with this economic reality, it would seem to the majority of the Panel, considering all of the circumstances and applying the applicable criteria, that from an economic standpoint, emphasis should be placed on wages and concerns as to hospitalization.

What follows is a review by the Panel of the various economic proposals to ascertain whether, considering the above statements, there is a compelling reason for granting any of said proposals. As to each proposal, the majority of the Panel has considered the applicable criteria balanced against the proposition that the economic emphasis should be on wages and health insurance concerns.

TUITION REIMBURSEMENT

Article 20 of the 1989-92 agreement provides:

Effective July 1, 1989, the City will reimburse members for the cost of school tuition up to a maximum of \$600.00 per year, subject to the limitations set forth in the Civil Service Tuition Refund Plan, as adopted by the Detroit Civil Service Commission on

June 14, 1966 and revised on January 17, 1975
and the Tuition Refund Plan as approved by
Detroit City Council, June 17, 1969.

The Association has proposed the following change:

The City will reimburse members for the cost of school tuition up to a maximum of \$600.00 per year, subject to the limitations set forth in the Civil Service Tuition Refund Plan, as adopted by the Detroit Civil Service Commission on June 14, 1966 and revised on January 17, 1975 and the Tuition Refund Plan as approved by Detroit City Council, June 17, 1969, provided, however, that if members of any other bargaining unit become entitled to educational reimbursement in an amount greater than the above maximum of \$600.00 per year, that greater amount shall apply to the employees covered by this Agreement.

This is an economic enhancement. Because the Panel majority has zeroed in on applying the financial resources of the City toward wages, the Panel majority declines to award financial enhancements that detract from Detroit's limited financial resources. For this reason, the Panel Majority declines to award the Association's proposal as to tuition reimbursement. The status quo will remain.

GUARANTEED EMPLOYMENT

According to the Association, in setting forth its proposal as to guaranteed employment, there is no such language in the current agreement. There are provisions for layoff and recall in Article 6.D, 6.E, 10.B and 10.E. The Association has proposed to add the following language to Article 10:

Any member employed on or after the effective date of this contract, including members hired or recalled, shall be guaranteed continued employment subject only to the Employer's right to discipline for just cause.

There are difficulties with this proposal. Based upon the Michigan Supreme Court's decision in Local 1277, Metropolitan Council No. 23, American Federation of State, County and Municipal Employees, AFL-CIO v City of Centerline, 414 Mich 642 (1982), it is doubtful that the decision to lay off police officers is a mandatory subject of bargaining, therefore subject to an opinion and award of an Act 312 panel. Centerline states otherwise.

As the Panel majority has already suggested, there are serious financial conditions facing the City. In the past, the City has had to resort to layoffs of police officers. Though the Panel hopes that this does not come to pass, it is difficult to conceive that a panel majority would award wage improvements and yet, regardless of Centerline, suggest that the City be restricted in adjusting its economic situation by limiting the City in laying off officers, if necessary.

All these factors dictate that the Panel majority will not award this proposal.

HOLIDAYS

There is a dispute, depending on how the contract is interpreted, as to the number of holidays in Detroit. Professor Stafford, in Exhibit 50, has listed Detroit with nine holidays. The City, in Exhibit 80, has listed Detroit with 12.5 holidays. But as noted in the record at Volume VIII, Tr. 26-27, 30, the City has listed the last working days prior to Christmas, New Year's and Martin Luther King Day which are "excused time" days. An officer who works these days receives regular pay plus eight (8) hours of compensatory time. Similarly, an officer who works

Good Friday receives, in addition to regular pay, four (4) hours of compensatory time. Officers who do not work the excused time days receive no reduction in wages.

In the metropolitan Detroit area, there are a number of communities such as Ann Arbor, Dearborn Heights, Farmington Hills, Livonia, Roseville, Southfield, Sterling Heights, having 12.5 or fewer holidays. There are some with more, such as Dearborn, 13, and Westland, 14, and Warren, 16.

Applying national comparisons, there are some communities, such as Chicago, that have 13. But there are others, such as Cleveland, that have 11. St. Louis has 10. Pittsburgh has 14. With such comparables and recognizing that the holidays were arrived at through a history of bargaining, there is no compelling reason to award a change the number of holidays in the City's current economic climate.

LEGAL DEFENSE PLAN

The Association has proposed a legal defense plan. There is presently no such provision in the contract. The Association proposal is as follows:

For all hours for which members are compensated, the Employer shall contribute two cents (\$.02) per hour per member to the Association's Legal Defense Account and all amounts so contributed shall be utilized to provide criminal representation in accordance with the Association's Plan. These City contributions shall be remitted to the Association every two weeks.

The proposal was discussed at Vol. X, Tr. 67-68. The purpose of the plan was to provide a defense fund for officers. Though laudable, it is still a cost item. One might suggest

that \$.02 per hour is miniscule in the overall scheme of things, given the budget of the City in general and the Department budget's in particular. That is true. But the name of the game is wages. And the Panel majority, after spending considerable time with the parties in hearings, has concluded the economic emphasis should be on wages.

It is for these reasons that the Award will not provide for a legal defense plan.

RESTRICTED LEAVE DAYS

The Association has proposed to amend Article 18, "Leave Days and Job Assignments," by adding the following language:

Employees shall be granted a \$.50 per hour premium for hours worked on restricted leave days with the exception of:

Spirit of Detroit Boat Races (2 days)
Detroit Grand Prix (3 days)
International Freedom Festival Fireworks (2 days)
Wisk Bright Night Fireworks (2 days)
Halloween Task Force (4 days)

The issue of restricted leave days is twofold. Based upon Article 18 of the 1989-92 agreement, in a seven day, 24 hour operation, officers have "eight leave days in a 28-day cycle." Vol. VIII, Tr. 39. The contract does not contain the term "restricted leave days." However, the Department has developed the concept of days on which officers cannot obtain leave days. These have become known as restricted days. As Officer John Barr testified:

When they've restricted my days, say they restrict three days in that 28-day cycle, now I can only put in those eight days spread among those 25 days. (Vol. VIII, Tr. 39)

Officer Barr explained that the concern of the Association is that the Department is continuing to add restricted days, limiting the opportunity for officers particularly to have Saturdays and Sundays as leave days on occasion. Officer Barr explained that the Association recognizes there are occasions when restricted leave days are necessary because of certain events occurring in the City of Detroit, for as he stated at Vol. VIII, Tr. 40:

The problem the Association is - wants to address is the number of restricted leave days that the department continually puts on.

We understand what the mission of the police department is. We understand that there are events that take place in this city that need more than what the normal complement of men are, men and women are.

And most basically, they have the Grand Prix, the boat races, the fireworks, Halloween task force. From time to time we have a presidential visit. We had the Pope visit in the past few years. The Tigers back in '84 won the World Series. There are events that take place that they need more than the normal complement of people working and therefore they restrict days.

After so testifying, Officer Barr stated at Vol. VIII, Tr. 40-41:

However, during the past years -- it's grown since the last 312 arbitration -- that commands themselves have been restricting leave days. Up until this point restricted leave days were supposedly only done on a departmentwide basis. Chief of police restricts leave days for everybody throughout the department.

* * *

Well, currently in the grievance procedure there are 13 pending grievances over the fact that local commands have restricted leave days. In other words, they've taken it upon themselves, for whatever reasons.

Some of the reasons are at communication operations they decided to have a training day. They were going to restrict leave days. So now automatically I'm lost a chance to bid for that day because they said I can't have a day off. Ironically, they never sent anybody to train on that day that they restricted.

We had the same problem at the second precinct, although a grievance wasn't filed. The inspector out there changed her mind about restricting leave days.

* * *

Officer Barr then noted at Vol. VIII, Tr. 44, after referring to the fact that there are 13 grievances pending over the issue of restricted leave days:

In the last 312, Inspector Michael Falvo testified that it was a circumvention of department policy to restrict leave days at a local command, and that's what's generated most of these grievances. He testified. He was asked the question is it a circumvention of department policy to restrict them on a local command, and his answer was yes. And yet we have 13 grievances because that's just what's been done.

The second prong of the problem relates back to the notice requirements of Article 18, and particularly, 18.E. As Officer Barr testified at Vol. VIII, Tr. 47-48:

Yes, we have had a problem in the past on the notice of restricted leave days. If you can imagine this, the leave days have to be posted a week before that 28-day cycle starts. Therefore, they have to be submitted at least a week before so that the managers can figure out how many people there will be off every day and do their calculations, and then during that seven days then they post them.

We have had a problem in the past where they have posted, or they submitted your leave days and nobody's bothered to tell the officers we've restricted leave days. Therefore, they put in days that they've lost their seniority option for because they couldn't have gotten the day anyway. Why? A

lot of times management has just made a mistake. And who pays for it? Management doesn't pay for their mistake. The officer pays for that mistakes.

We took that grievance to the chief. It was Chief Hart. Chief Hart came up with a solution to it. But as recent as March of this year I had to send a letter to the Chief McKinnon reminding him of that grievance and how that grievance was resolved, and had his administration decide to change it.

Because, again, they were restricting leave days after the members had submitted their leave days. And at that time Commander Iris Worthington wrote back to that the policy hadn't changed. It was supposed to be, again, distributed to the department to let the managers know in order to -- so that I can put in my leave day request knowing what days are restricted, if any leave days are restricted.

The Association's allegation as to the frequency of the use of restricted leave days and concerns over notice indicate problems.

However, the parties do have current contract language, which will carry over in the contract at issue now, addressing issues now being raised. If the parties are in disagreement as to the application of the language to a given set of facts, then the appropriate resolution would be in the grievance procedure. For these reasons, the Panel will not issue an award on this issue.

SICK LEAVE PAYOUT

The Association has asked for an increase for sick leave payout.

The request as to sick leave payouts again is illustrative of the point that the comparables do not support

the Association's position. On retirement, St. Louis has 25%, or a maximum of 90 days. Pittsburgh, 100%, maximum of 112 days. Cleveland has one third. In the local comparisons, the Detroit maximum of 50% or 125 days is not the highest, but is far from the lowest.

Because Detroit does fair well with the comparables, whether it be on the national or local comparables, there is no reason to award any change in the current language as to sick leave payout. A majority of the Panel has declined to do so.

MINIMUM STAFFING

The Association has made a proposal for minimum staffing in precincts by presenting the following language, "not less than five (5) two-officer regular fully marked response units staffed by uniformed officers" shall be deployed in every precinct except the First Precinct (which encompasses the Downtown area). The Association acknowledges that this proposal is intended to modify existing management rights to "determine...employees necessary for departmental operations." Article 6(E)(4)(d). This issue evoked vigorous debate between the parties.

Beginning at Vol. II, 11, President Schneider explained the rationale for the proposal:

- A. This demand arises out of the fact that we've had situations occur on a semi-regular basis on the street where we have precincts operating on various shifts with only one or two scout cars out there. There's been a lot of discussion about deployment of manpower both in the past administration and in the current administration and the reality of it is that we still end up in situations where we have only one or two scout cars at a

given time on a shift in a precinct, so this demand is an effort to correct that problem.

Everybody acknowledges that they want to put more police out on the streets and we think this would make sure that that happens by calling for a minimum of five two-person response units on any given shift in any precinct.

- Q. Is this a matter that involves the safety of members of the department in the Association's view?
- A. Yes, it is because we feel that with only one or two cars running out there that there's not adequate backup in the event that the officers get in trouble. The fact that a car may come from a neighboring precinct or whatever, there's a time factor involved. The simple matter is that if officers get in trouble and need help, they need it within seconds, not within minutes. It could end up being a matter of officers getting severely injured or even killed because they don't have adequate backup.

Inspector Falvo, expressing the position of the Department, responded:

- Q. Inspector Falvo, what is the position of the City in relation to this staffing proposal?
- A. We are strongly opposed to it for the same reasons that we have opposed it in prior Act 312s and it's been denied. First of all, we believe that given the state of the law, this proposal likewise is not a mandatory subject of bargaining and not properly before the panel. Secondly, we believe that it improperly is an attempt to intrude upon the department's right to establish the methods and processes by which work is performed.

We believe that it is a proposal that would very, very substantially increase the cost of operating the Police Department because it would result in overtime to meet this minimum staffing requirement. It is also a simplistic

approach because every precinct and every work situation is not necessarily the same. There are precincts and shifts that do not require five two-man cars. There may be other precincts and shifts where five is not enough.

It would reward officers for calling in sick. We do have some places such as the Communications Section where we do not have a clause on minimum staffing but, because of the nature of the job have minimum staffing, and the results is in that section that if somebody calls in sick one of their buddies will get overtime. We think that's not a proper result.

Furthermore, it would prevent us from handling staffing shortages with the re-deployment of persons. We now have the Tactical Services Section, we have a Special Crimes Section and we are about to develop a brand new unit both on the east side and the west side called the Precinct Support Unit and what that unit is going to do is to be shifted from precinct to precinct where there is manpower -- so this would cripple us. It would create very excessive cost and it would be in our judgment an unwise intrusion into the management of the Police Department by persons whose expertise is not management of police departments.

Q. Under the current collective bargaining agreement who has the right and authority to determine appropriate staffing?

A. The management of the Department.

The City has suggested there may be legal questions concerning the authority of an Act 312 panel to issue an award on this subject. The Panel finds it unnecessary to consider the legal question since the Association's proposal will not be awarded by a Panel majority. It may be that from time to time manpower shortages exist in some precincts for any number of reasons. It is undeniable that Department strength has been

substantially diminished from past years and fewer officers are called upon to do much. But the City of Detroit has limited resources, a point noted in this Opinion. Unfortunately, this is the economic reality of the situation. In order to provide a reasonable wage increase, the emphasis of the Panel majority has been not to add other costs to the Department's operations. This is the driving force behind not awarding this request.

VACATIONS

As to vacations, the national comparables, after 20 years' seniority, would make Detroit most favorable.

Pittsburgh, St. Louis and Cleveland only have 15 days. Chicago does have 28 days. Where there are some changes is after 20 years' seniority, as in St. Louis, which only goes up to 20 days. Pittsburgh is still at 20 days. Cleveland only goes up to 20 days.

After 10 years, there are suburban communities, such as Dearborn, at 20 days. Most of the suburban areas are higher than 20 days; Saginaw is at 31 days. The suburban comparison would be very helpful to the Association's cause as to furlough. Nevertheless, when one considers Cleveland, a city faced with similar economic concerns, is at 20 after 20 years, and the need to emphasize wage improvements, these comparables do not compel a change in Detroit.

BONUS VACATION DAYS LIQUIDATION

Article 34 of the 1989-92 agreement is entitled "Sick Leave." Section M, concerning bonus vacation days, provides in part:

The Department must insure that bonus vacation days are expended proportionately throughout the year and are not carried until the last month of the fiscal year. Therefore, on May 1st the commanding officer shall assign the remaining bonus vacation days at his discretion.

The Department has proposed that the May 1 deadline be changed to March 1st. The Department's explanation for this was set forth at Volume I, Tr. 48. The Association proposed the status quo. The Panel majority believes that there is merit to the Department's position and struggled with this issue for some time, being cognizant of the opposition by the Association. In an attempt to follow the art of the possible criteria and arrive at a reasonable accomodation of both points of view, the majority of the Panel will award the following language as to Article 34.M. The emphasized language is new language and has been included to respond to concerns voiced by the Association to protect seniority rights.

Bonus Vacation Days: Bonus vacation days are granted for unused current sick time. Officers who have accumulated a minimum of fifty (50) sick days including both current and seniority days and have a minimum of six (6) years of service on July 1st of each year will be credited with one-half (1/2) of the unused current sick time from the previous fiscal year up to six (6) days. An officer may request to take his bonus vacation days in any sequence by submitting a request in writing to his commanding officer. This request will be reviewed for the availability of personnel by his commanding officer. Seniority will be a prime consideration when several officers request the same period of time off.

The Department must insure that bonus vacation days are expended proportionately throughout the year and are not carried until the last months of the fiscal year; therefore, on April 1st, the commanding officer shall assign the remaining bonus vacation days at his discretion provided,

however, that on March 1st the commanding officer shall post a notice identifying the dates between April 1st and June 30th (including the number of opportunities per shift) that are available for officers to take as bonus vacation days. Selection for available dates within the period commencing April 1st and ending June 30th shall be determined by a seniority drawing by shift on a date to be determined between March 7th and 15th and announced by teletype. The procedure shall follow the established process for selecting furloughs. Officers not selecting days in the drawing shall have bonus vacation days assigned at the discretion of the commanding officer from remaining opportunities. Nothing in this paragraph shall affect the normal allocation of leave days.

Bonus vacation days which are not used prior to the end of the fiscal year will be lost.

The Award incorporates the above language by reference.

NON-DUTY DISABILITY INSURANCE

The Association has made the following proposal:

The department shall provide a group non-duty related disability insurance policy for all members.

Sergeant at Arms Ronald Rupert testified as to the reason for the proposal when he noted at Vol. IX, Tr. 22-23:

- Q. Why is the Association making this proposal?
- A. In light of the fact that the City has put a proposal in that will affect the non job related injured officer where they use all their sick time for the injury because the City may not provide a job for them, we feel like it's important that officers, particularly the younger officers who come on the job with no time on the job, with no sick time, no more than 17 days a year, and the fact that that sick time would be gone and they would go into an A no pay status, and it's important that they maintain some type of living. And we feel that

disability insurance, the very minimum, would be helpful towards the officer making it until he be able to come back to work.

Q. The current situation provides that at least where an officer is capable of performing in some limited-duty capacity, the department can't discriminate between persons who have nonduty and duty-related illnesses, correct?

A. Yes, that's correct.

Q. And under those circumstances is it not true it's often the case that the department finds some kind of work for officers who might otherwise be off sick for a nonduty related injury?

A. They have done that in the past.

Q. But the City has brought to this proceeding a proposal to try and restrict or limit its obligation to provide or find positions for nonduty-related injured officers, correct?

A. Yes.

Q. And this proposal would assist officers economically who might find themselves no longer able to work even in a limited duty capacity

A. Yes, it would.

The Panel majority understands the rationale behind the proposal, but there is a cost connected with furnishing such a non-duty related disability insurance policy. When the Panel notes there is an accumulation of a possible 17 sick days per year and considers the City's financial situation, as well as the fact that this provision has not appeared in the previous agreements, the Panel majority opts not award this proposal.

SHIFT DIFFERENTIAL

Perhaps the point the Panel majority makes as to the comparables is best illustrated by the shift differentials. Detroit now pays .40 per hour for afternoons and .50 for midnights. Sterling Heights and Roseville may have higher shift differentials. This could be the situation in Warren. But when one observes Troy, Taylor, Southfield, and notes that there are no shift differentials in Ann Arbor and Dearborn Heights, the suburban comparisons do not dictate a change in the Detroit differential.

The national comparables proffered by Dr. Stafford may provide some support for increased shift differentials. But as illustrated above, the comparables, particularly at the local level, reveal that Detroit's officers have favorably compared shift differentials. Again, recognizing that Detroit's differentials came about through a history of bargaining, including Act 312, the comparables do not dictate changes.

SENIOR POLICE OFFICER CLASSIFICATION

There has been no such Senior Police Officer classification in the parties' previous collective bargaining agreements. The Association has made the following proposal concerning the same:

Police Officers who complete fourteen (14) years of service shall be designated as Senior Police Officers and shall thereafter be paid at the rate of five percent (5%) over the top base rate for the Police Officer classification (Class Code #33-10-11).

Police Officer Chester Opolski, Secretary-Treasurer of the Association, explained the rationale for the classification

at Vol. VIII, Tr. 7, when he noted:

So we were looking for a way to reward an officer that served with longevity. Certainly the department looked over the years as far as his experience and knowledge to train less senior officers and to participate in the safety of the city of Detroit.

Secretary-Treasurer Opolski then suggested, at Vol. VIII, Tr. 8:

Well, once that officer has successfully completed his 15 years of active service within the police department, we feel for the rest of his tenure that he stay with the Detroit police department that he should enjoy at least a five-percent differential.

The Senior Officer classification is not new, and has previously been rejected by other Act 312 arbitration panels.

The problem the Panel majority has is that it must deal with the art of the possible, coupled with the history of bargaining over this issue, and the difficult economic situation involving the City's finances, overlaid with concessions made by civilian unions. Considering all of these circumstances, and the desire of Association members to obtain wage improvements, this is not the contract in which to address the Senior Police Officer classification.

In coming to this conclusion, the Panel majority appreciates the sincerity of Secretary-Treasurer Opolski's testimony, and understands the rationale behind same. But the Panel majority, in 1995, is faced with some stark financial realities which dictate that it cannot award this provision at this time, because of the costs involved.

BONUS VACATION

The Association has made two requests in the area of bonus vacation days. The first provides that "the granting of an emergency or excused day shall not affect a member's bonus vacation bank." The second provides that bonus vacation days shall not be affected by the use of partial sick days. See, Vol. IX, 6-8 and 16-19.

Article 34.M., which deals with Bonus Vacation Days, provides that employees having a minimum of six years of service, and having accumulated at least fifty sick days, "will be credited with one-half (1/2) of the unused current sick time from the previous fiscal year up to six (6) days."

This contractual provision is designed to be an incentive for reliable attendance. An employee who does not call in sick or utilize Personal Leave days is rewarded with slightly more than an extra week's vacation.

City witnesses have testified that the effect of granting these proposals would be a diminution in the incentives for an employee not to abuse sick time and E day usage. As Umpire Brown stated in the case of Bonus Vacation Days, Gr. No. 88-117 (Brown, Dec. 4, 1989) at p. 7-8, the current situation of E day bonus vacation reduction is a longstanding practice.

The Panel majority will not award the requested changes for three reasons. First, as emphasized in the discussion hereinafter concerning attendance control, regular attendance is critical to the proper functioning of the Department. Allowing the same "bonus," even though the employee has increased absences from work, would not, in the opinion of the Panel majority, enhance the goal of maximum attendance.

Secondly, there would be operational and financial implications of granting these demands. Increasing the number of bonus vacation days would necessarily have the consequence of diminishing the number of police officers available for performing patrol and other duties. The result would either be to reduce the level of staffing, which is not in the best interests of the citizens, or adding manpower to compensate for the additional bonus vacation days. The City's limited financial resources cannot absorb any such possible increase in costs.

Third, the present situation represents a longstanding practice.

Accordingly, the Association's proposals concerning changes in bonus vacation day calculations will not be awarded.

III. NON-ECONOMIC DEMANDS

PERMANENT SHIFTS

The Association has proposed permanent shifts. At the present time, in commands operating on a 24 hour basis, officers' shifts are rotated among the day, afternoon, and midnight shift on a 28-day cycle so that most officers, during a year, work at least four months on one of these shifts.

Department managers, though aware of the desire of the Association to obtain permanent shifts for its members, believe that there should be a continuation of rotating shifts. Though the Mayor indicated that he had an open mind on the issue, he was obliged to seek the counsel of Department managers who had concerns about the efficient operation of the police department.

Rotating shifts in Detroit has been a phenomenon in excess of 100 years. Although a number of departments have gone from rotating shifts to permanent shifts, there is at least one major City department now on permanent shifts, wherein it has been reported in the national media that the chief of that City's police department is urging a return to rotating shifts.

Contrary to what anyone might suggest, permanent shifts were not a given in this Act 312 proceeding. Association President Thomas Schneider and the Association bargaining team vigorously urged the Panel to accept the concept of permanent shifts and to recognize its members' concerns as to implementation, despite Department concerns. (Vol. III, Tr. 14-16). It took such urging by the leadership of the Association to persuade the Panel to opt for permanent shifts in Detroit.

This is a major breakthrough for the Detroit Police Officers Association. In the three Act 312 proceedings immediately preceding this proceeding, namely, over the last nine years, the Association has unsuccessfully sought permanent shifts. No Panel was convinced to award same.

But for the current leadership and the persuasive abilities of the Association's counsel, there still would be no permanent shifts in Detroit.

The approach of President Schneider and the Association's bargaining team caused the Panel to probe the parties to ascertain their viewpoints and concerns about implementation. In setting forth the configuration of permanent shifts for the department at large, the Panel exercised great care, seeking advice from the parties as to the time

limitations, as to whether any units, because of operational needs, should be exempt, and other sundry concerns that arise with the conversion to and operation of a permanent shift.

The Panel has determined that for the initial shift selection 85% of participating officers shall bid by seniority. The remaining officers (15%) shall be assigned at management's discretion. The Panel realizes that the application of these percentages may result in fractional amounts. With respect to the 15% assigned at management's discretion, a fraction of .5 or above shall be rounded upward to the next whole number; any fraction below .5 shall be rounded downward. The remaining positions shall be seniority bid.

As a part of the permanent shift issues, the parties have discussed but not agreed on the circumstances when a person regularly assigned to a particular shift may have his or her shift temporarily changed. With one notable exception, the collective bargaining agreement currently allows the Department to change working hours, without becoming responsible for overtime or other additional costs, provided that timely notice of the change is provided. See Article 33. The one exception is contained in Article 13(a) which states: "Employee's regularly scheduled working hours shall not be changed to circumvent this provision for payment of off duty court appearances."

In order to avoid uncertainty as to the interpretation of the rules subsequent to the implementation of permanent shifts, both the Department and the Association have proposed specific language to cover the topic of changing shifts.

The language proposed by the Association states:
"Management shall have the right to change daily shifts for training and details."

The language proposed by the Department states:
"Management shall have the right to change daily shifts for any reason, including but not limited to training, details, manpower shortages, and court appearances."

Despite the differences, the parties agree that the Department should continue to have the authority it presently has to change daily working hours. They disagree, however, on changing shifts for court appearances.

It is not the intent of the majority of the Panel to have permanent shifts increase the cost of operating the Department. Therefore, if the modification proposed by the Department was necessary in order to offset substantially increased overtime expenses for court appearances resulting from the adoption of permanent shifts, the Chairperson and presumably the City's delegate would be inclined to grant the requested change.

The rationale put forth by the City in support of its proposal is easily stated. Under rotating shifts, an officer is paid overtime for off-duty court appearances on the afternoon and midnight shifts but receives no additional compensation for scheduled court appearances during the day shift which are attended while on duty. The City concedes that officers on two shifts receive overtime now and also concedes that the same will be true under the permanent shift program. The City nevertheless contends that costs will increase because a disproportionate number of arrests (and consequently, court

cases) occur on the afternoon shift. Unlike the present situation where at least a portion of those appearances will not be compensated because the court date occurs when the officers rotate to the day shift, under permanent shifts such officers will never be on days and always will receive overtime for each court appearance they make.

The Association disputes the soundness of the argument. For example, the Association argued that much of the work on the afternoon shift which results in court appearances is performed by the power shift (also known as Platoon 4), which will not be part of the permanent shift program. The Association also observed that by making court time (on an overtime basis) available only to officers working afternoons and midnights, there would be an incentive for officers to select those arguably less desirable shifts (and a reward for officers assigned there). Thus, even if there is some increased cost associated with court time under the permanent shift program, the Association argues that any increased costs at best would be de minimus.

While the Panel understands the logic of the City's argument, and is concerned about the implications of additional court costs, the City has not (and in fact cannot) support its argument with actual financial data. It would therefore be premature to grant the requested relief.

The Panel directs that the Department establish an appropriate system with Association input to determine the overtime costs of officers attending court, as well as whether such costs increase as the result of permanent shifts. This will necessarily require the collection of base line data to be

used for comparison purposes. The Panel also directs that the Association be afforded the opportunity to confer with the designated Department personnel on the statistical information to be gathered. Moreover, representatives of both parties shall meet, no fewer than three times during the first eight months after the implementation of permanent shifts, to review the data. If indicated, the parties should discuss solutions.

If as a result of the review of the data the City believes there have been substantially increased overtime costs attributable to officers attending court under the permanent shift plan, and the parties are unable to agree on a solution, the matter may be referred to the Joint Labor Management Permanent Shift Committee. If no resolution of the matter is achieved by that Committee the matter may be referred to the Panel. The jurisdiction of the Panel on this issue shall be for the duration of the contract.

The Panel (with substitute delegates if a party so designates) will reconvene if necessary to reexamine this issue in light of the financial information which will be collected. At that time, should the Department successfully establish that substantial increased costs have been incurred by off-duty court appearances because of the adoption of permanent shifts and those substantially increased overtime costs are directly attributable to the permanent shift plan (and not, for example, to unusual or extraordinary events), the Panel will fashion an appropriate remedy.

Based upon the Panel's disposition of this issue, and the fact that the award on permanent shifts neither expands nor constricts management's existing authority to change daily

shifts, no change in contract language in this regard is necessary.

The language in Article 13(A) shall remain unchanged.

Several other matters associated with the permanent shift plan should also be noted. The purpose of providing the priority scout car plan is to afford officers an opportunity to take that information into consideration in making a selection. It does not affect the Department's right to designate which scout cars will be deployed or to make changes in the plan.

In addition, nothing in the permanent shift award affects management's right to determine and change a member's daily shift, provided timely notice is afforded as required by the collective bargaining agreement. The Panel also observed that under the award, the Department retains the right to change an employee's shift for cause. Furthermore, nothing in the Panel's award changes the Department's existing right to assign a person on restricted duty to any shift as determined by the Department.

Finally, because the permanent shift program applies only to precinct job assignments on the day, afternoon, and midnight shifts that currently rotate among all three shifts, staff, special operations, and shift positions such as the court and school officer are not included. However, under the award, these employees along with all other officers working in a precinct are entitled to bid for a position that is included in the permanent shift positions.

There was controversy over whether periodic rebidding should be a part of the permanent shift plan. The Association proposed that rebidding should occur at intervals of once every

six 28 day cycles. The Department opposed a rebidding procedure. Although the Association argued its position vigorously, the Panel is inclined to reject the inclusion of periodic rebidding. There are two fundamental reasons for this conclusion: the absence of job assignment bumping in parties' long relationship and the substantial flexibility that the plan allows even without periodic rebids.

Historically, although Association members have long enjoyed the right to exercise seniority for transfers and assignments these rights have not allowed bumping of other members out of their positions. The reasons for this tradition seem plain enough. The absence of bumping provides significant stability and thereby contributes both operational efficiency for management and a measure of predictability for members. These same considerations apply to the permanent shift plan and argue against periodic rebidding.

In addition to considerations of stability and predictability, the Panel believes the permanent shift plan affords significant flexibility. Vacancies, which create bidding opportunities without bumping other members, are broadly defined. For example, when new members assigned to precincts reach their second year their positions will be designated as vacancies except in the situation where an officer (with at least 18 months service) has successfully bid on a non-scout car assignment through the blue slip procedure. Given the likelihood of new hiring for the foreseeable future this would seem to insure a steady supply of vacancies and with it opportunities for many officers to move if they decide their permanent shift is undesirable. In sum, the Panel has sought to

balance the competing interests of stability and predictability with flexibility and believes that this can be accomplished without the disruption of period rebidding.

There was also a dispute over what commands would be covered by the permanent shift plan. The Association's original proposal applied only to precincts. The Association subsequently amended its proposal to include the Special Crimes Section (the Gang Squad), Harbormaster and the Tactical Services Section.

The Panel decided to include the Harbormaster because of its relatively small size and its organizational relationship with the Seventh Precinct, although it should be treated as a distinct entity. The Tactical Services Section was included because as a uniformed patrol operation TSS activities are analogous to the precinct patrol operations that will be part of the program. The Gang Squad is an arguably more specialized entity that is not involved in uniformed patrol activities. In rejecting the Department's opposition to permanent shifts, the Panel appreciated the Department's concern over the implementation of this essentially unprecedented program throughout the department. That obviously and wisely motivated the Association to limit its proposal, even as amended, to the precincts and certain other entities. In the final analysis, the Panel recognized the need to draw a line to include certain but not all entities sought by the Association. The Association's attempt to include the Gang Squad crosses that line. The program should not include that entity. In the future, if the permanent shift program proves to be as successful as the Association maintains it will be, the parties

may well agree to include additional entities such as the Gang Squad. This Panel will not do so.

For the reasons stated below, prior to delineating the actual award on permanent shifts, a related demand, seniority leave days, requires discussion.

SENIORITY LEAVE DAYS

The Department has proposed a change in leave day selection procedures. The current contract includes the following provisions:

18(A). A prescheduled temporary absence from duty of twenty-four (24) hours duration shall be defined as a leave day unless otherwise designated (e.g., sick leave, funeral leave, compensatory time, etc.) by the Department. Insofar as possible, the work week of every member of the Department shall consist of five (5) days. Leave days granted to employees who work Monday through Friday shall be Saturdays and Sundays. An employee shall be entitled to eight (8) leave days in each twenty-eight (28) day work period.

18(B) The present practice of employees submitting leave day requests shall continue. Upon submitting the request the employee shall circle the days he wishes to be granted under the conditions of this Article.

18(C). Employees shall be granted a minimum of four (4) circled days for each twenty-eight (28) day work period; provided, that an employee may select five (5) circled days in four (4) work periods per fiscal year which shall be designated by the Union and promulgated by special order.

18(D). Further, in the event that more leave day requests are submitted than the allowable percentage to be off on any given day or days, then the most senior employees shall be granted their requests. When leave day requests are less than the allowable percentage to be off, then all such requests for that day or days shall be granted.

The Department has requested that the number of seniority leave days be reduced from four (4) to two (2) per twenty-eight (28) day work period. This request was opposed by the Association.

The Department asserts that there is a close connection between the seniority leave day issue and permanent shifts. Its representatives have expressed the concern that low seniority employees are currently afforded disproportionately few leave days on weekends because they are unable to outbid more senior employees. In turn, because weekends are desired by most employees, this leads to diminished morale and other operational concerns, such as excessive sick time usage, among less senior employees.

Furthermore, the Department contends that while the situation is "undesirable" under the current rotating shift system, it will become very serious under permanent shifts. This contention is based upon the fact that rotation itself assures that an employee is off work on weekend evenings when working the day shift, and to a lesser extent, when working the midnight shift. However, if permanently assigned to the afternoon shift, the Department contends that the operation of the seniority leave day system could exacerbate the problem significantly since the employee is always on afternoons.

The Panel notes that changing from rotating to permanent shifts was a change of major significance. Major changes frequently result in operational ramifications which cannot always be accurately assessed without some actual experience under the new system. It is the Panel's understanding that Detroit's leave day selection system is not

the predominant system in departments with permanent shifts. For example, in Chicago, leave days are assigned to work groups on an annual basis.

However, the Association has correctly noted that the current language has been in the agreement for a number of years. The Association disagrees both with the Department's assessment of the situation under the present system and its prediction of more acute problems under permanent shifts. The Association insists that the adoption of a permanent shift program should not be used as an excuse to reduce existing employee benefits. Seniority leave days are important benefits to the Association's members.

The Association disputes the Department's contention that less senior members, who were repeatedly unable to get weekend leave days, would simply call in sick. The Association notes that the Department has the administrative tools to deal with such alleged sick leave abuse and, given the Panel's award in this area, the Department's ability to take action against such arguable abuse will be enhanced.

The Association emphasized that the longstanding practice of seniority-based leave day selection is the fairest method of resolving competition for desirable weekend days off; that officers with low seniority today will one day be senior officers and will then enjoy the greater benefits that result from their years of service; that it would be particularly unfair to impose a new system of weekend leave day distribution that would effectively diminish the seniority rights of senior officers.

The City's arguments are based on conjecture. The problems envisioned by the Department may or may not develop.

For this reason, the Panel majority has declined to award the Department's request to reduce the number of seniority leave days from four (4) to two (2). In doing so, the Panel has not retreated from the position that the adoption of permanent shifts should not create significant operational problems in the administration of public safety. The problem here is one of proof and the necessary data cannot be collected until permanent shifts are operations.

Should the City's concerns actually develop, the award already provides the mechanism for addressing such operational problems. The City will be able to bring the problem to the Joint Labor Management Committee dealing with permanent shifts where the parties will be expected to attempt in good faith to resolve it, and if necessary, to this Panel for a final determination. This solution protects the Association's concern that its members' benefits not be inappropriately diminished and the Department's concern that the award not create significant operational difficulties.

To assess whether future adjustments to leave day selection will be required, data will be necessary. To that end, both parties are directed to meet and confer to discuss a methodology for collecting the necessary data to determine whether there is a problem in this regard, and if so, its scope.

It is the Panel's view that this ability to exchange leave days may alleviate the Department's concern over the claimed inability of junior officers to secure weekend leave days. The Association believes that senior officers would be

responsive to a junior officer's request based on genuine need to trade leave days. The Panel also understands from the Department that the requisite supervisory approval would not be unreasonably denied. Implicit in the permanent shift award of the Panel is the conclusion that if, as a result of the trading of leave days, a junior officer traded for a leave day from a senior officer, an officer with seniority in between them (whose earlier bid for that day had been rejected in favor of the senior officer) would not have a cognizable grievance despite the fact that, as a result of the trade, a junior officer now had that leave day off.

Based upon the above discussion, the Award as to permanent shifts shall be as follows:

A. Effective date is to commence with beginning of 1995 Summer Furlough period (May, 1995).

B. The permanent shift program shall only apply to precinct job assignments on the day, afternoon and midnight shifts that currently rotate among all three (3) shifts. In addition, the permanent shift program shall apply to the Harbormaster which for purposes of the program shall be treated as an entity distinct from the Seventh Precinct and to the Tactical Services Section (TSS). All assignments shall be based on seniority provided the employee is qualified.

C. All officers in precincts, Harbormaster and the Tactical Services Section, regardless of their assignments, shall have the right to participate in the bidding for permanent shifts. Officers shall bid for shift first. Assignments shall not be bid upon until all officers are assigned to shifts. Each precinct, Harbormaster, and the Tactical Services Section shall post a list of all assignments to be bid on including the precinct and TSS priority scout can plans as of thirty (30) days prior to the selection.

D. Initial shift selection shall be 85% seniority bid, 15% management discretion.

E. An employee who currently has a specific job assignment shall have priority in keeping that assignment if he so chooses provided (1) he successfully bids for the shift on which the assignment exists and (2) no other more senior officer also having that specific job assignment desires the position on the shift.

F. There shall be no periodic rebidding procedure and vacancies will be filled, if and when the Department decides to fill them, in accordance with the following procedures:

1. A vacancy exists when an officer performing the assignment is permanently transferred, permanently reassigned, resigns, retires, dies, is separated, or when the Department increases the number of officers on a shift.

2. Employees having less than two (2) years of service may be assigned to shifts and assignments within the discretion of management. At the end of two (2) years of service their positions shall be considered vacancies and shall be subject to the procedures of this article except where an officer has obtained a permanent job reassignment through the blue slip procedure in accordance with the provisions of Subsection 4 of this Section F.

3. Whenever the Department chooses to fill vacancies created as a result of officers completing two (2) years of service, the positions to be filled shall be posted at least ten (10) days before they are permanently filled.

4. Employees with less than eighteen (18) months service shall not be entitled to use the blue slip procedure to bid on a permanent job assignment. Employees with at least eighteen (18) months and less than twenty-four (24) months service shall be entitled to use the blue slip procedure to bid on a permanent job assignment other than a scout car.

5. In addition to the existing procedure for filling job assignments, employees may also submit a blue slip indicating their preference for a shift change. In accordance with present practice, a blue slip that is accepted shall be reviewed promptly to determine if the employee is qualified. When vacancies occur the most

senior qualified employee will have his blue slip request honored. All blue slips will expire on October 1 of each year. The blue slip procedure is for the filling of vacancies and no employee may be bumped. The blue slip of an officer requesting a particular assignment on a shift shall be honored before the blue slip of an officer requesting the shift only.

6. In the event of an involuntary reassignment from one shift to another, the officer having the least Department seniority shall be reassigned. This provision shall not affect the Department's right to reassign members in accordance with Subsection 2, Section F.

7. Employees transferring into an entity participating in the permanent shift plan, may be initially assigned to shifts and assignments within the discretion of management, provided there are no blue slips on file for the requested shift or assignment. Thereafter, except as limited by the provisions of Subsection 2 and 4 of this Section F., employees may utilize the blue slip procedure in Article 10 C2. While employees shall be entitled to submit a blue slip for a shift or assignment they shall not be eligible to exercise seniority for shifts for a period of six (6) months or assignments for one (1) year. When employees are involuntarily transferred to an entity participating in the permanent shift program they shall not be eligible to exercise seniority for shifts for a period of three (3) months or assignments for six (6) months.

G. A Joint Labor Management Permanent Shift Committee, consisting of not more than five (5) representatives from the Association and five (5) representatives of the Department shall meet within five (5) working days of a request by either party. The Committee shall meet to discuss issues related to the transition from rotating to permanent shifts and to the implementation and continuation of the permanent shift concept. The Committee will attempt to resolve any such issues without the filing of a formal grievance with due regard to the fact that in negotiating permanent shifts the parties may not have considered all of the effects of such change

and that flexibility is necessary and desirable to ensure that an orderly transition from rotating shifts to permanent shifts is effectuated.

H. The Panel shall retain jurisdiction over the permanent shift award and, upon the request of either party, for a period of one year after permanent shifts are implemented, shall convene, with substitute delegates if a party so designates, to resolve any dispute concerning permanent shifts which has not been resolved by the Committee.

* * *

The following provision shall be applicable Department-wide:

In the case of a bona fide hardship, reviewed and approved by the Chief of Police or the appropriate Deputy Chief, management may change an employee's shift for a period not to exceed thirty (30) days. No other employee shall be displaced from his shift or assignment as the result of such a reassignment. The Association will be notified of any approved request.

It should also be noted that the above Award disposes of the Department's demand as to seniority leave days, and therefore, that demand will be covered by the aforestated Award as to permanent shifts plus the following addition to Article 18.E:

However, after being posted, employees may mutually agree with the prior written approval of their supervisor, to exchange leave days.

The Award on permanent shifts, however, is conditional and will not take effect, as indicated, unless the Lieutenants and Sergeants Association agrees that supervisors in affected commands will be assigned to permanent shifts at the same time as the officers. The majority of the Panel agrees that

permanent shifts cannot be implemented unless the command structure is also part of the permanent shift operations. Otherwise, there would be management problems. Therefore, the Award is conditional, and in the event that as a result of good faith negotiations or an Act 312 proceeding the lieutenants and sergeants do not agree to permanent shifts or permanent shifts are not ordered, then the parties are to return to the Panel for further consideration of the matter on or before March 24, 1995, by written communication to the Chairman.

The Award therefore will provide that the Panel retains jurisdiction in order to implement this Award in accordance with its intent; namely, that the Award is conditional for the reasons stated above.

The permanent shifts and seniority leave day provisions as set forth above are incorporated in the Award with the above reservation.

MEDICAL ISSUES

Article 34 of the parties' 1989-92 Agreement contains existing provisions affecting job-related medical benefits and procedures. The Association has come to the bargaining table, and to this Act 312, with some 16 issues on medical concerns. The lead witness for the Association, as to these concerns, was Sergeant at Arms Ronald Rupert, whose testimony began at Vol. II, Tr. 36. Among the proposals of the Association is the following:

Officers ordered to appear at the Medical Section during off duty hours should be compensated or placed on the appropriate shift to attend the examinations/appointments.

The Panel majority agrees with the Association's position in concept, and believes that the position can best be addressed by adding, as a new section to Article 34, as follows, which is hereby incorporated into the Award:

Subject to the following limitations, when scheduled for an appointment at the Medical Section or another medical facility for evaluation or treatment of a compensable injury or illness, a member who is off-duty at the time of the appointment shall receive one hour (straight time) compensation. However, in lieu of providing such compensation, the Department may, at its discretion, change the member's scheduled work hours. A member carried as "Disabled" on the date of an appointment shall not be entitled to additional compensation nor shall this provision be applied to members whose medical treatment extends beyond the regular shift ending time on a working day. Compensation shall be provided only for authorized appointments made or approved in advance by the Medical Section after submission of appropriate documentation by the member.

As to demands 2 through 7 and 11 through 16 on medical issues, it is best that these issues be reviewed by the parties in a joint Labor-Management committee. Therefore, within sixty days after the issuance of this Award, the parties will form a joint Labor/Management Committee to thoroughly review the Department's provision of medical services, including psychological services. The membership of this committee will be jointly determined by the President of the Association and the Chief of Police. The Committee shall submit reports of its findings and recommendations to the Chief of Police as appropriate.

This committee has been established with the realistic expectation that through concerted and cooperative efforts, the

parties themselves are best able to address the subject. The Award incorporates this committee concept. For the reasons just stated, the Panel will not make an award on the following medical-related Association demands.

However, the Panel retains jurisdiction on these demands and the Association shall have the right to present its demands to this Panel on or before January 1, 1996 by providing notice to the City and the panelists within thirty days of that date.

Assoc. Medical Demand 2	- Restricted duty assignments
Assoc. Medical Demand 3	- Restricted duty assignments
Assoc. Medical Demand 4	- Medical dispute resolution procedure
Assoc. Medical Demand 5	- Treatment by private physicians
Assoc. Medical Demand 6	- Sick status determinations
Assoc. Medical Demand 7	- Mileage for medical appointments
Assoc. Medical Demand 11	- Presumption in heart disease cases
Assoc. Medical Demand 12	- Choice of physician
Assoc. Medical Demand 13	- Determination of status provision
Assoc. Medical Demand 14	- Reporting for duty provision
Assoc. Medical Demand 15	- Review of medical files
Assoc. Medical Demand 16	- Illness or injury services

These demands are set forth below:

MEDICAL CONTRACT PROPOSALS

#2 Officers working a job assignment who are placed on restricted duty status, shall continue to work at that job assignment providing they have and can continue to do the regular duties of that assignment. (Arbitration Award 89-170)

#3 If more than one Restricted duty status officer is assigned to a Precinct, Section or Unit, reassignment on an assigned out basis including reassignments within the Precinct, Section or Unit shall be offered by seniority. Should no restricted duty officer desire the reassignment, the reassignment will be made on an inverse seniority basis. This

shall not include officers performing regular job assignments.

#4 When an Officer's opinion or private physician's medical diagnosis or opinion differ with the Department's doctor, a second opinion shall be granted at the City's expense. The dispute shall be referred to the Chief of Services of a hospital (to be chosen at a later date) within whose specialty the symptoms lie. Such Chief of Services shall designate a physician whose determination shall be binding on both parties.

#5 Officers shall be allowed to receive therapy or medical treatment at an outside facility of their choice including their private physician.

#6 Any Officer placed on Sick status by their private physician for non-job related illness or injury remain in that status until released by their doctor.

#7 Should the Department order an officer to a medical appointment (duty or non-duty related), the Department shall provide transportation to and from medical appointments or pay the appropriate mileage to and from an officer's home to appointment location.

#11 All heart related diseases shall be presumed to be duty related.

#12 An officer with a duty related injury may elect to be treated by a physician of his or her own choice by notifying the employer.

#13 CURRENT ARTICLE 34.G.

Determination of Sick and Disability Status: It is the responsibility of a Department physician to determine whether the illness or injury of a member is duty incurred. When a member sustains an original injury in the performance of duty during his regular duty hours, and is unable to complete his tour of duty, he shall be carried

disabled. At all other times, he shall be carried sick until a final determination is made by a Department physician. Under no circumstances shall the status of a member being carried sick or disabled be changed in the time book or other Department records without the written authorization of a Department physician. The Department physician shall authorize such change by preparing an interoffice memorandum. Members are automatically assigned to Platoon Two when disabled.

PROPOSED CHANGE:

Determination of Sick and Disability Status: It is the responsibility of the Commanding Officer of the Medical Section to determine whether the illness or injury of a member is duty incurred. When a member sustains an injury in the performance of duty during his/her regular duty hours, and is unable to complete his/her tour of duty, he/she shall be carried disabled. At all other times, he/she shall be carried sick until a final determination is made by the Commanding Officer of the Medical Section. Under no circumstances shall the status of a member being carried sick or disabled be changed in the time book or other Department records without the written authorization of the Commanding Officer of the Medical Section. The Commanding Officer of the Medical Section shall authorize such change by preparing an interoffice memorandum. Members are automatically assigned to Platoon Two when disabled.

#14 CURRENT ARTICLE 34.H.

Report for Duty When Ordered: Any member reported fit for duty by a Department physician who does not report at the roll call indicated by the physician shall be considered absent without leave.

PROPOSED CHANGE:

Report for Duty When Ordered: Any member reported fit for duty by a Department physician who does not report at the roll call indicated by the Commanding Officer of the Medical Section shall be considered absent without leave.

#15 A request to review medical files shall be granted within 72 hours after receipt of said request.

#16 CURRENT ARTICLE 34.K.

Illness or Injury Services: In non and/or post emergency cases, police personnel who have incurred a service connected illness or injury must obtain approval from a Department physician before securing any type of medical attention or treatment for the illness or injury, including x-rays and dental care. The Department will not be liable for costs so incurred unless prior approval is obtained.

Officers who are sick or injured or who are on limited duty shall report for physical examination when directed by a Department physician or the Medical Section. Furthermore, as a condition for continuing disabled or limited duty status and the benefits thereof, the officers must submit to all reasonable examination ordered by the Department. Failure to do so will lead to immediate termination of such status and benefits.

PROPOSED CHANGE:

Illness or Injury Services: In non and/or post emergency cases, police personnel who have incurred a service connected illness or injury must obtain approval from a Department physician before securing any type of medical attention or treatment for the illness or injury, including x-rays and dental care. A request for additional medical attention or treatment for a duty related illness or injury including x-rays and dental care shall be approved if the officer provides medical documentation from competent medical personnel i.e., MDs, Psychiatrists, Psychologists and other medical specialists. The Department will not be liable for costs so incurred unless prior approval is obtained.

Officers who are sick or injured or who are on limited duty shall report for physical examination when directed by a Department physician or the Medical Section. Furthermore, as a condition for continuing disabled or limited duty status and the benefits thereof, the officers must submit to all reasonable examination ordered by the

Department. Failure to do so will lead to immediate termination of such status and benefits.

DISCIPLINE PROCEDURES

Inspector Michael Falvo, Commanding Officer of the Labor Relations Section, explained that, in the perception of the Department, it was necessary to modify the 1989-92 agreement in regard to disciplinary procedures. (Vol. I, Tr. 8-14). President Thomas Schneider of the Association, for a variety of reasons, stated that the Association opposed such modification. (Vol. I, Tr. 14-16).

The Department proposals included a proposal that the Association provide a list of witnesses and copies of documents to be used at the Trial Board within seven days of receiving discovery from the Department; that the decision of the probationary evaluation board as to probationary police officers could be appealed to a Trial Board, but that the decision of the Trial Board shall be final; that Trial Boards "may increase the penalty in disciplinary appeals"; that de novo disciplinary appeals to umpires be limited to suspensions of 12 months or longer, rather than the current six months; that reprimands be appealed to the Chief of Police or his designee and that his decision shall be final; that the decision in a commander's action shall be final with the option of the officer scheduled for a commander's action to elect to proceed to a Trial Board in lieu of the commander's action; and that penalties rendered at a Trial Board shall be imposed immediately notwithstanding any appeal to arbitration or the Board of Police Commissioners.

The Panel recognizes that the discipline procedure as appearing in the 1989-92 agreement is the result of an evolutionary process, through numerous contracts. Nevertheless, the Department has expressed concerns that operationally, it needed certain changes. There came a point during the discussions where the Association noted that if the Panel was to grant any changes in the status quo, at a minimum, there should be revised language concerning the removal of reprimands.

After considering the pros and cons of the arguments made and recognizing the bargaining history, the Panel concluded that the following proposals by the City will be denied:

1. The Association shall provide the Department with a list of witnesses and a copy of documents to be used at the Trial Board within seven days of receiving discovery from the Department.
2. The decision of the Probationary Evaluation Board as to Probationary Police Officers may be appealed to a Trial Board. The decision of the Trial Board shall be final.
3. Trial Boards may increase the penalty in disciplinary appeals.
4. De novo disciplinary appeals shall be permitted for suspension of 12 months or longer.
7. Decisions rendered at a Trial Board shall be imposed immediately, notwithstanding any appeal to arbitration or the Board of Police Commissioners.

The Panel, however, will grant the City's proposal as it has chosen to modify same as to reprimands, as follows:

5. Reprimands may be appealed to the Chief of Police or his designee whose decision shall be final.

The Association has pointed out that the current language concerning reprimands sometimes results in a hardship to officers because, if there are additional infractions, the reprimand may remain in the file. Under this language, reprimands must be removed after two years.

In reaching this conclusion, the Panel also will award changes in Article 9.I. as suggested by the Association, namely, that Article 9.I. shall read as follows:

Before a reprimand is placed in an employee's file, it shall be explained by the supervisor to the employee and receipt of a copy thereof shall be acknowledged by the employee on the file copies. Reprimands shall be removed from the employee's file after two (2) years. (Remainder of article deleted.)

In connection with reprimands, the following paragraphs in Article 9.A. shall be deleted:

The Chief of Police or his designated representative shall give a written decision within ten (10) calendar days of the meeting.

The member shall then have the right, if the reprimand is sustained, to appeal the reprimand to a Trial Board or allow the reprimand to stand. Such appeal must be initiated in writing at the unit level within ten (10) calendar days of the Chief's decision, such appeal being addressed to the Chief of Police.

At the Trial Board, the reprimand as issued shall not be broadened but evidence of other acts may result in other separate actions by the Department consistent with Department regulations.

The Trial Board judgment shall be final and binding on the parties and there shall be no appeal therefrom.

The following sentence shall be inserted in place of the deleted 9.A. paragraphs:

The Chief of Police of his designated representative shall give a written decision within ten (10) calendar days of the meeting and that decision shall be final.

The Panel likewise agrees with the Department that considerations of effectiveness in the disciplinary system merit changes in the Commander's Action procedure so that in some circumstances it shall be final. However, through skillful advocacy, the Association convinced the Panel to substantially modify the City proposal so that further appeals will be possible for officers where substantial penalties are imposed.

Under the proposed change, a member scheduled for a Commander's Action may elect to proceed to a Trial Board in lieu of the Commander's Action. The Panel notes that it would be possible under the City's proposal that a Commander could impose a suspension of six days (two charges with a maximum of three-day suspension for each charge). That would exceed a penalty which should be imposed without further review. Therefore, in the event that the sentence at a Commander's Action exceeds two (2) days, the decision shall not be final and may be appealed. If more than two (2) days are imposed, not only is there a right to the full adversary proceeding of a trial board, further appeals, either to arbitration or to the Board of Police Commissioners, are preserved intact. As a result, Article 9 B shall be changed to read as follows:

B. Commander's Action Procedure

Upon a full investigation of allegations against a member, the Commander or designated Inspector of a bureau, precinct, section or unit or other entity of the department where empowered by the Chief of Police, may conduct a hearing and render a disciplinary penalty not to exceed three (3) days per charge with a maximum of two (2) charges. A member

scheduled for a Commander's Action may elect to proceed to a Trial Board in lieu of a Commander's Action. Any member not satisfied with the decision rendered at a Commander's Action may appeal such disposition to a Trial Board provided, however, that in the event that the sentence imposed at the Commander's Action is two (2) days or less, it shall be final and binding with no right of appeal. Such appeal must be initiated in writing at the unit level within ten (10) calendar days of the Commander's decision. If the Commander's decision is appealed to the Trial Board, the procedure for such matters shall apply.

Commander's Hearings are not adversary in nature and no plea will be taken; however, the employee will be given the opportunity to make statements or speak on matters of mitigation during the hearing. No tape recordings or stenographic notes will be made at any Commander's Hearing.

The award incorporates the above changes but otherwise the discipline procedures shall remain as set forth as in the 1989-92 agreement.

ASSIGNED TIME OUT LIMITS

The parties, in their 1989-92 agreement, provided in Article 10.C(2)(c) that "in the event it becomes necessary for compelling reasons other than restricted duty, to assign an employee from his/her parent command to another location on a temporary basis . . ." such assignment may not exceed 60 days. The Department's proposal was to modify the 60-day limit to 120 days. See Volume I, Tr. 53. Association President Thomas Schneider opposed the demand when he stated at Volume I, Tr. 55-56:

We're opposed to the demand. We think that 120 days is too long. What we see happen is that management assigns people out to different commands to play some statistical games because it's not reflected in the

manpower then especially when it comes to patrol. We think 60 days is adequate to determine what their needs are and if their needs are genuine, then they should transfer people so they're there on a regular basis.

What we're afraid of is an abuse of the transfer procedures and a circumvention of our current transfer procedures. At times when the department has asked for extensions of 60 days, we have granted them in certain circumstances an extension. In fact what happens right now though is the department on many occasions assigns people allegedly for 60 days and leaves them there until we happen to catch them and find out and then we have to file a grievance or make a phone call to get that situation corrected. So we think 120 days is way too long, that it would circumvent our transfer procedures.

Considering all the factors, and the testimony proffered by the Department concerning the practicalities of the situation and the Association's concern about the length of time, the majority of the Panel has concluded that the language should be amended to read "will not exceed 84 days." This is a recognition of the art of the possible between the two positions.

The award will incorporate this amended language by reference.

LIMITED DUTY

The Department has been concerned as to its obligation to provide restricted duty assignments to officers who are unable to perform full duty because of a non-duty related injury or illness. The parties have had disagreements over the obligation to assign such officers, as contrasted to duty-related disabled officers. This disagreement surfaced in Arbitration 83-189, wherein this Chairman issued an opinion and

award dated June 29, 1984 which in some respects supported the Association's position.

The Department expressed concern as to the ability of the Department to accomodate restricted duty for duty-related disabled officers, and the impact on being required to furnish restricted duty for non-duty related injuries. Volume I, Tr. 66-75. The Association, noting that the opinion and award of June 29, 1984 has been in existence for some ten years, guiding the parties, opposed any change. Volume I, Tr. 75-78.

The Panel majority agrees that modifications should be made in the Chairman's June 29, 1984 award because of its impact on the Department's ability to manage its operations efficiently, while accomodating the officers with medical problems.

The effect of the Panel's award is to modify the holdings in DPOA Grievance Arbitration 83-189. In 83-189, this Chairman ruled that the Department was precluded from differentiating between duty-related and non-duty related injuries or illnesses when making limited-duty assignments. By virtue of this Act 312 Award, the Department may, within the restrictions noted, give preference to employees who have been determined to have duty-related injuries or illnesses.

Under the Panel's award, that portion of the decision in 83-189 which recognized that the Department has the management right to make a good faith determination of the number and location of positions which should be filled by restricted duty officers remains unchanged.

Insofar as the number, location, and duration of restricted duty assignments is within the discretion of

management, nothing in this Award prohibits the Department from not making available a restricted duty assignment for an employee with a duty-related medical condition.

The Panel's award also recognizes that some employees with non-duty related medical restrictions can and do perform their normal duties. For example, an officer regularly assigned to the Property Section may have a non-duty related medical condition (such as a herniated disc) which precludes the employee from working in an enforcement capacity. However, he/she is fully capable of performing the duties of his/her assigned position in the Property Section. Under the award, this employee would not be subject to being displaced by either an officer having a duty-related condition or a more senior employee having a non-duty related condition. The key to this provision is the phrase "regularly assigned."

The Panel's award establishes a further exception. Those employees who were on restricted duty status as of the date of this Award shall be "grandfathered" with the effect that they shall not be displaced by either an officer having a duty-related condition or a more senior employee having a non-duty related condition. This special status shall be lost either upon the employee being restored to full-duty or the employee becoming eligible for full-duty for the particular medical condition for which restricted duty status was granted.

This Chairperson noted in Arbitration 83-189 that the question of which employees would receive available positions was not before him in that grievance. The Panel majority has now addressed the issue. When the number of restricted duty officers exceeds the number of restricted duty positions,

officers with injuries or illnesses which have been determined to be duty-related shall receive first priority. Therefore, the Department could require the least senior non-duty related restricted duty officers to use sick time. Such displaced restricted duty officers would be placed on a waiting list and assigned in seniority order as positions become available.

As noted, employees with duty-related medical conditions would be afforded preference over employees on that list. Moreover, since the waiting list is based on seniority, a particular employee's place on that list could change in the event that a more senior employee with a non-duty related medical condition seeks a restricted duty position. In addition, an employee assigned to a restricted duty position for a non-duty related medical condition could be displaced by a more senior employee who is placed on restricted duty for a non-duty related medical condition. Of course, the two exceptions noted above (regularly assigned employees qualified and able to perform the duties of that position and "grandfathered" employees) will apply. Eligibility will be by department-wide seniority.

It is recognized that currently under Article 10(C)(2)(c), the sixty (60) day limitation for assigning out employees from their parent command does not apply to restricted duty officers. It is the intent of the Panel that this not change. Therefore, under current practice the rights of a full duty officer on a transfer list are not violated by virtue of a restricted duty officer being assigned-in (rather than transferred) to a particular section. Nor will this

circumstance constitute a violation after the issuance of this Award.

The Panel considered but rejected the suggestion that the current situation should be modified by specifically identifying restricted duty positions in various commands. The proposal was rejected because that would constitute an undue interference with the Department's prerogatives to manage the operations of the agency. The Department is entitled to flexibility in determining, and as conditions dictate redetermining, the work to be accomplished by restricted duty officers.

Nonetheless, this power is not without limits. The Department could not, for example, purposefully circumvent the seniority transfer provisions by using restricted duty officers to block transfer opportunities. The Panel is aware of no evidence that the Department has exercised its authority to assign restricted duty officers in a manner designed to circumvent seniority transfer rights. The Department has specifically denied any intent to do so if its proposal were granted. Such a claim may be grieved through the grievance procedure.

Certain statutory provisions may be involved in this area. It is unnecessary to state that the City is obliged to follow the law. Insofar as any legal liability could possibly result from the adoption of these changes, the liability should properly rest with the city since it is its proposal. Therefore, hold harmless and indemnification language has been included. However, it is not the intent of the award to have the scope of the Department's legal obligations under this

article determined by a grievance arbitrator.

Therefore, in attempting to apply the art of the possible, the Panel majority will award the following contractual language addressing the respective concerns of the parties:

LIMITED DUTY/RESTRICTED DUTY

The number, location, and duration of restricted duty assignments, as well as whether a restricted duty assignment vacancy exists, shall be within the discretion of the Department.

The Department may give preference for restricted duty assignments to those employees whose injury or illness is determined to have occurred in the line of duty over employees whose injury or illness is determined to have occurred not in the line of duty. When the Department determines that the number of restricted duty employees exceeds the available number of restricted duty assignments, in accordance with the limitations enumerated below, employees having or seeking a restricted duty position for a non-duty related medical condition may be required to utilize sick time benefits. An employee who is required to utilize sick time benefits by operation of this paragraph but who has no accumulated sick time will be allowed to use other accumulated time to cover the absence.

When an employee having a non-duty related injury or illness is displaced from a restricted duty position, or when no restricted duty position is currently available, the employee shall be placed on a waiting list for assignment to an available restricted duty position. Placement on this waiting list shall be by departmental seniority and placement in restricted duty positions shall be made in seniority order provided the employee is able to perform the duties of the particular restricted duty position.

Notwithstanding the provisions of this article, employees on restricted duty for a non-duty related injury or illness and who are able to perform the duties of their regularly assigned job shall not be subject to being displaced by either an employee

having a duty-related injury or illness or by a more senior employee having a non-duty related injury or illness. In addition, an employee on restricted duty as of the effective date of this provision shall also not be subject to being displaced. Provided, however, that this special status shall be lost either upon the employee being restored to full duty or the employee becoming eligible for full duty for the particular medical condition for which restricted duty status was granted as of the effective date of this provision.

The Department shall maintain a continuous listing of those employees who are restricted duty which shall indicate their duty assignment, seniority date, whether the status is for a duty or non-duty related reasons, and other relevant data the parties may from time to time agree upon. The Department shall provide the Association with a copy of the list of any day that a change has been made.

The City shall indemnify and hold harmless the Association from any and all claims arising out of the application of this article.

Nothing in this article shall affect the right of the Department under the Charter of the City of Detroit to refer employees for duty or non-duty disability pensions.

This provision shall be effective on the date of the issuance of the award of the arbitration panel.

The Award will incorporate this language by reference.

EXEMPT UNITS

The parties, in Article 10, "Seniority," Section C, have provided that certain units be exempt from the assignment and transfer provisions based upon seniority. The Department has proposed in these proceedings to add additional exemptions, namely, the Special Crimes Section, the Liquor License Unit, the Police Athletic League, and the Junior Cadet Section. The

rationale proffered by the Department for the Liquor License Unit, the Police Athletic League, and the Junior Cadet Section is that they are specialized units, requiring specialized skills of the officers in those units.

The Department argued that the Police Athletic League's success depends on the motivation of the particular officers assigned. Commander Charles Wilson explained in great detail the Department's concern as to the Special Crimes Section, suggesting that, particularly because of the development of complex gang activities in Detroit, there is a need for specialized officers in that field. The unit represents some 70 officers.

The response of the Association was each of these entities has operated without being exempt; that its members are skilled and wish the opportunity to exercise those skills by being able to transfer, based upon seniority, into the entities. The Association supplemented this general argument with additional information challenging the City's position as to each individual unit.

The Panel majority believes this is an art of the possible matter, and also notes that over the years of bargaining, these units have not been exempt. This issue is a question of balancing interests. The assignment to the Police Athletic League involves more than just knowledge of police work. It also involves leadership, motivation and a number of other considerations. For this reason, the Award will grant by reference the Department's request as to adding the Police Athletic League as an exempt unit pursuant to Article 10.C.

Although the Panel majority appreciated Commander Wilson's testimony and that of Inspector Falvo as to Special Crimes, the Liquor License Unit, and Junior Cadet Section, seniority does have value to the Association. Those Sections rely on generalized police knowledge and, certainly, senior officers can be trained to provide excellent service in those units. The bargaining history plus the art of the possible would dictate that the request as to exempt Special Crimes, the Liquor License Unit, and Junior Cadet Section, should not be awarded.

SERVICE REVOLVER ON RETIREMENT

Article 37 of the parties' 1989-92 Agreement is captioned "Miscellaneous." Section F thereof provides:

F. Service Revolver. Effective July 1, 1981, all employees shall be provided at no charge with their department-issued service weapon upon retirement.

Effective July 1, 1989, this provision shall apply to employees who take a 40 & 8 vested pension.

The Department may refuse to give employees their weapon for good cause shown.

Both parties have presented proposals concerning this provision.

The Association has proposed:

F. Service Handgun. All employees shall be provided at no charge with their department-issued service handgun upon retirement.

This provision shall apply to employees who take a 40 & 8 vested pension.

The Department may refuse to give employees their handguns for good cause shown.

The Department has proposed:

F. Service Weapon. Effective July 1, 1981, all employees shall be provided at no charge with their department-issued service weapon upon retirement. Members shall not be provided with semi-automatic pistols until distribution is made to the entire department.

Effective July 1, 1989, this provision shall apply to employees who take a 40 & 8 vested pension.

The Department may refuse to give employees their weapon for good cause shown.

The Department is in the process of converting from service revolvers to semi-automatic weapons. This conversion cannot be completed all at once because the weapons are being obtained in stages and additional training is needed to become qualified with the new weapons. Therefore, there are officers who are still carrying revolvers who are waiting for the new weapons. See Vol. I, Tr. 104.

The fact that the parties have made proposals on the issue suggests that, under the art of the possible criteria, the issue cries out for a compromise on a common sense basis. The Panel, therefore, awards the following language as to Article 37.F, which recognizes the respective viewpoints of the parties:

SERVICE WEAPON

37.F. All employees shall be provided at no charge with their department-issued service weapon upon retirement, provided, however, that no employee who retires before July 1, 1995 shall be entitled to receive a Glock semi-automatic weapon unless the employee has been qualified with the Glock semi-automatic weapon for one year as of the date of retirement.

This provision shall apply to employees who take a 40 & 8 vested pension.

The Department may refuse to give employees their weapon for good cause shown.

The Award will incorporate this language by reference.

STAFFING ONE-PERSON CARS

There is no more emotional issue in policing than the question of staffing of personnel in vehicles. The Association has proposed, "Scout cars that are used to respond to emergency runs shall not be staffed by fewer than two police officers." The Department has proposed, "One person units may be utilized as directed by the dispatcher."

Over the years, there has been a practice developed among the parties as to the utilization of scout cars and the number of persons in the scout cars. The parties are well aware of this practice. Rather than accept either party's proposal, the Panel majority, after hearing arguments pro and con, has concluded that there should be no award on the issue of staffing of scout cars, but instead, the parties should rely on their current practice.

THE ATTENDANCE CONTROL ISSUES (E Days, Personal Days, Attendance Control)

For convenience purposes, the Panel has referred to a group of demands made by the parties as "attendance control issues." The Panel will separately address the Association's proposals that bonus vacation days not be reduced by the use of partial sick days or E days.

The City has put forth a proposal as to the use of E days by persons on the attendance control program. Inspector

Micheal Falvo, in Vol. IV, Tr. 8-9 explained the proposal as follows:

THE WITNESS: This is a proposal to strengthen the attendance control procedure and to correct a problem which we have been aware of in the last several years. The problem is, as succinctly as I can state it, is that once a sick time user is placed on the DPD 350 program he or she is required for every absence to bring in a doctor's excuse. The phenomenon that we have seen emerging over time is that in order to avoid the restrictions of the program, particularly that restriction, the absences change to E days, or emergency days. That is, the same employees who historically had unacceptable attendance by reason of sick days don't necessarily change the -- their attendance, just offer different reasons.

This proposal would impose a penalty upon employees who are on attendance control and state to them that they can use E days; however, those E days will not be removed from their sick time bank. Rather, they will be A no paydays.

The Association had proposed, as to personal leave days, the following:

A. Personal, emergency, or excused days shall be granted to an employee for an absence justified by urgent reasons such as attendance to demand personal business which cannot be normally taken care of outside of working hours.

B. Not more than five (5) such personal, emergency, or excused days shall be granted in any one fiscal year to an employee under any circumstances. All personal, emergency, or excused days that are granted shall be deducted from the employee's accumulated sick bank and will, consequently, affect the accumulation of bonus vacation days.

At Vol. IV, Tr. 9-10, Inspector Falvo explained the City's position as it relates to the Association's proposal as to personal leave days:

- Q. I'd like to direct yourself, direct you to a related issue concerning personal leave days presented by the union, and that particular proposal is entitled personal leave days. It, among other things, would change the word "may" to "shall." Would you give us the background and the City's position in this regard?
- A. This is an attempt by the DPOA to obtain the so-called LSA language on the E days. The most salient difference between the two contracts is, where in article 25 of the DPOA contract it states: "Emergency or excused days may be granted....," and it goes on from there, in the LSA contract it states they shall be granted.
- Q. Is there a particular arbitration award that concerns you?
- A. Yes, the LSA language has been construed by arbitrator Joseph Girolamo.

* * *

The background for the City's objection to the Association's E Day proposal stems in part from an opinion by Arbitrator Joseph Girolamo, which was discussed by Inspector Falvo at Vol. IV, Tr. 10-11, as follows:

THE WITNESS: Yes. And that decision construes that language as stating that the employee unilaterally decides what is an urgent reason, which the contract says is an urgent reason such as attendance to demanding personal business and other pressing matters which cannot be covered by sick, funeral leave, et cetera.

What that proposal, in effect, does is just give employees extra time off. It is a benefit to employees to have E days and it subverts what we believe is the clear intent of the language. And, therefore, we believe that, particularly given the fact that there's been an arbitration decision construing that language, incorporating that language into the DPOA contract would be particularly problematic.

The Association opposed the City's proposal concerning the use of E days by individuals on the attendance control program and urged the adoption of the Association's proposal for personal leave days. The essential difference between the parties as to the personal leave days is that the current language reads "Emergency or excused days may be granted...." The Association is proposing that the language be "shall be granted," relying on Arbitrator Girolamo's decision. As expressed in the aforequoted testimony, the Department has concerns over the Association's proposal.

The Panel majority has concluded that the City's proposal on E Days is reasonable as an attendance control device, and likewise that the Association's proposal as to personal leave days is reasonable with an addition, namely, the language "supervisory personnel may make reasonable inquiries in order to verify that the request is legitimate, but shall maintain confidentiality of any personal information." This is an attempt, applying the "art of the possible" criteria, to accomodate both parties.

Therefore, the Award will incorporate the following as to the use of E days by members who are under the restrictions of the Attendance Control Program:

Any member under the restrictions of the attendance control program (DPD 350) shall not be allowed to have E days deducted from the member's accumulated sick banks and will be carried Absent No Pay.

As to personal leave days:

Emergency or excused days shall be granted to a member for an absence justified by urgent reasons such as attendance to demanding personal business and other pressing matters which cannot be covered by sick, funeral

leave, etc. Permission to use emergency days must be granted in advance from the member's commanding officer or the officer in charge of his unit. Supervisory personnel may make reasonable inquiries in order to verify that the request is legitimate but shall maintain the confidentiality of any personal information. Not more than five (5) emergency or excused days may be granted in any one fiscal year under any circumstances. All excused days will be deducted from the member's accumulated sick banks, and will consequently affect the accumulation of bonus vacation days.

The emphasized language is the language that has been added to the proposal of the Association.

Alleging the need to make attendance control more effective, the Department also proposed that the attendance control language now in the Department's rules and regulations be incorporated, with some changes, into the Collective Bargaining Agreement. Vol. I, Tr. 57. Presently, these rules and regulations are not in the agreement.

President Thomas Schneider of the Association responded to this City proposal, objecting to same, noting in his testimony (Vol. I, Tr. 64-65):

We're opposed to it primarily because we don't think that the department has demonstrated a need for it. They have a counselling procedure right now. The proposal as it was provided doesn't have the same appeal process in it so an officer's appeal rights would be diminished and they could end up in a non-pay status without having the proper appeal procedure. Currently they can appeal and they're carried on sick time while their appeal is being processed until the outcome.

Attendance is important for the operation of the Department. Most officers are conscientious in attendance and the proposal is not directed to the vast majority of the

officers. But, in any large organization, there should be control. Therefore, it is reasonable to develop methods to improve attendance where necessary.

For this reason, the Panel majority agree that the attendance control process can be improved, provided that the Panel recognizes there must be certain modifications of the Department's position. The Award contemplates that attendance can be improved if certain terms used in the provisions have a commonly accepted meaning. The term "improved attendance" which is not specifically defined in current procedures is therefore defined. Furthermore, the panel has included the word "sustained" in the definition of "improved attendance." By doing so, it is the intent of the panel majority to incorporate the principles enunciated in the arbitration award in DPOA Grievance 90-001 (Rachelle McMahon) decided by this Chairman on August 25, 1992.

The expedited arbitration procedures are intended to resolve disputes in this area in a speedy and economical manner. It changes the current procedure in which a member on the attendance control program who fails to present a physician's excuse is afforded a hearing before his commanding officer with an appeal to a trial board. As modified by this award, a grievance may be submitted to challenge allegedly improper counseling, the placement of an individual on attendance control procedures, the failure to remove a person from initial counseling or attendance control procedures, or the imposition of an "Absent No Pay" day. The modification does not affect disciplinary actions for attendance related matters which will continue to be heard through the disciplinary process.

. Attendance control forms may be modified to reflect the changed procedures established in this Award.

The Award, therefore, incorporates the following language which will become a new section of the Collective Bargaining Agreement and the City may, as part of the incorporated award, amend the Manual provisions on attendance control based on said awarded contract language:

35. REGULARITY IN THE USE OF SICK LEAVE
BENEFITS

A. General

The Detroit Police Department is responsible for providing efficient law enforcement services. Maximum attendance is required from all members if this responsibility is to be fulfilled.

It is, therefore, necessary to identify and correct members who have developed a pattern of regularity in the use of their sick leave benefits. Therefore, all commanding officers are to review the records of their members quarterly: each January 10th, April 10th, July 10th and October 10th.

B. Counseling Regarding Regularity in the Use of Sick Leave Benefits

Upon review and approval of the commanding officer, a ranking member shall counsel subordinates whose records show such an indication. The counseling session shall include a discussion of the pattern observed to date, and the member's reason for absences. Where appropriate, the supervisor shall explore positive future courses of available action with the member in an effort to assist the member in adopting corrective measures. At the end of the counseling session, the supervisor shall prepare a detailed report of the meeting and attach the report to the member's Detroit Police Department Attendance Card, D.P.D. 350-C. A copy of this report shall be provided to the member. Note, however, that said counseling does not constitute disciplinary action and as such may not be noted in the administrative counseling register. Further, said detailed report shall be removed from

D.P.D. 350-C at the end of six months providing no further corrective action has been necessary since the initial counseling session with the member.

C. Continued Pattern of Regularity in the Use of Sick Leave Benefits

If counseling does not produce improved attendance, and the supervisor, after meeting with the member, determines that no satisfactory reason exists which would justify said continued regularity in sick leave usage, upon review and approval of the commanding officer, the supervisor shall personally serve the member with a Notice of Regularity in the Use of Sick Leave Benefits, D.P.D. 350, and forward the necessary copies as outlined on the form. The supervisor shall inform the member of the requirement to obtain documentation of the illness or of the illness of a family member which necessitates the member's absence from work. This documentation shall consist of a statement from a physician concerning the illness for each sick day taken during the next three month period. This requirement must be strictly adhered to during said period of time, except where the commanding officer is convinced that a reasonable basis exists for not requiring a physician's note in conjunction with a particular absence. The member will also be advised that said physician's documentation shall be submitted on D.P.D. 350-A, or an equally detailed doctor's note, and shall be presented to the member's section commanding officer within three days after returning to duty. This documentation is subject to the review of the department physician. Commanding officers shall ensure that the copy of D.P.D. 350-A which is submitted by the member is forwarded to the Medical Unit forthwith for retention.

A member who has been served with a Notice of Regularity in the Use of Sick Leave Benefits, D.P.D. 350, and is being carried sick due to personal illness or injury or for attendance upon a sick family member, must secure permission from the officer in charge of the member's unit or, if the unit is closed, from the officer in charge of the precinct in which the member resides before the member may leave the member's place of confinement. This restriction does not apply on leave days or non-duty hours.

"Improved attendance" as used herein shall mean that the member has consistently and reliably demonstrated the capacity to provide proper and sustained attendance within the meaning of this article. For purposes of interpreting the preceding sentence, the word "sustained" shall be construed to mean an improvement which demonstrates that the abuse has been eliminated.

The supervisor shall further advise the member that failure to satisfactorily comply with the regulation will result in the designation of each working day taken as "Sick" to "Absent No Pay." The supervisor shall also advise the member that unless attendance improves, additional disciplinary action may be imposed.

D. Improved Attendance

A member placed on a DPD 350 will have his attendance reviewed on a quarterly basis and will be removed from the restrictions of that provision upon a showing of improved attendance within the meaning of the above definition.

E. Extended Medical Treatment

Members who document that their illness requires treatment on a regular basis may submit D.P.D. 350-A for that ailment on a semi-annual basis. The department physician, however, may want further verification concerning said ailment, and accordingly the member may be required to see the physician.

F. Failure to Present Documentation by a Physician

If failure to comply with the regulation set forth on D.P.D. 350 occurs, the section commanding officer shall personally serve the member with a Notice of Failure to Present Documentation by a Physician, D.P.D. 350-B, and shall forward the necessary copies as outlined on the form. A designation of "Absent No Pay" will be entered in timekeeping records.

G. Appeals

Any member may file a grievance regarding the imposition of a Notice of Regularity in the Use of Sick Leave Benefits, D.P.D. 350. Once this grievance has been filed and is awaiting arbitral review, a member who calls in sick

and fails to provide documentation by a physician (D.P.D. 350-B) shall be carried "sick" pending the outcome of the appeal in the attendance control expedited arbitration forum. If the grievance is denied by the arbitrator, the member's time shall be carried "Absent No Pay" for each day taken as sick. This will result in the forfeiture of eight (8) hours of pay by the member for each day taken as "sick" where a D.P.D. 350-B has not been provided. Sick time originally taken by the member shall be returned to the member's sick time bank.

A member who has not filed a grievance regarding being placed on a Notice of Regularity in the Use of Sick Leave Benefits (D.P.D. 350), and who fails to provide documentation by a Physician (D.P.D. 350-B), shall be carried as "Absent No Pay" for each day taken as sick. This will result in the forfeiture of eight (8) hours of pay by the member for each day taken as sick.

H. Expedited Arbitration

Grievances concerning the attendance control program will be submitted to arbitration on an expedited basis in accordance with this paragraph. The time limit for submitting grievances concerning attendance control procedures is thirty (30) days. However, because of time considerations, members wishing to utilize the expedited arbitration process to grieve an alleged violation concerning attendance control procedures shall submit a grievance within ten (10) days of the alleged violation. The grievance shall be presented to the immediate supervisor and forwarded without delay directly to the Labor Relations Section where it shall be entered at the arbitration stage and heard before a mutually designated Umpire within forty-five (45) days of the date listed in Article 35(A), or as soon thereafter as an arbitration date is available. The parties will present their case in an informal and concise manner in which witnesses will be presented where relevant factual matters cannot be stipulated to through agreement of the parties. No written briefs will be presented. The Umpire shall issue a summary award within ninety-six hours of the hearing. Although the parties envision that multiple cases will be heard on a single hearing date, a second date may be added if necessary because of the number of

pending matters. This procedure shall not be used for appeals of disciplinary hearings involving attendance.

4 DAY AND 10 HOUR SCHEDULE

The Association has proposed a demand that the Department change its configuration of the work schedule. In addition to permanent shifts, the Association has requested that officers work ten hours a day, four days a week. Currently, the schedule is based on a configuration of five days a week, eight hours a day.

The Department's position concerning the 4 day, 10 hour schedule was expressed by Deputy Chief Daniel McKane, Commanding Officer of Western Operations, at Vol. III, Tr. 57-58:

Well, first of all, it would reduce the work week, as we see it, from 40 to 38 hours and what I mean by that is ten hours a day, four days a week with a half hour for lunch versus our current procedure which is eight and a half hours per day, five days per week with a half hour for lunch.

There are a lot of other issues involved. For instance, the overwhelming majority of police departments throughout the country have retained the 5/8 schedule. As a matter of fact, the Ann Arbor Police Department a number of years ago went back to the 5/8 plan after trying the 4/10 plan for several years because of numerous operational problems and I might add that they won it back in an Act 312 arbitration. A number of departments, large departments, Sacramento, California, San Jose, California, Phoenix, Arizona, also found many problems with 4/10 scheduling. Of course within our department we think that the 4/10 schedule is too inflexible to meet the Detroit Police Department's needs particularly regarding scheduling of officers for the many special events that we have throughout the year and for that matter being able to react to changing crime factors.

This testimony suggests that the comparables, with some exceptions, would not support such a change, emphasizing that, under the art of the possible criteria and even the strike criteria, it would be difficult to conceive that if the parties were left to their own negotiation devices, without the intervention of Act 312, that they would have also reached agreement on another dramatic scheduling change (4 day - 10 hour) in one set of negotiations.

Bargaining history also supports the Department's position. Twice before, in the last two Act 312 arbitration proceedings, this demand has been made by the Association and denied by the panels without even providing for the major work condition change that the Association also seeks here, namely, permanent shifts. See award of Panel chaired by John Keifer for the 1987-89 period and award issued by Panel chaired by Nathan Lipson for July 1, 1989-June 30, 1992 period.

It is for all these reasons that the request for a four day, ten hour, work schedule will not be awarded.

REPRESENTATION AND INDEMNIFICATION

The City has made four proposals on the issue of representation and indemnification, which for identification purposes are known as Proposals 20 through 23. The starting point of analyzing these proposals is Article 28 of the parties' 1989-92 agreement, which reads:

The City will continue to defend and indemnify employees in accordance with Section 13-11-3 of the 1984 Municipal Code and all practices and procedures related thereto, in effect July 1, 1977, except that such defense and indemnification is mandatory upon a finding that the claim, demand or suit against the employee arises out of or

involves the performance in good faith of the official duties of the employee. A contrary determination by the City Council is not final and binding as provided by the Code but is subject to review by an arbitration panel under Article 8 of this Agreement. Pending a final determination of whether or not the employee is entitled to defense and indemnification by the City, the City shall promptly undertake such defense on behalf of such employee.

Inspector Michael Falvo, at Volume I, Tr. 80-81, explained the background of the City's proposals as to representation and indemnification:

Q. Are there any examples that you would offer of abuse in this area?

A. We see a disturbing trend where employees, because of the system, in my opinion, the way it is, are requesting representation in lawsuits where really, in my judgment, there is not a good faith debate going on one neighbor sues another neighbor all of a sudden over some backyard dispute. We've had family members suing family members, quite possibly a collusive type of lawsuit where the employee only has to ask and must be represented until such time as there's a final determination, and if the case, as often is the case, gets settled in the interim, the employee has prevailed. Even if an arbitrator decides in our favor, the employee has received what is adjudged to be legal representation to which they aren't entitled.

So for example, if an arbitrator says this was not a situation where the City was responsible for indemnification, the employee has received thousands and thousands of dollars of legal advice and representation which an arbitrator has now determined that he wasn't entitled to.

Q. Which of these proposals regarding representation and indemnification most precisely deals with the problem that you've just described?

A. I would say 20 and 23.

The Department's proposals brought strong opposition to the proposals from Association President Thomas Schneider, who testified at Volume I, Tr. 91-92:

We're opposed to all these demands for all the reasons that Attorney Moore stated and the fact that it's just an unreasonable burden back onto the members. Just the nature of their jobs, there's the potential for litigation with every traffic stop, every arrest, so they're exposed to it on a constant, daily basis. There are a lot of lawsuits in Wayne County because it's known for its payouts.

Part of the problem with the Law Department was exemplified during the last mayoral election in which part of the mayor's platform was that the Law Department needed to be straightened out. I think what they're trying to get at is the amount of money that's being paid out on police lawsuits but a lot of times it's not the fault of the officers. Many times there are what they call nuisance payments where they settle claims without anyone consulting the officers. They just settle them for a few thousand dollars here and there and the officers read about it in the paper.

It just would compound a myriad of problems in terms of representation. We've had officers whose homes and paychecks have been garnisheed because of ineptness on the part of the Law Department where they don't file paperwork on time, they don't give notice on time. So the problem are in the Law Department, now with the process we have.

The proposals that were presented by the Department were (using the Department's numbering as to its proposals):

20. Pending a final determination of whether or not the employee is entitled to defense and indemnification by the City, the City shall promptly undertake such defense on behalf of such employee; provided, however, that the employee executes a written agreement to promptly reimburse the City for all legal expenses (including attorney fees and costs) in the event that it is finally determined that he is not entitled to representation and indemnification. An assignment of wages authorization may also be required.

21. The employee shall fully cooperate with defense counsel in all respects. Failure to do so may result in denial of continued representation and indemnification.

22. Upon final resolution of a grievance in favor of the City, the attorney representing the employee will withdraw from representation and the employee will be solely responsible for his legal defense.

23. The attorney representing the employee shall communicate any settlement demand or offer to the employee in a timely fashion. If the employee declines to pay the amount demanded to settle the claim, the City may, at its option, pay that amount on behalf of the employee in return for a full and effective release of the employee's liability. Upon final resolution of the grievance in the City's favor, the employee shall promptly reimburse the City the amount it paid to settle the claim on the employee's behalf, in addition to fees and costs for which the employee is liable.

There is merit to both positions. For this reason, the Panel will reject the Department's Proposal 20 through 23, but instead, will opt for additional language to be added to Article 28, which, in the view of the Panel majority, provides alternative solutions to the specific problem areas raised by the City while recognizing the Association's concerns.

The Award incorporates the following addition to Article 28:

In instances in which a recommendation against representation and indemnification is made to City Council, the Representation Packet shall not be transmitted when the written recommendation is forwarded. In such cases, within twenty-one (21) days a conference between Law Department counsel, counsel for the officer and the Association shall be scheduled at the Law Department. In addition to the parties' review of the Law Department file in the case, the Law Department shall identify all the materials it intends to include in its Representation Packet to the City Council. After the

review, counsel for the officer and/or a representative of the Association may request that additional materials from the Law Department's file be included in the Representation Packet. When submitted to City Council, a copy of the Representation Packet shall be served simultaneously on counsel for the officer and the Association. In the event that the Law Department fails or refuses to submit materials requested for inclusion by the officer and the Association, the Association shall not be precluded from arguing in the grievance-arbitration procedure that the absence of the requested materials constituted a procedural irregularity warranting reversal of the City Council's denial of representation and the umpire shall decide whether or not the absence of such materials actually did constitute a procedural irregularity warranting reversal or remand to the City Council for reconsideration in the circumstances of the particular case. In the absence of such request, that argument shall be precluded in the arbitration.

Grievances concerning disputes under this Article shall not be heard at the lower steps of the grievance procedure and shall proceed to a hearing before an umpire within thirty (30) days of the grievance. In view of the obligation of the City to continue to provide legal representation during the pendency of the arbitration, the parties agree to undertake all reasonable measures to expedite the process. No written post-hearing briefs will be submitted without the concurrence of each party. The umpire shall issue an award within thirty (30) days from the date the record is closed. If necessary to comply with the deadline, an award may be issued with the opinion of the umpire to follow. To permit the time lines established in this paragraph to be effectuated, in the event that an umpire has not provided an award by the stated deadline, the umpire's next regular arbitration date(s) shall be cancelled and assigned to another umpire for the purpose of affording additional time to complete the assignment. The number of arbitration dates shall not be diminished because of the operation of this provision.

Where a grievance is filed protesting the City Council's denial of representation and indemnification, the umpire may also be asked to determine if an officer's request for representation and indemnification was made

in bad faith because the officer knew or should have known there was no reasonable basis for the request. In the event the City elects to present the issue of a request for representation and indemnification made in bad faith, it shall notify the Association at the time the case is scheduled for arbitration. Failure to notify the Association shall result in the waiver of this issue. Where the City establishes that an officer's request was made in bad faith because the officer knew or should have known there was no reasonable basis for the request, the officer will be subject to disciplinary action by a Trial Board with the penalty not to exceed a suspension of twenty (20) working days without pay. When disciplinary action is taken against an officer, in the event the disciplinary action is appealed to arbitration, the case shall not be heard by the umpire who heard the representation and indemnification case. This second arbitration shall not be de novo and the umpire shall not have authority to reverse the original arbitrator's finding of bad faith but rather shall be limited to considering whether the penalty was excessive and, if it is found to be too severe under the circumstances, to reducing the penalty to a suspension of lesser length.

GRIEVANCE ARBITRATION

The City has presented the following proposal to modify Article 8.A concerning arbitration:

If deemed appropriate, either party may require that a panel be empaneled to hear a dispute. This provision shall not apply to disciplinary cases. Five (5) days notice shall be provided to the other party if a panel is requested.

The Association opposed same. Vol. I, Tr. 107. It may be that because of the complexities of police work and understanding Department procedures from both the view of the Association and the Department, there may be a need to add panel members in an umpire proceeding in rare instances. Therefore,

to accomodate the concern, the Panel majority incorporates the following additional language to Article 8.A in its Award:

In addition to the foregoing, either party may require that for each umpire a tripartite arbitration panel may be convened in up to two (2) non-disciplinary cases in a calendar year. Seven (7) days notice shall be provided to the other party if a tripartite arbitration panel is requested.

FURLOUGH ACCRUAL

Department Proposal 29 refers to furlough accrual. At Vol. I, Tr. 108, the following colloquy occurs:

MR. MOORE: Let me intrude, if I may. The Association has had an opportunity to review and consider this proposal number 29 with respect to furlough accrual and the Association has no objection to agreeing to this proposal provided that it is not made effective until 30 days after the issuance of this award and also provided that it should be optional for employees who are members of the bargaining unit at the time this provision becomes effective.

MR. AHEARN: Inspector Falvo, do you have any objections to that?

MR. FALVO: None whatsoever.

ARBITRATOR ROUMELL: Thirty days after the award?

MR. MOORE: Right, and again with the option that it is an optional requirement for employees who are then in the bargaining unit on that effective date.

ARBITRATOR ROUMELL: So that will be a stipulated award.

Based upon the above stipulation, the award incorporates the following language and the above quoted stipulation:

Furlough Accrual - Furlough accrues at the rate of twenty days per year of paid service. For partial years, it accrues at the rate of

ten days for six months paid service, and five days for three months of paid service. For lesser periods, one day accrues for eighteen calendar or thirteen payroll days of paid service (whichever is to the member's advantage).

Furlough Crediting - Furlough days are credited to a member's bank at the beginning of each furlough season. The number of days to be credited will be the number of days earned based on the formula above under "Furlough Accrual." When a member separates from the Department, any furlough days earned since the beginning of that furlough season will be credited to the member's time bank before determining the effective date of separation. Whole days only are credited. If the application of the formula results in partial days, the number of days credited will be rounded downward to the nearest whole day.

Furlough Scheduling and Liquidation - The time of taking a member's furlough will be determined in accordance with Article 22. The length of the furlough will be based on the number of days credited to the member's furlough bank, and may be extended by attaching one leave day for each two furlough days scheduled.

Transition Provisions - For members in the bargaining unit at the time this article is adopted, a calculation will be performed to determine what, if any, adjustment is due. The total number of furlough days earned as of the beginning of the current furlough season will be determined, and the total number of furlough days taken to that same date will be subtracted from the number of days earned. The resulting figure (whether positive or negative) will be divided by two, and each of the two furloughs following the calculation will be adjusted by the resulting figure. If the figure is an odd number, the adjustment will be made so as to make the summer furlough the longer.

CLEAN-UP LANGUAGE

At page 3 of this Opinion, listing the Association's demands, there is a reference to "Item 31 - Contract Clean-Up."

The Panel urged the parties to negotiate language designed to clarify provisions in the contract without necessarily changing the substance. This has been done. The clean-up language involves 1) Leave Days and 2) Holiday Provisions. The Award incorporates this clean-up language, which is as follows:

1. Leave Days

Article 18 shall read as follows:

- A. A prescheduled temporary absence from duty of twenty-four (24) hours duration shall be defined as a leave day unless otherwise designated (e.g., sick leave, funeral leave, compensatory time, etc.) by the Department. Insofar as possible, the work week of every member of the Department shall consist of five (5) days. Leave days granted to employees who work Monday through Friday shall be Saturdays and Sundays. An employee shall be entitled to eight (8) leave days in each twenty-eight (28) day work period.
- B. The present practice of employees submitting leave day requests shall continue. Upon submitting the request the employee shall circle the days he wishes to be granted under the conditions of this Article.
 - 1. Employees shall be granted a minimum of four (4) circled days for each twenty-eight (28) day work period; provided, that an employee may select five (5) circled days in four (4) work periods per fiscal year which shall be designated by the Union and promulgated by special order.
 - 2. Further, in the event that more leave day requests are submitted than the allowable percentage to be off on any given day or days, then the most senior employees shall be granted their requests. When leave day requests are less than the allowable percentage to be off, then all such requests for that day or days shall be granted.
- C. Under normal conditions, job assignments and leave days shall be posted seven (7) days prior to the end of the current work

period. After having been posted, leave days shall be changed only by mutual consent of the officer and the Department, except when leave days are cancelled because of an emergency.

- D. Under normal conditions, holiday assignments will be posted seven (7) calendar days prior to the holiday. In instances where two (2) holidays fall within a fourteen (14) day period, assignments for the second holiday will be posted a minimum of two (2) days in advance of that holiday.

This change is not substantive and only renumbers and reletters the paragraphs of Article 18 in the interest of clarity. The change is without prejudice to the parties' other proposals regarding leave days and Article 18.

2. Holidays

The Association's proposals to change Article 31.E.1, 31.E.4.b.4, 31.E.6 and 31.F.4, as modified by negotiations between the parties and set forth below are incorporated into the Award.

Article 31.E.1 shall be changed to read as follows:

For the purpose of keeping a complete record of holiday assignments and facilitating an accurate rotation of holiday work opportunities, D.P.D. Form #592 shall be prepared, beginning with the most senior employee and descending in strict seniority order. These rosters (D.P.D. Form #592) shall be kept up to date and posted within five (5) days after the holiday except that posting will not be required after General Election Day and Christmas. Employees shall be placed on separate rotation rosters for each precinct as specifically outlined in sub-section E.5. and for each non-precinct entity in accordance with past practice.

Article 31.E.4.b.(4) shall be changed to read as follows:

Once members with red designations are selected for work opportunities, the continual rotation shall continue from where it left off the previous holiday (the current "starting point") selecting in descending seniority order members with black "holiday worked," "holiday refused" or no previous status, until sufficient personnel are obtained.

Article 31.E.6 shall include the following additional roster entry, designated as subsection "j":

Holiday Suspended - HX - (Red) - indicates an employee was eligible to work the holiday but was suspended on the holiday and had disciplinary proceedings still pending or an employee who was serving a suspension of more than thirty (30) days as a result of completed disciplinary action (after all appeals have been exhausted).

An officer serving a suspension of thirty (30) days or less as a result of completed disciplinary action (after all appeals have been exhausted) shall be allowed to work a holiday if eligible.

Article 31.F.4 shall include the following additional subsection, designated "h":

Records and Statistics Section. Employees assigned into this section (usually long term limited duty employees), shall only be allowed to work at this section if they are eligible to work on their parent command's roster. If no work is available at this section, the employee retains the right to work at his/her parent command if a position is available.

CIVILIANIZATION

The Department presented Exhibit 31 which is a proposal to civilianize certain positions within the Department that are now filled by police officers. The positions were listed in the testimony of Deputy Chief Daniel McKane, at Vol. VI, Tr. 5-6:

36th District Court, the equipment and property control section, including all units and all positions, and within the precincts the vehicle maintenance officer, the property officer, and the detention facilities officer, which is the doorman.

The Department is thus seeking to civilianize 158 positions now held by police officers. Vol. VI, Tr. 10. Essentially, Deputy Chief McKane testified the positions could be filled by civilians, releasing 158 officers for duty in police work as needed.

The response to the proposal was set forth in the testimony of President Schneider and Officers Bernard Cybulski and John Barr. Vol. VI, Tr. 51-85. These Association witnesses argued that as to the 36th District Court, there has been litigation between the parties concerning the positions, and that the Association had prevailed; that the doorman positions in the precincts do require police presence and skill; and that the other positions are positions traditionally held by police officers.

The difficulty the City has in its civilianization proposal is the art of the possible criteria. There have been many proposals made by the parties as to non-economic issues. The Panel has carefully reviewed same, and has come up with certain awards. If this contract had been negotiated, it is doubtful that the parties would have reached closure on the issue of civilianization, recognizing the other many issues as to which this Panel was required to issue awards. Notwithstanding strong arguments in attempting to persuade the Panel, the Department cannot expect to prevail on civilianization considering the Panel's awards as to certain

other proposals. It is for this reason that the City's proposal as to civilianization will not be awarded.

RESIDENCY

Article 39 of the agreement provides:

All members of the bargaining unit shall be residents of the City of Detroit. Residence shall be construed to be the actual domicile of the member. A member can have only one domicile.

The Association would delete Article 39, eliminating the residency provision.

The issue of residency is not new between these parties. In the seminal opinion on the subject dated September 5, 1975, an Act 312 Panel chaired by Harry H. Platt concluded that the City's position on residency should be sustained and in so doing, wrote:

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.

Residency has continued to be an issue between the parties, and has been presented to all the Act 312 panels that have issued awards to these parties over the years. In each case, a majority of the Panel have reached Chairman Platt's conclusion.

It should be noted that the one Act 312 arbitration panel that made a hardship exception as to residency was reversed on appeal to the Michigan Supreme Court. City of Detroit v Detroit Police Officers Association, 408 Mich 410 at 496-497 (1980).

The Panel listened carefully to the Association's presentation on the issue of residency. Though the concern proffered by the Association witnesses can be appreciated, there is no evidence in 1994 dictating a different conclusion than that reached by Chairman Platt. It is for these reasons that the proposal to eliminate residency will not be awarded.

PROMOTIONS

There is no language in the current 1989-92 collective bargaining agreement as to promotions. The Association has presented a detailed proposal as to promotions.

Michael Falvo, Commanding Officer of the Labor Relations Section of the Detroit Police Department, explained that the Department is reviewing the entire issue of promotions, and needs additional time to review the matter and respond to the Association's request. The promotional practices of the Detroit Police Department have been matters of litigation for many years. Complex and significant matters are at issue. Vol. IV, Tr. 35.

The City has also noted there have been at least two Act 312 awards, one dated November 1, 1980 and one dated June, 1990, involving an Act 312 proceeding between the City of Detroit Department of Police and the Detroit Police Lieutenants and Sergeants Association, concerning requests to change the present procedures as to promotions. (City Exhibits 59, 60). In each case, the Act 312 Panel bifurcated the promotional issue from the other matters. Considering the existence of the above awards, and the testimony that the matter is under review and that the results of the most recent promotional examinations must be reviewed in connection with same, the Panel majority believes that the issue of promotions should again be bifurcated and heard at a later time.

Therefore, the award incorporates the proposition that the issue of promotions will be heard in a separate proceeding but not prior to June 1, 1995. This date permits time to consider the matters raised in the testimony. Thus, if the promotion issue is pursued, the Association must petition the Chairman for a hearing date, said petition must be filed not before May 1, 1995 and not later than June 1, 1995, with copies to be served upon the Director of Labor Relations for the City of Detroit. Upon receiving the petition, the Chairman will then direct a hearing to be held for further consideration of this issue. The Panel will keep jurisdiction for the purpose of considering the promotion issue.

OUTSIDE EMPLOYMENT

Article 40 of the parties' 1989-92 agreement provides:

An employee may engage in outside business activity or outside employment provided it is

not inconsistent or incompatible with or does not interfere with the proper discharge of the employee's duties and responsibilities as a police officer.

Approval for outside business activity or outside employment must be obtained from the Chief of Police, and shall be for a period of one year. The employee may request it be renewed after one year.

Approval will not be granted for an outside business activity or outside employment which would involve more than thirty (30) hours per week of work, or for work in private or personal security or in businesses that are regulated by the Detroit Police Department, e.g., bars, adult movies or adult bookstores, etc.

Approval to engage in outside business activity or outside employment shall not be unreasonably withheld.

The Association has proposed the following language:

An employee may engage in outside business activity or outside employment provided it is not inconsistent or incompatible with or does not interfere with the proper discharge of the employee's duties and responsibilities as a police officer.

Approval for outside business activity or outside employment must be obtained from the Chief of Police, and shall be for a period of one (1) year. The employee may request it be renewed after one (1) year.

Approval will not be granted for an outside business activity or outside employment which would involve more than thirty (30) hours per week or work, or for work in businesses that are regulated by the Detroit Police Department, e.g., bars, adult movies or adult bookstores, etc. provided, however, that officers shall be allowed to work in private or personal security.

Approval to engage in outside business activity or outside employment shall not be unreasonably withheld.

The thrust of the Association's demand is to eliminate the prohibition that Association members not be allowed to engage in outside employment "for work in private or personal security." The rationale for the Association's proposal was set forth by Association Vice President Derrick Royal when he testified at Volume X, Tr. 18-26. See also Association Exhibits 42 and 75.

This rationale was challenged by the testimony of Inspector Michael Falvo at Volume X, Tr. 27-50. See also City Exhibits 43 and 76.

There are two criteria applicable to the resolution of this dispute. The bargaining history does not favor the Association's position. On at least two occasions before previous Act 312 panels, the Association has attempted to obtain these provisions for outside employment, which primarily address employment in security. The matter was presented before the panel chaired by Chairman John B. Keifer in 1986, and again before the panel chaired by Chairman Nathan Lipson in 1989. In both cases, the proposal was denied. Such bargaining history gives some guidance to this Panel.

There is also the art of the possible. In these hearings, there was a very vigorous demand by the Department as to exempting Special Crimes Unit and civilianization. The Panel majority has declined to award such request, with one exception (Police Athletic League). As vigorously, the Association urged the outside employment issue. These are issues that are important to the parties.

Each party also argued about liability issues connected with outside employment. It would prolong this Opinion to

discuss the cases cited by the respective counsel with the City arguing that there is liability attached to the City for officers employed in outside security work, and the Association suggesting otherwise.

The point is, the bargaining history does not support the Association's position as the proposition has been twice denied by other Act 312 panels. Also applying the art of the possible, the outside employment demand will not be awarded and the present contract language shall remain, thereby receiving the same treatment by the Panel majority as the City demands on exempt status for additional units and on civilianization.

STATUS QUO

The Opinion has addressed numerous issues raised by the parties and those issues have been addressed in the Opinion. The Award reflects resolution of those issues raised by the parties. As to all other issues that were not raised by the parties and therefore not discussed in the Opinion, it is the assumption of the Panel that the language in the current contract will be carried forward.

A W A R D

1. The contract shall cover a period from July 1, 1992 through June 30, 1998.

2. The wages are as set forth in the Opinion, including the wages for officers whose first day on the payroll commences after the date of this Award.

3. All other economic and non-economic provisions have been set forth in the Opinion proper and are incorporated into and are a part of this Award by reference, including the referenced disability pension program, which will be issued subsequently by the Chairman on behalf of the Panel majority.

4. The Panel maintains jurisdiction in this matter on the terms and for the purposes set forth in the Opinion.

5. Each Award has been supported by a Panel majority, with signatures being waived by the respective City and Association delegates, with the understanding that the signature of the Chairman represents that there is a majority as to each Award.


GEORGE T. ROUMELL JR.
Panel Chairman

February 20, 1995