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STATE OF MICHIGAN  
COMPULSORY ARBITRATION  
ACT 312 PUBLIC ACTS OF 1969, AS AMENDED

In The Matter Of the Arbitration between:

THE CITY OF DETROIT,

Employer

-and-

MERC Case No. D98 E-0840

THE DETROIT POLICE OFFICERS  
ASSOCIATION,

Labor Organization

Appearances:

For the Employer: Kenneth S. Wilson, Esq. (Dallas G. Moon, Esq. and John C. Dickinson, Esq. with him on the brief) of Lacey & Jones, LLP, Detroit, MI

For the Association: Gregory, Moore, Jeakle, Hinen & Brooks, P.C. of Detroit, MI

Panel: Donald F. Sugerman, Chair  
Brian S. Ahearn, Esq., Employer Delegate  
Derrick Royal, Union Delegate  
John T. Barr, Sgt. at Arms, Union Delegate

Date of Award: July 21, 2000

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## OPINION AND AWARD

### Statement Of The Case

The **Detroit Police Officers Association** (“DPOA,” “Association” or “Union”) represents the almost three thousand police officers (below the rank of sergeant) employed by the **City of Detroit** and its **Police Department** (“City,” “Detroit,” “Employer” or “Department” as the context indicates). DPOA filed a timely Petition under Act 312, Public Acts of 1969 with the Michigan Employment Relations Commission (“MERC”). A petition is filed after negotiations and mediation fail to produce a new contract and binding, interest arbitration is sought to establish the terms and conditions of the new collective bargaining agreement (“CBA,” “Agreement” or “Contract”). The CBA in this case was to replace the one that expired on June 30, 1998. During negotiations the parties were able to resolve many issues, including the length of the successor CBA; it is to be for three years.<sup>1</sup>

First Year	July 1, 1998 through June 30, 1999
Second Year	July 1, 1999 through June 30, 2000
Third Year	July 1, 2000 through June 30, 2001

The arbitration hearing consisted of seventeen sessions held from mid June 1999 to mid January 2000, at which the parties introduced extensive testimony from numerous witnesses (including experts) and put into evidence hundreds of documents relating to the issues that each presented for resolution. On February 9, 2000, the parties submitted their last offers of settlement (“LOS”). Comprehensive, able briefs were filed on May 1, 2000.

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<sup>1</sup>All of the terms agreed to by the parties and all of the terms in the expired contract not changed or modified by this Award shall constitute the new Contract.

Thereafter, the Panel met on six occasions. Based upon the entire record and the arguments of the parties, the Panel issues this opinion and award authored by the Chairman. By signing below, the Panel Delegates concur on those issues decided in favor of their principal and dissent on those issues in favor of the other party.<sup>2</sup>

### **STATUTORY CRITERIA**

Pursuant to Section 8 of Act 312, the Panel must adopt the LOS on economic issues that more nearly complies with the applicable factors designated in Section 9. On non-economic issues, the Panel can either select the LOS or fashion a different resolution, provided that in both situations the term of employment chosen draws its essence from the Section 9 factors. Further, in deciding both economic and non-economic issues while all applicable factors are to be considered, the Panel has the authority to determine the priority and weight to be given to those factors in each instance.

The factors to be considered by the Panel in crafting its decision are:

- (a) The lawful authority of the employer.
- (b) Stipulation 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, hour and conditions of employment of other employees performing similar services and with other employees generally:

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<sup>2</sup>Sometime after the evidentiary hearings concluded, Assn. Delegate Derrick Royal became incapacitated and was replaced by John Barr.

(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 wages, 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 the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Panel has carefully considered the data and other relevant evidence presented by the parties in conjunction with the above factors. Based upon that analysis, it issues this decision and award.

(a) and (d)(ii) are not implicated in this proceeding.

(b) All stipulations of the parties have been adopted.

(c) A great deal of evidence was adduced with regard to the financial ability of the City to satisfy the costs that might be imposed by the Panel's actions in adopting one side's LOS over the other's. While the City does not assert an inability to pay, it describes a municipal government in transition; attempting to pull itself out from years of economic and

social difficulties. And by all outward appearances, it is succeeding! But movement of this type is often slow and bears fruit over the longer, rather than shorter, term.

The population of the City has been declining and trends suggest this will continue for some time. This decline negatively impacts all types of aid the City receives, including that from the Federal government. The change in the method of State financing (in the form of "Revenue Sharing") brings both good news and bad news. The revenue from the State will remain constant until 2007.<sup>3</sup> The City knows exactly how much it will receive from the State each year. This is positive. The bad news is that that amount generally increased yearly and under the new arrangement will decline as a percentage of the City's overall budget. In addition, to even secure this amount from the State, the City had to agree to reduce percentages of income tax incrementally over the same period.

And the recent State law barring governmental entities from making residency a condition of employment will add to Detroit's population loss. Without a doubt some City employees will take immediate advantage of their newly won right to relocate. Should, however, a large number of employees do so, it could have a significant adverse impact on City revenues over the short haul. These municipal employees (and their families) are at the higher end of the earnings scale among City residents. Their leaving would further reduce revenue from income tax. In addition, it might have a domino effect; a flood of houses on the market can depress prices and reduce revenue from property taxes. The City's expert

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<sup>3</sup>The Assn. stressed that this revenue program was the result of a mutual agreement between the City and the State. The City introduced evidence to demonstrate that it reluctantly accepted the agreement after realizing it was the best it could expect from a less than sympathetic State administration.

witnesses estimated that the cost of removing residency (when it was still a Panel issue, prior to the enactment of the statute which occurred near the end of the hearings) amounted to between twenty and twenty-five million dollars. This is speculative and will certainly not come to pass in the life span of the current agreement.

To finance its operation, the City still has one of the highest income tax rates in the State, levies a unique utility tax and has extremely high property taxes. Virtually all of the taxes that the City is authorized to levy are at the maximum legal limit. To raise taxes to underwrite increased costs for police payroll is not an option.

X | The Union's financial expert testified that the City has the "capacity" to grant the increase in wages and benefits that the Association seeks in this proceeding. I am compelled to disagree. For 1997-98, the City had a surplus of \$13,380,061. The Union's expert cited several funds with high balances that he said were surpluses that could be used to pay wages and benefits. These funds (risk management and health care) are specifically earmarked and cannot be used for general fund purposes. Moreover, the City cannot be expected to use all unallocated funds. It needs to maintain reasonable reserves. While the parties argue over what is reasonable (and clearly experts in the field have different views on the subject) the amount of the City's reserve, is inadequate for Detroit. The estimated surplus for 1998-99 was only \$245,000.00.

Furthermore, by ordinance, half of any surplus must be placed in the City's Budget Stabilization Reserve Fund, a "rainy day" fund, that can only be used for special purposes such as covering general fund deficits, restoring a reduction in the number of employees or

paying expenses involving natural disasters. The other half of any surplus is incorporated into the following year's budget to fund operations for that year. The Employer puts it this way, "A surplus as thin as those for the past four years is not evidence that the body is robust but only that it is surviving." I agree with the Employer that the surplus cannot be used to fund the improvements sought here.

Detroit has put great hopes for its financial well being on the gaming industry; three "temporary" casinos were to be up and running in early to mid 1999. Within about four years these casinos are to move into permanent facilities. The wagering tax was expected to generate \$51,500,000.00 in fiscal year 1999-2000. One casino opened on time and has done better then expected, the second was delayed for some months and the third is not yet open and it is uncertain when it will commence operations. In any event, it is expected that the two casinos will produce somewhat less revenue then was anticipated.

The City budgeted increases for all employees of 2% for the first year of the contract and 3% for the second year. Labor organizations representing a substantial number of other City employees accepted this offer. Were the City to experience a deficit, it most likely would affect its standing with the bond rating agencies. This in turn would increase the rates of interest the City pays to borrow money. These factors, among others, would have an adverse affect on the City's ability to fairly compensate its police officers.

I do not mean to suggest that everything about the City is bleak; it certainly is not. Good things are happening in Detroit. There have been a number of major developments; the construction of Comerica Park where the Detroit Tigers plays; the Detroit Lions will

return to Detroit and are in the process of building a new stadium in downtown; General Motors Corporation purchased the Renaissance Center and moved its headquarters to that location; CompuServe, a major computer service company, is building its headquarters downtown. Other major commercial construction projects have been announced some of which are already underway. Bond rating agencies like how the City is managing its finances. These and other like developments speak well for the City. But, in agreement with the Employer, it is concluded that the benefits of this progress cannot be "taken to the bank." They cannot be used to grant retroactive increases beyond the amounts deemed appropriate in this case. In other words, the capacity to give increases does not translate into the wherewithal to do so.

(d) The "comparable communities" category has flummoxed parties and panels over the years; both in selection and application. If there really is such a thing as comparability among communities it is hard to come by. Thus, a certain amount of thimble-rigging is built into the process. One can expect parties to nominate communities that, for the most part, support their substantive positions and then find imaginative and creative reasons for such selections.<sup>4</sup>

Experts for the parties in the immediate case explained in great detail how they used objective criteria to select the comparable communities each proposed. The array of criteria used by parties over the years is almost limitless: Geographical size, population, median

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<sup>4</sup>It may be easier in smaller municipal entities to find communities that are comparable or, at least, reasonably comparable. The size and nature of the City makes the selection of comparable communities tenuous.



household income, value of property, and historical selections are among the factors traditionally offered. Some of the more esoteric criteria are: "Rust belt" cities, ratio of police to population; metropolitan statistical areas; population loss; central city status; reductions in numbers of dwellings; percentage of population in poverty; percentage of college graduates, unemployment rates; employment rates; percentage of workers employed in blue collar occupations; crime rates per citizen and per police, etc.

On the national scene, the Association believes New York, Los Angeles, Chicago, Washington, D.C., San Francisco, Philadelphia, Boston, Dallas, and Houston are comparable to Detroit. The City's approach was to classify nominees as "most comparable" (Cleveland, Pittsburgh, St. Louis), "more comparable" (Baltimore, Chicago, Philadelphia) and "less comparable" (Boston, Milwaukee) to Detroit. While all of these cities have some attributes that mirror Detroit's, I am satisfied that only a few have enough important similarities that would permit their selection as being truly comparable.

If were not hard enough to compare cities on a national scale, it is even more difficult to attempt to use other Michigan cities for this purpose. It is, after all, one thing to try and compare a small community against other small communities, it is another to compare the largest city in the State with smaller ones. In this exercise, if "local comparable communities" are to be used, the City nominates Flint, Pontiac and Saginaw as "kind of mini-Detroit's." The Union proposes sixteen communities: Ann Arbor, Dearborn, Dearborn Heights, Farmington Hills, Livonia, Pontiac, Roseville, Royal Oak, Saginaw, St. Claire Shores, Southfield, Sterling Heights, Taylor, Troy, Warren, and Westland. Some of these

were ostensibly chosen because they border Detroit; others because they are in the same labor market.<sup>5</sup>

Clearly most of the local communities do not parallel Detroit, they are not such that meaningful comparisons can be made. For all of these reasons, I have chosen to give limited weight to the comparable communities factor and to instead focus on the other criteria.<sup>6</sup> }★  
While recognizing they are smaller, the City local communities bear more of a resemblance to Detroit than those of the Association. Of the national nominees, Cleveland, Pittsburgh, St. Louis, Baltimore, and Philadelphia have a number of attributes of Detroit.

Comparing a community with others is referred to as "external" comparables. Comparing the terms and conditions of the subject group with those of employees of the same employer in other bargaining units or groups is referred to as "internal" comparables. This factor is important (albeit not controlling) because how an employer deals with one segment of its work force often impacts on the other segments as well and vice versa. For example, police use the percentage wage increases paid to bus drivers to support a claim for higher rates for its members. And in some instances, like those of police command officers, they benefit directly whenever rank and file officers have their wages improved (and indirectly when other benefits are increased). And fire fighters are treated as *pari passu* with

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<sup>5</sup>Of this group, the City's nominees more closely resemble Detroit than do those of the Association.

<sup>6</sup>This itself may be a rationalization. There is something to be said, as Arbitrator Glazer found, in the "companion" Lieutenants and Sergeants Association ("LSA") case for using comparable communities that parties have historically used in their prior Act 312 cases. Nevertheless, fundamental changes in the structure of a community suggest that a hard and fast rule should not be imposed. For example, the strong possibility that the 2000 census will produce dramatic changes of populations requires some flexibility if the comparable communities criteria are to have meaning.

police officers. For its part, the City strategy often involves negotiating an agreement with one union and trying to establish it as the benchmark in dealing with other unions.

For example, the City has contracts with many unions covering over forty-five bargaining units. The largest of these are locals affiliated with Michigan Council 25, American Federation of State, County and Municipal Employees ("AFSCME"). Together AFSCME represents over 4,700 non-supervisory employees. AFSCME and the City reached a new agreement covering the same period as that under consideration here. It provides wage increases of 2% the first year, 3% the second year and 3% the third year.<sup>7</sup> All told, unions representing about 70% of the City's organized workforce accepted the pattern established by the AFSCME agreement. Together these unions represent about 70% of the Employer's organized workforce.<sup>8</sup>

(e) The Consumer Price Index ("CPI") is commonly used to measure changes in the so-called "Cost of Living." The Union's expert testified that the CPI increased just under three percent, on average, for the past four years. The increase for all urban consumers for 1998 averaged 1.6, for 1999 it was 2.2, and for 2000 (through May) the index has risen from 1.68.7 to 171.3 or 2.6. The increases proposed by both parties marginally exceed the CPI.

(f) Wages, to be sure, account for the largest part of the Employer's budget. But wages are only a part of the cost incurred by the City. Fringe benefits must also be

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<sup>7</sup>It also provides a possible cash bonus at the end of the third year and a possible cash incentive payment on the first pay day in December 2001.

<sup>8</sup>The Assn. is somewhat critical of agreements reached between the City and unions not governed by interest arbitration. This criticism is misplaced. It has often been said that the goal of an Act 312 arbitrator is to assist by making the agreement for the parties that they themselves would have made in direct negotiations, but were prevented from accomplishing for a variety of reasons.

considered as part of overall compensation. As noted below, some of the improvements add considerably to the Employer's costs and increase the overall compensation of police officers.

(g) Another of the Act 312 criteria is the changes in other factors during the pendency of the arbitration proceedings. There are four items in this category: The enactment of the anti-residency statute; production of information concerning the wage increase given to the Mayor by the commission that oversee's executive compensation; the contract reached between the City and the Amalgamated Transit Union representing equipment operators and other Department of Transportation employees, and; the Act 312 Award involving the LSA.

(h) Finally the statute does not limit the criteria used to that described above, but permits the Panel to consider those things normally or traditionally taken into account in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties. The criteria will now be applied to the issues in dispute.

#### 1. (A)(B)(C) WAGES

The City's LOS is 2%, 3%, and 4% for each year of the contract. This follows, for the most part, the settlements it has made with labor organizations representing a sizeable number of its employees. The Association proposes increments at six month intervals: 2% and 2% for the first year; 2.5% and 2.5% for the second year; 3% and 3% for the third year. The cumulative increases are 9% and 15% respectively.<sup>9</sup> Given the City's slim surpluses in

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<sup>9</sup>With compounding these numbers are roughly 9.25% and 15.96%.

1998 and 1999, the importance of avoiding a deficit at this time in its recovery, the amounts accepted by the other unions, the overall compensation of officers, and the unprecedented differential that the Association's proposal would mean *vis-a-vis* other employees, the Panel will award the City's LOS for the first and second year of the contract.<sup>10</sup> This does not mean that the overall compensation of officers is capped at 3% the second year. Other benefits described below will increase their overall compensation.

In the last year of the contract, the City should reap the benefits of the wagering tax from two of the casinos and possibly the third. Progress in other areas of development hopefully will continue apace. It will be the time for greater improvements in wages without sacrificing fiscal integrity. In this year, the effects of the anti-residency statute will be set in motion. Any impact on finances is likely to be limited. I am compelled to reject the City's dire forecast. And I cannot embrace its position that a *quid-pro-quo* should be imposed; what the Association would have given up/back to secure this "benefit."<sup>11</sup> In the third year then, the Union's LOS will be accepted.

#### 1. (D) STARTING WAGES

The entry level wage for police officers is low; it has not kept pace with starting salaries in other law enforcement departments nationally and locally. The Association has proposed that the wage rate be increased by the percentage increases awarded in this case. This makes sense and will be awarded by the Panel. It is recommended that the parties

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<sup>10</sup>It should be understood that reference to the Panel with regard to the award on each of the issues means a majority of the Panel.

<sup>11</sup>The positions of the parties were such that the subject of residency was for all intent and purposes "non-negotiable."

continue to monitor this item looking to adjust the starting wage rate when possible.

1. (E)(F) WAGES (ACADEMY & STEP INCREASES)

The parties agreed that the first step in the wage schedule will be applied to employees upon completion of the Police Academy and they shall proceed from the minimum to the maximum in five equal annual steps as more fully described in the June 23, 2000, letter to the Association from the City's Delegate, attached hereto as Appendix "A." They disagree, however, as to the date these changes will become effective. The Association would make them effective July 1, 1998, and the City would make them effective July 1, 2000. In order to limit erosion of the City's financial condition for the two year of the CBA on which its books have been closed, the Panel accepts the City's LOS.

2. (A) HOSPITALIZATION PREMIUM SHARING

The City proposes various changes in health care benefits or in funding the payment for benefits to "curtail . . . skyrocketing cost(s) . . ." It wants to cap the amount it pays to the C.O.P.S. Trust (the entity that administers the health benefits that most police officers receive) for coverage of active employees (individuals, two persons, family, sponsored dependents) and for retirees (and their spouses). This, it says, will cause employees to be more judicious in using benefits covered by the plan.

There is no probative evidence that by shifting some of the cost to employees, it will reduce health care utilization. Indeed, the increased cost of health care is almost entirely out of the control of the employee/patient and his/her dependants. And it is frightening to think a person would forego essential treatment on the theory that he or she will be more

circumspect in accepting a physician's course of treatment as it will cause the employee to pay a part of the cost.

In the last analysis, cost sharing is simply a method of transferring what has traditionally been an employer paid benefit to employees. In some cases this may be appropriate. An Act 312 Panel, however, must be careful in dealing with issues that a party would unlikely obtain in negotiations. I believe the City's LOS falls into this category.

In addition, where, as here, measured wage increases have been granted, they should not be reduced through the imposition of a new cost being transferred to employees. Finally, it is noted that the City sought this same benefit in the LSA Act 312 proceeding. Arbitrator Glazer denied the request. He was uncertain about the wisdom of a give-back. He accepted the City's wage offer of 2%, 3% and 4% and rejected its cost sharing proposal with a neutral recommendation. Arbitrator Glazer was mindful that command officer might get greater wage benefits since their earnings are tied to those of police officers. The increase of 3% and 3% in the last year, however, is not sufficient to overcome the refusal to award a give-back of health care sharing.

## 2. (B) HEALTH CARE (DEFERRED VESTED RETIREES)

Currently, deferred vested retirees are eligible for hospitalization benefits. The City proposes that this benefit be eliminated effective July 1, 2000. A deferred vested retiree is an officer who terminates employment before achieving 25 years of service. The Employer premises this proposal for the following reasons: Civilian deferred vested retirees are not eligible for coverage and the City wants to treat both groups alike. This is only fair. Adoption

of the proposal would encourage longevity in the Department.

None of the reason advanced by the City are persuasive. First, no projected savings were calculated by the City were this proposal to be accepted. It is unclear what the savings would be to the City since the benefit does not apply until the retiree reaches what would have been his/her 25<sup>th</sup> year of service (or age 62 for those hired after July 1, 1985). The fact that civilian employees do not have this benefit is of little moment. This has been the situation for some time. Indeed, it is not clear whether civilian employees ever had this benefit. Finally, the City implies that this benefit would be eliminated for relatively short term employees. (To be eligible an employee must have 8 years of service). In fact, the benefit could be removed from employees who leave the Department with much more seniority. It would apply to someone leaving just before his/her 25<sup>th</sup> anniversary. The Union's LOS of the *status quo* will be accepted.

## 2. (C) HEALTH COVERAGE (SPONSORED DEPENDENTS)

Effective July 1, 2000, the City wants officers to pay the cost for sponsored dependent coverage, i.e., extended family members—not those in the immediate family. This will reduce costs and bring the officers coverage into line with civilian employees who pay for this coverage themselves.

According to the Association only about 30 members have this coverage. It appears that its cost is *de minimus*. The LSA arbitrator denied the same proposal in this last Act 312 case. The City did not even put this LOS forward in its negotiations with the Command Officers Association ("COA"). At the management level, Department employees continue



to have paid sponsored dependent coverage. For these reasons and those in the preceding section, the Association's LOS of the *status quo* is accepted

### 3. EDUCATIONAL REIMBURSEMENT

The parties have agreed to the City's LOS. It is hereby accepted.

### 4. EMERGENCY/EXCUSED LEAVE DAYS

Currently, DPOA members are entitled to not more than five emergency or excused days in a fiscal year. All excused days are deducted from the officers' accumulated sick banks; a current sick bank and a seniority sick bank. The City seeks to have emergency/excused days come out of the current sick bank, not their seniority sick bank to encourage and improve attendance. Were this done, the City claims employees would be more careful about taking an emergency/excused day.

There is no evidence to suggest that the City's proposal is designed to correct an existing problem that requires changes of the type sought. No existing problem was described. On the other hand there are two mechanisms already in place to address sick leave usage; the right to discipline for failing to give maximum attendance and a non-disciplinary counseling program. For these reasons the Panel concludes that the existing practice should not be changed.<sup>12</sup> Accordingly, the Union's LOS is accepted.

### 5. SICK LEAVE (A)(B)(C)(D)

In (A) the City proposes that seniority sick days not be available for use as emergency or excused time days and that such leave be used only for chronic illness or hospitalization.

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<sup>12</sup>It is noted that an identical proposal made by the City was rejected in the LSA case.

By this proposal the City seeks to encourage and improve attendance. Officers accumulate sick time in two banks; in the current sick bank at eight hours per month/twelve days per year and in the seniority or reserve bank (for a member on the payroll for a year) with five seniority/ reserve sick days.

According to the Association, the proposal is ill-conceived and unnecessary. It attempts to correct a non-existent problem. How there has come to be two banks is somewhat of a mystery. But there is no evidence that these banks were to be used for different kinds of illnesses or injuries or that reserve or seniority sick days be used for more serious type illnesses.

In agreement with the Association, the Panel concludes that the restriction is not supported by the record. There is no evidence of a problem. Correspondingly, there is no evidence that the machinery already in place is inadequate to deal with such a problem should it arise. Officers should not be subjected to a contract provision that penalizes them for the legitimate use of accumulated sick time. For this reason, the City's proposal is rejected.

(B)(C)(D) are interrelated and will be considered together. An officer accumulates sick time at the rate of one day for every calendar month (of not less than eighteen paid time days, excluding over-time) to a maximum of 125 days. An officer with current service status for a full fiscal year is credited with five days in his seniority bank. This bank, too, is limited to an accumulation of 125 days. Upon retirement/death, DPOA members/estates receive full pay for 50% of their unused accumulated sick banks. Thus, the maximum payout is 125

days.

Where an officer uses no sick time at all, it takes ten years and five months to accumulate 250 days in these banks. At retirement, an officer with more than the maximum in his/her bank is not compensated for the additional time. In its recent and first CBA with the COM the City provided sick banks without a cap. And LSA and AFSCME, have no cap on accumulated current sick time. The City projected the cost of this benefit on the assumption that every unit member would retire having never used a sick day. This is unrealistic.

Reserve sick days are based on seniority and are earned even if sick leave is used. Uncapping the reserve bank allows greater accumulation. When coupled with the removal of the payout cap (D), it will provide an incentive not to use reserve sick days unless absolutely necessary (reserve days can only be used after current days are exhausted). This will have little economic impact since the 125 day limit is achieved only after 25 years of service (past normal retirement). Given the average of years of service (27), the maximum additional accumulation would be ten days. This is a benefit enjoyed by all other police units and is awarded to this unit as well.

Finally, the Association proposes to uncap the 125 day limitations in the current and reserve sick banks. Illness and injury are not matters within the control of officers and their families. Removing the 250 day limitation provides a reasonable incentive to forbear the use of sick days when circumstances permit. The City gets improved attendance and officers get a modest economic reward. Given that the other Department units have these benefits, the

total costs are limited, the fact that another major City union has uncapped sick leave, and the equity of granting this in lieu of higher wage rates, the Association LOS will be accepted.

#### 6. LONGEVITY

Currently, longevity increments are paid in flat sums: \$250.00 at the first step (after 5 years); \$500.00 at the second step (after 11 years); \$750.00 at the third step (after 16 years); \$750.00 plus 1% of the employee's base salary at the fourth step (after 21 years). Each step being inclusive of the previous step(s). This benefit is designed to reward employees for long-term service.

The Union proposes that effective July 1, 1999, longevity be paid on percentages of base salary (on the same progression): 1% (5 years), 2%(11), 3% (16), and 4% (21). These are also inclusive of the prior steps.

The Panel notes that in the LSA proceeding, the union there made an identical proposal, albeit effective the third year of the contract. This proposal was accepted. There is something to be said about treating the various organizations that represent sworn police and command officers *pari passu*. While it would have been preferable to institute this benefit in the third year, is not an option in this case. The Association's LOS was to make this proposal effective July 1, 1999. The City's LOS was to deny the benefit altogether. Of the two choices, equity requires that the benefit be put into effect. As there has been no change in the longevity formula for seventeen years; the LSA achieved this benefit, the record indicates the City is in a position to absorb the cost of the change from a flat rate to

a percentage,<sup>13</sup> the Union's LOS is accepted.

#### 7. UNIFORM ALLOWANCE

#### 8. HOLIDAYS

According to the Association, the current benefit of \$250.00 for cleaning uniforms is too low and should be increased to \$350.00. The Department provides officers with a complete summer and winter uniform including 12 shirts, three pairs of pants, an overcoat and two hats. The Union seeks to add Martin Luther King, Jr. Day to the schedule of holidays. This would be a paid holiday. The City proposes that these benefit remain unchanged. The DPOA relies almost exclusively on the comparable communities. There is no consensus among the communities in the treatment of uniforms. Some pay more,, but do not provide uniforms; some pay more and some about the same as Detroit. Holidays fall into the same category. Moreover, as previously noted this factor is given little weight. There is no other probative evidence in the record to warrant increasing the two benefits. For these reasons, the City's proposals are accepted.

#### 9. PENSION PROVISIONS

The City proposes to increase the amount members contribute to the Annuity Fund from 5% to 8%. The Association opposes any increase. The Pension System is in excellent financial condition. It is fully funded. There is nothing in this record to establish that at a time when the Pension Fund is doing so well, officers should be called upon to pay more.

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<sup>13</sup>While being given only lip service, the following is noted for the comparable communities: Baltimore - 2.5% at 10 years ending at 10%; Pittsburgh - 2% to 8%; Cleveland and Milwaukee akin to Detroit; Pontiac - 2% to 10%; Flint 2% - 6%; Saginaw and many of the local comparable communities pay lump sums exceeding those of Detroit.

The Association's LOS is accepted.

The Association requests that the pension multiplier be increased. Currently it is 2.5% for the first 25 years of service and 2.1% for every year of service thereafter, up to ten years. It proposes that the multiplier be set at 2.5% for each year of service after 25 years up to a maximum of 35 years. The Association believes its members deserve this modest increase where they chose to remain on the job beyond 25 years, the time that they become fully vested. It bases this proposal on the comparable communities. While most of the national nominees pay a smaller percentage of final average compensation than Detroit, the DPOA justifies its position on the basis of higher rates of earnings in these other communities. (The local comparable communities it says, have both higher multipliers and higher earnings. The cost of this benefit, measured as a percentage of payroll, would be 1.39% amortized over 19 years, the current basis for such calculations.<sup>14</sup> It would yield a pension of 87% of Final Average Compensation ("FAC").

In the prior Act 312 proceeding involving the LSA, the City withdrew its objection to an increase in the multiplier from 2.1% to 2.5% for the first 25 years of service with 2.1% remaining for the 26th through the 35th year. This was applied to police officers as well. As it now stands, the current pension is one of the best among police officers in Michigan. The maximum percentage of final average compensation provided by the Plan is 83.5%. In view of the fact that longevity will be added to the FAC computation; that the LSA does not have this benefit; that it is costly; and that no persuasive reasons have been advanced to warrant

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<sup>14</sup>This amounts to 3 million dollars a year.

this increase, the City's LOS is accepted.

10. D. PENSION/10 YEAR VESTING

E. ELIMINATE AGE 62 REQUIREMENT

There are two related Association proposals involving "deferred vested retirees." Currently, a police officer who has reached age 40 with at least 8 years of service is entitled to a deferred pension based on 2.5 times years of service.<sup>15</sup> The Association proposes to change vesting from eight to ten years of service. An officer in this category would receive credit for those years at the regular multiplier (2.5%). DPOA also wants to eliminate the requirement that officers hired after July 1, 1985, wait until age 62 before receiving a full benefit.

According to the DPOA, the 40 year age requirement penalizes officers who join the Department at a young age. An officer who joins the Department at age 21 and leaves at age 39, receives no pension whatsoever, only the return of the officer's mandatory annuity contributions with earned interest. The Association would eliminate this penalty. Where an officer has ten or more years of service the officer would receive pension credit for those years at the regular 2.5% multiplier. This comports more closely with the so-called ERISA standards as well as those in place with the other City Unions.

The Association argues that the cost of these changes is small; only 1.18% of payroll (or 1.07% if amortized over 30 years). This translates to 2.56 million dollars.

It has long been recognized that a pension is designed to reward employees for long-

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<sup>15</sup>Officers hired prior to 7-1-85 receive their benefits after what would have been their normal twenty-fifth year, or a benefit if taken before is actuarially reduced. Thus it adds no cost to the City. Officers hired after that date can receive an actuarially reduced pension on leaving or the full benefit at age 62.

term service. The Michigan Court's have endorsed this principle. See Jurva v. Attorney General, 419 Mich 209 (1984). I am not impressed with the example put forth by the Association. A person who leaves the service after 18 years at age 39 makes a studied decision; to continue at work until vesting or to leave forthwith. Most employees concerned about this matter would make every effort to work the added year. (Some might not be able to continue at work). But this is theoretical. DPOA pointed to no instances where this has happened. It has not shown that a problem exists that must be addressed at this time. The City's available funds are better expended in other ways to improve the benefits of police officers who plan to make the Department a career. Accordingly, the City's LOS is accepted.

#### 10.(F) FINAL AVERAGE COMPENSATION

At issue here is the proposal of the Association that average final compensation (AFC) include longevity payments. Until now Police Officers have had AFC based exclusively on salary. Unlike fire fighters who can move up the ranks in the IAFF, a police officer who retires only receives the AFC of the top patrol officer's rate. General City employees have their AFC calculated on more than just their base salaries; it includes such items as overtime, holiday pay, and longevity. The cost of this benefit as calculated by the actuary for the Retirement System was 1.92% of payroll with the improvement in longevity.

In the LSA case, the Panel accepted the Union's LOS awarding longevity be included in AFC. Given this and the fact that the benefit is already in place for other City employees, it should be award here as well. Accordingly, the Association's LOS is accepted.



#### 10. (G) LAYOFF TIME

The Association proposes to give its members who were laid off (essentially during two reductions in force during the 1980s) credit for such time toward satisfying the requirement of 25 years of service. Currently, an officer who retires with less than 25 years of service would be a deferred vested retiree entitled to an immediate but actuarially-reduced benefit. The DPOA proposal would eliminate the actuarial reduction where the actual service time and layoff time added up to at least 25 years. The change would not provide service time for purposes of the pension amount, only for eligibility. An officer with 20 years of actual service and 5 years of layoff time would be eligible for a full-vested pension, but the allowance would be calculated at 20 years times the 2.5% multiplier. It was estimated that around 900 officers have at least one period of layoff. The cost of this is about .53% of payroll. This benefit recognizes employees' long term commitment to the Department. The City recognized the merit of this provision by it being included in the LSA agreement. For these reasons, the Association LOS is accepted.

#### 10(H) THE DROP PLAN

The Association proposes a Deferred Retirement Option Plan ("DROP"). Under a DROP, a member who is eligible to retire makes an irrevocable commitment to participate. The pension allowance is then established. However, the officer continues to work and the pension benefit, reduced to a percentage is "dropped" into an account and invested. When the officer retires, he/she collects the money accumulated in the DROP account; his/her retirement allowance is restored to its full amount (including annual escalator amounts) that

would have been added but for the member's DROP participation.

Various trade publication indicate possible advantages and disadvantages to a DROP. Notwithstanding the possible disadvantages, the Association believes the plan is an option its members should be given. It appears that the plan proposed by the Association is cost neutral premised on a DROP percentage of 75% with adjustments in future years depending on experience. This is an experiment. It should not be undertaken if there is a cost to the City. Since the actuary indicates that a 75% DROP would be cost neutral, that is the plan that will be accepted. This matter is remanded to the parties for action consistent with the Award.

#### 10.(J) ANNUITY CONTINUATION

Currently, an officer can withdraw the annuity part of his/her pension in a lump sum or by rolling it over into an IRA type of account. The DPOA proposal would permit the officer to leave his/her money in the system and accumulate the officer's portion at the actual rate of return. The officer could later withdraw all of the annuity, he/she could not do so piecemeal.

This proposal, too, is cost neutral. This was confirmed by the Retirement System's actuary. He stated that there would be no change in computed contributions. Apparently there was some misunderstanding between the parties concerning the interest paid on the annuity part of the pension. With this resolved, the LOS of the Association will be accepted.

#### 10.(K) SHARING EXCESS INCOME

The Union proposes to distribute assets from the Retirement System in any year the

funding value of the assets exceeds actuarial liabilities by \$100 million. The excess is to be divided into thirds; two thirds are to be retained by the Fund as part of a "smoothing" formula. The remaining third would be further divided into thirds; paid in equal parts to the City, the retirees and active employees.

This comes about because of the Retirement System being over funded. But this is a recent phenomenon. The Plan's actuary noted that he was not familiar with any system utilizing this program. He also noted that by changing assumptions, the Board of Trustees could increase surpluses and that this might be counter productive to the long-term well being of Fund. The Union's proposal is a radical one. The operation of a Fund, such as this one, must be examined over long periods, not those of the moment. As the Employer must bear the burden of under funding, it is not appropriate to change the process simply because in one, two or even three consecutive years over funding has occurred.

The actuary who testified for the City opined that were the Union's proposal adopted, the City's cost will definitely be higher than it would have been otherwise, and that would probably be significantly so. The Union did not refute this assertion. Given these facts, the City's LOS will be accepted.<sup>16</sup>

#### 11. EXEMPT TRANSFER ENTITIES

There are two types of Sections/Units in the Department (for convenience "Section(s)"); Exempt and Non-exempt. Officers transfer into non-exempt sections based, in large part, on seniority. To involuntarily transfer an officer out of a non-exempt unit,

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<sup>16</sup>It is noted that the LSA made the same proposal to the City and it was rejected by the panel.

requires the City to establish that he/she is not qualified and, when put to the test, it must prove this by clear and convincing evidence.<sup>17</sup> As the name implies, exempt sections, are not burdened by this constraint (they are exempt from following seniority). Transfers into and out of exempt sections are done by the Employer based on qualifications, ability, skills, and special needs (e.g. young in appearance, of particular ethnicity or race).

For these reasons, the City wants to convert from non-exempt to exempt status its Narcotics Special Enforcement Section ("NSE"). And the Association wants to convert from exempt to non-exempt status the Commercial Auto Theft ("CAT") and Forfeiture Sections. According to the City, NSE with about eighty officers is the only non-exempt section in the Narcotics Bureau; narcotics enforcement is extremely important, and; the need for highly trained, specialized and qualified employees is paramount.<sup>18</sup> These factors require that NSE join the other entities of the Bureau and be made exempt.

The evidence establishes that transfers into non-exempt sections are based on more than seniority. After an officer submits a transfer request, he/she is evaluated by management and if deemed qualified is then placed on the transfer list. Thereafter, openings are filled by seniority from the list. Where the Department has refused to place an officer on a transfer list or involuntarily transferred an officer out of a non-exempt entity, it has, when challenged in the grievance/arbitration procedure, been required to prove the *bona fides* of

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<sup>17</sup> According to Commander Michael Falvo, to remove an officer with a poor work record, the Department must establish that the officer's performance is "below average," something that he claims is difficult to do; it has sometimes taken several years, especially where grievance/arbitration was involved.

<sup>18</sup> NSE was formerly known as the "Gang Squad." It has over the last few years gradually shifted its focus and responsibility toward narcotics, as youths and gangs have become intertwined with guns and drugs.

its position.

There is no probative evidence that NSE has been unable to carry out its mission because it is a non-exempt entity. There is no probative evidence that it has been unable to recruit capable, qualified and conscientious officers. There is no probative evidence that it has been seriously handicapped because of its status. Indeed, in its various incarnations it appears to have done the job expected of it over the years. At the very most, the Department has been inconvenienced in that it has had to justify denying a transfer request and to prove "just cause" to remove a very few officers who were unable to perform their jobs at an acceptable level of competence. This hardly demonstrates a systemic problem.

There is a balancing of rights that must be considered here. The seniority rights of qualified officers to serve in the section against the Department having the unfettered right to select and remove officers from the NSE. I conclude that in this situation, the officers' rights override the Department's to a considerable degree. For these reasons, the Association's LOS is accepted.

CAT is responsible for investigating theft-related complaints, organized auto theft teams, chop shop operations, violations of the Motor Vehicle Code and the Motor Vehicle Service Repair Act, organized re-tag operations, and on occasion the transportation of stolen vehicles and parts. It also has a number of regulatory functions.<sup>19</sup> The exempt status of CAT came after negotiations in 1983. There was a *quid pro quo* for the Association's agreement to exempt this section; The Department's commitment to give a 120-day notice

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<sup>19</sup>These include (working with other government entities), enforcement of dealer laws, inspection of repair facilities, regulation of new and used car dealers, junking facilities or shredder operations.

before establishing any new exempt status entity. At first blush, the exchange appears one-sided. But it was not. Thus, the Department cannot create an exempt section for 120 days and, in the event of a grievance, it might take significantly longer. In fact, these time restrictions may foreclose the Department from even attempting such a creation.

During negotiation leading to the change in the CAT's status, the Department contended that staff was engaged in "sensitive" "technical" and highly confidential work.<sup>20</sup> DPOA did not establish by competent, probative evidence that the work of CAT has changed since it became exempt. The only testimony was from an officer who worked in the Section many years ago. I sense that the Association's position on this Section and that of Forfeiture was in response to the City's effort to change the status of NSE; in other words, the best defense being to go on the offense. I see no valid reason to change the status of CAT and for this reason the City's LOS is accepted.

Forfeiture has been an exempt section since the beginning of 1980. The Forfeiture unit is now a part of the Narcotics Bureau. Its mission is to eradicate narcotics activity by taking their assets (seizing monies, assets, real estate, etc.). As with CAT, the Union admits that Forfeiture operations are essentially unchanged from the time it became exempt. In other words, there is no probative evidence that its current operations are any less sensitive than when the change in status occurred without DPOA objection. On the contrary, with its placement in the Narcotics Bureau, its responsibilities have increased; It needs officers with

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<sup>20</sup>The evidence demonstrates the technical skills needed for a CAT officer. For example, a minimum of one year of intensive training is required for officers responsible for identifying stolen vehicles. They are sent to the FBI Academy and must periodically update their skills.

even greater skills and abilities who are able to handle more technical, sensitive, and confidential material than before. The City's LOS is therefore accepted.

## 12. CIVILIANIZATION OF POSITIONS

The City wants to civilianize a number of positions. Commander Falvo explained the rationale:

This is one of a series of efforts over the years to be able to use civilian employees in certain locations in the police department where sworn officers currently perform the duties in order to maximize the efficiency of the department by using sworn officers in traditional law enforcement responsibilities such as patrol and response in order to enhance the public safety...

Maybe the easiest way to put it is what the goal is not. The idea of our civilization efforts is not to reduce the size of the police department, the sworn complement of the police department. It is really not to save money. What we have found, what other police departments have found, what the national trend clearly is that if we are going to begin making substantial inroads into confronting the crime problems we have and become a more effective police department, it is essential that we use sworn officers, who are very scarce and valuable commodities, to the fullest extent in those jobs that only they can perform because of their excellent training and experience.<sup>21</sup>

Under this proposal the force will not be reduced. DPOA membership will not be eroded. There will simply be a reallocation of sworn officer where they are most needed: back on the street, back into patrol cars. Citizens of Detroit are better served with as many sworn officers as possible available to fight crime. This concept is in keeping with the effort in many organizations and institutions to refocus on their underlying work by removing tiers

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<sup>21</sup>Tr. 4, 5-6.

or administration, reducing administrative positions, and using its employees in the most efficient manner possible.

Against this philosophy we measure the wisdom of having sworn officers in the various positions described below. In the precincts there are two position implicated in this proceeding: Vehicle Maintenance Officer ("VMO") and Property Officer.

**VMO(13).**<sup>22</sup> This is a logistical position; the officer arranges to have maintenance service performed on Department vehicles and transports or causes them to be transported to and from garages for this purpose. This work recently has been reduced by a new program that uses an independent contractor to perform oil changes and routine maintenance onsite. The VMO job is basically keeping records of scheduled maintenance, arranging for maintenance to be performed and transporting vehicles to accomplish this objective.

**Property Officers(13).** A property officer keeps track" of property and evidence. He is responsible for ensuring that evidence is where it is supposed to be and that it is transported at the right time.

In the Commands there are the following units/positions.

**Fleet Control Unit Officers(6).** Officers in this unit keep track of the Department's fleet of vehicles. They assign vehicle identification numbers, replaces vehicles, transfers cars among commands and arrange for owner vehicles when other cars are unavailable. Officers also can be used to inspects other fleets such as buses, taxicabs, limousines and ambulances.

**Uniform Store Unit(3).** A uniform store officer sees that other officers get the right

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<sup>22</sup>Numbers in parenthesis are sworn officers in each position.



uniform and that it is properly fitted. They fit officers for protective vests. And they keep track of how often officers get their uniforms changed.

**Auto Pound Unit(7).** Officer in the Auto Pound perform essentially the same function as the precinct property officer. He/she is responsible for impounded vehicles. They are stored with the Auto Pound Unit, searched and inventoried, and after a requisite period of time, sold at auction.

**Equipment/Property Unit(5).** This unit is at Police Headquarters. It is responsible for property received from the precincts. The officer makes sure that all of the property received is inventoried and stored for safekeeping.

**Communications Systems Section (9),** (a/k/a as "Belle Isle Radio" because of its location), is staffed by technicians who install radios and other equipment (such as sirens) in police vehicles, repair and replace portable radios and make recommendations about the purchase of communications equipment. Some civilians already work in this unit and perform these functions.

**Records/Identification Section(9).** Officers maintain crime reports and other records produced by the police department. They maintain criminal records and fingerprint records. They conduct fingerprint checks. Some civilian employees work in the unit, too. As might be expected with voluminous records, officers may spend a considerable amount of time filing documents.

**Print Shop Unit and Graphic Arts Unit(7).** These units perform as a commercial print and graphic shop. Officers print forms and fliers. They design visual aids. And they

make composite drawings.

**Crime Analysis Unit(5).** The five officers in this unit identify crime trends and assist street officers in detecting patterns. Some knowledge of police work may be helpful in performing this work. However, civilians with degrees in demographics, criminal justice, etc. from institutions of higher education or with certifications from technical schools undoubtedly can do the jobs, too.

**Technology Liaison Office(4).** Officers are responsible for the Department's computer systems, including setup, programming and diagnosing computer problems.

Without question, officers in each of the above positions perform vital, important work that is needed by the Department. It is also beyond peradventure that the duties and responsibilities involved are completely outside of the core functions of sworn officers; to maintain order in Detroit, protect its citizens and perform other tasks and assignments directly related to those functions.

I agree with the City that nothing taught or learned in the Police Academy prepares officers to work in any of the above described jobs. It is work that can be done by civilians and, if done by them, can free up officers to perform the important tasks for which they are specifically trained and urgently needed. The interest and welfare of the public is best served when police officers perform the duties that only they can perform and when they are relieved from performing the myriad, peripheral duties that civilian employees can do as well. These functions, over the years, have in an osmosis-like manner become

institutionalized.<sup>23</sup>

Here again, it is necessary to balance the rights and needs of the parties. Incumbent officers have served in the above positions, for considerable periods of time. It would be unfair to uproot them after they have learned to do the work and apparently do it well. In addition, it would be costly to the City to lose their specialized expertise and it probably makes little sense from a logistical standpoint to change the operation in a fell swoop. It is therefore best to temporize. To the extent civilians may be employed to replace officers, it is to be done on the basis of added staff or by attrition when an officer leaves the position he/she currently holds.

The City has stated that it does not intend to reduce staff (including the subject positions). For this reason and because the Department might nevertheless decide to use officers in positions for which it now has obtained the right to hire civilians, the positions are to remain available for officers to submit blue slips in the precincts and transfer requests in the commands. Unless a position is abolished, the Department must fill all vacancies as soon as practicable; if not with a civilian then with a sworn officer.

**36th District Court(58).** With thirty judges and six magistrates this District Court is, by far, the largest in the State. (The next closest has six judges) In addition to officers, Wackenhut, a private security firm, provides a large staff for general building security. Among other duties, the security force tends the metal detectors at the entry points, and

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<sup>23</sup>It appears that other police departments of a size comparable to that of Detroit employ civilians to a much greater degree than that of the Department. Furthermore, with residency and the likely exit of police officers, their off-duty presence will be reduced. This makes it imperative that more officers be available for deployment to deal with the myriad problems of protecting the safety of the public.

attempts to insure that weapons are not brought into the building.

36<sup>th</sup> District Court Judge, John Perry, testified that it was important to the administration of justice to have sworn officers provide security in the courtrooms; criminal and civil matters at the 36<sup>th</sup> District sometimes result in volatile circumstances with physical problems including fights that continue and spill into the hallway. It is precisely for these reasons that officers are needed. Wackenhut security guards, he opined, had no police training and were no different from any security officer you might see at a Rite-Aid store. Having personally attended matters in 36<sup>th</sup> District Court, I am compelled to agree with Judge Perry's apt assessment.<sup>24</sup> One cannot possibly compare the security provided by guards to that provided by sworn officers. And the volatile environment in this District is not surprising: To some extent it mirrors that of the streets.

Here, officers provide an important police function. They assist the courts. Their mere presence is a deterrent to matters getting out of hand. They protect the administration of justice, the persons who have matters before the court, and the other members of the public in attendance. Contrary to the Employer who sees Wackenhut guards as being able to provide complete security throughout the building, I see the matter differently. It is the police presence that makes it possible to utilize guards for the job they now perform. Without sworn officers, the likelihood of there being chaos rises exponentially. For this

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<sup>24</sup>Judge Perry's testimony was corroborated by some of his colleagues who submitted written statements supporting the continued use of sworn officers in the courtrooms. Judge Marlin E. Atkins wrote, "I believe our safety will be jeopardized without our police officers who are very well trained to recognize trouble before it begins and have the ability to stop the trouble if and when it occurs." (Ex. A-80)

reason, the City's request to civilianize the 36<sup>th</sup> District Court is denied.

### 13. AMMUNITION

The Association proposes that its members be provided with limited penetration, full expansion rounds to be carried on or off duty and that members be allowed to purchase (at their own expense) and carry other Department - approved limited penetration, full expansion rounds.

The testimony of Association Secretary-Treasurer, Richard G. Weaver, was that the rounds currently used by officers is inadequate; the safety of officers and the public is jeopardized by the use of full metal jacket ammunition.

The Department's Range Master, Sgt. Lawrence Semczak and the Board of Police Commissioners have endorsed the use of limited penetration, full expansion rounds. And they are already used by the Special Response Team and the Mayor's Security Unit. Authorization to use the new ammunition was approved by the Department. It was rescinded when some City Council members raised questions.

There being no reasons to reject this proposal, the Association's LOS is accepted.

### 14. RESIDENCY

The longstanding effort by the Association to remove the requirement of residency as a condition of employment is well known and need not be repeated here. Suffice it to say that in contract after contract, in Act 312 proceeding after proceeding, this was among the most contentious and litigated issue. This case was no exception. However, as the hearing was coming to a conclusion, the State Legislature decisively changed the equation. It passed

Act 312 of 1999 that was signed into law by the Governor on December 22, 1999, and became effective on March 10, 2000.

Section 2(1) of Act 212 prohibits a public employer from requiring, by collective bargaining or otherwise, that a person reside within a specified geographic area or within a specified distance of travel time from his or her place of employment as a condition of employment or promotion.

Section 2(2) permits a public employer to require, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer provided the distance is 20 miles or less.<sup>25</sup>

The City seems to contend that Act 212 does not apply here because the statute went into effect after this contract was negotiated. Its argument is weak tea. While the contract has an effective date of January 1, 1998, its date of negotiation is the date on which this award issues, July 21, 2000. I find that the statute applies. No more need be said on this subject and no more will be. Residency as a condition of employment is to be removed from the CBA. The statute shall govern.

## 16. POLICE RESERVES

Article 27 of the CBA provides as follows:

In continuing its policy on police reserves, the City will in no event use police reserves to do normal work of bargaining unit members or to circumvent the holiday over-time and/or any other provision of this Agreement.

The City proposes to eliminate reference to "normal work of bargaining unit

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<sup>25</sup>Sec. 2(3) deals with situations where spouses both work for public employers and need not be discussed here.

members" while committing that its use of reserves would not diminish the strength of the bargaining unit or circumvent other contractual provisions. The change is needed, the City says, because almost everything reserves do falls into the category of normal police work. The Union adamantly opposes this change. It notes that the City has the flexibility it needs and while the Union took three cases to arbitration over this provision, it lost all of them.

I agree with the Union that reserves are not trained as police officers although they do receive some training. And it would be dangerous for officers and the public alike were reserves to substitute for sworn officers. On the other hand, I agree with the City that it is important that it be able to utilize reserves in appropriate situations. As noted, with the elimination of residency, a police presence in the City will almost assuredly be reduced. Just as a police presence in 36<sup>th</sup> District Court is important, so is it with officers living in the City. Reserves may help to continue such a presence. There is a compromise. Reserves shall not be used to perform the essential core duties of officers. They may be used to assist officers in non-core functions; e.g. being deployed on Angels' Night when all officers are on duty or to assist officer at or around Comerica where a police presence is needed.

As an added security against using reserves in place of sworn officers, should a dispute over their deployment arise, the burden of proceeding and the burden of proof in any grievance/arbitration proceeding shall be on the Employer to establish by probative, objective evidence, that its use of reserve(s) did not circumvent any provision of the CBA, and that but for the use of reserve(s), a officer(s) would not have been called to participate in the particular event, duty, function, etc.

The first paragraph of Article 27 shall read as follows (with new language underlined):

In continuing its policy on police reserves, the City will in no event use police reserves to perform the essential core duties of bargaining unit members or to circumvent the holiday over-time and/or any other provision of this Agreement. Should a dispute over the deployment of reserves arise, the burden of proceeding and the burden of proof in any grievance/arbitration matter shall be on the Employer to establish by probative, objective evidence, that its use of reserves did not circumvent any provision of the CBA, and, but for the deployment of reserves, bargaining unit members would not have been used to participate in the particular event, duty, function, activity, etc.

The second paragraph of Article 27 is also at issue.

The City proposes to change the part of this provision that prevents reserves from riding in two person scout cars unless both officers consent. The Department did not establish that this was a problem in need of repair. At no time did it inform the Association that reserves were being systematically refused permission to ride with officers. It may have occurred in isolated instances. This is unclear as no anecdotal information was provided. For this reason, the City's request to change this provision is rejected. However, this matter will be remanded to the parties to consider how to best address this issue, if it is still an issue.

#### 17. PAYMENT OF BANKED TIME

The City proposes to extend the time in which it is required to pay a employee lump sum banked payroll time (other than sick time), unused vacation and compensatory time from thirty to sixty days after separation from employment. The justification for this request is



that the civilian workforce has been reduced and it therefore needs the added time to get the job done.

While I sympathize with the City's plight, it is unreasonable to ask a person owed money to now wait twice as long for payment, especially where no suggestion has been made that interest is to be added. The City apparently is not meeting the contractual time limits as it is. This is not a method that will encourage correcting a problem. Indeed, doubling the time is not the solution; a more efficient operations is. The City's request is denied.

#### 18. ELIMINATION OF PAYROLL DEDUCTION/ DISABILITY INSURANCE

The City wants to end the practice under which DPOA members use payroll deductions to pay for supplemental disability policies. These provide disability income over and above that which they receive from the City. The City does not seek to prevent officers from obtaining such added insurance. It only wants to end payroll deductions for such insurance. The rationale for the change is a statistical survey that purports to show that officer who have additional policies do not return to work as quickly as those who do not. I find the evidence of such use inconclusive, at best. The sampling was too small; the examination was incomplete. Furthermore, the proposal would be a band aide solution; it would not discourage the purchase of supplementary insurance only make paying for it less convenient. No persuasive reasons were advanced for changing the *status quo*. The proposal will be rejected.

## **AWARD (SUMMARY)**

### **WAGES:**

For July 1, 1998 through June 30, 1999 the City's LOS is accepted.

For July 1, 1999 through June 30, 2000 the City's LOS is accepted.

For July 1, 2000 through June 30, 2001 the Association's LOS is accepted.

**STARTING WAGES:** The Association's LOS is accepted.

**WAGES (ACADEMY & STEP INCREASES):** The City LOS are accepted.

### **HOSPITALIZATION:**

**PREMIUM SHARING:** The Association's LOS is accepted.

**HEALTH CARE (DEFERRED VESTED RETIREES):** The Association's LOS is accepted.

**HEALTH COVERAGE (SPONSORED DEPENDENTS):** The Association's LOS is accepted.

**EDUCATIONAL REIMBURSEMENT:** The parties have agreed to the City's LOS.

**EMERGENCY/EXCUSED LEAVE DAYS:** The Association's LOS is accepted.

### **SICK LEAVE**

**USE OF SENIORITY SICK DAYS:** The City's LOS is rejected.

**UNCAPPING OF CURRENT AND RESERVE SICK BANKS; UNCAPPING 250 DAY LIMIT FOR RETIREMENT/DEATH:** The Association LOS are accepted.

**LONGEVITY:** The Association's LOS is accepted.

### **UNIFORM ALLOWANCE**

**HOLIDAYS:** The City LOS are accepted

**PENSION PROVISIONS:**

EMPLOYEE ANNUITY CONTRIBUTION: The Association's LOS is accepted.

PENSION MULTIPLIER: The City's LOS is accepted.

10 YEAR VESTING: The City's LOS is accepted.

ELIMINATING THE 40/8 PROVISION: The City's LOS is accepted.

FINAL AVERAGE COMPENSATION: The Association's LOS is accepted.

LAYOFF CALCULATION: The Association's LOS is accepted.

THE DROP PLAN: The Association's LOS is accepted.

OPTIONAL ANNUITY WITHDRAWAL: The Association's LOS is accepted.

EXCESS REVENUE SHARING: The City's LOS is accepted.

**EXEMPT TRANSFER ENTITIES:**

NARCOTICS SPECIAL ENFORCEMENT SECTION: The Association's LOS is accepted.

COMMERCIAL AUTO THEFT: The City's LOS is accepted.

FORFEITURE SECTION: The City's LOS is accepted.

PRECINCT ASSIGNMENTS (EXCEPT FOR 36<sup>TH</sup> DISTRICT COURT): The City's LOS is accepted.

36<sup>TH</sup> DISTRICT COURT: The Association's LOS is accepted.

COMMAND ASSIGNMENTS: The City LOS are accepted as modified by the Panel Majority.

AMMUNITION: The Association's LOS is accepted.

RESIDENCY: Act 212 of 1999 is applied.

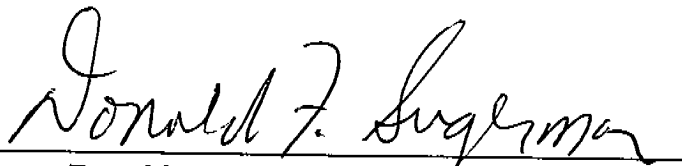
**POLICE RESERVES:**

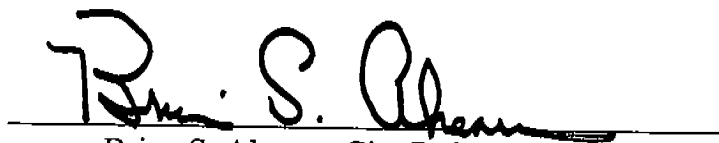
USE OF RESERVES: The City's LOS is accepted as modified by a Panel Majority.


TWO MAN CARS: The Association's LOS is accepted.

PAYMENT OF BANKED TIME: The Association's LOS is accepted.

ELIMINATION OF PAYROLL DEDUCTION/ DISABILITY INSURANCE: The Association's LOS is accepted.

  
Donald F. Sugerman, Chairman

  
Brian S. Ahearn, City Delegate

  
John T. Barr, Association Delegate

Detroit, Michigan  
July 21, 2000

Employees who have already completed the Police Academy prior to July 1, 2000 but have not yet reached the 1st Pay Step shall have \$1,000 of the 1st Pay Step applied to their annual salary effective July 1, 2000. Employees who complete the Police Academy on or after July 1, 2000 will have \$1,000 of the 1st Pay Step applied to their annual salary upon completion of the Police Academy. This increase will be considered an early entitlement to part of the first annual step increase.