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STATE OF MICHIGAN  
COMPULSORY ARBITRATION

In the Matter of:

CITY OF DETROIT,

Employer,

Arising pursuant to  
Act 312, Public Acts  
of 1969, as amended

-and-

DETROIT POLICE LIEUTENANTS  
AND SERGEANTS ASSOCIATION,

Case No. D98 F-0944

Union.

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ACT 312 AWARD

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APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Chairman  
Brian S. Ahearn, Employer Delegate  
Ronald Stempin, Union Delegate

FOR THE EMPLOYER

Kenneth S. Wilson  
Lacey & Jones, LLP

FOR THE UNION

J. Douglas Korney  
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STATE OF MICHIGAN  
SPECIAL ACTS COMMISSION  
DETROIT OFFICE

## BACKGROUND

There are 930 persons in the Detroit Lieutenants and Sergeants Unit. An Act 312 Petition was filed on June 30, 1998. The chairman was appointed on December 1, 1998. At a pre-hearing conference held in January of 1999, the parties agreed to waive all time limits, inclusive of the time for the completion of the case and the preparation of the award by the chairman. The waiver is attached hereto as Exhibit "A".

Thereafter, there were 13 hearing dates through November of 1999. The parties submitted thousands of pages of exhibits and voluminous briefs, all of which have been reviewed by the chairman, in addition to the extensive transcripts.

The panel is to apply the provisions of Section 9 of Act 312. Pursuant to the City of Detroit v DPOA, 408 Mich. 410, 482, the panel need not afford equal weight to all factors. The Section 9 criteria 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 these 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 proceeding.
- (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 factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties have reached agreement on the City last best offer #12, attached hereto as part of Exhibit "C". The Union issues are: 1) Reduction in Force as it Affects Pensions; 2) Longevity Pay; 3) Sick Leave; 4) Addition of Easter Sunday as a Paid Holiday; 5) Uniform Allowance; 6) Inclusion of Longevity Pay in FAC; 7) Retirement Escalator; 8) Pension Surplus Distribution; 9) Wages and Differential; and 10) Article 54(b) - Wages and Differential.

The City issues are: 1) Sick Leave, Seniority Sick Days; 2) Sick Leave, Bonus Vacation Days; 3) Emergency or Excuse Days; 4) Hospitalization for Deferred Vested Retirees and Spouses; 5) Insurance for Sponsored Dependents; 6) Premium Sharing for Health Coverage; 7) Option to Change Healthcare Provider; 8) Employee Premium Share Withholding; 9) Healthcare Opt Out Benefit; 10) Duplicate Healthcare Coverage for Retirees; 11) Pension Contributions for Bargaining Unit Members; 13) Wages and Differential; and 14) Article 54(c) - Wages and Differential.

The parties have submitted non-economic offers on residency and promotions.

This case is unique in two distinct areas. First, the lieutenants and sergeants have completed their Act 312 proceeding prior to the patrol unit. The lieutenants and sergeants are guaranteed a

wage differential with the patrol unit. This means that this lieutenants and sergeants award will issue without the knowledge of the final wages to be awarded, since that may be dependent upon the DPOA award, which will issue at a later time. Further, the legislature has essentially taken the residency issue out of the Act 312 process through a statute directly on the subject.

However, the legislatively mandated residency rule has an economic impact on this proceeding, and must be considered under Section 9(h) of Act 312. There is evidence that the elimination of residency will cause a departure of some bargaining unit members and a concomitant loss of revenue to the City. Consequently, residency must be considered in terms of its economic impact upon the City.

It must be emphasized that the parties have a history of having their contracts determined by Act 312. Therefore, the parties' history in 312 must be considered under 9(h) of the Act in the same manner as collective bargaining.

### **COMPARABILITY**

The City of Detroit lists Chicago, Baltimore, Cleveland, St. Louis, Boston, Pittsburgh and Milwaukee as national comparables, particularly because they have suffered large population losses, like Detroit and they have similar median incomes. The City's expert denies that there is any Michigan city that is comparable to Detroit; however, insofar as any Michigan city is to be considered, the City selects Flint, Pontiac and Saginaw.

The Union bases its national selection upon population and previous use in Act 312 proceedings involving these parties. It selects: Baltimore, Boston, Cleveland, Chicago, Los

Angeles, Miami, New York, Oakland, Philadelphia, Pittsburgh and Toledo as national comparables. For Michigan cities, the DLSA selects Ann Arbor, Dearborn, Flint, Grand Rapids, Livonia, Pontiac, Saginaw, Southfield, Sterling Heights and Warren.

Insofar as the parties use the Act 312 process as the exclusive method of resolving their contracts, it is important that they know prior to the proceedings, which cities are likely to be used by the panel as comparables. Otherwise, their last best offers become uncertain, hit or miss propositions. Further, the parties should not be in the position of "arbitrator shopping" in the hope that during a particular Act 312 proceeding they will receive a favorable list of comparables. Also, the parties have developed an Act 312 history over their many Act 312 proceedings. The comparables should be consistent with that history pursuant to Section 9(h) of Act 312.

I have been on record since I began hearing Act 312 cases in the 1980s, and over the course of numerous reported decisions, that comparables should be carried forward into subsequent proceedings in the absence of changed circumstances, in order to provide stability in labor relations.

In the prior **Scott** award involving these parties, there is no indication that the arbitrator considered comparability. Further, the parties did not introduce earlier Act 312 awards involving these parties so that it could be determined how the panels decided comparability.

This means that there isn't an arbitral history for me to use in assessing the appropriate comparables. Under these circumstances, I will consider the entire list of comparables as supplied by the parties and weigh their relative importance as necessary. The parties should not consider the assessment of the entire list of comparables in this proceeding as an endorsement of that approach; to the contrary, I am only using the expanded list in the absence of the arbitral history of the parties in regard to comparability. Further, external comparability will not be of particular significance in

the formulation of this award because of the unique factors presented in this case by the City of Detroit.

## **NON-ECONOMIC ISSUES**

### ***PROMOTIONS***

The City and the Association both have demands to change existing contractual provisions concerning promotions. The Association's demand states:

Promotions to the rank of inspector, and to that functional rank, however denominated, shall be made only from the rank of lieutenant. To be eligible for promotion to inspector, a lieutenant shall have held the rank of lieutenant in the Detroit Police Department continuously for two (2) years, and shall have submitted a request for appointment to the rank of inspector. Promotions of lieutenants so qualified shall be made in the order of their seniority unless the City documents that a lieutenant it promotes to the inspector classification has some special skill or attribute not possessed by other lieutenants eligible for promotion, and the City has based its out-of-seniority-order promotion on the need to employ that skill or attribute. Such documentation shall be available to the Association and any authority which approves promotions. The purpose of the documentation requirement is to assure the Association that the City has a sound basis for making an out-of-order promotion. The present procedures governing promotions of Association members to the ranks of sergeant and lieutenant shall continue in operation, except that if the City promotes employees to those ranks out of order of their listing for promotion the same documentation above required for promotions to inspector shall be required. Individuals who believe they have been unfairly bypassed for promotion may seek redress through the grievance procedure in accordance with Articles 8 and 9 of this agreement.

The City opposes any change to the existing procedures on promotion to the ranks of Investigator, Sergeant and Lieutenant. The City does, however, seek to modify the procedures by which Lieutenants are appointed to the rank of Inspector. The City demand states:

Appointments to the rank of Inspector shall be made at the discretion

of the Chief of Police in accordance with his authority under the City Charter.

It should be noted that although the Association demand uses the term "promotion" and the City demand uses the term "appointment" with regard to the rank of Inspector, the distinction in phraseology is not particularly significant in terms of resolving the issues before this panel.

The City Charter sets forth procedures for making promotions within the police department.

Section 7-1114 of that document provides:

The Chief of Police shall make all promotions within the department. All promotions shall be with the approval of the board.

Promotions shall be made on the basis of competitive examinations administered by the director of police personnel except for positions above the rank of lieutenant or its equivalent. All examinations will be prepared by the division of police personnel with the concurrence of the board. No person who has taken an examination and has been placed on a register of employees eligible for promotion, may be passed over in favor of an employee with a lower examination score, unless the chief of police files with the board and the division of police personnel written reasons for the bypass, and the promotion is approved by four (4) of the commission members serving. Any person having been passed over may appeal to the board.<sup>1</sup>

As this provision indicates, advancement in the Department is different for "positions above the rank of lieutenant" and for the ranks of lieutenant and below. With regard to the former, the

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<sup>1</sup>The excerpt is from the Charter that became effective on January 1, 1997. The same language was also contained in the 1974 Charter except for the requirement that four out of five members of the Board of Police Commissioners must concur in any "charter" promotion. The record indicates that the current president of the Lieutenants & Sergeants Association testified before the Charter Revision Commission in support of placing numerical limitations on the Chief's right to make "charter" promotions. The Charter Commission did not recommend a numerical limitation, but did change the approval requirement that previously required only a simple majority vote of the Board of Police Commissioners. The Charter was adopted by a vote of the citizens on August 6, 1996.

Chief of Police has historically had the discretion to select, subject to the concurrence of the Board of Police Commissioners, from among persons holding the rank of Lieutenant. No examination or formalized competitive process is involved. For the ranks of Investigator, Sergeant, and Lieutenant, an eligibility register is compiled based upon the weighted results of a competitive written examination and oral board that also provides credit for seniority, time in grade, college, military service, and performance evaluation ratings.

One aspect of the Association's demand addresses so-called "charter promotions." For many decades, the Chief of Police (or Police Commissioner before 1974) has promoted, in varying numbers, individuals on the eligibility register out of order of their placement on the list. The Michigan Court of Appeals decided in an unpublished case that grievances protesting the propriety of these "charter promotions" were not arbitrable under the collective bargaining agreement. The Association seeks to change that result by modifying the collective bargaining agreement to permit arbitral review.

An understanding of the current demands by both parties requires a discussion of the preceding Act 312 proceeding (Case Nos. D92 B-0206 and D95 C-0639) that covered the period July 1, 1992 to June 30, 1998 which was chaired by Arbitrator John Scott. In that proceeding, the Association sought to impose a numerical limitation on "charter" promotions. The LSA requested that the following demand be granted:

**CHARTER PROMOTIONS.** In no event shall more than five (5%) of each rank promoted on a given date be out of order (charter promotions).

The percentage calculation for charter promotions shall be one or



greater to qualify for one charter promotion. Each additional charter promotion calculated shall be at least .05, i.e., twenty equals one charter, thirty to forty equals two charter, fifty to sixty equals three charter, etc.

Regardless, the Association and its members shall have the right to grieve up to and including arbitration of, all issues raised in this provision.

In addition, the Association demanded that the process of selecting Inspectors be changed so that promotions to that rank also be made in descending order from a competitively established eligibility roster. The LSA proposed that only candidates having two years of experience as a lieutenant and four years of college would be eligible to compete. Based upon the results of a written examination, the top thirty percent of competitors would proceed to the next phase, the promotional assessment center. According to the proposal, assessors would be comprised of police officials from a jurisdiction other than Detroit who hold a rank equivalent to Inspector or higher. The assessment center would involve exercises to measure the following criteria: information gathering analysis, decision making, supervision, training, interpersonal skills, scheduling, planning and organizing, communication skills, and personal maturity. The written examination would be weighted at fifty-five (55) percent and the assessment center at forty-five (45) percent with promotions being made in descending order based upon total score.

The City opposed both demands and requested the panel to maintain the status quo.

Arbitrator Scott denied the demand to place a numerical limitation on "charter" promotions and decided that "the present procedures governing promotions of [LSA] members to the ranks of

Sergeant and Lieutenant shall continue in operation."<sup>2</sup> Arbitrator Scott also denied the Association's request that "charter" promotions could be grieved in the grievance procedure.

However, over the dissent of the City delegate to the panel, Arbitrator Scott did change the procedure for selecting Inspectors. In reliance on the statutory authority allowing him to fashion an award on non-economic matters other than the positions set forth by either party, he rejected the proposals of both the Association and the City in favor of a promotional model that he fashioned. The Scott award is based on the following points.

1. No written examination or promotional assessment center, as requested by the LSA, will be required.
2. The Chief of Police may consider only candidates who have held the rank of Lieutenant continuously for two years and have submitted a request for appointment to the rank of Inspector.
3. "Promotions of Lieutenants so qualified shall be made in the order of their seniority unless the City documents that a Lieutenant it promotes to the Inspector classification has some special skill or attribute not possessed by other Lieutenants eligible for promotion, and that the City has based its out-of-seniority-order promotion on need to employ that skill or attribute."
4. Out-of-order promotions are not subject to the grievance procedure.

Based on his award, it is reasonable to surmise that Arbitrator Scott was persuaded that a written examination followed by an assessment center administered by executives from police agencies outside Detroit, as proposed in the Association's demand, should not be adopted. However, at the

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<sup>2</sup>The panel did require that the Department document its reasons for a "charter" promotion and to provide the documentation used to justify the promotion to the Association. However, this requirement merely formalized the longstanding practice under which the LSA has received a copy of the written documentation given to the Board of Police Commissioners upon request.

same time, he concluded that the discretion traditionally exercised by the Chief of Police should be limited in favor of a presumption of seniority. In order to deviate from seniority order, the Chief would be required to articulate "some special skill or attribute" coupled with the operational need for that special skill or attribute that justified the selection of a less senior candidate. Finally, Arbitrator Scott precluded arbitral review of the sufficiency of the Chief's justification, although he envisioned the documentation requirement as creating "a record [the LSA] may use in future negotiations if it feels that promotions have been unfair to Lieutenants not promoted in seniority order." His rationale is summarized by the following statement: "With the evaluation that went into making a Lieutenant first a Sergeant and then a Lieutenant, no reason appears in the record to show why promotions to Inspector should not be made in order of the seniority of Lieutenants; unless the City adduces reasons to support any promotion which it feels worth the risk of alienating the feelings of its high-ranking officers."

This background places the nature of the present demand with regard to the rank of Inspector in perspective. Succinctly, in this proceeding the City seeks to restore the status quo ante that existed before the Scott award. On the other hand, the Association no longer advocates the combined written test/assessment center model it sought in the prior Act 312 proceeding, but instead seeks to maintain the Scott award on Inspector promotions but to expand it in order to enable "individuals who believe they have been unfairly by-passed for promotion" at **any** rank to seek "redress through the grievance procedure."

Both aspects of the promotion issue have been vigorously litigated.

The Department has offered a number of arguments in support of its position. With regard

to the "charter" promotion demand, the City relies on the ruling of Arbitrator John Swainson who twice rejected earlier demands by the LSA to change the Charter provision permitting "charter" promotions. Arbitrator Swainson wrote:

. . . the proponent of change in a system that has been in place for a substantial period of time must present a compelling rationale to establish a threshold need for change. Here the Union, through testimony and argument, has alleged that a number of such "Charter promotions" have been made on the basis of favoritism or were politically motivated, and therefore the basis for such discretionary promotions must be eliminated. But even if all the Union allegations are considered to be true, it still remains clear that the number of such promotions is still but a small fraction of the total. In a department of approximately 5,000 uniformed officers, one or two such Charter promotions made by the chief with the approval of the Board on an average annual basis, does not demonstrate a need for a change. There is no allegation that such promotions have been systematically made to circumvent the promotional requirements of the charter, nor does the Union allege that the basis purpose for making such promotions to be non-existent. This exception as provided in the charter, a document designed by the charter commission over a period of years, and approved by the citizens of Detroit, cannot be discredited and eliminated without some showing of substantial need.

In that regard, the City maintains that the Association acknowledged before the Charter Commission and the Scott panel that there could exist "sound grounds" for the Chief to promote a person out of order to fulfill particular needs in the organization. The City witnesses emphasized that the Charter Revision Commission attempted to address the concerns expressed by the LSA by changing the approval requirement from a simple majority to a super-majority of the Board of Police Commissioners and that this safeguard, designed in the words of the Charter Revision Commission "to provide equity to all persons affected," has not been shown to be inadequate in the relatively short time that it has been in effect. The Chief of Police testified that he is cognizant of morale concerns that "charter" promotions may engender and that he appreciates the need to use the

authority judiciously. The Chief believes that the issue should not be whether the authority to make "charter" promotions could be abused but whether it has been abused. Members of the Board of Police Commissioners also testified that they take their oversight role seriously and demand that the Chief of Police support his requests for "charter" promotions with adequate justifications that are properly scrutinized.

The Department witnesses also contended that the LSA proposal for arbitral review was unsound and unworkable. The LSA's demand envisions a right to appeal "charter" promotion decisions to the ranks of Sergeant and Lieutenant. However, the Department points out with regard to aspirants to Sergeant, the vast majority of those persons are represented by the DPOA, not the LSA.<sup>3</sup> The Department maintains that since the DPOA is not seeking any change with regard to promotions in its Act 312 proceeding, granting the LSA demand would create the anomalous result that a small group of candidates (Investigators) who are bypassed could file a grievance but candidates in a much larger group (Police Officers) could not. The Department also asserted that the LSA demand is unworkable because (1) it could potentially permit dozens of "individuals" to challenge a single promotion and (2) it sets forth no workable standard for the arbitrator to decide whether someone had been "unfairly" bypassed. The Department witnesses strongly insisted that the Chief of Police has not abused his authority in making "charter" promotions and expressed its ability to demonstrate the appropriateness of any particular promotion that the LSA claimed was

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<sup>3</sup>According to the City, as of May 31, 1999, there were 2960 police officers and 202 investigators. While not all of these persons would necessarily meet the seniority eligibility requirement to take the Sergeant examination, the numbers demonstrate that many more persons who are represented by the DPOA are potential candidates for promotional consideration to Sergeant than are represented by the LSA.

unjustified.

The Department also presented extensive testimony in support of its demand that this panel change the Scott award on Inspector promotions. It will suffice to summarize the main points.

The Department argues that the Scott award is not entitled to the customary deference accorded to prior arbitration decisions because the arbitrator established the seniority-based promotional criteria despite a complete absence of record support. According to the Department, no witness, including Association witnesses, testified or even implied that seniority was a proper basis to select individuals for the Inspector rank. Since no evidence was introduced by either party on whether seniority was a proper basis for such promotions, and Arbitrator Scott is not himself experienced or trained in the field of police administration, the Department contends that he abused his discretion. In support of that assertion, the Department notes that the LSA's own proposal did not give any weight – much less presumptive weight – to seniority except to establish a threshold eligibility requirement of two years experience as a Lieutenant. Under Act 312, even though the arbitrator is free not to adopt either party's proposal on a non-economic issue, his decisions are to be "supported by competent, material, and substantial evidence on the whole record." M.C.L.A. § 423.240. The Department asserts that not only was there no evidence before Arbitrator Scott to support the conclusion that seniority is a proper basis to make promotions at that level of the organization, the Association has still not provided such evidence in this proceeding. The Department responds to the statement in the Scott award found at page fourteen that "no reason appears in the record to show why promotions to Inspector should not be made in order of seniority of Lieutenants"

by arguing that no evidence in that regard was presented because no one had even hinted that

seniority should be considered, the Department could not predict the course of the arbitrator's unarticulated thinking, and it is not customary to present evidence on or debate a point not understood to be in contention. The Department also offered comparative evidence, which it maintains is uncontradicted, that seniority is not used to select individuals at equivalent levels in other police departments.<sup>4</sup> It maintains that the inability to point to another police agency in the United States that selects persons in equivalent ranks on the basis of seniority, or for that matter on the basis of "special skills or attributes," is strong substantiation of the City's conclusion that the Scott award is not well conceived and fundamentally unworkable.

The Department also criticizes the Scott award for negating the need for Inspectors to attain advanced educational credentials. All persons selected for appointment to Inspector have for some time had substantial college. The problem with this aspect of the award, according to the City, is evidenced by the fact that the LSA itself recognized that a minimum of four years of college should be required for promotional consideration. The Department noted that the arbitrator did not explain the rationale for failing to include an educational requirement that the Department has followed and the union itself deemed appropriate.

The Department considers Arbitrator Scott's reliance on "some special skill or attribute" as a promotional criterion fundamentally and irremediably misconceived. The Department asserts that in selecting persons to serve in key leadership positions, the objective should be to select the most

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<sup>4</sup>The Association has pointed out that the Michigan Employment Relations Commission ruled that Inspectors are eligible to collectively bargain and are not "executives" as that term is defined in the Public Employment Relations Act. While not disputing that statement, the Department notes that Inspectors are high ranking commanding officers who outrank more than ninety-eight percent of the Department. In recognition of the MERC ruling, the panel has not referred to individuals holding the rank of Inspector as "executives."

competent and qualified person who can meet the goals of the organization. The Department maintains that it is utterly unreasonable to necessarily equate seniority with being the most qualified and competent person. It points out that on cross-examination, the Association witnesses conceded that the most qualified Lieutenants should be elevated to Inspector. In the Department's view, deciding whether a person has a "special" skill or attribute that is not possessed by other candidates misses the mark by a wide measure in properly evaluating a person's potential for a high-ranking police position. Leaders are customarily selected based upon an appraisal of their overall abilities and potential, not on the basis of any particular "special" skill or attribute. The Department contends that a shortcoming in the Scott award is demonstrated by the failure to take account of precisely the type of factors that the LSA itself identified as appropriate for those who will command the agency: information gathering and analysis, decision making, supervision, training, interpersonal skills, planning and organizing, communication skills, and personal maturity. These criteria, among others, are universally considered to be relevant in selecting high-ranking police officials and should be appropriately considered in the selection process in Detroit. According to the Department, what the LSA advocated as appropriate before Arbitrator Scott it disparages in this proceeding. The Department maintains that by requiring the articulation of "special skills or attributes" as opposed to traditionally considered skills and attributes, the Scott award places artificial and inappropriate constraints on selection. Further, this problem is compounded by the second requirement of showing that the special skill or attribute is not possessed by a more senior lieutenant. The Department asserts that this approach is illogical since all Lieutenants possess, at least to some extent, traits such as decision-making or interpersonal and communication skills. The pertinent inquiry in selecting top leadership should not be whether candidates do or do not have such skills, but qualitative



judgments about the relative strength of the skills in comparison to other candidates. Furthermore, according to the Department, the modification requested by the Association in this proceeding would only compound the problem since the arbitration would inevitably focus on what it views as the superfluous question of whether a skill or attribute is "special" or "ordinary."

The Department asserted that the Scott award is fundamentally flawed for another reason. According to the Department, a careful reading of the award demonstrates that it contains no provision to disqualify an unsuitable candidate. While the award does allow a senior Lieutenant to be bypassed in favor of a less senior Lieutenant if the less senior Lieutenant meets the qualification of having a special skill or attribute, this is the only corrective mechanism to overcome seniority. What does it do, the Department asks, when it does not claim that the lower seniority Lieutenant has "special" skills, but decides that it must bypass the most senior Lieutenant because he is simply unqualified to be an Inspector? The Department asserts that there is no mechanism in the Scott award for the Chief to conclude that a particular Lieutenant lacks the requisite qualifications for further advancement based upon a documented record of marginal or even inferior performance. In that regard, the Department pointed out that the spokesman for the Association on this issue testified that he interpreted the Scott award to mean that the promotion must be given to the most senior "marginally functioning" Lieutenant. It contends that the Association witness also conceded that nothing in the Scott award deals with the disqualification of an unsuitable Lieutenant. In the Department's view, it would be utterly incomprehensible for a reasonable person to deny that a particular Lieutenant with top seniority might be unqualified for further advancement. The Department concludes, therefore, that it is illogical not to have a means of disqualifying an unsuitable Lieutenant.

## *DISCUSSION*

A majority of the panel concludes that the Department's arguments with regard to appointments to the rank of Inspector are persuasive and should be accepted. Accordingly, the City's demand that the Chief of Police regain the right to make appointments to the rank of Inspector in accordance with the provisions of the Charter is granted. Furthermore, the panel declines to permit challenges to the appointment of Inspectors in the grievance process.

This decision is based on a careful examination of the Scott award and more importantly the evidence in this record. The statute mandates the consideration of practices in public and private employment, M.C.L.A. §423.239, and it appears from the record evidence that no police agency selects officers at the commanding officer level by using either seniority or "special skills or attributes." The objective of selecting the most qualified candidate is a legitimate objective and while seniority is important, a strict application of seniority is not invariably consonant with the selection of the most qualified administrator. The present contractual provision does not include a specific procedure for disqualifying a Lieutenant who is unqualified for further advancement and it does not contain a requirement for college education. Finally, the record is devoid of specific evidence that the Chief of Police has abused his discretion in selecting Inspectors or that unqualified persons have been selected. To the contrary, it appears that the persons who have been selected have been very qualified, impressively credentialed, and highly motivated individuals who are competently performing as commanding officers. A majority of the Panel is persuaded that the City's demand is more in line with the criteria set forth in the statute than the Association's demand and that it should therefore be granted.

A majority of the panel has also decided to significantly limit the present authority of the Chief of Police to make "charter" promotions, although not precisely in the manner requested in the Association's demand.

Nevertheless, the Association will finally, as the result of this award, prevail in its longstanding efforts to significantly curtail the discretion of the Chief to make "charter" promotions. The award will be limited to "charter" promotions to Lieutenants since only DPOA members compete for promotion to Investigator and the number of police officers who compete for promotion to Sergeant is perhaps ten times greater than the number of Investigators who do so. The panel understands the significance of granting this demand since the first three attempts (twice before Arbitrator Swainson and once before Arbitrator Scott) failed. The authority of the Chief of Police to make "charter" promotions to the rank of Lieutenant shall be limited in the following respect. No more than one "charter" promotion shall be made for thirteen (13) promotions to that rank. For purposes of applying the provision, the permissible number of "charter" promotions will be based upon the **cumulative** number of promotions in that rank made after the effective date of this award.<sup>5</sup> In view of the fact that the Chief's authority to make

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<sup>5</sup>In order to avoid the potential for misunderstanding, the following examples are provided.

**Example 1.** On January 1, 2000, the Chief of Police promotes 10 Sergeants to Lieutenant. None are "charter" promotions. On June 1, 2000, the Chief of Police promotes 10 more Sergeants to Lieutenant. None are "charter" promotions. On December 1, 2000, the Chief of Police promotes 6 Sergeants to Lieutenant. If he chooses, the Chief may make two "charter" promotions to Lieutenant because the cumulative total of "non-charter" promotions is 26.

**Example 2.** On January 1, 2000, the Chief of Police promotes 16 Sergeants to Lieutenant, including one "charter" promotion. On June 1, 2000, the Chief of Police promotes 5 Sergeants to Lieutenant. No "charter" promotion is allowed until an additional 6 "non-charter"

"charter" promotions will be numerically limited, there will be no contractual right to challenge such promotions in the grievance process.<sup>6</sup> This award does not change the provision in Section 7-1114 of the Charter which permits an appeal to the Board of Police Commissioners.

It is important to note that the panel has acted to curtail the permissible number of "charter" promotions based upon factors that are unique to this proceeding at this time and particularly with reference **only** to this rank. The result is not based in any form or fashion on a finding that the Charter authority has been abused. For these reasons, the panel does not believe that its action should be construed as an appropriate precedent for resolving the issue in the DPOA bargaining unit. The Chief and other witnesses made it unmistakably clear that the overturning of the Scott award on Inspectors had the highest priority and the decision to impose a numerical limitation to "charter" promotions in the rank of Lieutenant cannot be divorced from the unique context of this proceeding.

The Chairman believes that an additional point is appropriate. These comments do not necessarily reflect the views of the other members of the panel. This case has demonstrated that both of these promotion issues are highly contentious and extremely important to the parties. Understandably, the issues evoke strong reactions and do not necessarily encourage the voluntary settlement of other important bargaining issues. Both sides have expended significant sums and devoted substantial time and effort on the promotion issues. The clash over "charter" promotions has gone on for many years. In the considered view of the Chairman, a substantial hiatus is in the larger

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promotions to Lieutenant are made.

<sup>6</sup>Of course, the LSA would be permitted to grieve or take any other action it deemed appropriate to protest the alleged failure of the Department to limit "charter" promotions as required in this award.

interest of both the management and membership of the Department. Based upon this award, the Association has achieved one of its major objectives in curtailing the Chief's right to make "charter" promotions. On the other hand, the Chief of Police has regained the discretion to select persons in the critical rank of Inspector. An observer would not be entirely off base were he or she to conclude that the Association has in effect "bought and paid for" the change in "charter" promotions and the Department has done the same concerning appointments to Inspector. In light of this, although not formally a part of the award, the Chairman believes that it would be out of bounds for either party to make further demands on the issue of (1) promotion to Inspector or (2) "charter" promotions, absent mutual consent, for the next two contract periods.

With the exception of the preceding paragraph, both the City panelist and the Association panelist have indicated concurrence in this part of the award. However, a word of explanation is in order. The Association panelist vociferously disagreed with the award on appointments to Inspector. The same is true with regard to the City panelist's position on "charter" promotions. However, since these promotion issues have been joined for consideration, and in order to have a majority vote for the portion of the award that supports their position, both panelists have signed the opinion as concurring in the decision by the Chairman notwithstanding the fact that they take serious exception to aspects of it.

#### ***AWARD***

1. Appointments to the rank of Inspector shall be made at the discretion of the Chief of Police in accordance with his authority under the City Charter.
2. The authority of the Chief of Police to make "charter" promotions to the rank of Lieutenant shall be limited in the following respect. No more than one "charter" promotion to Lieutenant shall be made for

thirteen (13) promotions to that rank. For purposes of applying this provision, the permissible number of "charter" promotions will be based upon the cumulative number of promotions in that rank made after the effective date of this award.

### ***RESIDENCY***

Subsequent to the closing of the record in this matter, the legislature passed, and the governor signed, a law which prohibits residency as a condition of employment for contracts entered into after March 9, 2000. The statute states:

#### **PUBLIC OFFICERS AND EMPLOYEES-RESIDENTIAL REQUIREMENTS-EMPLOYMENT CONTRACTS**

#### **PUBLIC ACT NO. 212**

#### **S.B. No. 198**

AN ACT to restrict certain governmental entities from requiring individuals to reside within certain geographic areas or specified distances or travel times from their place of employment as a condition of employment or promotion.

*The People of the State of Michigan enact:*

#### **M.C.L.A. § 15.601**

Sec. 1. As used in this act:

- (a) "Public employer" means a county, township, village, city, authority, school district, or other political subdivision of this state and includes any entity jointly created by 2 or more public employers.
- (b) "School district" means a school district, local act school district, or intermediate school district as those terms are defined in the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or a public school

academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

**M.C.L.A. § 15.602**

Sec. 2. (1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2) Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance shall be 20 miles or another specified distance greater than 20 miles.

(3) A requirement described in subsection (2) does not apply to a person if the person is married and both of the following conditions are met:

(a) The person's spouse is employed by another public employer.

(b) The person's spouse is subject to a condition of employment or promotion that, if not for this section, would require him or her to reside a distance of less than 20 miles from the nearest boundary of the public employer.

(4) Subsection (1) does not apply if the person is a volunteer or paid on-call firefighter, an elected official, or an unpaid appointed official.

**M.C.L.A. § 15.603**

Sec. 3. This act applies only to employment contracts entered into, renewed, or renegotiated after the effective date of this act, in accordance with the prohibition against impairment of contracts provided by section 10 of article I of the state constitution of 1963.

Approved December 22, 1999.

Filed December 22, 1999.

Since this award will be effective after March 9, 2000, residency can no longer be included in the labor contract between the parties. Section 9(a) of Act 312 requires an award to comport with "the

lawful authority of the Employer". As a result, the award on residency must comply with 212 PA 1999.

The Union in a post-hearing motion requested that the panel decide that it no longer had jurisdiction to consider residency. This award renders that motion moot.

#### **AWARD ON RESIDENCY**

The issue of Residency shall be governed by Act 212 PA 1999



## ECONOMIC ISSUES

### *PENSIONS*

The evidence reveals that the Police and Fire Pension Fund is overfunded by \$349,159,059.00, or roughly 10%. Because of this overfunding, the record indicates that actuarial adjustments are likely to be made, which will substantially reduce the Employer's contribution rate.

### UNION ISSUE NO. 8

#### *DISTRIBUTION OF THE OVER FUNDING*

This is the most important issue for the Union in the pension area, and perhaps in the entire Act 312 proceeding. It seeks to have pension surpluses that exceed \$100,000,000.00 distributed as follows: one-third of the surplus to the Employer in the form of reduced normal cost contributions; one-third to retired members of the system and other beneficiaries in the form of a 13th check, and one-third to the active employees to be deposited in a separate pension trust account.

An employee of the pension board, who testified for the Union, indicated that the Union's proposed distribution would permit the Employer to reduce its contribution rate in the future, and that the distribution would not lead to underfunding of the pension system. The City's witnesses, including an actuary, testified that the Union's proposal is dangerous and could lead to serious underfunding, and a commensurate increase in the Employer's contribution rate.

The Employer witnesses attacked the appropriateness of the methodology used by the Union witness, including the assumed interest return rate and the growth of the payroll.

Prior to this proceeding, the City's General Pension Fund distributed its surplus. This has led to the current underfunding of the General Pension Fund Plan.

After a careful review of the record, it is determined that panel lacks sufficient and appropriate information to make an informed and correct decision involving hundreds of millions of dollars. Accordingly, the Union's offer should be rejected.

### **AWARD**

The Union's offer concerning distribution of surplus funds is rejected and the City's offer to maintain the status quo is accepted.

### **UNION ISSUE NO. 1**

#### ***REDUCTION IN FORCE***

In this pension issue, the Union seeks to allow members who have been laid off, to retire on their 25th anniversary, notwithstanding the time of their layoff. However, their benefits will only include the time they worked, and not the time of the layoff. Gabriel Roeder, in its July 10, 1998 actuarial report to the LSA on this issue, indicated that the benefit will cost the Employer between .24% and .47% of payroll.

Due to the anticipated reduction in the City's contribution rate resulting from the overfunding of the plan, it is probable that, even after the granting of this and the other pension improvements awarded herein, the City's contribution rate will be less than it was without those new benefits prior to the rate reduction.

### **AWARD**

The Union's last best offer on Union Issue No. 1, reduction in force, is granted.

## UNION ISSUE NO. 6

### *INCLUSION OF LONGEVITY PAY IN FINAL AVERAGE COMPENSATION*

The LSA in this offer seeks to have longevity pay included in FAC for pension purposes. The pension actuary has costed this benefit at 1.3% of payroll.

As noted, it is probable that the City will be able to pay for this benefit, due to the pension fund overfunding, without an increase in its pension contribution rate. The record would support an increase in this pension benefit for the Union. As a result, the Union's last best offer on the inclusion of longevity payments and FAC should be awarded.

### AWARD

The Union's last best offer on the inclusion of longevity pay in FAC is awarded.

## UNION ISSUE NO. 7

### *COMPOUNDING OF PENSION ESCALATOR*

Currently, the contract in Article 51(l) provides for a pension escalator of 2.25%, that results in retirees having their benefits multiplied by that amount each year. The Union's proposal would require that the escalated payments be compounded, which would result in an increased payment to retirees. The actuaries have costed this benefit at 1.58% of payroll.

The increases represented by the last best offers of the Union on the pension issues, represent an important and reasonable benefit for this command group, where pensions are a primary issue. There is a current 10% surplus in the plan, which should shield the City from market reversals, even if the pension requests of the Union are granted.

So long as the City is granted the appropriate actuarial contribution rate, the significant pension improvements sought by the Union in this issue and the others are reasonable under Section 9 of Act 312.

### **AWARD**

The Union's last best offer on compounding of the pension escalator is granted.

### **CITY ISSUE NO. 11**

#### ***INCREASE EMPLOYEE CONTRIBUTION TO THE PENSION FUND***

Presently, LSA members make a 5% contribution to the pension plan. However, employee contributions are returned upon retirement, in addition to interest. This means that the value of the 5% employee contribution to the City, in terms of reducing its normal costs, is only .085%. An increase to an 8% employee contribution, which the Employer seeks in this issue, would raise the real rate of contribution to 1.5% of wages.

If the Employer's contribution rate is reduced to the appropriate level, the Employer would not need additional relief in the form of an 8% employee contribution, which would only have the real effect of lowering its pension contribution by less than 1%. Consequently, an 8% employee contribution would not be appropriate at this time.

### **AWARD**

The status quo should be maintained on employee contribution to the pension plan.

### SUMMARY OF PENSION ISSUES

The increases sought by the Union represent a fair balance to the overfunding in the pension fund. If the Employer receives the appropriate contribution rate, it can fund the pension increases sought by the Union, while maintaining the integrity of the fund for future retirees without harming the financial position of the City. Pursuant to Section 9(h) of Act 312, an award of the pension increases is the result that comports with the Act 312 history of the parties and the financial exigencies of the City.

## ECONOMIC ISSUES

### UNION ISSUE NO. 9

#### *WAGES; CITY ISSUE NO. 13*

The Union proposes wage increases over the years of the contract of 3%, 5% and 5%; the City proposes 2%, 3% and 4%, in addition to a cash bonus formula, should a general fund surplus exist.

The Union cites, among other things, Detroit's emergence as a world class city in justifying its offer. It also points to the casino gambling revenue, and the difficulty and importance of the work of lieutenants and sergeants and investigators. The City argues that there has been a loss of revenue from the state, the third casino has not commenced operation, and there will be losses occasioned by the legislature's residency ruling.

The LSA contract provides for a guaranteed differential between DPOA and LSA wages. This means that an LSA member is guaranteed the DPOA wage that results from the DPOA Act 312 , plus the differential.

If this panel accepts the Union's wage offer, it is still possible for the LSA to receive even higher wages, if the DPOA achieves higher wages in its 312. This is because of the guaranteed differential between the DPOA and the LSA. If, however, the City prevails with its wage demands in the DPOA proceeding, the LSA will do no worse than the City's offer in this matter. Further, since the DPOA's wage offer may be higher than the LSA's, it is possible that the LSA will eventually receive more than it is offering in this 312.

Given the uncertainty of the result of the DPOA Act 312, and the historic relationship between the DPOA wages and those of the LSA, the LSA's offer should not be awarded pursuant to paragraph

(h) of Section 9 of Act 312.

I would emphasize, however, that I am not endorsing the Employer's wage proposal or rejecting the Union's; rather, I am completely neutral, and the DPOA 312 panel should make its decision on wages completely *de novo*.

#### **AWARD**

For the foregoing reasons, the Union's offer on wages is rejected and the Employer's is accepted.

## UNION ISSUE NO. 10

### *PROPOSAL TO REDUCE STEPS TO MAXIMUMS AND TO INCREASE PERCENTAGE DIFFERENTIAL*

The LSA's offer is to retain the status quo for investigators, who received increases in the prior Scott award. Its present offer would delete Steps 4 and 5 for sergeants, and would move them to the maximum salary after three years. Also, the Union asks for a 1% increase in the differential at Step 2, and at Step 3, the percentage would increase from 22% to 24% after three years, rather than the present six years that it takes to get them to 24%.

For lieutenants, the LSA asks that Steps 4 and 5 be eliminated and that the percentage for Step 2 be increased from 36% to 37%. It also asks that the percentage be increased from 37% to 39% at Step 3.

The cost of the Union's offer is approximately 0.3% of salary.

The Union's demand on this issue creates the same problem as its wage offer. At this point the LSA panel doesn't know what the DPOA Act 312 panel is going to award for wages. A high DPOA wage award might make a percentage differential increase inappropriate; conversely, a lower DPOA wage award might make the differential offer more reasonable.

Because of the uncertainty presented by the DPOA wage award, the Union's offer on the differential should not be awarded. However, it should be emphasized that I am neutral on the merits of the LSA's proposal.

### AWARD

The Union's offer to reduce steps to maximum and to increase the differential is rejected.



## **CITY OFFER NO. 14**

### **TO REQUIRE A SATISFACTORY PERFORMANCE EVALUATION FOR MOVEMENT ALONG STEPS**

In this offer, the City seeks to require LSA members to receive a satisfactory performance evaluation before they can be advanced to the next salary step. It is maintained that this proposal will enhance the performance of the department.

The City did not present any data to support its LBO. Further, Commander Falvo indicated that in the last performance rating, 100% of the LSA members scored 3.0 or better. This would constitute a satisfactory score. Consequently, there isn't a demonstrated need for the City's offer on performance evaluations and it therefore should be rejected.

### **AWARD**

The City's LBO on performance evaluations is rejected.

## UNION OFFER NO. 2

### *CHANGE LONGEVITY TO A PERCENTAGE CALCULATION BASED UPON 1-2-3-4% OF BASE SALARY*

The Union in this issue seeks to amend the contract to increase longevity pay at the first step from \$250.00 to 1% of base salary, to increase longevity pay at the second step from \$500.00 to 2% of base salary, to increase longevity pay at the third step from \$750.00 to 3% of base salary, and to increase the fourth step from \$750.00 plus 1% of base salary to 4% of base salary.

The cost of the Union's longevity proposal is 1.3% of salary. The Employer is concerned that an increase in the longevity pay will have an unknown effect on the employer's pension contribution

Longevity pay is a form of direct compensation, in the same manner as wages. Further, as a result of this Award, longevity pay will be included in Final Average Compensation for pension purposes. The evidence suggests that the Employer will be able to pay the increased pension cost for an increase in longevity pay without an increase in its pension contribution rate. Also, improvements in the City's overall financial health by the third year of the contract make this increase appropriate at that time.

As previously noted, the wages of the Lieutenants and Sergeants will be dependent upon the award in the DPOA 312, due the guaranteed differential. However, the record supports that a separate longevity increase in the third year of the contract is appropriate.

### AWARD

The Union's Longevity Pay offer is awarded in the third year of the contract.

## UNION ISSUE NO. 4

### *ADD EASTER SUNDAY AS A PREMIUM HOLIDAY*

The LSA currently has nine premium holidays, where it receives double time plus regular pay if an officer works the holiday; there are also 3.5 straight time holidays, where members are paid straight time for the excused time. The Union requests Easter Sunday as an additional premium holiday. The cost to the City of this benefit would be .6% of payroll. The DPOA does not have Easter Sunday in its contract as a premium holiday; the firefighters do have Easter Sunday as a premium holiday.

Again, the uncertainty concerning the ultimate DPOA Act 312 wage award makes it inappropriate to award this offer by the Union. The addition of an additional premium holiday should be considered in the context of the total wages and benefits that are awarded. Depending upon the DPOA Act 312 award, a premium Easter holiday may or may not be appropriate. I am neutral on this issue, but cannot award the premium holiday because of the uncertainty of the DPOA Act 312 award.

### AWARD

The Union's last best offer to add Easter Sunday as a premium holiday is rejected.

## UNION OFFER NO. 5

### *INCREASE THE UNIFORM ALLOWANCE TO \$750.00*

Currently, the cleaning allowance is \$250.00; the Union seeks to increase the allowance to \$750.00. The cost to the City is approximately 1% of payroll.

Absent evidence on the record that a \$500.00 increase is necessary to meet inflationary increases in cleaning costs, the \$500.00 proposed by the Union becomes another form of a potential wage increase for the LSA members. Again, the uncertainty of the ultimate DPOA wage increase is of critical concern. Depending on that award, the increase sought by the Union may or may not be relevant as part of an overall economic package. Without information concerning the final DPOA wage rate, the LSA's offer cannot be granted.

### AWARD

The Union's offer on an increase in the uniform allowance is rejected.

## SICK LEAVE ISSUES

### UNION ISSUE NO. 3

#### *ARTICLE 35, SICK LEAVE*

The Union in this offer would uncap the seniority sick bank, which is currently capped at 125 days, and which would take a member 25 years to reach. The City contends that the Union has failed to prove that the department will receive an attendance gain, if the sick bank is uncapped. The Union feels that there are situations where high seniority officers could benefit from additional sick days in their bank.

This offer would seem to encourage high seniority officers to stay with the department, rather than retiring, by offering the additional protection against illness. It would seem to benefit the department to have high seniority command officers remain, and accordingly, the Union's offer should be adopted.

### AWARD

The Union's Offer No. 3 is accepted.

## CITY ISSUE NO. 1

### *UNAVAILABILITY OF SENIORITY SICK DAYS FOR USE AS EMERGENCY OR EXCUSED TIME DAYS OR TO COVER PERIODS OF NON-CHRONIC ILLNESSES*

The City seeks to limit the use of seniority sick days for hospitalization or for long-term illnesses. This proposal, it is argued, would improve attendance because employees would be less inclined to draw on their current sick bank for intermittent illnesses.

There isn't sufficient evidence to conclude that LSA members have abused the use of their sick banks. Absent competent proof of such conduct, the Employer's proposal should be rejected.

### AWARD

The City's Issue No. 1 is rejected.

## **CITY ISSUE NO. 2**

### ***BONUS VACATION DAYS TO BE DEDUCTED FROM SICK BANK BEFORE COMPENSATORY TIME***

The City identifies a problem wherein bargaining unit members use bonus vacation days at the end of the fiscal year to avoid losing them. Under the Employer's proposal, Employees would have to draw their bonus days before they could use comp time. Absent any demonstrable harm to the bargaining unit, this proposal should be granted.

### **AWARD**

The City's last best offer on the use of bonus vacation days is granted.

### CITY ISSUE NO. 3

#### ***REQUIREMENT TO DEDUCT PERSONAL, EMERGENCY AND EXCUSED DAYS FROM CURRENT SICK BANK***

In this proposal, the City seeks to require the LSA to take their personal, emergency and excused days from their current sick bank as opposed from either their current or seniority sick bank. This proposal, it is argued by the City, would encourage attendance. It is emphasized that this proposal is in effect for general City employees.

Absent proof on the record that LSA members are abusing their current sick leave bank, this proposal should not be granted. Further, while general City employees may have this requirement, the closest internal comparables, the DPOA and the firefighters, who are tied to the LSA on contract issues, are not covered by the Employer's proposal.

#### **AWARD**

The Employer's last best offer for Issue No. 3 is rejected.



## **HEALTHCARE LAST BEST OFFERS**

### **CITY ISSUE NO. 4**

#### ***EXCLUDE VESTED RETIREES AND SPOUSES FROM HEALTHCARE COVERAGE***

In this offer, the City seeks to eliminate healthcare coverage for deferred vested retirees after July 1, 1999. This proposal, it is argued, would create parity with civilian City employees and would encourage officers to stay with the department. This is clearly a cost savings issue for the Employer. Because it is unclear at this time what the DPOA 312 panel is going to do with wages, the importance of additional cost savings for the Employer is unknown. Consistent with my awards on the Union's economic issues, the Employer's proposal should be denied, with a neutral recommendation relative to its acceptability.

### **AWARD**

The City's Issue No. 4 on excluding vested retirees and spouses from healthcare coverage is rejected.

## **CITY ISSUE NO. 5**

### ***REQUIRE BARGAINING UNIT MEMBERS TO PAY THE COST OF SPONSORED DEPENDENT COVERAGE***

The City, in an effort to seek parity with general City employees, requests that LSA members be required to pay for the healthcare coverage of sponsored dependents. There is no indication that the DPOA or the firefighters, who are the closest internal comparables, pay for this coverage.

This is another issue where gains, if any, made by the LSA as the result of the DPOA Act 312 award could be relevant. Since it would be speculative to consider the results of the DPOA 312 award, the Employer's proposal should be denied at this time. This is with a neutral recommendation regarding its merits, insofar as the uncertainty of the DPOA award is the basis for rejecting the proposal.

### **AWARD**

City Issue No. 5 is rejected.

## CITY ISSUE NO. 6

### *50/50 PREMIUM SHARING OF HEALTHCARE INSURANCE COST INCREASES*

In this issue, the City seeks to require a cost sharing arrangement for new premium increases. It is attempting to lower overall premium costs, while achieving some parity with the civilian employees, who already have cost sharing with the City. The police and fire units, however, do not have a cost- sharing arrangement.

The City's proposal represents a give-back for the LSA. Because the amount of wage increases for the LSA may be dependent upon the DPOA proceeding, it cannot be determined at this time if a give-back is appropriate as a quid pro quo for gains achieved as the result of the DPOA 312. Certain economic proposals by the LSA have been rejected in this proceeding because of the uncertainty of the DPOA Act 312 award, which may determine the wages for LSA members, based upon the guaranteed differential that is built into the contract. Similarly, the City's give-back request in its proposal No. 6 should be rejected with a neutral recommendation.

There is a further problem with the City's proposal. The precise cost of the 50/50 sharing arrangement hasn't been explained through expert testimony. Accordingly, it would not be appropriate to award this benefit to the City, without being apprised of the potential cost to LSA members.

### AWARD

The City's Issue No. 6 on 50/50 premium sharing is rejected.

## CITY ISSUE NO. 7

### *THE RIGHT TO AMEND HEALTHCARE PROVIDER ARRANGEMENTS*

In this proposal, the City is asking for the right to change healthcare providers to save costs, so long as there isn't a material change in healthcare benefits.

There isn't evidence that internal or external comparables would support this proposal. Further, there isn't expert testimony to suggest that a change in healthcare carriers could be accomplished without creating significant problems, potential litigation, and grievances for the parties. As a result, the City's offer should be rejected.

### AWARD

The City's issue on the right to amend healthcare providers is rejected

## CITY ISSUE NO. 8

### *PROPOSAL FOR PRE-TAX EMPLOYEE HEALTHCARE CONTRIBUTIONS*

In this proposal, the City asks that the employee healthcare contributions be considered pre-tax. This should be considered a non-economic issue that is best remanded to the parties for resolution, insofar as it appears to be of mutual benefit to them.

### AWARD

The issue of pre-tax employee contributions is remanded to the parties for resolution as a non-economic issue.

**CITY ISSUE NO. 9**

***\$950.00 PREMIUM OPT OUT FOR  
HEALTHCARE COVERAGE***

The City in this proposal seeks to allow employees, who are eligible for healthcare coverage outside of the LSA, to opt out of LSA coverage in exchange for \$950.00. A similar plan is in the DPOA agreement.

This plan should be remanded to the parties for resolution as a non-economic issue, insofar as it appears to be of mutual benefit.

**AWARD**

The \$950.00 employee health insurance premium opt out proposal is remanded to the parties as a non-economic issue.

**CITY ISSUE NO. 10**

***PROPOSAL TO ELIMINATE DUPLICATE  
HEALTH INSURANCE COVERAGE***

This proposal would require married City of Detroit employees to select one healthcare plan to avoid duplicate coverage. This proposal was granted in the past DPOA award.

Because internal comparability in the form of the DPOA award supports the Employer and because it has not been shown that LSA employees would be harmed by the proposal, since it would presumably allow married spouses to select the LSA insurance, the Employer's proposal should be granted.

**AWARD**

The Employer's proposal to eliminate duplicate healthcare coverage, Employer Issue No. 10, is granted.

Dated: June 12, 2000



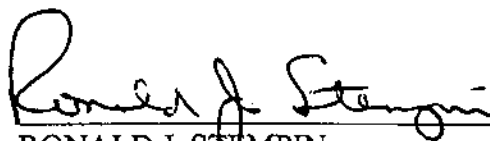
MARK J. GLAZER  
Chairman

Dated: 6-12-00



BRIAN S. AHEARN  
Employer Delegate\*

Dated: 6/12/00



RONALD J. STEMPIN  
Union Delegate\*\*

\* Concurs on all last best offers granted to the City and dissents on all last best offers granted to the Union.

\*\* Concurs on all last best offers granted to the Union and dissents on all last best offers granted to the City.