

158

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
COMPULSORY ARBITRATION PURSUANT TO MCL 423.231, ff;  
(1969, P.A. No. 312)

In the Matter of the Arbitration  
Between:

DETROIT POLICE LIEUTENANTS  
& SERGEANTS ASSOCIATION,

Union,

-and-

Case No: D89 C-0622  
Contract Period: 1989-92

CITY OF DETROIT, DEPARTMENT  
OF POLICE,

Employer.

\_\_\_\_\_  
JOHN B. SWAINSON, Chairperson  
JOHN A. LYONS, Union Delegate  
FLOYD ALLEN, City Delegate  
\_\_\_\_\_

OPINION AND AWARD OF PANEL

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Dated: June, 1990

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## ISSUES PRESENTED

### **CITY ISSUES:**

1. Hospitalization, Medical Insurance & Optical Care
2. Drug Testing

### **UNION ISSUES:**

1. Longevity Pay
2. Sick Leave - Banks
3. Sick Leave - Annual Payoff
4. Holidays and Excused Time
5. Vacation Selection
6. Educational Reimbursement
7. Hospitalization - Dental Coverage for Retirees
8. Hospitalization - Optical Coverage for Retirees
9. Death Benefits and Life Insurance
10. Optional Annuity Withdrawal
11. Pension - Modify FAC
12. Pension- Insurance for Vested Retirees
13. Pension - Option to Retire - Old/New Plan
14. Pension - Increase multiplier
15. Pension - 40% Minimum
16. Pension - 8 year vesting
17. Differential - Article 54B
18. Residency
19. Promotions
20. Cost of Living Allowance
21. Protection Clause
22. Uniform Allowance
23. Wages

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INTRODUCTION

STATEMENT OF PROCEEDINGS

This case involves the resolution of the recent collective bargaining dispute between the Detroit Police Lieutenants & Sergeants Association (DPLSA) and the City of Detroit for the fiscal years July 1, 1989 through and including June 30, 1992. A Petition was filed by the DPLSA and a compulsory arbitration panel was established pursuant to the so-called Act 312, MCL 423.231. The issues were submitted to the Arbitration Panel pursuant to public policy as set forth in Section 1 of Act 312 wherein it states that:

It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate,

expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this Act, providing for compulsory arbitration, shall be liberally construed.

There were a number of hearings at which several witnesses testified, and a few hundred exhibits were presented. The result are contained within this document relative to the findings, opinions and orders of the Panel.

Preceding the filing of the petition in the instant case there were eight collective bargaining sessions between the parties which proved to be unsuccessful. Mediation was initiated in accordance with Section 3 of the Act and the parties participated for two days. That effort was also unsuccessful. The DPLSA requested, through its Petition, which was filed on June 27, 1989, that the parties' dispute be resolved through the binding arbitration procedures of Act 312, and pursuant to the rules of the Michigan Employment Relations Commission (MERC).

Subsequently, the MERC appointed Mr. John B. Swainson as the Impartial Chairperson pursuant to Section 5 of the Act. Pursuant to Section 4 of the Act, the DPLSA appointed Mr. John A. Lyons as its Delegate to the Panel, while the City appointed Mr. Floyd Allen as its Delegate.

A pre-arbitration hearing conference was held on September 11, 1989, to establish the hearing schedule and to fix the order of presentation of the issues as well as to resolve other miscellaneous procedural matters. The parties resolved to attempt to complete the hearings in as expeditious a manner as possible. Likewise, the Chairman announced his commitment to do so and to comply with the time limits set by the Michigan

Employment Relations Commission, and encouraged the parties to streamline proofs and arguments and to attempt to resolve as many issues as they could through ongoing negotiations.

A total of twenty-three (23) hearings were held beginning September 27, 1989 and ending on February 27, 1990. Although a number of issues were resolved by agreement or were withdrawn by the parties during the course of the hearings, a total of twenty-five (25) issues have been left for resolution by this Panel. The Last Best Offer by each party was received on or about March 13, 1990. Post-hearing briefs were submitted by the parties in support of their respective positions on or about April 27, 1990.

Decisions on each issue have been reached by the Panel considering the evidence, testimony and exhibits presented by the parties, and the Panel has based its findings, opinions and award on the proofs as related to the criteria required in the legal standard as set forth in Section 9 of Act 312. The provisions of that Section provide that the Panel must consider the following:

- (a) The lawful authority of the Employer;
- (b) Stipulations of the parties;
- (c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs;
- (d) Comparison of the wages, hours and conditions of employment of employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with out employees generally;
  - (i) In public employment in comparable communities;
  - (ii) In private employment in comparable communities;
- (e) The average consumer price of goods and services commonly known as the cost of living;

- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holiday days and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Chairman wishes to commend the parties, their advocates and their delegates on a most informative and professional presentation which has permitted the Chair to issue what he believes to be a fair, equitable and just award for both the City of Detroit, its citizens, and for the members of the Lieutenants & Sergeants Association.

The Panel is acutely aware of the financial condition of the City as set forth in the evidence. On the other hand, the Mayor's budget message of April 12, 1990, paints a more encouraging picture, if not too much brighter. Obviously, the finances of the City are important for the economic consideration of the Panel, but as the Section 9 factors reflect, although an important consideration, it is certainly not the only factor upon which the Panel must rely. Regardless, the City has offered the same pay increases as received by members of the DPOA, and the continuation of the current wage differentials as contained in Article 54 B. Thus, the Panel acknowledges that the City within its own wisdom, based on its ability to pay, has made

this economic offer upon which there have been "coinciding positions". Generally, the issues concerning wages and pay differentials are some of the most difficult economic matters to deal with; however, in this case we have received identical positions from the two parties and therefore to that extent our task has become somewhat less difficult. The Panel reviews the remaining economic issues with serious concern but has determined that based on the Section 9 factors, that substantial change is not appropriate or necessary. It becomes patently obvious when reviewing this Award that the majority of the Union issues have not been granted by the Panel. These findings have certainly not been made because the issues lack merit, rather, in considering the agreed upon economic impact of the wages and differentials, it is believed that the total award which incorporates all of the terms of the existing agreement, tentative understandings, and a consideration of the ability of the City to meet the economic burdens of this Award, that the final product more nearly complies with the objectives of compulsory arbitration. That is, this Award is a result more nearly of that which the parties would have reached had they continued to negotiate.

Moreover, with regard to one of the City's principle issues - health care cost premium sharing, the majority of the Panel is of the opinion that the Employer had the opportunity to negotiate for relief in this area through the creation of the Committee approach, but the City utterly ignored the Award of the former, 1986 Panel, while at the same time did in fact conduct such negotiations, in similar Committees with other



City employees. Procedurally, if you will, the Award of the former Panel simply has not been carried out. In choosing, therefore, the position of status quo the Panel is simply not acting upon the request of the City on this issue for the reasons more fully stated subsequently.

The other significant issue presented by the City - Drug Testing - is non-economic. In the words of one of the City's witnesses, this issue was one of the most important in the view of the Police Department administration. The majority of the Panel has a similar position; and the drug testing issue was granted to the City.

Further, the Panel has taken into consideration all comparables presented by the parties, external as well as internal. The Panel does recognize the obvious special relationship that the DPLSA has with its brothers and sisters in the DPOA. However special this relationship, and significant and important, this is but one of the factors that must be considered by the Panel and in and of itself is not completely controlling.

Each issue will be dealt with separately; however, because of the extensive record both testimonial and demonstrative, the Panel, where possible, shall make simple findings and award without the total recitation and restatement of the record, which remains, regardless, in support of the Panel's findings. The Panel has sought to make each award as to the several issues comply with the directions of Act 312 in this regard, that is, the findings are based on competent, material and substantial evidence presented by the parties on the record as a whole.

City Issue #1

HOSPITALIZATION, MEDICAL INSURANCE AND OPTICAL CARE

**CITY PROPOSAL:**

The City proposes that the following language be added as the second paragraph to Article 44, Section A:

Effective August 1, 1989, the monthly amounts for hospitalization coverage will be paid as follows:

For the period of August 1989 through July 1990, the City will increase its contribution for all component rates currently paid by the City by twenty percent (20%) over 1988-89 levels. Fifty percent (50%) of any component rate premium charges paid for by the City that exceed the above amounts will be paid by the employee, and fifty percent (50%) will be paid by the City.

For the period of coverage beginning as of August 1, 1990 and thereafter, the City will increase its contribution for all component rates currently paid by the City by eight percent (8%) over the prior year's levels. Fifty percent (50%) of any premium charges that exceed the above amounts will be paid by the employee, and fifty percent (50%) will be paid by the City.

The City also proposes that the following language be added to Article 44, Section C, as a new subsection 3:

3. For employees who retire on or after August 1, 1989, the City will pay up to the following monthly amounts for retiree hospitalization coverage:

For the period of August 1989 through July 1990, the City will increase its contribution for all component rates currently paid by the City by twenty percent (20%) over 1988-89 levels. Fifty percent (50%) of any component rate premium charges paid for by the City that exceed the above amounts will be paid by the retirees, and fifty percent (50%) will be paid by the City.

For periods of coverage beginning as of August 1, 1990, and thereafter, the City will increase its contribution for all component rates currently paid by the City by eight percent (8%) over the prior year's levels. Fifty percent (50%) of any premium charges that exceed the above amounts will be paid by the retirees, and fifty percent (50%) will be paid by the City.

## UNION RESPONSE:

The Union demands as its last offer (sic) settlement that the existing language of Article 44 be continued in this contract.

## DISCUSSION:

This issue is economic. There is no current collective bargaining language covering sharing of premium costs for health care benefits. By this demand, the City is seeking to modify Article 44 to allow such premium sharing. The City has presented evidence that other units, among them general city employees, and the DPOA members, participate in premium sharing. They further urge that this issue must be granted to the City because of the increasing costs of providing health care benefits for its employees. On the other hand, the Union requests the status quo. The evidence tends to support the Union position because it became painfully clear during the course of the hearing that the City did not comply with the 1986 Panel Award with regard to this issue.

The issue of health care cost containment is a major concern of the City. As the record reflects health care costs have risen drastically over the past years. While other City employees are engaged in health care premium sharing LSA represented employees have not been required to share in the cost of rising health care. However, the LSA argues that the union is willing to help control health care cost, apart from premium sharing, but the City has failed to request joint meetings to work on the problem.

In 1986 this Chairman heard evidence identical to that which was presented, on an identical issue. The Award in that case was as follows:

The parties agree to form a Health Care Cost Containment Committee made up of an equal number of members from the City and from the DPLSA which may review changes in the future in health insurance plans. Any proposed changes must be ratified by each of the parties in accordance with their normal ratification procedures. Matters not ratified by both sides may not be implemented.

Although the 1986 Panel made the above specific award, the Committee was never convened. The evidence supports that the City completely ignored this procedure. On the contrary, the DPLSA President, John Storm, immediately notified the City Director of Labor Relations in writing of the Union's members to the Committee and invited both meetings and the Committee scenario. Even though the City had similar Cost Containment Committee members, it did not ever respond to the Union's letter.

As noted, the Committee did not meet, and therefore, no recommendations were ever made. The City failed to follow the direction of the Panel with regard to this issue as set forth in the 1986 Panel Award. Quite frankly, this failure weighs more heavily against the City, and in favor of the status quo approach of the Union because the object of the former Award was completely ignored by the City. Therefore, the majority of the Panel finds it inappropriate to act upon the City's demand and would thereby adopt the Union offer of status quo as to Article 44.

However, it is quite clear to the Panel that the City's excuse for not meeting with the Union based on allegations that the LSA would only "go through the motions," has not gone unnoticed. The Panel strongly suggests to the parties that the Cost Containment Committee investigate employee medical utilization, current plan features and adopt meaningful Medical Cost Containment Programs. The success of this collaborative effort may well determine future medical premium sharing on the part of LSA represented employees.

The City Delegate dissents from this view.

**AWARD:**

Article 44 of the Collective Bargaining Agreement shall remain as written, the status quo being maintained, and the City's request is denied.

DRUG TESTING

**CITY PROPOSAL:**

The City proposes as its last offer of settlement that the Detroit Police Lieutenants and Sergeants Association be covered by the Detroit Police Department's drug testing policy as presented and contained in City Exhibit 49.

**UNION RESPONSE:**

Members may be required to undergo drug testing whenever reasonable suspicion of the illegal use of drugs exists subject to the following conditions:

- a) Any urine testing of members shall be performed pursuant to privacy and all other requirements of Mandatory Guidelines for Federal Workplace Drug Testing Programs published on April 11, 1988 and appearing in Volume 53, No. 69 of the Federal Register.
- b) Any member who desires to do so may elect to be drug tested by radioimmunoassay of hair instead of urine testing.
- c) Any member required by the Department to expend out of pocket costs to complete the drug testing process will be reimbursed by the Department.

**DISCUSSION:**

This issue is non-economic. The City proposes a drug testing program identical to the policy in effect for the DPOA members. The evidence presented supports the position of the Employer. The DPOA has been, albeit by agreement, subject to drug testing since 1988. In fact, all members of the Department other than DPLSA members have been subject to drug testing. In April, 1989, the United States Supreme Court determined that drug testing was not unconstitutional in the testing of certain public employees who engage in very similar activity even in the absence of particular suspicion. Skinner and VonRaab.

The testimony of Inspector Falvo supports the Panel's finding. He noted that the objective of the program is primarily deterrence. He stated that the plan is working within the rank and file (DPOA). Executive Deputy Chief Bannon confirmed this notion and supported the position of the Department and urged that it is absolutely necessary to have the total Department subject to the testing. Moreover, the City urged that a dual

standard is unacceptable; the Panel agrees. The evidence discloses that the entire Department is subject to and has been tested except for members of the DPLSA. To subject subordinates to drug testing but not requiring the same of supervisors could create obvious personnel problems. The objective of the drug testing program is to assure a drug free work place and to deter drug use among police officers. It goes without saying that the objectives are not only laudable, but absolutely necessary for professionals in this line of work. Members of the Board of Commissioners, the Chief, all Deputies, Commanders, Inspectors and police officers are now subject to drug testing. By this Award so shall members of the DPLSA. The evidence is compelling in favor of the City's position.

Moreover, the City offered a so-called amnesty phase in the original DPOA drug testing program. It is the Panel's understanding that a similar amnesty/rehabilitation phase would be available to DPLSA. The Panel directs that these amnesty/rehabilitative provisions be made a part of the policy and offered to DPLSA members to the same extent as was offered to DPOA members.

Lastly, the City has the legal obligation to bargain over this mandatory issue. See DPLSA v Detroit, \_\_\_\_\_ MERC Lab Op \_\_\_\_\_, Case No: C88 C-66 (Jan., 1990).

**AWARD:**

The City's last offer is granted. An amnesty/rehabilitation program will, however, be incorporated as a part of the program.

The Union delegate dissents.

Union Issue #1

LONGEVITY PAY

**UNION PROPOSAL:**

Amend Article 30, Paragraph A, sub-paragraph 5 to read:

5. The first step of longevity increment shall be 2% of the employee's base salary. The second step of longevity increment shall be 3% of the employee's base salary. The third step of longevity increment shall be 4% of the employee's base salary. The fourth step of longevity increment shall be 5% of the employee's base salary.

**CITY RESPONSE:**

The City rejects the Union's last position on Longevity and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

The evidence does not support the Union's proposal. Moreover, in light of the economic cost to the City, the Panel must deny this demand.

**AWARD:**

The City's position is adopted. Status quo shall be maintained.

SICK LEAVE

**UNION PROPOSAL:**

Amend Paragraph A (a&b), only, to read as follows:

- A. Sick Banks: There are two sick banks, current sick bank and seniority sick bank.
- a. Current sick bank is designated as that sick time accumulated at the rate of one day for every calendar month in which a member has been credited for not less than eighteen (18) paid time days, excluding overtime. There shall be no limit on accumulation of days in this sick bank.
- b. Every member who has a current service status for a full fiscal year shall be credited with five (5) days in his seniority bank on July 1 of each year.

However, if a member retires with 25 years of service and has been credited with only 120 days in his seniority sick leave bank and has failed to qualify for the additional five (5) days because of appointment date, five additional sick days will be added to the bank solely for the purpose of paying unused sick leave pursuant to subsection N of the Article. There shall be no limit on accumulation of days in this sick bank.

**CITY RESPONSE:**

The City rejects the Union's last position on Sick Leave which would uncap both the current and seniority sick banks and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. It is a request to uncap two identified sick banks. However, the evidence on the whole record favors the City's position, therefore, this demand will not be granted.

**AWARD:**

The City's last offer is adopted; the status quo is maintained.



SICK LEAVE

**UNION PROPOSAL:**

Add Paragraph A (c) to read as follows:

- A. Sick Banks: There are two sick banks, current sick bank and seniority sick bank.
- C. At the option of each member on July 1, the department shall pay for each sick day accumulated in excess of 125 in the current sick leave bank and 125 in the seniority sick leave bank, at 100% of the value of those days, based upon the member's salary at the time of application.

**CITY RESPONSE:**

The City rejects the Union's last position on Sick Leave which proposes an annual payoff at the option of the employee of all sick days earned in excess of 125 days in each bank and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. It would operate to pay accumulated sick days in excess of 125 in each bank on a specified date. The evidence, however, supports the status quo. Therefore, the demand is denied.

**AWARD:**

The position of the City is adopted. The status quo is maintained.

Union Issue #4

HOLIDAYS AND EXCUSED TIME

**UNION PROPOSAL:**

Amend paragraph A only adding Presidents Day (3rd Monday in February) to the schedule of Holidays.

**CITY RESPONSE:**

The City rejects the Union's last position on Holidays and Excused Time and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. If granted it would operate to add an additional holiday to Article 37. This demand is not supported by the evidence on the whole record. Therefore, the City's position is adopted.

**AWARD:**

The position of the City is adopted and the status quo is maintained.

VACATION SELECTION AND CANCELLATION PROCEDURE

**UNION PROPOSAL:**

Subsection E of Article 38, should be amended to read as follows:

The annual furlough shall be divided into two (2) seasons, summer and winter. Each furlough season shall consist of 13 furlough periods, corresponding with the biweekly payroll periods. Each furlough period shall contain ten (10) consecutive days during the first 10 years of employment. After 10 years of employment, the duration of furlough shall be based upon the foregoing table. Each furlough shall also include the standard number of leave days granted in connection with the furlough.

Upon completion of 10 years of service members will be granted one (1) additional furlough day per year of service to a maximum of thirty (30) furlough days per year.

i.e.	1-10 years	20 furlough days
	10-11 years	21 furlough days
	11-12 years	22 furlough days
	12-13 years	23 furlough days

Members may attach the extra day(s) to either furlough (summer or winter) selected.

**CITY RESPONSE:**

The City rejects the Union's last position on Vacations and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. The Union seeks to increase the amount of furlough time for members who have gained ten (10) years of service. Based on the whole record, the evidence supports the City's position.

**AWARD:**

The demand of the Union is denied. The status quo is maintained.

Union Issue #6

EDUCATIONAL REIMBURSEMENT

**UNION PROPOSAL:**

Amend Article 43 by adding the following:

Effective July 1, 1989, the maximum for tuition reimbursement shall be \$600.00 per fiscal year.

**CITY RESPONSE:**

The City as its final offer of settlement accepts the Union's proposal that the Educational Reimbursement be increased to \$600 per year.

**DISCUSSION:**

This issue is economic. It appears that the parties have, through the last best offers, reached an accord. Therefore Article 43 shall be amended by adopting the Union's final offer.

**AWARD:**

The final offer of the Union, accepted by the City, in its last position, is adopted by the Panel.

Union Issue #7

DENTAL INSURANCE - SERVICE RETIREES

**UNION PROPOSAL:**

The City will pay to the dental plan or program selected by the Association an amount per retiree equal to the premium cost for the Blue Cross/Blue Shield program which provides Class I benefits on a 25% co-pay basis and Class 2 and Class 3 benefits on a 50% co-pay basis with Class 1, 2, and 3 benefits not to exceed \$1,000.00 per person per year and also orthodontic coverage on a 50% co-pay basis with a \$1,000.00 lifetime maximum. Coverage shall be provided for service retirees and their spouses who retire on or after July 1, 1990.

**CITY RESPONSE:**

The City rejects the Union's last position on Hospitalization which proposes dental coverage for retirees and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. The evidence on the whole record does not support the Union's position, therefore, the status quo will be maintained.

**AWARD:**

The City's position is adopted. The status quo shall be maintained.

OPTICAL INSURANCE - SERVICE RETIREES

**UNION PROPOSAL:**

The City will pay to the optical plan or program selected by the Association an amount per retiree, equal to the premium cost for the Blue Cross/Blue Shield A/80 optical plan for service retirees and their spouse.

**CITY RESPONSE:**

The City rejects the Union's last position on Hospitalization which proposes optical coverage for retirees and as its last offer of settlement proposes the status quo be maintained.

**DISCUSSION:**

This issue is economic. The Union seeks to have this benefit memorialized in the collective bargaining agreement. Current retirees enjoy this benefit by action of the City Council. According to the information received at the hearing budget amounts have been supplied for the 1989-90 fiscal year. The Union's request to incorporate this benefit into the collective bargaining agreement is denied based on the record as a whole.

**AWARD:**

The City's position is adopted. The status quo shall be maintained.

DEATH BENEFITS AND LIFE INSURANCE

**UNION PROPOSAL:**

Amend Paragraph C to read as follows:

1. The City will pay during the first payroll period of each fiscal year to the life insurance plan selected by the Union fifteen cents per straight time hour for each member.
2. Members newly promoted into the DPLSA bargaining unit shall be continued in the life insurance program they were entitled to as police officers until the payment due under section 1 is made.

**CITY RESPONSE:**

The City rejects the Union's last position on Life Insurance coverage and proposals as its last offer of settlement that Article 45, Section C read as follows:

C. Group Life Insurance

A group life insurance program for the employee and his family is available for all members of the Employees Benefit Plan on an optional basis, under the provisions of the City Code, Chapter 13, Article 9.

1. Membership:  
Optional for members of the Employees Benefit Plan
2. Contributions:  
Effective April 1, 1990, the City shall pay 100% of the premium for insurance up to and including \$35,000 for each member plus \$5,000 for each dependent.

Additional life insurance may be purchased through this plan at the employee's expense.

**DISCUSSION:**

This issue is economic. The Panel has received last offers of settlement from both parties which would modify the status quo. After due consideration, based on evidence in the whole record, the Panel believes that the City's position is the most appropriate. Therefore, the Panel adopts the City's position set forth above as its Award and would deny the request of the Union.

**AWARD:**

The City's last offer of settlement as to Article 45, Section C is adopted.



OPTIONAL ANNUITY WITHDRAWAL

**UNION PROPOSAL:**

The Union has proposed that employees who retire on or after July 1, 1990 and have elected to receive their total or partial refund of accumulated contributions to the Defined Contribution Plan suffer no actuarial reduction in their Defined Benefit Plan benefits with respect to withdrawn interest earnings, but only with respect to actual contributions which the employee withdraws.

The following is the language proposed by the Union as adding to Article 48 of the collective bargaining agreement entitled OPTIONAL ANNUITY WITHDRAWAL, a new Section H.

**New Section:**

- H. For employees who retire on or after July 1, 1990, and who have made or make an election to receive a total or partial refund of his or her accumulated contributions to the Defined Contribution Plan, there shall be no reduction of retirement allowances due to the portion of withdrawal representing interest credits.

**CITY RESPONSE:**

The present language of the collective bargaining agreement requires that an employee who exercises his/her option to withdraw all or part of his/her accumulated contributions to the defined contribution shall be subject to an actuarial reduction in the benefits provided or to be provided by the Defined Benefit Plan to the extent of the amounts withdrawn whether such amounts consist of principal or interest or both.

**DISCUSSION:**

1. It is the position of the City that the historically collectively bargained for provision with respect to all such amounts withdrawn, i.e. both the original amount of employee contributions together with interest earned thereon in the Defined Contribution Plan should cause an actuarial reduction in the benefits to be received by the employee from the Defined Benefit Plan notwithstanding that additional earnings in excess of the actuarially assumed interest rate are sufficient to fund the proposed benefit. The City further argues that the current funding features of the retirement system are in excess of that required by the State Constitution, any applicable law and the Retirement System provisions.

2. It is the position of the Union that only the actual contributions made to the Defined Contribution Plan and withdrawn and not the interest earned thereon should be the base for the actuarial reduction in the benefits to be received from the Defined Benefit Plan.

The Union argues that such amounts as are contributed by or for the benefit of employees to the Defined Contribution Plan are mandatory contributions and that the interest earnings on such amounts should not be part of the basis for the reduction in the benefits paid from the Defined Benefit Plan as the result of the partial or total withdrawal of such interest earnings and that the retirement system has the ability to provide such benefit with no increase in employer percent of payroll contribution rates.

The City further argues that in the event this Panel awards the benefit to the Lieutenants and Sergeants Association, historically, because of parity, the benefit will be extended to all firefighter and police officers and there is no safeguard that such benefit extension will not result in increased cost. The City appears to argue that if it is determined that the retirement system can provide the proposed benefit without increased cost to the employer, that the Retirement System can further provide for reduced employer contributions without violating the established constitutional and other legal funding requirements.

**AWARD:**

The Panel is persuaded by the Union's arguments in favor of adopting the proposal. However, the Panel also recognizes the validity of the City's concerns. Therefore, this Panel orders the adoption of the Union's proposal with the following provisions to become a part of the collective bargaining agreement.

Provisions indicated in the following paragraphs which will be added to Section H and which along with said Section H will be made part of the retirement system provisions as applicable to employees affected by this award. The above paragraph is expressly subject to the following requirements.

1. That this award will not result in an increase in the Employer contribution percentage of payroll as determined in the June 30, 1989 actuarial valuation.

2. That the Board of Trustees of the Policemen and Firemen Retirement System of the City of Detroit determines after assurance from the retirement system's actuary that the cost associated with the implementation of this award can be borne by the retirement system earnings without violation of the constitutional requirements of Article 9, Section 4 of the State of Michigan Constitution or the funding provisions of the retirement system.

3. That the Board of Trustees of the Policemen and Firemen Retirement System, and its actuary review the actuarial valuation of June 30, 1989 in light of the new updated financial information and adopt the appropriate resolutions consistent with the above provisions.

4. This award with respect to Issue 10 will not be operative unless the Board of Trustees of the Policemen and Firemen Retirement System receives written concurrence from the City with the resolutions of the Board of Trustees as referred to in the preceding paragraph.

Union Issue #11

PENSIONS - New Plan AFC

**UNION PROPOSAL:**

Amend Paragraph D(2) to read as follows:

The average final compensation for "new plan" members is calculated by using the current maximum salary for the ranks, grades or positions held by the member over the 60 months just prior to the member's elective date of retirement. The salary is obtained from the official Compensation Schedule for the fiscal year prior to the members' effective date of retirement and an average is determined.

**CITY RESPONSE:**

The City rejects the Union's last position on Pensions which proposes that the definition for "New Plan" AFC be modified to reflect the "Old Plan" definition of AFC and as its last offer of settlement proposes the status quo be maintained.

**DISCUSSION:**

This proposal would amend Article 51, Section D(2). The issue is economic. Based on the record as a whole, the evidence does not support the Union's position.

**AWARD:**

The position of the Employer is adopted. The status quo shall be maintained.

PENSIONS - Health Insurance for Vested Retirees

**UNION PROPOSAL:**

Amend Paragraph F subparagraph 3 to read as follows:

3. No other benefits or amounts payable pursuant to the Policemen and Firemen Retirement System including benefits available to persons who retire under Article VI, Section 4 shall be affected by this contractual provision. Health insurance benefits payable under this provision will commence when the member would have been eligible to retire with a service retirement under Article VI of the Pension Plan. For members retiring on or after July 1, 1989 health insurance benefits payable under this contractual provision will commence when the member begins to receive a retirement allowance.

**CITY RESPONSE:**

The City proposes that the Union's last position on Pensions be rejected and the status quo be maintained whereby a vested retiree begins to receive health care coverage on his/her 25th anniversary date.

**DISCUSSION:**

This issue is economic. Again, this proposal would modify appropriate sections of Article 51. Based on the whole record, the position of the Union is not supported, therefore, the City's last best offer prevails.

**AWARD:**

The City's position is adopted. The status quo shall be maintained.

PENSIONS - Old Plan/New Plan Option

**UNION PROPOSAL:**

Amend current Paragraph G to read as follows:

- G. Members of the Policemen and Firemen Retirement System as defined in the previous Charter of the City of Detroit -- Chapter 7 of Title IX, Section 2 of Article II, as adopted by Article 11, Section 11-102 of the present Charter of the City of Detroit as previously amended to July 1, 1977; who were in the service on or after July 1, 1941 and are still active members, shall have the option of retiring under any existing plan of the pension system; (i.e., Amendment of November 5, 1969 or previous plan) commonly known as the new plan and old plan.

**CITY RESPONSE:**

The City rejects the Union's last position on Pension which proposes that members have the option of choosing between the "Old Plan" and the "New Plan" upon retirement and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. Based on the record as a whole the evidence does not support the position of the Union. Therefore, the status quo will be maintained.

**AWARD:**

The Panel adopts the City's position as to the status quo.

Union Issue #14

PENSIONS - 2.05% Benefit Multiplier

**UNION PROPOSAL:**

Add a new Paragraph K to read as follows:

The multiplier factor utilized to calculate all retirement allowances for members of the bargaining unit shall be 2.05%.

**CITY RESPONSE:**

The City rejects the Union's last position on Pensions which proposes to increase the pension benefit multiplier to 2.05% and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. While the record in this matter contains a number of comparables with multiplier factors in excess of the current 2.0%, the increased costs associated with this demand are too great when considering the total cost of the Award, and therefore the status quo will be maintained.

**AWARD:**

The position of the Employer is adopted as to the status quo.

Union Issue #15

PENSIONS- 40% Minimum Pension

**UNION PROPOSAL:**

Amend Section F by adding a new subsection 8 to read as follows:

Persons electing to retire under this section with twenty years or more of service shall not have their retirement benefits reduced below 40% of final average compensation.

**CITY RESPONSE:**

The City rejects the Union's last position on Pensions which proposes that members retiring with twenty years or more of service shall not have their retirement allowance reduced below 40% of AFC and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. Considering this issue, as well as other Pension issues, the Panel finds that the evidence does not support the need for a change in the current system.

**AWARD:**

The City's position of status quo is adopted.

Union Issue #16

PENSIONS - 8 Year Vesting

**UNION PROPOSAL:**

Add a new paragraph M to read as follows:

For all members of the bargaining unit, the vesting provisions of the Policemen and Firemen Retirement System, shall require 10 years of service regardless of age.

**CITY RESPONSE:**

The City rejects the Union's last position on Pensions which proposes to allow a member to be eligible to receive a vested pension after eight years of service, regardless of age, and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. Based on the evidence in the record as a whole the Panel does not find support for the Union position and therefore the status quo shall be maintained.

**AWARD:**

The position of the Employer is adopted; the status quo shall be maintained.



Union Issue #17

DIFFERENTIAL

**UNION PROPOSAL:**

As its last offer the Union demands that the current language of Article 54B be continued in this labor contract.

**CITY RESPONSE:**

The City rejects the Union's last position on Differentials and as its last offer of settlement for the period of July 1, 1989 through June 30, 1992 proposes that the status quo be maintained.

**DISCUSSION:**

The City's last offer and the Union's last offer appear to coincide and render the dispute over this matter moot. Obviously, this issue is economic. The Union has expressed some concern over the wording of the City's response, and in light of the fact that both positions seek to maintain the status quo, the Panel would direct that the language contained in Article 54 be continued as it is written.

**AWARD:**

The current contract language of Article 54B shall be continued as it appears on pages 59 and 60 of Union Exhibit 12.

RESIDENCY

**UNION PROPOSAL:**

Amend the current language to read as follows:

All members of the bargaining unit, except those who have earned twenty-five years of service credit, shall be residents of the City of Detroit. Residence shall be construed to be the actual domicile of the member. A member can have only one domicile.

**CITY RESPONSE:**

The City rejects the Union's last position on Residency and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is non-economic. This identical issue has been presented on numerous occasions to various Panels. Specifically, the same identical issue was presented to the 1986 Panel to which the Chairman was also a member. The Union's position was not granted at that time. As stated, this issue is not new to the arbitration forum. Arbitrators Platt, Howlett, Strichartz, Kruger, Keifer, Lipson, and the current Chairman have all heard evidence on the residency issue. There has been a common finding among the lot. The residency requirement has remained status quo after their examinations.

This is a serious and sometimes emotional issue. The Panel has received evidence from the Board of Police Commissioners, Departmental Executives, opinion surveys, and from members of the DPLSA. The evidence establishes that this residency requirement, in one form or another, has been in existence since the 1800's. Attempts to modify this requirement have been rebuked by the Employer and have been consistently denied by arbitration panels in the past. In fact, the Chairman as a member of the 1986 hearings Panel, adopted much of Arbitrator Kruger's language from the then recent DPOA arbitration award. Recently, the DPOA has again presented, as has the DPLSA, this issue to an arbitration Panel. The DPOA demand has been denied, as likewise this Panel is similarly acting. The reasons for eliminating the residency requirement as advanced by the Union for members who have achieved a number of years of service are compelling, however, not persuasive in light of the long history of this requirement. The views expressed in the former award are further adopted by this Panel. A specific opinion was issued regarding the 1986 Union Issue #16. That Panel held that:

Section 9(a) of Act 312 indicates that the City's lawful authority to adopt this requirement is one of the factors to be weighed by this Panel. Section 9(c) refers to "the interests and welfare of the public". Section 9(h) speaks of "other factors . . . normally or traditionally taken into consideration" in collective bargaining matters, which would certainly include the long, unbroken past practice of requiring residency which is demonstrated by the record in this case. It is on the basis of these factors, together with the reasoning set forth in the Kruger opinion as quoted above, that the Panel has concluded that the residency requirement should be maintained.

The majority of this Panel makes similar finding in the instant case, and must therefore deny the Union's request for relief.

**AWARD:**

The Union's proposal is rejected, and the City's position of status quo is adopted by the Panel.

The Union delegate dissents from this view.

PROMOTIONS

**UNION PROPOSAL:**

Short Form:

Place the current promotional system in the contract and provide for standards and criteria that establish rank order promotions.

**CITY RESPONSE:**

The City rejects the Union's last position on Promotions as its last offer of settlement proposes that the status quo be maintained.

While this has been deemed by the Panel to be a non-economic issue, it is the City's position that this issue is an economic one and wishes to submit this last offer of settlement.

**DISCUSSION:**

This issue is non-economic. As can be seen, the majority of the Panel has determined that the promotional issue is non-economic, although the City argues that it should be considered economic. The Union on the other hand, urges and the Panel has adopted, the notion that the promotional issue is a classic non-economic matter. The arguments advanced by both parties were explored in full by a previous Panel in 1986 in a separate Award: See "Decision and Award of Panel on Promotional Issue" dated November 1, 1988. In that Award extensive findings were made, and it was determined that (a) the issue is non-economic and (b) that the status quo should be maintained. The majority of the Panel reaffirms that holding when considering the issue again in the instant case.

The Union in this case requests the modification of the Performance Evaluation procedure in use for Investigators who compete for Sergeant; the elimination of the affirmative action promotional program; and, the elimination of the so-called Charter promotions (those made outside the normal promotional process). The Employer opposes any changes to the current system because it argues that Charter promotions are necessary to reflect unique and special skills.

As to the first two suggested changes, the Panel adopts the following award from the earlier case cited:

In order to justify changing the promotional system which is an issue of such great importance, not only

to Union and Management as parties in this process, but also to the citizenry and their perception of the Department and its officers, the Union must bear the burden of proof. Accordingly, any basis for change in the present promotional system must be accompanied with some powerful prima facie support for such change. Disappointment and frustration as expressed during the testimony of Union witnesses who found themselves passed over for promotions certainly has an emotional impact with which one can easily identify. But we must also recognize that every individual's expectations often will not be satisfied, especially on an abbreviated time table.

. . .

The Panel majority finds that the Union has not established a threshold need to alter the promotional system which has undergone years of legal struggle to establish the present affirmative action policies.

Likewise, similar findings apply equally as well regarding Charter promotions. We previously held and adopt as follows:

However, in dealing with this issue or this piece of promotional issue, the Panel majority also feels it is appropriate to take the position that the proponent of change in the 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's allegations are considered to be true, it still remains clear that the number of such promotions is 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 appear to be so frequent or unreasonable so as to demonstrate a need for 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 basic 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.

The Panel found with regard to this "piece" of the issue that:

Consequently, in weighing all factors as required under Act 312, Section 9, we find that even if the allegations made by the Union in support of their proposal are true, they do not outweigh the City's need to maintain the present system.

The majority of the current Panel adopt that finding and reasoning even in light of the separate record made in the instant case.

**AWARD:**

The status quo with regard to Promotions issue will be maintained.

The Union delegate dissents from this Award.

Union Issue #20

COST OF LIVING ALLOWANCE

**UNION PROPOSAL:**

(Short Form) Taken from p. 37 of the Union's Brief.

The Cost of Living Allowance program will be initiated July 1, 1989 including a feature for semi-annually (sic) payments as well as a roll-in feature each year. The plan is comparable to the Cost of Living Allowance which was in existence in the Detroit Police Department for DPLSA members from 1974 through 1980.

**CITY RESPONSE:**

The City rejects the Union's last position on instituting a Cost of Living Allowance and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. The Union is proposing that a modified form of the previous Cost of Living Allowance which was removed from the Collective Bargaining Agreement between the parties be reinstituted. It urges that the escalator clause is necessary because of the loss of purchasing power of the officers since 1980. The Panel finds, however, that the cost of this issue, and the lack of comparable evidence, does not support the Union's position.

**AWARD:**

Based upon the record as a whole, the status quo should be maintained with regard to this issue.

PROTECTION CLAUSE

**UNION PROPOSAL:**

It is recognized that the 1986-89 Public Act 312 Arbitration Award with the Detroit Fire Fighters Association resulted in a diminishing of parity between the DPLSA and the DFFA bargaining units. The City shall adjust the benefits accordingly to maintain the recognized traditional wage and benefit relationship with both bargaining units. Should the 1989-92 Collective Bargaining and/or Public Act 312 process with the DFFA bargaining unit result in wages and/or benefits in excess of those granted to the DPLSA bargaining unit, said wages and/or benefits granted to the DPLSA bargaining unit shall be adjusted accordingly.

**CITY RESPONSE:**

The City rejects the Union's last position on instituting a Protection Clause and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. The Union urges that a "me-too" clause be granted based on what it perceives as a diminishment of parity between allied ranks of members in the DFFA and DPLSA. In reality, this issue is prompted by the fact that the DFFA has a parity agreement that grants to its members certain advances received by DPLSA members. However, the opposite is not true. There is no such language in the parties' agreement. Even though there may be some differences between the parties, historically, there have been differences between all of the public safety units, DPOA, DPLSA and DFFA. The evidence does not support the Union's position.

**AWARD:**

Based on the record evidence as a whole, the status quo must be maintained.



UNIFORMS

**UNION PROPOSAL:**

- A. The members of the bargaining unit shall continue to be provided with uniforms in accordance with present practice.
- B. Each member of the bargaining unit shall receive an annual uniform cleaning allowance payable the first payroll period of each fiscal year as follows:

July 1, 1989	\$250
July 1, 1990 and thereafter	\$450

**CITY RESPONSE:**

The City rejects the Union's last position on Uniform Allowance and as its last offer of settlement proposes that the status quo be maintained.

**DISCUSSION:**

This issue is economic. The Union requests an increase of \$200 annually in the above allowance. The majority of the Panel does not find that the Union has demonstrated a need to change the current practice. In addition, the increased cost in this issue is a factor that must be considered and the consequent impact on the contract benefits as a whole.

**AWARD:**

Based on the record evidence as a whole, the status quo must be maintained on this issue.

WAGES

The parties have submitted coinciding positions with regard to Wages and therefore the Award of the Panel will reflect their agreement:

- A. Wages, July 1, 1989 through June 30, 1992 - Base Salary.
  - 1. Effective July 1, 1989, the salaries for all employees shall be increased by 5%, over that being paid effective June 30, 1989.
  - 2. Effective July 1, 1990, the salaries for all employees shall be increased by 5%, over that being paid effective June 30, 1990.
  - 3. Effective July 1, 1991, the salaries for all employees shall be increased by 4%, over that being paid effective June 30, 1991.

SUMMARY OF FINDINGS OF THE PANEL

City Issue # 1

**HOSPITALIZATION, MEDICAL INSURANCE AND OPTICAL CARE**

Article 44 of the Collective Bargaining Agreement shall remain as written, the status quo being maintained and the City's request is denied.

City Issue #2

**DRUG TESTING**

The City's last offer is granted. An amnesty/rehabilitation program will, however, be incorporated as a part of the program.

Union Issue #1

**LONGEVITY PAY**

The City's position is adopted. Status quo shall be maintained.

Union Issue #2

**SICK LEAVE**

The City's last offer is adopted; the status quo is maintained.

Union Issue #3

**SICK LEAVE**

The position of the City is adopted. The status quo is maintained.

Union Issue #4

**HOLIDAYS AND EXCUSED TIME**

The position of the City is adopted and the status quo is maintained.

Union Issue #5

**VACATION SELECTION AND CANCELLATION PROCEDURE**

The demand of the Union is denied. The status quo is maintained.

Union Issue #6

**EDUCATIONAL REIMBURSEMENT**

The final offer of the Union, accepted by the City, in its last position, is adopted by the Panel.

Union Issue #7  
**DENTAL INSURANCE - SERVICE RETIREES**

The City's position is adopted. The status quo shall be maintained.

Union Issue #8  
**OPTICAL INSURANCE - SERVICE RETIREES**

The City's position is adopted. The status quo shall be maintained.

Union Issue #9  
**DEATH BENEFITS AND LIFE INSURANCE**

The City's last offer of settlement as to Article 45, Section C is adopted.

Union Issue #10  
**OPTIONAL ANNUITY WITHDRAWAL**

The Panel is persuaded by the Union's arguments in favor of adopting the proposal. However, the Panel also recognizes the validity of the City's concerns. Therefore, this Panel orders the adoption of the Union's proposal with the following provisions to become a part of the collective bargaining agreement.

Provisions indicated in the following paragraphs which will be added to Section H and which along with said Section H will be made part of the retirement system provisions as applicable to employees affected by this award. The above paragraph is expressly subject to the following requirements.

1. That this award will not result in an increase in the Employer contribution percentage of payroll as determined in the June 30, 1989 actuarial valuation.

2. That the Board of Trustees of the Policemen and Firemen Retirement System of the City of Detroit determines after assurance from the retirement system's actuary that the cost associated with the implementation of this award can be borne by the retirement system earnings without violation of the constitutional requirements of Article 9, Section 4 of the State of Michigan Constitution or the funding provisions of the retirement system.

3. That the Board of Trustees of the Policemen and Firemen Retirement System, and its actuary review the actuarial valuation of June 30, 1989 in light of the new updated financial information and adopt the appropriate resolutions consistent with the above provisions.

4. This award with respect to Issue 10 will not be operative unless the Board of Trustees of the Policemen and Firemen Retirement System receives written concurrence from the City with the resolutions of the Board of Trustees as referred to in the preceding paragraph.

Union Issue #11  
**PENSIONS - New Plan AFC**

The position of the Employer is adopted. The status quo shall be maintained.

Union Issue #12  
**PENSIONS - Health Insurance for Vested Retirees**

The City's position is adopted. The status quo shall be maintained.

Union Issue #13  
**PENSIONS - Old Plan/New Plan Option**

The Panel adopts the City's position as to the status quo.

Union Issue #14  
**PENSIONS - 2.05% Benefit Multiplier**

The position of the Employer is adopted as to the status quo.

Union Issue #15  
**PENSIONS - 40% Minimum Pension**

The City's position of status quo is adopted.

Union Issue #16  
**PENSIONS - 8 Year Vesting**

The position of the Employer is adopted; the status quo shall be maintained.

Union Issue #17  
**DIFFERENTIAL**

The current contract language of Article 54B shall be continued as it appears on pages 59 and 60 of Union Exhibit 12.

Union Issue #18  
**RESIDENCY**

The Union's proposal is rejected, and the City's position of status quo is adopted by the Panel.

Union Issue #19  
**PROMOTIONS**

The status quo with regard to the Promotional issue will be maintained.

Union Issue #20  
**COST OF LIVING ALLOWANCE**

Based upon the record as a whole, the status quo should be maintained with regard to this issue.

Union Issue #21  
**PROTECTION CLAUSE**

Based on the record evidence as a whole, the status quo must be maintained.

Union Issue #22  
**UNIFORMS**

Based on the record evidence as a whole, the status quo must be maintained on this issue.

Union Issue #23  
**WAGES**


The parties have submitted coinciding positions with regard to wages and therefore the Award of the Panel will reflect their agreement.

Respectfully submitted,

Dated:

*June 25, 1990*

  
John B. Swainson, Chairperson

  
John A. Lyons, Union Delegate

  
Floyd E. Allen, City Delegate

## POSITION OF UNION DELEGATE AND DISSENT

The Union Delegate writes separately in concurrence and dissent.

The Union concurs with the majority of the Panel's holdings because it understands that the Act 312 arbitration process is an extension, if you will, of the Collective Bargaining process. All issues, and positions, must be considered as a whole, or as a total package, which is the traditional approach to collective bargaining. The Union has attempted to take this posture in the best interests of its members. Moreover, with that concept in mind, the Union has always viewed the issues that separate the parties in a negotiation posture - we were ready, willing and able to meet anytime. The Union clearly understands that an agreement between the parties is always more desirable than an imposed award. However, when all is said and done, and when all the issues are considered and weighed, this Award hopefully will meet the needs of both parties.

The Union disagrees with the Panel's decision on Pension issues 11, 13, and 14. Specifically, however, the Union disagrees and dissents from the Panel's holding on the issues of Drug Testing, Residency, and Promotions.

The Union does recognize the costs that are involved and the economic factors that the Panel must take into consideration. It understands, further, that the role of the Panel is to help make a new document which will guide the parties during the

contract term. The Panel did not have to wrestle with the two major economic demands of Differential and Wages because the parties coincidentally submitted realistic positions. Even so, the Union does not share the gloom and doom outlook of the City finances, especially in light of the 1990-91 Mayor's message on the budget presented April 12. The Mayor indicated that despite the City's dire financial straits, about which the Panel heard ample evidence from City witnesses, there is a 75 Million Dollar plus "rainy day fund", which we are certain is going to assist the City through these allegedly troubled financial times. I cite this because it is one of those "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 . . . " in factor (h) of Section 9 of Act 312.

In the matter of **Drug Testing**, the Union recognizes that the Employer has a right to expect a drug free workplace. The Union agrees with and lauds that goal, but disagrees with the notion that the Employer has presented any evidence whatsoever to support a need for drug testing of the DPLSA membership. In fact, not one example was given to support any of the Employer's claims. The evidence presented related to DPOA members, rather than DPLSA members. We do not believe that the City has established in the first instance the need to test its members regardless of the objectives of the program.

With respect to the **Residency** issue, it is the strong feeling of the Union that the time has long passed, when a



change is needed in this antiquated policy. A person, even an employee of the City of Detroit Police Department, should be able to live where he or she wishes. This appears to be one of our basic human inalienable rights. Residency requirements such as those existing in the City of Detroit, run afoul and in the face of such higher rights. Many opinions were offered as to the benefits of the residency requirement and what problems might exist if the Panel were to relax those restrictions. These opinions were just that, opinions, based on supposition and nothing more.

The Union, on the other hand presented public opinion evidence that suggested the notion that the citizens of the City do not oppose a relaxation of the residency requirement. The City attempted to discredit the findings but was unable to do so.

Moreover, the idea that if the Panel were to relax the requirements, the possible result would be an occupying army of non-residents, is pure hogwash. There is no evidence to support this theory. Rather, common sense would seem to indicate that the opposite is true.

The Union's request addresses a loosening of the requirements after a member reaches 25 years of service so that a member could better prepare for their retirement. This suggestion was a modest compromise when considering the unrefuted evidence that the City of Detroit has a serious urban crime problem, is in a depressed real estate market, has poor, at best, public schools, and is fraught with many other social and economic

problems. The residency requirement is ludicrous in light of these realities. The above factors are also those that are considered by most families, including police, when determining where one's family is going to live. For all these reasons, which have been more than documented on the record, the Panel should grant the Union's request to modify the residency requirement to allow members to reside outside of the City upon reaching 25 years of service.

Lastly, the Union dissents on the Promotional award of the Panel. The choice of performance evaluation and its resultant use as suggested by the Union would make the process more equitable for investigators being considered for promotion to sergeant. Based on the evidence, this facet of the promotional issue raises equitable consideration that should be changed to counter the current situation which is tipped in favor of patrol officers.

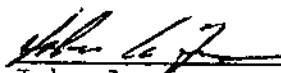
Elimination of Charter promotions would do the obvious: take away any possibility of political partisanship in the promotional process. If the City is serious about its goals - an equal opportunity for all members - then the political selection process should obviously be removed.

Moreover, affirmative action promotional programs have been in existence since 1975. During this 15 year period, the City has yet to develop a testing procedure that is free, in its own opinion, from disparate impact. Disparate impact obviously works both ways. Disparate impact on many DPLSA members is just as discriminatory as the alleged effects of the former system. It is time that the inherent racial and

ethnic considerations be put aside, so that all members can be treated, in the present, in a fair and equitable manner.

While it is true that the Panel wrote separately and heard separate evidence on this issue in 1988, the result and impact on a number of DPLSA members is in no way any less at this time. The status quo simply should be changed.

It is the position of the Union that the current promotional system has created disparate results both politically and racially, and thus the Panel should remedy this situation by granting the Union's proposals. The Panel has not, therefore I dissent.

  
\_\_\_\_\_  
John A. Lyons  
Union Delegate

### Position of Employer Delegate

The City delegate recognizes the difficult task of the panel in deciding between competing demands and proposals of the City of Detroit and Lieutenants & Sergeants Association (LSA) in the Act 312 proceedings. The panel majority denied many of the union's economic and non-economic demands. The City delegate feels that the Panel Chairman followed the legal standard enunciated in Section 9 of Act 312, regarding these issues and concurs. In particular, the City delegate concurs with the Panel Chairman's position regarding Drug Testing, Residency and Promotions. The record supports the panel majority's decision on these issues.

Nonetheless, once again the Union entered Act 312 with a "shotgun" approach and has achieved significant objectives beyond what the record supports and is reasonable under the circumstances.

With respect to City Issue No. 1 - Health Care, the City delegate strongly opposes the position of the majority. The City's cost for medical insurance premiums continue to increase 15% - 25% each year, yet the panel majority choose not to require members of the LSA to contribute to this escalating cost.

This decision was made in the face of overwhelming evidence that most other City of Detroit employees are required to share in the cost of health insurance premiums. Moreover, the panel majority rendered a decision in opposite to one previously reached

by the DPOA<sup>1</sup> Act 312 panel. As a result, the panel majority has created an inequity which can only be resolved during the next round of bargaining by LSA members contributing to part of their health care cost. In spite of the record which supports the City's financial woes, the panel choose to ignore this fact in its decision regarding premium sharing. As a result, the City delegate dissents with respect to Union Issue No. 10, the City delegate concurs with the panel majority only so long as provisions enunciated in paragraphs No's 1, 2, 3, and 4 are satisfied.



Floyd E. Allen  
City Delegate

FEA/ef

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<sup>1</sup>The Detroit Police Officers Association (DPOA) represents approximately 4500 patrol officers in the City of Detroit. The Lieutenants & Sergeants Association (LSA) represents approximately 1200 investigators and supervisors. The record in both cases was almost identical yet the panel majority reached different conclusions.