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**FINAL ACT 312 AWARD OF THE ARBITRATION PANEL**

**Michigan Employment Relations Commission**

**Case No. D01 B-0202**

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**In the Matter of the Act 312 Arbitration between**

**City of Detroit**

**- and -**

**Detroit Police Lieutenants and Sergeants Association**

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**DATE OF MEDIATION:** August 23, 2001

**DATE OF ACT 312 PETITION:** August 23, 2001

**DATE OF IMPARTIAL ARBITRATOR APPOINTMENT:** May 16, 2002

**ARBITRATION PANEL:**

**Richard N. Block, Chair and Impartial Arbitrator**  
**Mr. Brian S. Ahearn, Lacey & Jones, City of Detroit Delegate**  
**Mr. John A. Lyons, John A. Lyons and Associates, Detroit Police Lieutenants and Sergeants Association Delegate**

**APPEARANCES:**

**For City of Detroit**

**Mr. Kenneth S. Wilson, Abbott, Nicholson, Quilter, Esshaki & Youngblood**  
**Mr. Dallas G. Moon, Lacey & Jones**

**For Detroit Police Lieutenants and Sergeants Association**

**Mr. J. Douglas Korney, Korney & Heldt**

## **BACKGROUND**

The most recent master agreement between the City of Detroit (hereinafter the City or Employer) and the Detroit Police Lieutenants and Sergeants Association (hereinafter the Association or Union) expired on June 30, 2001. (Assoc. Ex. 23) On August 23, 2001, following negotiations and mediation, the Association filed a petition for Act 312 arbitration. The City filed an answer on August 31, 2001.

On May 16, 2002, the Michigan Employment Relations Commission (MERC) appointed Richard N. Block as Impartial Arbitrator and Chair of the arbitration panel. At a pre-hearing conference held on July 9, 2002, the City selected Brian S. Ahearn as the Employer Delegate, and the Association selected John A. Lyons as the Union Delegate.

There were a total of fourteen (14) hearings<sup>1</sup> held, with the final hearing concluding on April 1, 2003. After the hearings concluded, the parties exchanged last offers of settlement on economic issues and submitted these to the arbitration panel.

On April 2, 2003, in a letter to Impartial Arbitrator Block, the parties jointly requested that the panel issue an interim decision in this proceeding on the following issues:

- Association Issue 13: Health Insurance
- City Issues 12-15, 18-20: Health Insurance
- Association Issue 19: Wages
- Association Issue 20: Duration
- City Issue 35: Wages

The parties requested that the health insurance issues be decided in an interim award because there was an open enrollment period scheduled to begin in late April, 2003. A favorable award to one of the parties could cause Association members to change their hospitalization coverage, and as such, a decision sufficiently in advance of the open enrollment period was

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<sup>1</sup> There were only 14 hearings held, not 16, as was stated previously in the Interim Act 312 Award.

necessary to give members all information necessary to make such a decision, in the event that certain proposals were awarded. As to an interim award on the parties' wage demands, the City expressed that the Mayor of the City of Detroit was giving his budget address to City Council on April 14, 2003, and requested an immediate wage decision so that the Mayor could give as detailed a presentation to the City Council as possible. Further, by agreement of the parties, as referenced in the same letter dated April 2, 2003, the following issues have been deferred to the outcome of the DPOA Act 312 proceeding (Case No. D01 0568):

- Association Issue 2: Outside Employment
- City Issue 23: Employer Contribution Rate
- City Issue 24: Assumed Rate of Return, Other Assumptions and Methodologies
- City Issue 26: Police and Fire Pension Board

The Interim Act 312 Award, on wages and hospitalization only, was entered by the Arbitration Panel on April 10, 2003. The rationale and reasoning for those awards are contained herein.

### **APPLICABLE STATUTORY CRITERIA**

Pursuant to MCLA 423.238, Section 8 of Act 312, the arbitration panel must adopt the last offer of settlement as to each economic issue that more nearly complies with the applicable factors described in Section 9, however, the panel need not afford equal weight to all factors. *The City of Detroit v DPOA*, 408 Mich 410, 482 (1980). Section 9 of the Act, MCLA 423.239, provides as follows:

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

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

Section 8 of Act 312 also requires that the Arbitration Panel's findings, opinions and order as to all non-economic issues shall be based upon the applicable factors prescribed in Section 9 of the Act. *City of Detroit v DPOA, supra*.

Although all applicable factors must be considered, the arbitration panel must determine which particular factors are more important in resolving a contested issue under the singular facts of the individual case. *Id*, at 484.

The panel has carefully considered all of the evidence in this matter, including the voluminous exhibits and transcripts, and the arguments and positions of the parties, and renders this final award on both economic and non-economic issues after full consideration of all of the criteria contained in Section 9 of Act 312.

### Comparability

One of the most important factors upon which this Arbitration Panel must base its findings, opinions and order is a comparison of the wages, hours and working conditions of other employees in public and private employment "in comparable communities" (Act 312, Section 9(d)).

The Association contends that the following cities outside Michigan are comparable to Detroit:

Baltimore	Miami
Boston	New York
Chicago	Oakland
Cleveland	Philadelphia
Los Angeles	Pittsburgh
	Toledo

As its comparables within the State of Michigan, the Association has identified:

Ann Arbor	Pontiac
Dearborn	Saginaw
Flint	Southfield
Grand Rapids	Sterling Heights
Livonia	Warren

Association President James Gawlowski presented credible testimony in support of its comparables and the history and use of such municipalities in prior proceedings by the parties.

In support of its comparability selections the City presented Patricia Becker, a demographer, who also gave credible testimony concerning the methodology, which she employed in determining, which cities are comparable to Detroit. This methodology was based primarily on the following criteria:

1. Population Size (over 500,000 in 1960);
2. Substantial Population loss;
3. Central City Status;
4. Significant Reduction in Households;
5. Median Household Income;

6. Percentage of Population in Poverty;
7. Unemployment Rate;
8. Percentage of Workers Employed in Blue Collar Occupations.

Applying these criteria, Ms. Becker concluded that the only communities that may be considered comparable to Detroit are the following cities, which she ranked in two (2) categories:

**MOST COMPARABLE**

Cleveland  
Pittsburgh  
St. Louis

**COMPARABLE**

Baltimore  
Chicago  
Philadelphia

The Arbitration Panel notes that all of these cities appear on the Association's list of national comparables except St. Louis.

With respect to local comparables, Ms. Becker testified that there are no cities in Michigan that are truly comparable to Detroit because of the substantial differences in size and other relevant characteristics. However, Ms. Becker further testified that if the Panel were of the belief that it must consider Michigan comparables, she would select Flint, Pontiac and Saginaw because like Detroit these cities are historic central cities that have experienced significant population loss and otherwise have an economic profile similar to Detroit's. Significantly, the Association also agrees that Flint, Pontiac and Saginaw are comparable to Detroit.

The Panel is of the opinion that for communities to be considered comparable they must share a sufficient similarity of essential characteristics for it to be reasonable to compare them. In reaching its findings and conclusions the Panel has carefully considered all of the comparables

advanced by both parties and the survey data concerning their respective wages, hours and working conditions.

### City's Financial Ability

Another very important factor upon which the Arbitration Panel must base its decision is the financial ability of the unit of government to meet the costs of the award that it will render (Act 312, Section 9(c)).

Regarding its financial ability the City presented as its witnesses Sean Werdlow, its Chief Financial Officer, Edward Rago, a past City Budget Director who currently is a consultant in the field of government finance, Leslie Pulver, a Certified Public Accountant specializing in governmental auditing and accounting, and Patrick O'Keefe who is also a finance expert. The Association's principal witness concerning the City financial ability was Dr. Alan Reinstein, a Certified Public Accountant and George R. Husband Professor of Accounting at Wayne State University.

In support of his conclusion that "Detroit's financial position remains strong for the term of the expected DPLSA Contract, which demonstrates the City's ability to improve substantially the compensation of its DPLSA personnel," Dr. Reinstein states in his "Executive Summary:"

(t)hese data indicate that despite a bit of a recent economic downturn, overall the City has amassed some fine financial results, both in the recent and intermediate periods. Despite some adverse financial [FYE] 2001 results, its General Fund Cash balances have generally increased greatly, e.g., sextupled from 1992/92 to 1999/2000 (\$8.7 to \$52.8 million). Despite a current operating deficit, total 2001 General Fund Equity Balance and total Unreserved Fund Balance remain strong, e.g., respectively exceeding \$218 million and \$45 million, compared to \$46 million and \$53 million (deficit) for 1994. Despite some temporary, adverse financial conditions, its general financial trend remains strong. It generated surpluses from operations for each of the four years, 1997 through 2000 (after amassing five consecutive years of deficits). Other financial trends look strong, including combined

equity in certain Enterprise Funds more than doubling from 1996 to 2001—from \$217.6 to \$482.9 million. Its average Reserves for such major reserves as Reserve for Blue Cross/Blue Shield and inventories have grown significantly since 1995. Next, despite a “down” stock market, it has large Pension Reserves. Its wagering taxes appear to more than offset any potential decreases in income taxes, and it has stabilized its strengthening and its net debt per capita keeps improving, while large employers keep relocating to Detroit. Briefly, its consistently strong Bond Rating balances reflect a fiscally strong municipality—one with much capacity to weather hard times.

The City has portrayed itself as healthy in reports to bond rating agencies, which stress its financial stability, budgetary control and many new private investments. It projects a stronger and more profitable manufacturing sector with a less cyclical auto industry; its increased business activity and record profits, points to renewed interest in City housing and lower unemployment (a drop from 17.2% to 7.2%). The City notes Chrysler, GM and other long-term investments in Detroit, the Greater Detroit Partnership’s work to refurbish and redevelop blighted areas, billions of dollars of investments in Empowerment Zones, and a host of building projects, including Orchestra Place, Harmonie Park, the VA Hospital, Tiger/Lions Stadium and the Renaissance Zone. All three bonding agencies (Standard & Poor, Moody and Fitch Investors Services) have upgraded or retained the City’s very high credit ratings. Outside reports of the City’s financial position also seem generally favorable. Thus, the City’s recent deficit(s) should not overshadow its fundamentally strong, underlying economic health and financial results.

Much of the data relating to the City’s financial ability is undisputed. It is the interpretation of some of this information and the conclusions to be drawn therefrom over which the City witnesses and Dr. Reinstein differ.

Since 1950, the population of the City has declined by nearly 50% from 1,849,568 to approximately 950,000 or less. During the 1990s alone Detroit lost 7.5% of its population (76,704 residents). The Southeast Michigan Council of Governments forecasts that this trend will continue for the foreseeable future. Whereas the citizens of Detroit once constituted more than 30% of the population of Michigan, they now represent only 9.6%. One effect of this



decline has been a reduction of representation in the Michigan legislature and a consequent loss of political "clout" in Lansing.

Those residents who have left the City have tended to be gainfully employed with middle to higher-level incomes. A disproportionate percentage of those who have remained are unemployed and live in poverty.

Over the last 20 years the City has lost 65% of its retail, service, manufacturing and wholesale business establishments with a corresponding drop in the City's labor force of approximately 63,000 workers.

The departure of taxpayers and businesses has left Detroit with thousands of untaxable vacant homes and buildings. Since 1974 the City has demolished nearly 145,000 abandoned housing units. Detroit's office vacancy rate is the fourth highest of all major national markets. Over the past 30 years the taxable value of City property adjusted for inflation has declined by nearly 70% from \$4.8 billion to \$1.5 billion.

Property taxes, which are the principal revenue source for most municipalities, once constituted 61% of the City's general fund budget. However, they now represent only 12%. In an attempt to compensate for the loss of revenues resulting from the decline in its property values, the City adopted and then increased an income tax that, although recently reduced by the Michigan legislature, is still the highest in the State. It also levied a utility tax that is unique in the State and raised its property taxes to the highest rate in Michigan. With minor exception, all the taxes that the City is authorized to levy are currently at the maximum legal limit.

Historically, Detroit's economy has been heavily dependent upon the automotive industry. While it once was concentrated within the City, the automotive industry now is geographically dispersed, significantly lessening its contribution to the City's revenues. But still,

when the automotive industry is experiencing financial problems of its own as now, the negative impact on Detroit's economy is substantial.

The City also tends to react severely to any downturns in the National economy. Since March, 2001, the City has experienced a severe economic contraction increasing its unemployment rate from 6.6% to 11.2% and causing a sharp reduction in its income tax revenues. In addition, as a result of action by the Michigan legislature which the City attributes to its declining influence in Lansing, its State revenue sharing, which had been its fastest growing revenue, has been capped at the 1999 level through fiscal 2006-07. Furthermore, also as a result of State legislation, the maximum rate at which the City may levy income tax, which had been its largest specific revenue source, is being gradually reduced over the same period from 3% to 2% for residents and 1.5% to 1% for non-residents.

As a consequence of its diminishing revenues, the City experienced a deficit of \$26,345,130 in fiscal year 2000-01. Since a deficit must be the first item funded in the next year's budget, the City was forced to drain its Budget Stabilization Fund of all but \$7,690,256 in constructing its 2001-02 budget. According to Chief Finance Officer Werdlow, the amount remaining in the "rainy day" fund would only cover "about a day and half worth of expenditures." In the opinion of governmental auditing and accounting expert Leslie Pulver and the Government Finance Officers Association as reflected in its research bulletin entitled "Unreserved Fund Balance and Local Government Finance", a governmental unit with economic characteristics like Detroit's should maintain a fund balance of at least 5% but ideally closer to 10%. As of June 20, 2002, the City's fund balance was only ½ of 1%.

In order to formulate a balanced budget for fiscal 2001-02 the City not only had to draw down the Budget Stabilization Fund by \$26.4 million but also utilize a number of one-time

management initiatives including implementing a Property Tax Amnesty program and selling or leasing assets as non-repeat revenue generators. It also cut expenditures by 5% across-the-board and sharply curtailed overtime. Although the financial statements have not yet been audited, it appears that fiscal 2001-02 ended with a minuscule surplus of \$400,000, which would be enough to run the City for only about 15 minutes.

The Mayor was able to present a balanced budget to the City Council for fiscal 2002-03 but only by reducing the General Fund budget by \$69 million. In his budget message the Mayor stated: "The budget is so lean, it provides for no pay increases for city employees, either during the current fiscal year or the next in order to save as many jobs as possible."

In the past, budget deficits have caused reductions in civilian employees' compensation and layoffs of police, fire and civilian employees. Although the geographic size of the City has not shrunk and still requires governance, the City has been forced by budget constraints to permanently reduce its staffing over the years by approximately 30%. Chief Financial Officer Werdlow noted during his testimony that although the 2002-03 budget was formulated as balanced, recent developments that were not contemplated when the budget was prepared, such as an executive order reducing State revenue sharing and revenue shortfalls, could cause a deficit in actual experience.

Both CFO Werdlow and government finance expert Rago testified that if this Arbitration Panel were to award any retroactive wage or benefit increases for the contract period corresponding with fiscal year 2001-02 and/or fiscal year 2002-03, the impact would not be upon the budget for 2001-02 which is already closed or upon the budget for 2002-03 which will soon close. Rather, the budget for 2003-04 would bear the full brunt of any such retroactivity as well as the cost of any improvements awarded effective July 1, 2003.

The duration of the collective bargaining agreement, which is the subject of this proceeding, is a 5-year contract effective July 1, 2001 through June 30, 2006. By the date of this final award, the first two years of the contract will be virtually completed. The Arbitration Panel has been enlightened by the evidence presented by both the Association and the City as to the actual economic conditions which have prevailed until now and their affect upon the City's financial ability.

With respect to the future, the City through CFO Werdlow and government finance expert Rago presented projections based upon past and current experience which, if the future proves them to be accurate, would indicate that the City's major revenues will remain flat or decline, while its expenditures will rise, creating an unfunded budget "gap" of \$87.16 million in 2003-2004, and a cumulative unfunded budget requirement of \$282.16 million in 2004-05 and \$545.37 million in 2005-06.

While Dr. Alan Reinstein, the Association's financial expert, acknowledges that the City has experienced "a recent economic turndown" resulting in "some temporary, adverse financial conditions," his view of the present and future is more optimistic than the opinion shared by the City's experts. In support of his position, Dr. Reinstein prepared an "Excel Spreadsheet" of Detroit financial data and a report summarizing his analysis of this and other related information. His report includes an "Executive Summary" which accurately reflects the content of his report and the essence of his testimony.

The Arbitration Panel has carefully considered the testimony of the experts of both parties concerning the City's financial ability as well as the documentary evidence in support thereof. The Panel's evaluation of this evidence and the conclusions that it draws therefrom will be expressed in its rationale in support of its wage award.

**ECONOMIC ISSUES**  
**INTEREST PAYMENTS**

**Union Issue No. 3**

Article 17 of the 1998-2001 Master Agreement between the City and the LSA covers miscellaneous items in the contract. Section H of Article 17, provides that when an employee leaves employment with the City, the employee is paid for all banked time, other than sick time, in a lump sum payment within thirty (30) calendar days of the separation. The current section does not provide for the payment of interest in the event that the payment is not made within thirty (30) calendar days. The Union, in its LOS, requested the following language be added to Section H:

Late lump sum payments will include interest at the Michigan Judgment Interest Rate as described in MCL 600.6013(6).

The City rejects the Union's last position on interest, favoring the status quo. The LSA's LOS as to the accrual of interest will be granted. Interest shall accrue at the Michigan Judgment Rate as described in MCL 600.6013(6). The LSA Members have earned this time and are entitled to have this payment made in a timely fashion. This proposal encourages prompt payment by the City, and merely provides for interest in the absence of same.

**AWARD**

The Union's last best offer on its Issue No. 3, Interest Payments, seeking interest at the Michigan Judgment rate is granted. The date from which the interest shall accrue will be determined pursuant to the status quo between the parties.

## **SHIFT DIFFERENTIAL**

### **Union Issue No. 6.**

The Union proposes that the shift differential, as provided for in Article 24 of the Agreement, be increased from 40¢ per hour to two (2%) percent of the member's base pay, for the tour of duty between 11:00 a.m. and 6:59 p.m., and the shift premium be increased from 50¢ per hour to three (3%) percent of the member's base pay for the tour of duty beginning 7:00 p.m. and ending on 3:59 a.m. The City rejects the Union's last position on increasing the shift differential and requests that the status quo be maintained.

The argument proffered by the Union for changing the shift differential is that the same amounts have been in the contract since, at least, 1986. Additionally, the LSA presented national and local comparability data on shift differential (Union Exhibits 22 and 37.) However, these data do not support the contention that Detroit is not comparable with both the local and national comparable cities selected by the Union. There was no persuasive evidence presented at hearing by the LSA, and therefore the current practice will be maintained.

## **AWARD**

The Union's offer on Shift Differential is rejected and the status quo is maintained.

## **SICK LEAVE**

### **Union Issue No. 7.**

In its last offer of settlement, the Union seeks to increase the granting of sick time for attendance upon relatives, as is contained in Section B of Article 35 of the Master Agreement, from three (3) days in one instance, to thirty (30) days in one instance. The City rejects the Union's last position on use of sick leave for family illness and as its last offer of settlement proposes that the status quo be maintained.

The LSA seeks a 27-day increase in this sick leave benefit, and proffered evidence at hearing of an incident with a member's wife that occurred in the past few years. The Union seeks to have all 30 of these days as paid leave, with a corresponding reduction in the member's sick leave bank. The City considers 30 days excessive, and urges that members can arrange furlough or use comp time for extended illnesses. Further, for any extended periods, the members may also take a family medical leave under the FMLA. As the Union has not provided any evidentiary support for increasing this benefit, the proposal is rejected.

### **AWARD**

The Union's last offer of settlement on use of sick leave for family illness is rejected.

#### **Union Issue No. 8**

Presently, the Master Agreement provides that immediately preceding the effective date of a member's retirement, a member is entitled to receive full pay for fifty (50%) percent of his or her unused accumulated sick bank amounts. The contract between the parties provides for two (2) sick banks, a current sick bank and a seniority sick bank, which accumulate during a member's employment tenure. The Union proposes that the sick bank payout, immediately preceding the effective date of a member's retirement, be increased from fifty (50%) percent to seventy (70%) percent. The City rejects the Union's last position to increase this amount to seventy (70%) percent.

In the proposal presented by the Association at hearing, the Union sought 100% of the sick bank payout. The costing showed that a 10% increase to 60%, would cause an average increase in lump sum payouts of .31%. Thus, a 20% increase to 70% would cost .62%. Although this is not an insignificant cost, this benefit improvement will be awarded to the Union. LSA members, particularly those members who did not overuse or abuse their sick time, should

be entitled to receive some payment for a benefit unused during his/her employment tenure. The City should be able to afford this benefit improvement.

### **AWARD**

The Union offer to increase the payout of the unused accumulated sick bank amounts from fifty (50%) percent to seventy (70%) percent, as provided for in Union Issue No. 8, is granted.

#### **City Issue No. 28.**

The City seeks to amend that section of Article 35C that addresses how sick time will be deducted when a member is unable to finish a shift because of sickness. Currently, when a union member works less than four (4) hours and leaves as a result of sickness, he or she is charged one-half (1/2) a sick day and credited with one-half (1/2) a work day. If four (4) or more hours have been worked from the beginning of the shift, the member is credited with a full workday. The City seeks to amend this to charge a member who completes less than four (4) hours of work in a normal eight (8) hour day with a full eight (8) hours of sick time usage, and four hours of sick time usage if a member works four (4) or more hours in an eight (8) hour day. The Union is opposed to this demand and proposes that the current practice and contract language be maintained.

The City's request to modify this provision under sick leave, is based entirely on its desire to have the LSA practices more in line with the practices applicable to General City employees. The City presented no evidence at the hearing of any abuse by LSA members of the current sick leave policy, nor was any costing evidence presented. Accordingly, there is no compelling reason to change the current practice.



## **AWARD**

The City's last offer of settlement to amend Article 35 C on chargeable sick leave is rejected.

### **HOLIDAYS AND EXCUSED TIME**

#### **Union Issue No. 10.**

The LSA currently has eight (8) premium holidays during which its members receive double-time plus regular pay if an officer works a holiday. In addition to these premium holidays, the LSA also has three and one-half (3-1/2) straight time holidays, during which members are paid straight time for the excused time. In this proposal the Union seeks to add Martin Luther King, Jr. day to the schedule of paid holidays. The City proposes that these benefits remain unchanged.

Both parties presented comparability data for Michigan and National Cities on total paid holidays. The City also presented evidence on what it would cost to add this day as a paid holiday. The cost of adding this paid holiday is significant, particularly, if it is received by the allied ranks. Additionally, the comparability evidence supports a finding that the City remains very comparable when it comes to the number of holidays, and the compensation received for working these holidays. Therefore, the Union's LOS is denied, and this day will remain as an excused time day.

## **AWARD**

The Union's last offer of settlement to add Martin Luther, Jr. day as a paid holiday is rejected.

**Union Issue No. 11.**

In addition to receiving paid holidays, LSA members also receive excused time days as defined in Article 37 of the Agreement. Currently, employees are granted four (4) hours of "excused time" on Good Friday, or the last four (4) hours on the last scheduled day prior to Good Friday. The Union seeks an additional four (4) hours of "excused time" on Good Friday increasing the "excused time" to eight (8) hours total. This proposed increase is rejected by the City and it requests that the status quo be maintained.

Unlike Union Issue No. 10, herein the LSA merely seeks an additional four (4) hours of excused time, and does not seek to make Good Friday a "premium paid holiday." The City did not cost this issue, but generally noted at hearing that the economic projections did not support adding an additional paid holiday. No reference was made to adding an additional four (4) hours of excused time. As no holiday premium is paid for work on excused days, this benefit will be increased for the Union.

**AWARD**

The Union's proposal in Union Issue No. 11, that "excused time" on Good Friday be increased from four (4) to eight (8) hours, is granted.

**UNIFORMS****Union Issue No. 12.**

Under the current collective bargaining agreement between the City and the LSA, members of the LSA receive an annual uniform cleaning allowance of two hundred fifty (\$250.00) dollars per year payable the first payroll period each fiscal year, which fiscal year commences on July 1.

At hearing on March 31, 2003, the City presented a proposal on uniform allowances, which provided, in part, as follows:

The City will provide a uniform allowance to all members of the Department effective July 1, 2004 in the following amounts:

New Officers shall receive a full compliment of uniforms and equipment upon graduation from the academy. During their first two (2) years of service, the members shall receive an annual allowance in the amount of five hundred (\$500.00) dollars.

All Officers beyond their first two (2) years of service shall receive an annual uniform allowance of eight hundred fifty (\$850.00) dollars.

The proposal by the City further provided that the allowance was for the procurement and maintenance of all members' required uniform and accessories, and was in addition to the current uniform cleaning allowance of two hundred fifty (\$250.00) dollars.

The Union, in its last offer of settlement, agreed to the City's proposal on uniforms that was presented on March 31, 2003, however, countered with an effective date of July 1, 2001, not July 1, 2004. This counter proposal would effectively permit the Union to receive the allowances proposed by the City starting in fiscal year July 1, 2001- June 30, 2002, not July 1, 2004-June 30, 2005.

The City's uniform proposal, though generous and very comparable with the local and national cities, would not become effective until the fourth year of this five-year contract.

#### **AWARD**

The Parties' last best offers on uniform allowances are accepted. However, the first allowance shall be paid by the first pay date in July, which could include July 1, 2004.

## **HOSPITALIZATION**

### **Introduction**

The awards on the Union's and the City's hospitalization proposals were provided for in the Interim Decision, dated April 10, 2003. These awards are reiterated again in this Final Decision, along with the reasoning for each.

### **Union Issue No. 13**

The Union proposes that Section A of Article 44 be amended to provide hospitalization and medical insurance based on the Blue Cross/Blue Shield Comprehensive Master Medical (CMM) plan and all applicable riders describing benefit levels and prescription drug group benefit levels.

The Union further proposes that Article 44 B be amended to require the City to pay to the optical plan or program selected by the Association an amount per employee equal to the premium cost for the Blue Cross/Blue Shield VSP Optical Plan.

Finally, the Union proposes that Section D of Article 44 be amended as follows:

Effective July 1, 2003, the City will pay to the Blue Cross Traditional Plus (Option 2) Dental Plan selected by the Association an amount per employee equal to the premium cost for the Blue Cross/Blue Shield program which provides Class I benefits on a 25% co-pay basis and Class II and III benefits on a 50% co-pay basis, with Class I, II and III benefits not to exceed \$1,000 per person per year and also orthodontic coverage on a 50% co-pay basis with a \$1,000 lifetime maximum. Coverage shall be provided to all employees and their dependents and duty disability retirees and their dependents, except that newly-hired employees must complete 1,040 straight time hours of work before becoming eligible to receive dental care benefits.

The City rejects the Union's last position on Hospitalization, Optical and Dental Plans and as its last offer of settlement proposes that Article 44 be amended as indicated in City Issues 12-15 and 18-20.

Accelerating health care costs are a serious nationwide concern for both public and private sector employees. In Union Issue No. 13, the LSA has proposed a more expansive and comprehensive plan for its members with a cost savings to the City. The evidence presented by the Union at hearing projected savings over the current Blue Cross/Blue Shield Traditional illustrative rates. The City did not quarrel with this projection, but simply stated that it was a projection, not a guarantee. Further, the City did not present any evidence that the proposed CMM plan would be a cost increase to the City. The Union's LOS on the CMM is accepted. In these times a panel must look favorably on a proposal that may save money while maintaining benefits at similar levels.

Within Union Issue No. 13, the LSA is also seeking a change in the optical and dental plans. The City has its own LBO on an optical plan in City Issue No. 18. The Union's proposed change in optical plans leads to a slight cost increase to the City; however, presented as a total package with the other proposed improvements, the City is still saving money. There is no evidence to the contrary that the changes in hospitalization sought by the Union in Issue No. 13 will be other than a cost savings to the City. Accordingly, the Union's LOS is awarded

#### **AWARD**

The Union's offer to have Section A of Article 44 amended to secure hospitalization and medical based on the Blue Cross/Blue Shield CMM plan is accepted. The Union's offer to have Section B of Article 44 amended on optical is also accepted. The Union's offer to amend Section D of Article 44 on dental is accepted.

## **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

### **City Issue No. 12**

The City proposes that Section A of Article 44 be modified effective with coverage beginning July 1, 2002, to provide that prescription drug coverage co-pays shall be \$5 for generic, \$10 for formulary, and \$20 for brand name prescription drugs; further, that all plans shall have a mail order prescription drug coverage program with a \$10 co-pay, generic, for a 90-day supply; \$20 co-pay, formulary; and \$40 co-pay, brand. Therein, the City proposes that all co-pays may be coordinated with a flexible spending plan which the City may offer during the term of the labor agreement, dependent on the capabilities of the City's payroll system. The Union offers that the status quo be maintained.

The evidence presented by the City does not support a change from the current practice. The City's demand to more than double the co-pay amounts is not supported by any probative evidence justifying such a substantial increase. Moreover, although the City is attempting to make similar changes with their civilian employees, these same employees presently have a \$3.00 co-pay requirement. The City's LBO is not accepted.

### **AWARD**

The City's last offer of settlement on drug coverage co-pay amounts is rejected.

## **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

### **City Issue No. 13**

In its last offer of settlement, the City proposes to amend Section C of Article 44 as follows:

For employees who retire with a deferred vested retirement on or after July 1, 2003, the City's contribution towards its share of the

premium cost shall be limited to four percent (4%) for each year of service or pro rata portion thereof. The premium sharing formula applicable to retirees shall continue to apply to such deferred vested retirees with respect to all future changes in the premium rates charges for the coverage selected.

The Union requests that the current practice and contract language be maintained.

The City's original proposal to exclude deferred vested retirees from health care, was tendered to create parity with civilian City employees, and as a cost savings measure. In the City's LOS, the City now does not seek to exclude them entirely, but simply to require them to pay a percentage of their premiums based on years of service. The City's LOS is premised on fairness, namely, that deferred vested retirees should also pay a percentage of these hospitalization benefits, like the civilian employees. The City's last offer of settlement is accepted.

#### **AWARD**

The City's last offer to modify Section C of Article 44 regarding deferred vested retirees is granted.

#### **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

##### **City Issue No. 14**

The City proposes that Section A of Article 44 be modified to provide as follows:

The City shall be entitled to implement a self-insured prescription drug program to replace other prescription drug providers, provided such program does not cause a material change in health care benefits.

The Union's last offer is that the current practice and contract language be maintained.

The City, in its proposal, is asking for the right to implement a self-insured prescription drug program to save costs. Such a program would replace existing prescription drug providers,

unless it causes a material change in health care benefits. Therein lays the problem with this proposal, as suggested by the Union. Any such change could cause significant problems, including grievances and litigation. An absence of evidence in the record as to how such a program would be implemented, militates against awarding this proposal to the City. However, this decision should not be seen as foreclosing such a program for the future if a more comprehensive and detailed proposal is presented.

### **AWARD**

The City's last offer of settlement is rejected and the Union's is accepted.

### **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

#### **City Issue No. 15**

The City proposes to modify Section A of Article 44 to provide as follows:

The City will pay for coverage for dependents of those who are members of the Association as of July 1, 2003 only. Members entering the Bargaining Unit after July 1, 2003 shall pay for any and all coverage for sponsored dependents.

The Union requests that the current practice and contract language be maintained.

The City proposes to change coverage for sponsored dependents in an effort to reduce costs and bring LSA members' coverage in line with civilian employees who pay for this coverage themselves. Currently, under the Blue Cross Semi Private Plan, LSA members pay only \$2.81 for sponsored dependents, yet, General City employees pay \$178.00 for identical sponsored dependent coverage. This change of coverage will apply only to members entering the bargaining unit after July 1, 2003. In light of the City's bleak financial picture in the future, such a cost savings initiative is warranted, and supported by the evidence.



## **AWARD**

The City's last offer of settlement that Article 44 A on sponsored dependents be amended, is granted.

### **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

#### **City Issue No. 18**

In its last offer, the City requests that Section B of Article 44 be modified to provide as follows:

The City will pay to the optical plan or program selected by the LSA an amount per employee equal to the monthly amount the City pays to Heritage Optical for the current level of benefits being provided to the City employees.

The Union is opposed to this demand and proposes that the Optical Plan as set forth in Union Issue 13, Article 44, Section B be granted.

The City's proposal is rejected in accordance with the findings in Union Issue No. 13.

## **AWARD**

The Union's offer on the optical plan is accepted and the City's is rejected.

### **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

#### **City Issue No. 19**

The City proposes that a new provision be added to Article 44 which provides that:

Bargaining unit members will be entitled to participate in any new wellness incentive plan the City may implement.

The Union offers that the status quo be maintained.

Wellness incentive plans are designed to enhance or improve the health of employees. These types of plans, such as weight reduction or smoking cessation programs, potentially lead to reductions in health care costs for the City. LSA members would not be forced to participate

in such wellness plans, but rather, only encouraged to do so by their Union. To that end, no objections were raised by the Union.

#### **AWARD**

The City's offer regarding a wellness incentive plan is accepted.

#### **HOSPITALIZATION, MEDICAL, DENTAL AND OPTICAL CARE**

##### **City Issue No. 20**

The City requests that language be added to Article 44 to provide that coverage will be terminated for any employee who receives a paycheck with less than eight hours of pay in any month. The language contained in this provision will also apply to employees serving suspensions.

The Union requests that the status quo be maintained

This City proposal, again similar to the other hospitalization proposals, is based in part on the fact that the proposed changes will be consistent with the practice currently in place with civilian city employees. Fairness is the City's theme. However, the City did not present any evidence as to how many Union members in the past, or presently, fall into this category, and what cost savings may be generated. There was no evidence presented demonstrating any problems with the current practice. The City's LOS is rejected.

#### **AWARD**

The City's last best offer to terminate coverage for any employee who receives a paycheck with less than eight hours of pay in any month is rejected.

## **OPTIONAL ANNUITY WITHDRAWAL**

### **Union Issue No. 15.**

The Union proposes to amend Article 48, Optional Annuity Withdrawal, to provide that a member who has elected to retire and elected to withdraw his annuity for the purposes of calculating his retirement allowance, may nevertheless choose to leave the annuity in the retirement system collecting regular annuity interest with the option of a one time withdrawal of the annuity funds at a later date. This was awarded to the Detroit Police Officers Association (DPOA) in the award for the last Act 312 dated July 21, 2000, and the Union has restricted its proposal to include the application of all of the substantive rulings and administrative procedures that have been applied since the awarding of this provision to the DPOA. The City's position is that the status quo be maintained.

The benefit proposed by the LSA is not only enjoyed by the DPOA, but also by DPOA allied ranks of the DFFA (Detroit Fire Fighters' Association) and the Command Officers' Association. In the prior DPOA Act 312 matter, Case No. D98 E-0840, the award was issued on the premise that it was in fact cost neutral. The City did not present any evidence to suggest that this proposal was not cost neutral. Based on equity and the cost neutrality of this proposal, the Union's offer is awarded.

### **AWARD**

The Union's last position on optional annuity withdrawal, is granted subject to all restrictions and requirements applicable to the DPOA.

### **Union Issue No. 9**

The Union proposes to add language to Article 35 of the Agreement, whereby a member may, in lieu of payment of fifty (50%) percent of the unused sick leave bank amounts, elect to

have his or her final years compensation increased by that amount. The City rejects the Union's position on including the unused sick leave payout in the computation of average final compensation, and proposes no change in the status quo.

Increasing a member's average final compensation by including the unused sick leave payout would be a substantial pension cost to the City. As will be noted throughout this section this pension plan already provides superior benefits at great cost to the City. Although the costing contained in Joint Exhibit 112 is for a proposal different from the Union's last offer of settlement, it nevertheless shows that such a proposal, if applied to all plan members, significantly increases the City's normal cost contribution. This benefit improvement is not warranted. Moreover, the City does not have the resources to fund pension improvements at this time.

#### **AWARD**

The Union's offer on Union Issue No. 9 is rejected, and the status quo maintained.

#### **PENSIONS**

##### **Union Issue No. 16.**

At issue here is the proposal of the Union to amend Sections C & D of Article 51 to reduce the period of time to calculate average final compensation from the current period of time of sixty (60) months to thirty-six (36) months. The City rejects the Union's last position on reducing the months used to determine final average compensation and requests that the status quo be maintained. Evidence shows that the Police and Fire Retirement System provides benefits superior to those offered by most every municipality in the State. This pension is already one of the most costly in the State.

The LSA did not present any comparability evidence for other municipalities with respect to this proposal. The City's expert witness testified that such a proposal could increase the City's contribution, and as such is a cost to the City of Detroit. It is one that the City cannot afford to fund, based on the evidence and testimony presented at hearing

#### **AWARD**

The Union's LOS to reduce the months to determine average final compensation from sixty (60) to thirty-six (36) is rejected.

#### **Union Issue No. 17.**

The LSA proposes a Deferred Retirement Option Plan ("DROP"), a plan that was awarded to the DPOA in the Act 312 Case No. D98 E-840. The current DROP Plan awarded to the DPOA contains a DROP percentage of seventy-five percent (75%) with adjustments in future years depending on experience. The LSA argues that such a plan is an option its members should be given, as this plan has already been awarded to the DPOA. The Union proposes to take the awarding of such a plan subject to all of the substantive features and administrative procedures that follow the DPOA Plan.

Initially, the Union sought a 100% DROP; however, in its last offer the Union proposed the same DROP plan as the DPOA. Evidence presented at hearing revealed that a 75% DROP is cost neutral to the City (City Exhibits 44 and 119). For that reason, the LSA is awarded this plan.

#### **AWARD**

The Union's last best offer on the proposal for a DROP plan is awarded, subject to all of the substantive features and administrative procedures that follow the DPOA Plan.

**Union Issue No. 18.**

The Union seeks to amend Section K of Article 51 to have the pension multiplier increased from the current percentage of 2.5% to 2.8%. The City requests no change in the current multiplier percentage.

Police and Fire Retirement System members received an increase in the pension multiplier from 2.1% to 2.5% in the 1990's. Currently, the plan members receive pension benefits that are among the very best for police officers in the State of Michigan, as well as nationally. The normal cost of the proposed pension improvement for all members is 2.44%, and then for 15 years another 3.53%, to pay off an unfunded liability, for a total cost of almost 6%. The City's current normal cost remains one of the highest, both locally and nationally. The evidence shows that the City's pension contribution to the Police and Fire Retirement System is increasing exponentially, and by credible projections will exceed \$100 million for fiscal year 2004/05.

**AWARD**

The Union's proposal to increase the pension multiplier from 2.5% to 2.8% is rejected.

**City Issue Nos. 23, 24 and 26**

The parties have agreed that City Pension Issues 23 - Employer Contribution Rate, - City Issue No. 24 - Assumed Rate of Return, - Other Assumptions and Methodologies, - and City Issue No. 26 - Police and Fire Pension Board, will be deferred to the outcome of the DPOA Act 312 proceeding, Case No. D01 0568. The same three City Pension issues are before the panel in that Act 312 proceeding.

## **WAGES**

**Union Issue No. 19**

**City Issue No. 35**

The Arbitration Panel's Interim Award included the following wage award:

Effective July 1, 2001 - 0% increase  
Effective July 1, 2002 - 0% increase  
Effective July 1, 2003 - 3% increase  
Effective July 1, 2004 - 5% increase  
Effective July 1, 2005 - 3% increase

Due to time constraints imposed by the parties' mutual desire for an immediate Interim Award regarding wages and certain other issues, the full rationale for this wage award was not presented in the Interim Award, but rather was deferred until this Final Award.

All members of the Arbitration Panel agree that the Association's members and the other officers comprising the City's Police Department are indeed Detroit's finest and fully deserving of the best that the City's financial ability allows and the other criteria of Section 9 of Act 312 would justify. The only disagreement concerns the extent of the City's financial ability.

The Association's proposals with respect to the first and second years of the five-year contract sought a wage increase of 3% effective July 1, 2001 and another 3% on July 1, 2002. The City's last offers of settlement proposed no wage increase for these years.

The Panel notes that the City incurred a deficit of \$26.4 million which, in order to balance the budget for 2001-02, necessitated substantial depletion of its Budget Stabilization Fund, the one-time utilization of a number of non-repeat revenue generators, and the imposition of austere expenditure cuts. Even with these measures the City barely finished fiscal year 2001-02 in balance, eking out a meager surplus equivalent to the fund's necessary to run the City for only 15 minutes. The Panel also notes that the 2002-03 budget which could be presented as

balanced only by reducing the General Fund budget by \$69 million does not provide for any pay increases "in order to save as many jobs as possible." In the judgment of a majority of the Panel, the actual experience during the time frame corresponding with the first and second years of the contract leads to the conclusion that the City's rather than the Association's last offer of settlement for that period are more consistent with the City's financial ability and the other Section 9 criteria.

In arriving at this decision regarding the initial two years of the contract, a majority of the Panel also considers it significant that any retroactive award relating to the first and second year would have had to be paid for with funds necessary to balance the 2003-04 budget which, by virtue of the Award of this Panel, must provide for a substantial wage increase effective July 1, 2003. Therefore, if the Panel had granted the Association's proposed wage increases for 2001-02 and 2002-03, the budget for a single year (2003-04) would have had to bear the brunt of the cost of increases attributable to three fiscal years.

In the third year of the agreement (2003-04) the Association seeks a wage increase of 5% in contrast with the City's proposal of 3%. As Dr. Reinstein emphasizes in his testimony and report, there are positive developments on the horizon that should benefit the City. However, just as the decline in the City's economy has been long and agonizing, it will take time for the good news to reach full fruition. With respect to the current state of the City's financial condition, Chief Financial Officer Werdlow testified:

...there are some good things happening right now, but we are still confronted with a very, very fragile financial situation.

We recognize how important our police officers and fire fighters are to us, and we are trying to in fact put ourselves in a position where we can pay more in the form of wage increases.



...We have done a lot in a very little bit of time, but there is no short-term solution with the situation that we are confronted with.

It is only going to get better over time through some very tough management initiatives and expense reduction initiatives down the line.

The Panel obviously cannot foretell the future, but in the judgment of a majority of its members based upon knowledge of current economic conditions as confirmed by the evidence on the record as a whole, an increase of 3% is more compatible with the City's likely financial ability to meet the costs of the award for the contract's third year.

For the fourth and fifth years of the contract, the Association has proposed wage increases of 5% effective July 1, 2004 and 3% effective July 1, 2005. The City's last offers of settlement provide for 2% increases on each of those dates. A decision on wages for fiscal years beginning 18 months from now is more problematic. Although the City's projections for the fourth and fifth years of the contract and beyond certainly cause concern over whether its revenues will keep pace with the anticipated increases in expenditures, the Mayor and his administration have demonstrated through strong management actions the City's capacity to maintain budget balance despite financial challenges. All of the bond rating agencies have noted and based their positive ratings upon the expectation of future tax base expansion resulting from substantial public and private investments in economic developments to revitalize the City. Much of this development is relatively new or yet to be completed. With each passing day the expectation that this development will eventually produce future tax base expansion comes closer to reality. It is also noted that larger permanent casinos with additional gaming space and hotel rooms are scheduled to come on line during the last year of the contract, providing a projected lift of a much larger annual increase in revenue from the casino tax and fees. In this light and with the awareness that the Association members will not receive any

wage increases in the first and second years of the contract and that survey data from communities which both parties consider comparable lend support to the Association's last offers of settlement for the fourth and fifth years, a majority of the Panel concludes that the Association's proposals more nearly comply with the applicable factors described in Section 9 and has fashioned its award accordingly.

The panel recognizes that funding such wage increases may be difficult for the City. By this Panel accepting the City's wage proposals for the first three years of this contract, the Administration receives time to implement policies and programs that might assist it to fund these increases.

### **AWARD**

The City's last offer on wages for 2001, 2002 and 2003 is accepted and its offer on wage for 2004 and 2005 is rejected. The Union's offer on wages for 2001, 2002 and 2003 is rejected and the Union's offer on wages for 2004 and 2005 is accepted. Accordingly, the wage award is as follows:

Effective July 1, 2001 - 0% increase  
Effective July 1, 2002 - 0% increase  
Effective July 1, 2003 - 3% increase  
Effective July 1, 2004 - 5% increase  
Effective July 1, 2005 - 3% increase

### **VACATION SELECTION AND CANCELLATION PROCEDURE**

#### **Union Issue No. 22.**

The Association seeks to add language to the contract that would permit a member with twenty-five (25) or more years of creditable service to bank one of his/her furlough periods each year. At retirement, the member would be paid a lump sum for any such banked furlough time at his/her regular rate of pay; however, these payments would not be included in a member's

average final compensation for pension purposes. No such language is in the current Master Agreement between the parties, and the City requests that the status quo be maintained.

The rationale presented by the Union for this proposal, is that some members, after 25 years of service, would prefer to receive money for one of their furlough periods, in lieu of the time off. The City did not present any costing on this benefit request, nor any substantive objection to this proposal. This benefit will be awarded to those members with in excess of 25 years of service.

### **AWARD**

The Union's proposal on banking one furlough period per year is awarded.

### **NON-ECONOMIC ISSUES**

#### **MEMBER'S RIGHTS**

##### **Union Issue No. 1**

The Union, in its first proposal, seeks to add to the Member's Rights section in the contract language that "no member shall be disciplined for departmental charges that mirror a criminal charge for which charges have been dismissed." The proposal further contains language that any disciplinary charges that mirror criminal charges that have been initiated, shall not be scheduled for disposition until after the criminal charges are resolved.

The evidence presented at hearing by the Union, although compelling, does not support a change in the current practice. Substantial testimony was offered by both sides, including testimony from Police Chief Oliver, and the reasons against the proposal far outweigh the reasons for it. Departmental disciplinary proceedings are much different than criminal proceedings under state or federal law. In criminal proceedings, there are different evidentiary rules, standards of proof, and due process standards. The evidentiary rules are stricter, and the

standard of proof is much higher. As the City urged at the hearing, criminal charges can be dismissed for a number of procedural or evidentiary reasons, yet the probative evidence against an officer may still support a finding of guilt on the charges. The charges may be dismissed, or the officer may be acquitted, however, this does not support a finding that the individual remains fit to be a Lieutenant or Sergeant, or should not be disciplined.

Equally, though the LSA presented a credible case in support of the second part of its proposal, the demand must be rejected. Criminal proceedings can take extended periods of time to come to conclusion, yet, under the Union's proposal, the Department would have to wait for such a conclusion before disposing of disciplinary charges. This presents serious practical problems to the Department in terms of conducting timely investigations, and as the City presented, exposes the Department to potential liability. The overwhelming evidence supports maintaining the status quo.

### **AWARD**

Union Issue No. 1 on Member's Rights is rejected.

### **ARBITRATION**

#### **City Issue No 1.**

The City proposes to add language to Article 9 of the Arbitration Section to provide that neither the Board of Police Commissioners nor an Arbitrator can modify any penalty imposed in a Chief's hearing on matters relating to excessive force, mistreatment of a person or prisoner, corruption, or unjustified use of a firearm. While the Panel recognizes that it is the Chief's desire to remain accountable for discipline, the evidence presented by the City does not warrant a change in the current practice. The absence of any evidence showing that penalties on these types of matters are occurring all too frequently, militates against changing the status quo.

## **AWARD**

The City's Issue No. 1, precluding the Board of Police Commissioners or an Arbitrator from modifying penalties imposed in a Chief's hearing, is rejected.

## **DISCIPLINE PROCEDURE**

### **City Issue No. 3.**

Currently Section A-2 of Article 10 permits a member to appeal any decision from a Commander's hearing to a Trial Board, when a penalty of more than two (2) days has been rendered. Herein, any penalty of two (2) days or less is considered final and binding with no right of appeal. Under the City's proposal, the City wishes to expand the period of time from two (2) days to three (3) days. As such, any penalty of three (3) days or less would be considered final and binding with no right of appeal, and any penalty exceeding three (3) days may be appealed to a Trial Board.

In seeking this change, the City's objective is to make the discipline process more efficient, and at the same time clear out a backlog of cases. By adding one day, the City argues that unnecessary appeals would be reduced dramatically. This proposal is consistent with the City's overall objective to make the entire discipline process function in a more efficient manner.

## **AWARD**

The City's proposal to expand the penalty period triggering a member's appellate rights to the Trial Board, from two (2) days to three (3) days, is granted.

### **City Issue Nos. 4.-6.**

In City proposals 4 and 5, the City is seeking to modify the existing discipline procedures to provide as follows:

The Trial Board shall serve an investigatory role, it will not issue a penalty, but will make a penalty recommendation to the Chief of Police; and

The discipline decision rendered in the Chief's hearing shall be the final ruling by Senior Management of the Department.

In City disciplinary proposal No. 6, the City seeks to further revise the discipline section as follows:

Appeals from the Chief's hearing, either to the Board of Police Commissioners or to arbitration must be set for hearing within thirty (30) days and the decision must be rendered no later than thirty (30) days after the hearing closes. For good cause shown by either party and/or mutual consent these time limits may be modified.

All three of these disciplinary proposals are responsive to a March 6, 2002 letter from the Department of Justice regarding an ongoing investigation into the Detroit Police Department, and the appointment of a new Chief of Police.

The City contends that the purpose of proposals 4 and 5 is to respond to what the City states is a DOJ concern that the Chief of Police be held accountable for discipline. The City notes that under the discipline procedures in the 1998-2001 agreement, the discipline imposed by the Chief may be modified by the Trial Board, a body composed entirely of the Chief's subordinates. The City points out that the DOJ letter, on page 8, refers to the necessity of the Chief answering directly to the Board of Police Commissioners (BPC). The City argues that the Chief cannot answer to the BPC, because the agreement between the parties places the Trial Board between the Chief and BPC, and it is the Trial Board's decision on the discipline, not the Chief's decision, that goes to the BPC.

The City also argues that expanding the Chief's authority is consistent with the mandates of the many memoranda of agreement and consent decrees that the DOJ has entered into with other cities. Paragraphs 75 and 76 of the City of Cincinnati Memorandum of Agreement (City Ex. 34), and

paragraph 67 of the City of Pittsburgh Consent Decree (City Ex. 35) support its position that the DOJ prefers that discipline be determined by a single authority within the Department. The City argues that the Chief must exercise that authority.

The Association, for its part, argues that Section 7-110(3) of the Detroit City Charter provides that a decision by the Chief to discharge or indefinitely suspend an employee may be referred to a public trial board if the employee contests the discharge or indefinite suspension. The decision of the trial board may be appealed to the BPC. The Association argues that the City Charter provides for civilian control of the police department through the BPC and public trial boards. (Assoc. Ex. 33)

The Association also points out that the DOJ letter on pages 7-8 recommends increased communication between the Chief and the BPC, through a written explanation by the Chief in the event the Chief chooses not to impose discipline. The Association urges that there is no relationship between the DOJ letter and the proposals made by the City, and the evidence does not support changing the status quo.

As to City Issue No. 6, the City contends that this disciplinary proposal would place time limits on appeals from the Chief's hearing to the Board of Police Commissioners or to arbitration, and an additional time limit on the issuance of the decision. The City notes that page 15 of the Department of Justice letter directly addresses the backlog of disciplinary cases resulting from the time it takes to complete trial hearings and BPC hearings. The City argues that this proposal specifically addresses the concerns of the Department of Justice. The Association notes that the backlog is due to upper management of the Department and the BPC, as the BPC meets only one (1) hour per week and schedules only two (2) appellate hearings per month. The position taken by the LSA is not entirely supported by the evidence. Item 5 of the DOJ letter directly addresses the backlog of disciplinary cases resulting from the time it takes to complete Trial Board hearings and BPC hearings. The City proposal

would directly place such time limits on appeals from the Chief's hearing to the Board of Police Commissioners or to arbitration. Although some backlog may be caused by police department management and the BPC, this proposal directly addresses such backlog.

The Panel does not find merit in the City's attempt to schedule appeals from the Chief's Hearing to either the Board of Police Commissioners or Arbitration within thirty (30) days or to mandate that any such decision must be rendered no later than thirty (30) days after the Hearing closes.

The Panel does find merit and support in the record for making the Chief of Police more accountable. Because this issue is non-economic, the Panel is not required to accept either party's position and may fashion its own award. As a result, and to assure that the Chief of Police is more accountable, Article 10 of the Collective Bargaining Agreement shall be modified as follows:

**Appeal to the Chief.** Subject to the provisions of this Agreement, the Chief of Police (or his designee) shall be the final determinant of guilt or innocence and penalty. The Chief of Police will review the findings of the Trial Board based upon the record made before the Trial Board or the Chief may conduct a de novo hearing and take testimony and consider any other evidence relevant to the case. The member or representative shall be afforded the opportunity to make a statement or offer any other evidence in support of his/her appeal. The Chief of Police may accept the findings of the Trial Board, modify the findings of the Trial Board, or may render an entirely new finding and penalty. The decision of Chief of Police shall be the final Department Administrative remedy. The Chief of Police shall notify the employee in writing forthwith.

In order to make this modification, Article 10 should be changed in order that the Chief's hearing occur after the Trial Board Hearing. The parties shall make any other changes to this Article necessary to implement this decision.



## **AWARD**

City Issues 4 and 5, whereby the City seeks to amend the existing discipline procedures, are granted. City Issue 6 is rejected.

### **City Issue No. 7.**

In City Issue No. 7, the City seeks to amend Article 10 to provide for the following:

At any stage of the appellate process where there is a de novo hearing of the discipline matter, the deciding authority has the ability to raise, lower or not modify the penalty.

Under the current collective bargaining agreement, the disciplinary penalty for members cannot be increased from that rendered in the original hearing. The City contends that the rationale for this proposal is also related to the DOJ's concern about the backlog of cases. The City argues that because the current contract prohibits the City from imposing a more severe penalty on appeal than was imposed in the original hearing, there is an incentive for disciplined employees to file frivolous or unnecessary appeals because disciplined employees know they have nothing to lose; the discipline can not be raised on appeal but it may be lowered. As a result the disciplinary backlog is increased. With de novo hearings, the City urges that disciplined employees will run the risk of imposition of a greater penalty on appeal. Thus, they are more likely to accept the initial penalty if that penalty is warranted.

The Association argues that there is no relationship between this proposal and the DOJ letter. The Union states that the backlog is due to the infrequent meetings of the Board of Police Commissioners, and small number of hearings scheduled per month. Although the City's proposal may provide a disincentive for officers to file frivolous appeals, there is no evidence presented by the City that these frivolous appeals abound within the Department. The weight of the evidence does not support changing the current practice.

## **AWARD**

The City's proposal on de novo hearings is rejected.

### **City Issue No. 8.**

In this proposal, the City seeks to amend Article 10 to provide that: "all discipline penalties may be immediately imposed at any stage of the grievance process at the discretion of the Chief of Police." Currently, the contract does not permit imposition of disciplinary penalties until the member has exhausted his administrative remedies in accordance with the contract.

The City urges that this proposal, consistent with the other disciplinary proposals, was developed in an effort to reduce the significant backlog of disciplinary cases and make the entire process more efficient. Deputy Chief Evans testified at hearing on behalf of the City that this proposal derived from the mandates provided to the City by the Department of Justice in the ongoing investigation into the Detroit Police Department, and the idea was that discipline would be imposed as soon after the misconduct as possible, without requiring exhaustion of any appellate processes. The LSA argues that there is no relationship between this proposal and the concerns expressed in the Department of Justice letter. Although it is not inconceivable that the possibility of delaying an otherwise justifiable penalty through appeal could lead to frivolous appeals, and an increase in the number of cases being appealed, there is no probative evidence presented by the City that there is currently abuse of this appellate process in the cases have arisen over the years.

## **AWARD**

City Issue No. 8 is rejected.

## **PROMOTIONS**

### **City Issue No. 27.**

The new promotions language being proposed by the City is an effort, in part, to make promotions to Lieutenants based upon objective criteria. In order to develop the promotional roster to Police Lieutenant, the City is proposing to use a compilation of factors, all weighted differently. The proposed Promotions language contained in City Exhibit 111, is attached at the end of this award.

Currently, for the ranks of Investigator, Sergeant, and Lieutenant, an eligibility roster is compiled by the Department based upon the weighted results of a competitive written examination and oral board which also provides credit for seniority, time in grade, college, military service, and performance evaluation ratings. The City seeks to change these criteria with respect to Lieutenants, so that more emphasis can be placed on what the City terms "Assessment Center results." The City proffers that the Assessment Center process gives a candidate for promotion a better opportunity to demonstrate a range of skills, as opposed to a narrowly focused set of skills. This process is used by many police departments around the country.

In this new promotions policy, the City will also continue to give weight to an officer's departmental seniority and his/her in-grade rank seniority. Candidates will also be required to attend candidate school, however, they will not be promoted until they have successfully completed the Lieutenants' promotional assessment course (LPAC), and have attained a passing score on the final LPAC written examination. Further, the City proposal provides that candidates who have sustained disciplinary action resulting in penalties of ten (10) days or more, shall be ineligible for promotion for two (2) years from the date of the incident. This Panel recognizes that it only makes good sense that recent discipline be considered in the promotional process,

particularly when one is talking about ascertaining qualifications for supervisory positions in a major police department like the City of Detroit.

The City argues that this revised promotions policy rewards members who have prepared themselves to fill higher supervisory ranks, and gives the Department certain assurances that it is promoting the most qualified officers in the department. Further, it is designed to effectively eliminate arbitrariness and favoritism, which have historically infected the promotional process. In addition to the City's goal of enhancing the criteria for promotion to supervisory ranks, the City has also expressed its intention to eliminate the rank of Investigator altogether.

The LSA presented credible testimony that members holding the rank of Investigator performed many of the same duties and assumed the same responsibilities as Sergeants. The LSA also notes that the City Charter states how employees of the Department should receive equal pay for the same or similar work and should have an equal opportunity for promotion. Also, faced with the rank of Investigator being phased out and the proposed change in the promotional process, the Association expressed concern over a potential immediate negative impact on the employment equities of some of its members. Based on the foregoing, the Association first asks the panel to include, as a part of its award, an order to promote all Investigators to Sergeant.

The Act requires this panel to consider the interests and welfare of the public. The availability of proper supervision is important to the safety of the officers as well as the citizens of Detroit. Because it will take time to implement these new promotional procedures and criteria and, since we have found validity in the Association's arguments that this panel's conclusion and award should attempt to avoid harming the immediate employment equities of Association members, in the interim, the Department shall promote any and all Investigators to the rank of Sergeant without either adhering to past practice or adhering to these new criteria as it deems

necessary. Similarly, in the interim, and until these new promotional procedures and criteria are implemented, the Department shall promote all Sergeants on the current promotional list to the rank of Lieutenant. Because it is anticipated that these Sergeants will immediately assume higher supervisory responsibility those members who were placed on the promotional eligibility roster for Police Lieutenant shall receive a 2% differential of base salary over and above that of the maximum salary of Police Sergeant for the duration that the member is on the promotional eligibility list until that individual is promoted. Moreover, the record shows that those Sergeants and Investigators who were scheduled to be promoted on November 4, 2002, be given that seniority date. However, this seniority date shall not in any way require any retroactive pay adjustments of any kind.

#### **AWARD**

The City's proposal to revise the promotions policy consistent with City Exhibit 111, is granted in its entirety and as made therein. However, it is granted subject to the additional conditions expressed herein.

#### **TRANSFERS**

##### **City Issue No. 29.**

Within the Detroit Police Department there are two types of sections or units, which fall under the heading "exempt" and "non-exempt." LSA members can transfer into non-exempt sections based, in large part, upon their seniority. Article 23 of the Master Agreement, defines how transfers occur within the department. Units or sections that are considered "exempt" are excluded from the procedures contained in Article 23 A, covering transfers between non-exempt units/sections. Conversely, transfers in to and out of exempt sections are done by the City based upon qualification, ability, skills and the needs of the employer.

In this proposal, the City seeks to make the homicide unit or section, an exempt section. According to the City, it is essential that the Department be able to identify those officers that are best suited for homicide, without being bound by the seniority provisions of the contract. The Command Officer in the homicide section testified that highly developed investigative skills and interrogation are essential to this position, in addition to advanced communication and organizational skills. Currently, this section is bound by the seniority provisions of the contract, albeit, officers requesting transfers to homicide must still be approved by management before being placed on the list. Nevertheless, once placed on the list, openings are filled by seniority.

The weight of the evidence supports making homicide an exempt unit. Homicide investigations need to be conducted timely, and by qualified and talented officers. The City's ability to select these types of officers, without being constrained by seniority, is paramount to a successful and effective homicide unit.

#### **AWARD**

The City's proposal to make the homicide section exempt is granted.

#### **City Issue No. 30.**

The City seeks to further permit the Chief of Police to transfer members from an exempt entity to any precinct, section or unit without regard to any other LSA members standing on a transfer list to that entity.

With this proposal, the City wants to have the ability to move ineffective or burnt-out members out of exempt units, without delay. The City argues that the seniority transfer list ties their hands and causes delays, thus leaving ineffective officers in exempt sections. No evidence was presented citing examples or showing that this is a recurring problem. It appears to be more

of an inconvenience for the Department, however, this does not warrant supplanting members' seniority rights. The evidence does not support a change in the current practice.

#### **AWARD**

The City's proposal to permit transfers from an exempt entity into other precincts, sections or units without regard to seniority, is rejected.

#### **City Issue No. 32.**

A member placed in a DPD 350 status is an officer who has exhibited regularity in the use of sick leave benefits. In this proposal, the City seeks to add the following language to Article 23:

Once placed on a DPD 350, the Commanding Officer of the transfer requested entity may, upon request, have the member removed from the transfer list to that command.

Similar to City Issue No. 30, rendering an award on this proposal requires balancing the seniority rights of officers, with the City's right to have precincts run efficiently and effectively. According to the City, officers on a DPD 350, have shown a pattern of attendance problems, bordering on chronic. At hearing, the Union's questioning of the City's witness focused almost entirely on the fact that members seeking transfers go through an exhaustive review process before even being placed on a transfer list. The evidence reflected that, a transferee's attendance record is an important factor and consideration in the transfer process. The weight of evidence supports the City's LOS. LSA members on DPD 350 status may be removed from a transfer list by the Commanding Officer of the transfer requested entity.

#### **AWARD**

City Issue No. 32 is awarded to the City.

## DRUG TESTING

### **City Issue No. 39.**

In a new proposal presented at the hearing of March 31, 2003, the City proposed to the LSA that the penalty for first time marijuana use would be dismissal.

The City presented evidence at hearing that such a requirement is warranted for a number of reasons. Namely, LSA members serve supervisory roles, and must set a high standard for the DPD. A member testing positive for marijuana not only loses his/her credibility, and sets a poor image for the department, but also must have committed a number of criminal acts in obtaining and using the drug. The record is devoid of any probative evidence from the Union, against this proposal.

## **AWARD**

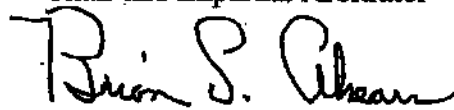
City Issue No. 39, requiring dismissal for first time marijuana use by LSA members, is awarded.

Dated: June 2, 2003



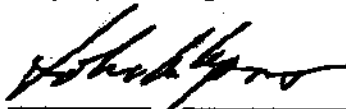
Richard N. Block  
Chair and Impartial Arbitrator

Dated: June 2, 2003



Brian S. Ahearn  
Employer Delegate\*

Dated: June 2, 2003



John A. Lyons  
Union Delegate\*\*

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

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



**DETROIT POLICE LIETTENANTS' &  
SERGEANTS' ASSOCIATION**

**Promotions**

1. Promotion to the ranks of Police Lieutenant shall be based upon objective criteria which shall be utilized to rank members on a promotional roster.
2. The promotional roster for Police Lieutenant shall be established by compiling:
  - a. Results of a written examination 26%
  - b. In-grade seniority points 12%
  - c. Regular seniority 6%
  - d. Assessment Center Results 50%
  - e. Veterans points 2%
  - f. Four-year college degree\* 4%

(\* graduation/scaled points for Associate Degree)
3. Written examinations established for Police Lieutenant shall be job related and objective. Said examination shall be administered during the month of April, biannually. The promotional rosters shall be announced on or before July 1 of the year the examination is administered to be effective for a two year period.

The number of positions on the register will be determined in advance of the written examination based on an assessment of potential vacancies and to ensure an adequate pool of potential candidates from which promotions may be made during the projected life of the register. For example, if the assessment of personnel requirements indicates that 100 names will comprise the promotional register then only those officers who attain the top 100 scores on the written examination will proceed to the Assessment Center phase of the promotional process. In the event of ties, candidates shall be listed in order of in-grade (rank) seniority and, in the event of equal rank seniority, departmental seniority then by lot. A converted score will be sent to each candidate based upon the number of his/her correct answers.

Should the promotional roster be exhausted during the life of the two year period, such that the departments' needs cannot be fulfilled, the department will re-assess the amount of potential vacancies to ensure an adequate pool of candidates during the remainder of the life of the register and process that amount of candidates from those candidates who are next in rank scoring order from the same examination.

4. Departmental seniority shall be computed on the basis of 1% per year of service to a maximum of 6% (from date of exam).

5. In-grade (rank) seniority shall be computed on a basis of 1% per one-half year of in-grade service to a maximum of 12% for Lieutenant candidate (from date of exam).
6. Veterans points shall be computed per past practice, and, include hostility dates of Operation Desert Storm and subsequent hostility dates if applicable to City Ordinance. (Ordinance 385-F, Section 13-6-27 and Amendments.)
7. Eligibility requirements for Sergeants taking the examination for Lieutenant shall remain the same pursuant to past practice. The educational components for ranking candidates on the promotional eligibility list shall be as set forth in paragraph 2 (f) of this agreement
8. The authority of the Chief of Police to make "charter" promotions to the rank of Lieutenant shall remain the same as defined in the current collective bargaining agreement (DPLSA-CBA-1998-2001).
9. Candidates for the ranks of Lieutenant shall be promoted to that rank after successful completion of a Lieutenants promotional assessment course (LPAC) and attainment of a passing score on a final LPAC written examination.

The LPAC examination will be based on objective criteria that will be utilized in that new rank. The rank, insignia and pay of the new rank will be given after completion of the LPAC or with approval of the Chief of Police whichever comes first.

10. Candidates who have sustained disciplinary action after exhausting all administrative remedies which resulted in a ten (10) day or more penalty shall be ineligible for promotion for two (2) years from the date of the incident.
11. In addition, prior to the confirmation, in the new rank, members shall be required to pass a medical examination reasonably establishing ~~their~~ physical ability to proficiently perform all duties related to the new rank with or without accommodation.

If a candidate is denied a promotion due to a medical restriction, then upon presentation of evidence by the candidate that the illness or injury may be duty related, the candidate shall be granted a duty disability retirement at the new promotional rate if requested by the candidate or remain in the candidate's present capacity if requested by the candidate. The Association shall be held harmless by this provision.

12. The Assessment Center process shall be job related and objective as possible. All segments of the Assessment Center shall be designated at the sole discretion of the Chief of Police.. The Department and the Association shall agree to confer, only, regarding the content of the Assessment Center. Any disagreement as to the content of the Assessment Center shall be resolved in favor of the Chief of Police.

- All candidates shall be processed in the exact same manner and be assessed by competent, qualified, trained assessors who are not affiliated with the department.
- The process shall be videotaped with audio for each candidate.
- Appeals shall be based on bias of the process itself, not scores.

- All candidates shall be given a complete orientation of the assessment process, and all segments of the assessment process, and topics and questions relative to each segment.
- Topics of each segment shall be germane to the job that the candidate is competing for based on a job analysis.

13. Those members who score sufficiently well enough to appear on the promotional eligibility register for Police Lieutenant will receive a 2% transitional differential of base salary over and above that of the maximum salary of Police Sergeant for the duration that the member is on the promotional eligibility register until that individual is promoted.

The transitional differential shall represent and be compensation for additional duties and responsibilities that members on the eligibility register will be called upon to perform above and beyond the regular duties of the member in his current rank.