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East Detroit, City of

STATE OF MICHIGAN  
BEFORE THE DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION  
between  
THE CITY OF EAST DETROIT  
-and-  
THE EAST DETROIT POLICE OFFICERS ASSOCIATION

4/12/76

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AUG 18 1976

PANEL OF ARBITRATORS

Ronald M. Dowell, Member; Donald Kuhn, Member; Theodore J. St. Antoine, Chairman

APPEARANCES

For the City of Detroit: Robert J. Hribar, Esquire

For the East Detroit Police Officers Association: Fred L. Harris, Esquire, and Patrick Kelly O'Dea, Esquire

OPINION AND AWARD

I. Introduction

This arbitration has been conducted pursuant to the Police-Firefighters Arbitration Act (Act No. 312, Michigan Public Acts of 1969, as amended), upon the initiation of the East Detroit Police Officers Association (hereinafter the "Association"), following negotiations with the City of East Detroit for a new collective bargaining agreement to replace one expiring on June 30, 1975.

St. Antoine, Theodore J.

The statutory conditions precedent to the arbitration, namely, collective bargaining and mediation, have been fulfilled.

The members of the Arbitration Panel are: Ronald M. Dowell, Delegate of the Association; Donald Kuhn, Delegate of the City; and Theodore J. St. Antoine, Chairman, appointed by Chairman Robert G. Howlett of the Michigan Employment Relations Commission on July 23, 1975, pursuant to a request submitted by the parties, per Mr. Kuhn, on June 30, 1975. The initial hearing was held at the Municipal Offices of East Detroit on August 6, 1975. At that time the Chairman of the Panel remanded the dispute to the parties for three weeks for further bargaining. No final agreement resulted from these negotiations, and formal hearings were subsequently conducted at the East Detroit Municipal Offices on September 11, October 10, October 15, October 29, and November 11, 1975.

The City of East Detroit lies to the northeast of, and adjacent to, Detroit. Its 1974 population was 43,200 and it covers an area of about 4.6 square miles. Besides Detroit, neighboring cities include St. Clair Shores (85,500 pop.; 11 sq. mi.), Roseville (59,100 pop.; 8-10 sq. mi.), Warren (173,700 pop.; 34.5 sq. mi.), Clinton (56,600 pop.; 32 sq. mi.), Center Line (10,000 pop.), Fraser (13,700 pop.), Sterling Heights (82,700 pop.), and Harper Woods (18,900 pop.). The Association is the collective bargaining representative of all patrolmen and detectives in East Detroit's Police Department. At the time of the hearings, there were forty persons in the bargaining unit, including two detectives and three probationers.

In the course of the hearings and in the subsequent exchange

of last best offers, the parties either withdrew a number of demands or reached agreement on several items. Issues thus removed from the arbitration include Additional Definitions, Sick Days, Bonus Days, Holiday Call Outs, Double Time for Call Outs, On the Job Disability, Armed Forces Reserves, Clothing and Cleaning Allowance, Shift Premiums, Mileage for Using Private Vehicles, Vehicle Use, Shooting Requirements, and Pension Costs. The remaining issues will be dealt with, seriatim, below.

At the outset, the Chairman of the Panel feels it might be helpful for him to mention two guiding principles he is ordinarily inclined to follow in handling new contract arbitrations. First, he believes that a party proposing changes in the terms of an existing (or immediately preceding) agreement should generally have the burden of persuading the Panel of the need for, or the soundness of, such a change. Second, he doesn't believe that the Panel (or its Chairman) should try to substitute personal judgments for the parties' own decisions. The terms imposed by arbitration should resemble as closely as possible those the parties might have negotiated if bargaining had not broken down. In this light, the best criteria for determining what the parties might have agreed on are the agreements actually reached by comparable parties in other negotiations, modified as appropriate by the peculiar history and circumstances of this particular bargaining relationship. Included in these special circumstances must be the fact that the tax and financial climate in East Detroit may be less favorable than in several neighboring communities.

## II. President's Time Off (Article IV-B)

The City submits that the Association President should work a full eight-hour shift, with reasonable time off, plus emergency time for Association duties. The Association wishes to maintain the present arrangement, essentially, whereby the President works six-hour days when on day or afternoon shifts. His day shift terminates at 2:00 p.m. and his afternoon shift does not start until 6:00 p.m.

We have paid especially careful attention to this problem, since it obviously involves strong feelings between the City and the Association. We realize that the President of the Association believes that granting the City's demand might destroy the Association. From the evidence presented to us, however, there does not appear to be another Police Department in the whole area that guarantees its union president a six-hour day on the day or afternoon shift. Nearly all provide for the usual eight-hour day, with "reasonable time" off to perform union duties. The Association has not persuaded us that East Detroit should be accorded unique treatment, now that the City objects to continuing this special arrangement. While there are undoubtedly deep philosophical differences between the City and the Association, personal relationships seem relatively good. Other cities in the area, e.g., Warren, St. Clair Shores, and Sterling Heights are substantially larger than East Detroit, and yet their union presidents seem able to dispose of organizational business with the "reasonable time" provided them. Moreover, the two hours off preceding the Association President's starting time of 6:00 p.m. do not help him in dealing with Inspector Lemke, who ordinarily leaves work around 4:00 p.m. Finally, while there is no suggestion that the Association

President has abused his right to time off, it appears that in fact much of his business with City officials is conducted by telephone or in person during the morning hours.

To say that the Association President is entitled to "reasonable time" off, rather than a set number of hours, is not to say that the City is sole arbiter of what is "reasonable." Ultimately, this would be a matter for resolution under grievance or other review procedures. In this regard, however, I think it significant that in 1972 Mr. Charles Beaubien, City Clerk, and Mr. Ronald Dowell, Association President, came up with the figure of seven hours per week as the average time needed for Association business. A further point to note is that while the City's proposed language speaks in terms of "reasonable time" off, it has also committed itself to provide "emergency time off," in addition.

AWARD: The President of the P.O.A. shall be afforded reasonable time during regular working hours without loss of pay to discharge his responsibilities, processing grievances, and administering this Agreement.

### III. Funeral Leave (Article V(b))

The last contract provided for three days of nonchargeable funeral leave for a death in the immediate family, as defined, and one day of chargeable leave for a death in the current spouse's family. The Association wants to add the member's non-immediate family under the one-day provision, and also wants to make that one day nonchargeable. The City is only prepared to extend the scope of the immediate family by adding step-mother and step-father.

A common pattern in the area is to provide up to four or five nonchargeable days for a death in the immediate family, as defined,

and one nonchargeable day for other relatives. Unfortunately, there is a crazy quilt in the definitions of "immediate family," and some cities that may seem much more generous than East Detroit, at first glance, turn out, on closer inspection, to define "immediate family" in a more limited way. Furthermore, we fear that the Association's proposal for covering the member's "non-immediate" family under the one-day provision would add imprecision to the contract -- for example, would cousins of whatever distant degree be included? (We recognize the Association's argument that it is trying to equate the position of member and spouse as to their non-immediate families, but we do not think it all that clear that the one-day provision was meant to apply to a spouse's non-immediate family.)

AWARD: Step-mother and step-father shall be included in the definition of immediate family.

#### IV. Leave Days (Article V(e))

The City demands that to receive compensation while absent on sick leave or funeral leave, an employee must notify his immediate supervisor no less than one-half hour prior to the start of his shift. The last contract permitted notification up to four hours after the scheduled starting time, "or as may be specified by his department head."

There seems much logic in the City's position. But there also seems no evidence of an abuse of this provision, and if abuses occurred, a department head under the existing language may have authority to prescribe new procedures. Furthermore, someone con-

fronting a sudden illness or a death in the family may genuinely need extra time to notify the City of his predicament.

AWARD: Article V(e) shall remain unchanged.

V. Sick Leave -- Terminal Pay (Article V(g))

The City is willing to pay for sick days in accordance with the formula in Article V(g), up to a maximum of 220 days. This sliding scale formula would give a man who had worked 25 years a maximum of 110 days pay upon retirement. The Association has asked for full pay for accumulated sick days upon retirement; since it did not specifically request an increase in the maximum, we shall assume it is resting on the "maximum 200 days allowed under our contract."

Upon retirement, St. Clair Shores and Roseville pay 100% on a maximum of 200 days. Warren pays 80% on a maximum of 225 days. Clinton pays only 50%, but there is no limit on the accumulation. The treatment accorded sick leave upon employees' retirement in other cities in the area is not entirely clear, but it is obvious that East Detroit is substantially out of line with those neighboring cities about which the most information was provided. We see no justification for this discrepancy.

AWARD: All accumulated sick leave credits up to the 200 days shall be paid the employee upon retirement or death.

VI. Longevity Pay (Article VI(a))

The last contract had a \$900 ceiling on longevity pay, which the Association wants to remove and the City wants to retain.

As base pay continues to increase, a \$900 cap on longevity pay will operate more and more harshly against the older members

of the bargaining unit. Nonetheless, to adopt the Association's proposal would catapult East Detroit from a place far back in the field to a position of leadership in providing this benefit. A maximum of some kind is still the norm in this geographical area, and \$900 is not the lowest.

AWARD: Article VI(a) shall remain unchanged.

VII. Minimum Call Out (Article VII(c))

At the present time East Detroit provides a 2½ hour minimum call out, payable at time and a half. The Association wishes to increase the minimum to four hours. The City would agree to a three-hour minimum call out time exclusive of Municipal Court time and Macomb County Prosecutor runs.

In the immediate area of East Detroit, four hours minimum call out time at time and a half is recognized in at least a couple of jurisdictions, but this formula is complicated by special distinctions between hours actually worked and those not worked, and between call outs for court appearances and other call outs. According to Mr. Kuhn, midnight shift and split shift employees called out within eight hours of the termination of their shift, as they often are for court appearances, are entitled to a minimum of two and a half hours at double time (R. 10/10/75, p. 154; see J-6, Art. VII(b)). He argued that to give three or four hours as a minimum call out, without exceptions for court appearances, would mean many double time payments for those extended periods. A majority of the Panel is satisfied that if all call outs were based on a minimum of four hours at time and a half, with the provision for double time for midnight and split shift employees



as described above superimposed on this rule, the result would be a windfall for Association members unlike anything enjoyed by their colleagues in surrounding cities.

AWARD: There shall be a three-hour minimum for all call outs, exclusive of Municipal Court time and Macomb County Prosecutor runs. Call outs for the latter shall be entitled to a minimum of two and one half hours. All employees remain entitled to double time under the terms of Article VII(b).

VIII. Overtime (Article VII (g) & (h) proposed)

The City requests two new provisions concerning overtime. The first would treat a person leaving directly from one detail and going to another as being subject to the time and a half overtime provision, and not to the provision requiring a minimum call out at time and a half. The second would make failure of personnel to be on time for Court or other prescheduled events the basis for automatic loss of minimum call out time.

The Association responds that Mr. Kuhn said that the City would not regard an officer as on duty while driving from one detail to another, and thus he should be treated as if on call out, just as if he had gone home before being called to the second detail. Second, lateness at court has occurred only once in three years, and automatic loss of all minimum call out time is too severe a penalty for such a rare offense.

A majority of the Panel considers the key to minimum call out time to be the sensible notion that an officer who is off duty should not have his leisure suddenly interrupted for a paltry bit of compensable time. To recompense him adequately for the intrusion on his free time, a minimum payment is necessary. But if an

employee is already at work, a request that he move to another detail is hardly different from a request that he continue on for another hour or so on his own detail. He has not, in either case, passed that critical psychological boundary into "his own time." While saying this, the Chairman of the Panel also concedes that he simply doesn't understand Mr. Kuhn's remark that a patrolman would be regarded as "off duty" while driving from one detail to another. In the Chairman's view, the whole theory of the City's proposal turns on the recognition of one continuous, extended tour of duty. If the City is not prepared to accept this consequence of its proposal, the Chairman would quickly change his vote from the City to the Association. The Award which follows is contingent on the City's recognition of a single uninterrupted tour of duty.

We agree with the Association that lateness at court has not been shown to be a serious problem, and that it does not justify establishing a severe penalty, at least not at this time.

AWARD: (1) A person leaving directly from one detail and going to another shall not be considered on a call out, but shall be covered under section (a) of Article VII.

(2) Article VII shall remain unchanged, except as set forth above.

#### IX. Holidays (Article VIII(a))

The Association asks for two additional holidays, bringing the annual total from eleven to thirteen. The City offers twelve.

Warren and Clinton provide thirteen holidays. (Warren permits

only twelve to be taken in cash.) St. Clair Shores provides eleven, and Roseville ten. Adoption of the City's proposal would ensconce East Detroit comfortably in the middle of this group.

AWARD: The City shall provide the Association with twelve (12) holidays each year.

X. Life Insurance (Article X(a))

The Association has asked that members be provided life insurance equal to one year's salary, with double indemnity. The City has offered to add to its present \$10,000 policy a double indemnity provision for non-service connected accidental death or dismemberment.

The range of life insurance provided in the East Detroit area is broad. Without double indemnity, it goes from \$10,000 to \$25,000; with double indemnity, it goes from \$10,000 to \$12,500. The City's proposal is a reasonable compromise.

AWARD: The City shall provide the Association with a \$10,000 life insurance policy, with double indemnity for non-service connected accidental death or dismemberment.

XI. Health Insurance (Article X)

The Association asks that the present Blue Cross MVF-1 plan be improved by making it an MVF-2 plan, and that a Delta Dental rider be added. The City wishes to stand pat on the present MVF-1 and optical plan.

MVF-1 plans exist in Mt. Clemens and Warren, besides East Detroit. MVF-2 plans are found in St. Clair Shores, Center Line, Roseville, and Clinton. The total cost of adding MVF-2 coverage

for all East Detroit employees is estimated at \$10,694. That is a substantial but hardly exorbitant figure. The Panel will approve this part of the Association's request.

Delta Dental riders are just on the verge of becoming standard provisions in collective bargaining agreements. They are found in about half the contracts in communities bordering East Detroit, and in about half the contracts in the more extensive neighborhood. But East Detroit also has an optical rider, which is true of only one other city in the geographical area. Balancing these various considerations, the Panel concludes that the grant of the MVF-2 policy is enough at this time, and that the further request for a Delta Dental rider should be denied.

AWARD: (1) The City shall provide the employees represented by the Association with a Blue Cross MVF-2 plan.

(2) Article X shall remain unchanged, except as set forth above.

#### XII. Vacation Time Conversion (Article IX(c))

The last contract gave employees the option of converting one week of vacation time into forty hours of compensatory. The City wanted this provision eliminated; the Association wanted it preserved. The City did not persuade us that the minor problems in scheduling caused by Article IX(c) justifies its elimination.

AWARD: Article IX(c) shall remain unchanged.

#### XIII. Grievance Procedures (Article XIII(f))

The City makes the technical point section (f) of Article XIII more logically belongs in Article XXII, dealing with the causes of discipline. No change in meaning or effect is intended. The Association apparently misconceives the purpose of this stylistic change,

since the Association argues against moving the provision into the grievance procedure, while the very reason for the switch from Article XIII is to get section (f) out of the grievance procedure and into a more suitable Article.

AWARD: Without any change in substantive meaning or effect, section (f) of Article XIII shall be moved to Article XXII, dealing with cases of suspension, removal, discharge, or reduction.

#### XIV. Salary (Article XV(a))

The Association asks for \$15,600 as the patrolman's basic annual salary; the City offers \$15,400. The closeness of these figures reflects well the spirit of reasonableness that pervaded most of the hearings in this arbitration.

The City insists that a \$1200 increase it gave to the Firefighters (essentially the same amount sought by the Police) was designed as a "catch-up" measure. But the Police respond that a boost to \$15,600 would merely place them the same distance ahead of the Firefighters that has become traditional in recent years. More to the point, the Association argues that the average salary for police in the surrounding cities is \$15,623, and that the East Detroit force performs essentially the same mission and should therefore receive the same compensation. The City counters that East Detroit is smaller and less affluent than neighboring communities.

We are satisfied that both the Association and the City have made eminently reasonable salary offers. We feel, however, that the Association comes off slightly better when comparable salary data are examined. Moreover, we cannot forget that the City has had the use of the larger part of any salary increase for almost a year. In view of these and all other relevant circumstances,

we conclude that the Association's offer should be accepted.

AWARD: The standard salary for patrolmen shall be \$15,600 per annum.

XV. Cost of Living Allowance (Article XV (d) & (e))

The Association seeks a new cost of living formula identical to that adopted by the major automobile companies. The City wishes to stay with the present formula, namely, the payment of one cent for each one point rise during each six month period in the Consumer Price Index, plus an additional payment of \$50.00.

Of the ten neighboring cities on which we have been supplied extensive data, four have no provision for a cost of living allowance. Three or four would appear to have programs distinctly superior to that of East Detroit. Adoption of the automobile companies' formula would probably provide the Association's members with the most favorable plan for police in the area. We are loath to install such a high-powered program through the process of compulsory arbitration.

AWARD: (1) Article XV(d) shall remain unchanged.

(2) The amount of \$50.00, instead of \$25.00, shall be added to the cost of living, as set forth in Article XV(e).

XVI. Miscellaneous Employee Benefits (Article XVII(b))

Under the last contract, an employee who first requests leave on a particular date with 24 hours advance notice will be given the time off, so long as he has leave due him. Additional requests by other employees for leave on the same day may be granted at the option of the supervisor. The City has requested that this

provision be rewritten to state that time off will only be granted when the department does not have to call in personnel on an overtime basis.

It is obviously highly desirable for employees to be able to take leave on the particular days they select. Article XVII(b) as written protects the department from an excessive number of requests for leave on the same day. We do not think that the City demonstrated any such inconvenience in operating under Article XVII(b) as to justify a major change in the provision.

AWARD: Article XVII(b) shall remain unchanged.

XVII. Compensation for Education (Article XVII(g))

At present the City reimburses officers for tuition and books for "police related courses and approved courses." No compensation is provided, however, for securing a degree or earning credits. The Association has proposed a schedule of compensation supplements for education, ranging from \$300 annually for 30 credits up to \$600 annually for a bachelor's degree. The City has countered by proposing to limit reimbursement to police related or approved courses, specifically excluding such subjects as social sciences, humanities, psychology, physical education, English, history, etc.

A majority of the cities in the area provide supplemental compensation for educational attainments, although most do not have as generous a schedule of payments as the Association proposes. Since the Panel must accept or reject the Association's proposal in its entirety, its relatively high scale would be enough in itself to give us pause. Beyond that, compensation for education

may be a matter that is peculiarly within the province of the political process. While it would seem likely that a community would benefit from a well-educated police force, it may be that the community itself is entitled to decide how much of a price tag it wishes to place on the accomplishment. In any event, as between accepting the Association's offer or leaving matters as they stand, we incline to the latter course.

We are not sure what particular abuses the City has spotted in the course work being pursued by its police officers. We are convinced, however, that it has been too heavy-handed in its reaction. We do not know whether there is such a thing as a course that is "relevant to police work only." But we are satisfied that much within the area of the social sciences, psychology, natural sciences, etc., could be "police related" in the truest sense. Although it may not be entirely appropriate for the compulsory arbitration process to be used to determine what kinds of courses a city must finance for its police officers, once the city decides to finance any, we think there must be some rationality in the eligibility standards it establishes.

AWARD: Article XVII(g) shall remain unchanged.

XVIII. General Provisions (Article XXII(b))  
Management's Prerogative (Article XXVII(a))

These two provisions will be treated together, and out of their numerical sequence, because they underlie nearly all the other issues left for resolution. Article XXIII(b) provides in part: "No change will be made affecting wages, hours of employment, working conditions, or conditions of employment, without the prior mutual consent of both parties." The City would confine this provision to "wages or rates of pay." Article XXVII(a) sets forth



the City's "sole right to manage its business," subject only to such "restrictions governing the exercise of these rights as are expressly provided in this Agreement, and provided by State Statute." The City would first make a small technical change in the last quoted portion by adding a reference to "Federal Statute." It would then propose a major substantive addition, detailing the City's prerogative to determine a whole array of specific questions, such as the manning of police cars, the performance of patrolman's work by supervisors, the use of split shifts, overtime call ins, methods of promotions, the number of budgeted positions, etc. The City contends that to leave the contract in its present form will only lead to "continuing chaos." The Association responds that to grant the City's demands would "destroy the morale" of the Association's members.

The City is undoubtedly right <sup>that</sup> a police force, to operate most efficiently, must function in a paramilitary manner. The kind of authoritarian control and unquestioning obedience one sees in a military organization does not fit in easily with our notions of the traditional collective bargaining relationship. It might well have been that the State for these reasons should have excluded police forces when it gave public employees the right to organize and bargain with their employer. But the State did not see it that way, and our task is not to reexamine fundamental premises, but to see that the demands of collective bargaining are properly reconciled with the needs of a paramilitary force.

In our view, the problem should not be attacked by focusing on such broad, symbolic provisions as Article XXIII(b) and Article XXVII(a). The first, a standard "maintenance of conditions" clause, and the second, a standard "management rights" clause, are found

together in innumerable labor agreements in private industry. They have much the same potential there for creating conflict. But it is the whole purpose of collective bargaining to resolve, not bottle up, the parties' conflicts. The Association is surely correct that a couple of major disputes in two years is hardly a reason for despair. If collective bargaining means anything, it means a constant jockeying by union and management to better their own position without seriously damaging the other party. That entails a constant testing of that shadowy line between working conditions, in which the union has a legitimate interest, and management rights, in which it has not. Both the City and the Association must learn to live with the uncertainties which are inherent in collective bargaining.

Even though the Agreement states that working conditions may not be changed except by mutual consent, that does not mean that the City or its representatives are stymied in their need to give orders to the police force. "Working conditions" encompass the whole of the working relationship -- including the right and power of management to give orders of the sort that are customary in a particular working relationship. Without spending further time on the general clauses in the Agreement, the Panel will proceed to consider some of the specific provisions and proposals.

AWARD: (1) Article XXIII(b) shall remain unchanged.

(2) Article XXVII(a) shall remain unchanged, except that the last phrase shall be amended to read: "...and provided by State and/or Federal Statute."

XIX. Budgeted Positions (Article XVIII(c))

The Association wants the number of budgeted provisions increased from 37 to 40. The City wants all reference to a mandatory figure eliminated from the contract. Among the ten other cities in the East Detroit area surveyed by the City, the substantial majority did not have minimum manpower standards. In the immediate East Detroit area, however, the percentage was higher. Article XVIII(c) is not a tight restriction on the City, since it contains an exception for "financial reasons." The Association is a relatively small organization, and, rightly or wrongly, it apparently worries more than is usual about its continuing existence. It probably values Article XVIII(c) highly, regarding it as a shield against erosion of the unit. Although we have doubts on both economic and managerial grounds about such provisions as a general matter, we are reluctant to order the section deleted at this time.

AWARD: Article XVIII(c) shall remain unchanged, except that "forty (40)" shall be substituted for "thirty seven (37)."

XX. Scout Car Manning (Article XVIII(a))

The City wishes to delete the provision requiring that patrol cars be manned by two officers for a minimum of twelve hours between 6:00 p.m. and 8:00 a.m. The Association insists that two-man cars are recognized as safer, at least during the darker hours with their higher crime rate. A contractual requirement for two-man scout cars is a distinct rarity. We think this is a situation where the City is entitled to some flexibility, and should be able to adopt different approaches in different seasons. We see no evidence that the City is uncaring about its men's safety and welfare.

AWARD: Article XVIII(a) shall be deleted.

XXI. Warrant Officers (Article XVIII(f) proposed)

The Association wants a provision whereby the City would agree to let patrolmen serve warrants on overtime. At present only supervisory personnel are allowed to serve warrants on overtime. Although the City again displays an exaggerated concern about "management's prerogatives" in its handling of this Association request, we were not persuaded by the Association that we should overturn management's decision by writing a new term into the contract.

AWARD: Proposed Article XVIII(f) is rejected.

XXII. Manpower Policies (Article XVIII(b))

This Article at present aims at reducing supervisor performance of patrolmen's duties. The City proposes to rewrite the provision to permit management sole discretion in assigning any employee to any duties. It is traditional for unions to keep supervisors from performing the functions of rank-and-file employees. The City has not demonstrated that there are practical reasons for it to be unable to operate under the modest strictures of Article XVIII(b).

AWARD: Article XVIII(b) shall remain unchanged.

XXIII. Split-Shift Policy (Article XX)

The City wants to eliminate the whole set of rules governing the split shift, and substitute a management's rights provision. There was evidence that there were few practical problems in the handling of the split shift. Article XX contains procedures for resolving difficulties that may arise.

AWARD: Article XX shall remain unchanged.

XXIV. Equipment Policy (Article XXI(c))

At present an employee may refuse to use any equipment "which in his opinion is deficient." The City would rewrite this to say that the employee could refuse "only after supervision has agreed it is unsafe for operation." This is a non-economic issue, and we believe a clause could be written that takes a middle ground and seeks to protect the interests of both employer and employees.

AWARD: Article XXI(c) shall be rewritten as follows:

An Employee may refuse to use or operate any equipment which he reasonably believes is unsafe or dangerous without a direct order or disciplinary action until any question concerning the condition of the equipment has been resolved.

XXV. Riot Helmets (Article XXV(f) proposed)

The Association wants immediate replacement of its present riot helmets with an allegedly stronger, safer type, the so-called "BUCO" helmet. The City contends such items should not be in the contract, but agrees that when the existing helmets have to be replaced, they will be replaced with BUCO helmets. We were not persuaded that the City was so jeopardizing the safety of its officers that a contract provision on the subject is necessary.

AWARD: Proposed Article XXV(f) is rejected.

XXVI. Promotions (Unnumbered Article proposed)

The Association fears that if the rank of Corporal is eliminated, patrolmen may be blocked for several years in moving up to Sergeant, since under present policy one may only test for next higher rank. The Association proposes that

patrolmen be permitted to test along with corporals for the Sergeant's slot. An unknown element is the extent to which the City may have entered into any agreements or understandings with the supervisors' union concerning this problem. While we sympathize with the Association's position, we conclude that there are too many imponderables in this situation for us to draft a clause that we could be confident would be fair to all the interested parties.

AWARD: Proposed Article on Promotions is rejected.

XXVII. Overtime Call Ins (Article XIX)

Article XIX is a complex set of rules governing the distribution of overtime. The City proposes that it be eliminated from the contract, on the ground that it is management's right to determine the policy on overtime. Overtime provisions like Article XIX are standard items in collective bargaining agreements, and the City has supplied no reason for Article XIX to be treated differently. Like promotions, overtime is a well-recognized subject of mandatory bargaining.

AWARD: Article XIX shall remain unchanged.

XXVIII. The Panel reserves jurisdiction to settle any dispute that may arise concerning the interpretation or implementation of this decision.

*Ronald M. Dowell*

RONALD M. DOWELL, Member\*

*Donald Kuhn*

DONALD KUHN, Member\*

*Theodore J. St. Antoine*

THEODORE J. ST. ANTOINE, Chairman

April 12, 1976

\*Members Dowell and Kuhn dissent, respectively, from those awards in favor of the City and those awards in favor of the Association.