

State of Michigan

Department of Consumer and Industry Services

Employment Relations Commission

In the Matter of the Act 312 Arbitration between:

City of Lincoln Park

Employer/City

-and-

Police Officers Labor Council  
Patrol Unit

Union

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MERC Case No.: D02 A-0020

**FINDINGS, OPINION AND ORDER**

**APPEARANCES:**

Arbitration Panel:	Eugene Lumberg, Chairperson
Employer Delegate:	Patricia Lulko, Personnel/Purchasing Director
Union Delegate:	John Viviano, POLC Staff Representative
For the Employer:	Howard L. Shifman, P.C. By: Howard L. Shifman 370 E. Maple Road, Ste. 200 Birmingham, MI 48009
For the Union:	John A. Lyons, P.C. By: Mark P. Douma, Esq. 675 E. Big Beaver Road, Ste. 105 Troy, Michigan 48083

Date of Award: December 20, 2004

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## **INTRODUCTION**

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Act of 1969 as amended. The record reflects the following:

- A. The Union filed a petition for Act 312 arbitration which was received by MERC on December 15, 2003.
- B. The impartial arbitrator and chairperson was appointed via correspondence from the Employment Relations Commission dated March 18, 2004.
- C. A pre-hearing conference was held on April 21, 2004.
- D. The Arbitration Panel held a Hearing on September 21, 2004.
- E. The Chairperson received the parties' last offer of settlement on or about October 25, 2004.
- F. The panel held executive sessions to review these issues on several occasions.

These Findings, Opinion and Order which follow were issued as soon as possible thereafter consistent with a thorough and careful analysis of the record and the issues before the Panel. The Panel greatly appreciates the thoughtful arguments raised by each of the respective parties as well as their delegates.

## **APPLICABLE FACTORS AND STATUTORY SUMMARY**

Act 312 provides for the compulsory arbitration of labor disputes involving municipal police officers and fire departments. Section 8 of Act 312 states in relation to economic issues that:

The Arbitration Panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors described in Section 9. The findings, opinions and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

Consistent with the above, the factors that the Arbitration Panel must consider in resolving this dispute are contained in Section 9 of Act 312, 1969 as amended, i.e. MCLA 423.239. The provision reads as follows:

“423.239 Findings and orders; factors considered.

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or 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 interest and welfare of the public and the financial ability of the unit of the government to meet these costs.
- d. Comparison of the wages, hours and conditions of employment of the conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities,
  - (ii) In private employment in comparable communities.

- e. The average consumer price for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical 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.”

On each issue, the Panel has taken into account these factors in reaching its decision.

## **COMPARABLES**

One of the Section 9 factors that parties often have relied upon is subsection (d) which involves the comparison of wages, hours and conditions of employment of the employees involved in the arbitration with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable communities and in private employment in comparable communities.

Often the parties spend a substantial amount of time presenting evidence and arguments regarding the question of which communities should be considered comparable to the community involved in the arbitration. In many cases, a substantial portion of the record is developed where this type of evidence and argument is bandied back and forth.

However, in the current case, the parties stipulated to a list of communities which they propose the panel should consider comparable for the purposes of this arbitration. The communities agreed upon by the parties are:

Allen Park

Eastpointe

Ferndale

Garden City

Southgate

Trenton

Wyandotte

Based upon the above, there is no necessity for delving into those elements which arbitration panels consider relevant in determining whether communities are comparable for the purposes of an Act 312 Arbitration. The Panel will honor the stipulation of the parties on the comparability issue consistent with the Statute.

## ISSUES

The parties have indicated various issues to be submitted to the Panel. The Last and Best Offers of each of the respective parties are noted below:

“Union’s Last and Best Offer and Issues are as follows:

### 1. Article VII – Fringe Benefits

- I. Effective upon Award, or reasonably thereafter, all Officers shall receive Blue Cross Blue Shield Community Blue Option 2 Health Insurance at no employee cost.

Cops Trust shall be offered as an option. Employee to pay the difference between Cops Trust and BC/BS CBPPO2, the appropriate BC/BS drug provision shall be included in the cost. The City shall recalculate the difference annually.

Blue Care Network and HAP shall be offered as options at no additional cost.

- II. Effective upon issuance of the Award, and for those retirees who retire thereafter, retirees would have the option to remain on the City’s Optical and Dental Insurance. The retiree would be required to pay 102% of cost.

Employer position – Status Quo.

(The parties have agreed that each of the above issues are separate issues).

### 2. Article XII – Working Conditions

- a. (p) Senior Lead Officers  
City – Eliminate SLO pay.

Union – All SLO provisions to remain unchanged.

- b. (o) Special Assignments

Union – Detective Patrolmen assigned to the Detective Bureau will receive a 5% premium over SLO pay.



Employer position – See Employer offer below.

3. Article III – Wages

Union -

- July 1, 2002 = 3% increase across the board
- July 1, 2003 = 3% increase across the board
- July 1, 2004 = 3% increase across the board
- July 1, 2005 = 3% increase across the board
- July 1, 2006 = 3% increase across the board
- No change in current COLA provision.

Employer position – Employer's response is set forth in its LBO regarding wages.

4. Article III – Wages

Union position – Full retroactivity.

Employer position – No retroactivity.

The Employer's Last and Best Offer and Issues are as follows:

1. Article III – Wages

City -

- July 1, 2002 = 1% increase across the board
- July 1, 2003 = 2% increase across the board
- July 1, 2004 = 3% increase across the board +  
\$ 0.42 Cola Roll-in
- July 1, 2005 = 0% increase
- July 1, 2006 = 0% increase

Union position – See above.

2. Article V – Compensated Fringe Benefits

Section 3 -Gun Allowance

City - The current gun allowance shall remain in place for 02, 03, 04, 05 fiscal years. On July 1, 2006 the gun

allowance shall be reduced to \$500 for all employees and the balance added to base pay.

Union position – Status Quo.

3. Article IV – Court Duty

City - District Court O.T. reduced to 3 hours minimum at time and one half (1.5) .

Union position – Status Quo.

4. Article VII – Fringe Benefits

Section 2 Hospitalization Insurance –

- a. City – Change the current \$5.00 generic \$10 name Brand Blue Cross / Blue Shield drug provision to a \$10 /\$20 / \$30 Pharmacare or successor drug provision.  
To become effective July 1, 2005
- b. City Employees will co-share in health care increases 50 / 50 effective July 1, 2005.
- c. City The city has the discretion of choosing health carriers.

(Each of these are separate issues).

Union position – Status Quo.

5. Article XII – Working Conditions

- a. (p) Senior Lead Officer  
City – Eliminate SLO Pay

Union position – Status Quo.

- b. (o) Special Assignments

City – Detective Patrolmen assigned to the Detective Bureau will receive a 3.6% premium over a fully tenured patrolman.

Union position – See above Union L.B.O.

(Each of the above are separate issues).

6. Article XII Working Conditions - Staffing

City - Shift Staffing to remain the same, provided that the 3<sup>rd</sup> shift (11:00 pm – 7:00am) may operate with 1 less man 3am –7am if on overtime.

Union position – Status Quo.

7. Book Time –

City - Current Book Time accounts are to be frozen.  
Future postings to book time are to be paid out at the end of the fiscal year if not taken.

40 hours of book time may be carried over from year to year.

Union position – Status Quo.

8. Retroactivity

City - No retroactivity on wages.

Union position – Full retroactivity on wages.

(The parties have agreed that retroactivity is a separate issue from wages)."

### **ABILITY TO PAY**

Subsection (c) of Section 9 of the Act specifically references as a factor, which the panel must consider, the interest and welfare of the public and the financial ability of the unit of government to meet those costs. This element has often been characterized as the Employer's ability to pay. In this case, while not technically raising an ability to pay claim, the Employer has taken the position that it lacks both the short and long term ability to afford the proposals sought by the Union.

In essence, in the long term, there is a real question of its ability to pay. The background information and record establishes that the City of Lincoln Park was faced with a financial crisis. It was facing an approximate \$2 million shortfall in its budget in each year. According to the City, and supported by the record, it could not continue to afford to meet the demand for services and keep its present work force.

The City had been buffeted by numerous increases in pension, healthcare increases, millions of dollars in lost state shared revenue as well as a lack of increase in revenue due to the fact that the community is fully developed as well as the impact of both Proposal A and Headlee Amendment. Despite their best efforts, the Union was not in a position to challenge the undeniable fact that older, well-developed communities such as Lincoln Park in the State are facing a serious financial crisis.

Unlike many communities, however, the City of Lincoln Park took steps with each of their collective bargaining units, including the Patrol Unit here, to reach what have been called Early Retirement Incentives (ERI) to reduce its workforce.

Exhibits in this case demonstrate agreements with all employee unions including the Lincoln Park Fire Fighters Association, Local 1292, Lincoln Park Command Officers Association, the POLC Patrol Unit, AFSCME Local 628, Chapter A – who covers the Clerical Employees, the TPOAM – who represents the Department of Public Works Employees and the GELC – who represents the Foreman and Deputy Directors.

From the Chairperson's perspective, these agreements are unique and all parties are to be commended on them. They are recognition of the difficult financial straits faced by the City. Each of these proposals and agreements, which are Exhibits in this case, indicate that the parties have agreed upon Early Retirement Incentives to voluntarily reduce the workforce which included language which stated the following:

The City of Lincoln Park proposes the following effort to voluntarily reduce the work forces as an avenue to reduce the City's fiscal liability at a time when we are receiving revenue shortfalls and to minimize or avoid hardships of layoffs.

### **Voluntary Reduction in Force**

The City proposes to amend the current collective bargaining agreements in pension system to allow a temporary incentive to encourage a voluntary reduction in workforce as follows:

**“Benefit provisions deleted.”**

In each case, a voluntary incentive was offered to all unionized and non-unionized employees in the City. Almost eighty (80) employees were eligible for this early retirement incentive out of the almost two hundred (200) employees in the City. It is the Panels understanding that at least 67 employees have taken advantage of these Early Retirement Incentives. Many of them will never be replaced.

In addition to allowing these employees to retire with enhanced benefits without the necessity of replacement, each department in the City has been restructured, including both the Police and Fire Department, with a significant reduction in rank and less personnel. It is the Panels understanding that virtually the entire Command Staff has left the Police Department and numerous other employees throughout the City have left. Again, numerous individuals will not be replaced in the City. Where there are replacements, in many instances, the Department has been restructured so that there will be lower ranking individuals replacing them and the benefits for many entry level people will be reduced.

The reason why these Early Retirement Incentives are important is that they are recognition by all collective bargaining units in the City that the City is facing difficult financial times. All of the Unions, including the Police Officers Labor Council, are to be commended for reaching these agreements to avoid layoffs of bargaining unit members. From the Panel Chair’s perspective, this was a unique

way of dealing with the problem without having to layoff active employees and it provided significant benefits to Union Members.

Additionally, as both the Employer and the Union concede, if this had not occurred, these proceedings would have been more contentious since the City may have felt compelled to make many more onerous proposals. As it is, the reasonableness of both sides in reaching those agreements will be taken into account by the Panel, where appropriate. Section 9 compels that this Panel take into account these negotiated agreements.

The City relies heavily on Statutory State Revenue Sharing. Its uncertain future also requires this Panel to take that into account in making its decision here.

While the most recent budget deal at the State level allegedly protected Counties from losing any further State Shared Revenue, no such guarantee exists for the City.

## **THE DIFFICULT NATURE OF A CITY OF LINCOLN PARK LAW ENFORCEMENT OFFICER'S JOB**

The Union has forcefully argued that it has a fine group of Officers who are subject to significant risks in law enforcement. They point to the number of runs in the City as well as to the stress that each City of Lincoln Park Officer is subjected to. As was strongly stated to the Chairperson by the Union, the guys are “always jumping”.

The Chairperson has a long background in Law Enforcement and recognizes and respects the significant risk each officer faces. While there is a risk for Law Enforcement Officers in every community, the Chairperson is also taking into account in making this decision that this is not, as the Union stated, a sleepy suburban department where the Officer's runs and being subjected to the risks of Law Enforcement are intermittent.

The City, the Panel would also note, has indicated that it is proud of its Law Enforcement Officers and that it is a hard-working department. The City does not challenge the Union on this issue, but instead, simply points out that its position on the issues has to do with the fiscal reality that it faces and its hopes to continue to deliver services to the public – it is not a reflection on the dedication of its officers.



## **BACKGROUND**

The City of Lincoln Park is a city of 5.8 square miles with a population of 40,008 in the Year 2000. That population reflects a decline in the most recent census.

The State Equalized Valuation in the City of Lincoln Park in the Year 2000 was 667, 502,080. It is important to note Lincoln Park's SEV is less than in many of the comparables despite the fact it had a higher population than each one of them.

Additionally, the City of Lincoln Park relies heavily upon residential SEV as a component of its total State Equalized Valuation. Also of note, the population density of the City is the highest of any of the comparables.

The number of full-time employees in the City has ranged from 188 full-time employees to 194 full-time employees in recent years. While the numbers have varied slightly for the Police Department, prior to the Early Retirement Incentive noted elsewhere in this Opinion, it has hovered around 60 Police Officers which generally included 40 Patrol Officers, 18 Command Officers and a Chief and Deputy Chief. This number may change significantly based upon the Early Retirement Incentive and the agreements reached with the Unions also include a major restructuring which will significantly reduce the number of Command Officers as well as eliminate the Deputy Chief's position.

The number of Fire Fighters in the City has hovered around 34 as well. Again, the Department has been restructured pursuant to the Early Retirement

Incentive Program and the ranks have been restructured as a result of the agreement with the Fire Fighter's Union and the Deputy Chief's position was eliminated in the Fire Service as well.

All of the background information offered by the parties has been taken into account by the Panel. The restructuring in both the Police and Fire Departments is, again, an important background factor for the Panel to consider in reaching its decision in this case.

## **INTERNAL COMPARABLES**

From the Chairpersons perspective, one of the most critical factors in this Arbitration Case are the internal comparables as well as a recent Act 312 Arbitration Award involving the Command Bargaining Unit. From the Chairperson's view, much of the work and many of the issues are going to be resolved based on the internal comparables and the prior arbitration award.

In the Chairpersons view, where the City asks for more from the Union than was obtained from other bargaining units, it must show a compelling reason to do so. Equally true, when the Union seeks more than has been provided to other bargaining units, it, too, must show compelling reasons. That is particularly true in this case.

The present contract being arbitrated is a five (5) year collective bargaining agreement. Its duration is July 1, 2002 through June 30, 2007.

For the years July 1, 2002 through June 30, 2005, all unionized employees in the City, other than this bargaining unit, have collective bargaining agreements in place. Again, this covers the following bargaining units:

- A. Lincoln Park Police Command Officers Association;
- B. Lincoln Park Fire Fighters Association, Local 1292
- C. TPOAM Bargaining Unit;
- D. AFSCME Local 628, Chapter A;
- E. GELC Bargaining Unit; and
- F. Administrator's Association.

Beyond that, the following unions have also extended their contracts through June 30, 2007. They are:

- A. Lincoln Park Police Command Officers Association; and
- B. Lincoln Park Fire Fighters Association, Local 1292;

These extensions occurred after this Act 312 Arbitration case was filed.

These agreements, as well as the Early Retirement Incentive plans, require significant consideration and weight by the Panel.

This is particularly true since the issue of parity was recently addressed by Arbitrator Dr. Benjamin Wolkinson in the Police Officers Labor Council and City of Lincoln Park Case. Case No. D99 A-0088 which was issued on August 9, 2001.

While that case only dealt with a pension issue, there was much discussion regarding internal comparables. Sustaining the City's position and adopting its Last and Best Offer on pension, the Chairperson noted as follows:

"The record indicates that at least since 1980 there has been parity with respect to pension benefits across all three public safety units: police patrol, police command, and the fire department. This result is the manifestation of the parties' own collective bargaining efforts. Significantly, the Act 312 process is designed to be an adjunct to and not a substitute for the parties' efforts to negotiate and agreement. Yet this Panel would be promoting the latter outcome were it to adopt a proposal that in a single stroke would uproot long established bargaining patterns. For this reason, deviations from the traditional pattern of pension parity in Lincoln Park should not in the absence of compelling arguments be implemented as a result of Act 312 intervention."

The Chairperson further stated the following:

“Furthermore, from the standpoint of internal comparisons, the City’s proposal is strongly justified by the fact that it offers to command personnel the same benefits extended to all other public safety units. These units are uniquely comparable to the command personnel as they all share in the common responsibility of providing public safety services to the residents of Lincoln Park.”

One further comment which this Panel has taken into consideration in rendering its Award is the Opinion of Dr. Wolkinson where he indicates “These realities justify the City’s concern over the potentially negative and destabilizing implications growing out of the Union’s efforts to break away from the parity agreements on pensions previously maintained by the City’s public safety bargaining units.”

The reason why this becomes important is that while pensions are not an issue in this case, there is a significant history of providing across the board wages and benefits on an equal basis on a number of the issues which are presently before the Panel. Disturbing that history may well bare fruit on Arbitrator Wolkinson’s concerns.

### **OTHER APPLICABLE FACTORS**

There is other data and evidence regarding all of the statutory factors which have all been carefully analyzed and considered by the Panel on each issue before the Panel.

## **RESOLUTION OF THE ISSUES**

At the outset, in addition to developing a record which is hundreds of pages of documentation, the parties have also made numerous arguments on behalf of their respective positions. They are to be commended on their presentation. The entire record was carefully and painstakingly analyzed in making these decisions.

In resolving the issues before the Panel, on occasions the Panel will bounce back between the Employer and the Union issues since there is an overlap between the two. In resolving these issues, while all of the applicable statutory factors have been reviewed, only the important reasons for the Panel's decision will be outlined below.

### **Employer Issue No. 1 – Wages**

### **Union Issue No. 3 – Wages**

The position of the City on wages is as follows:

#### **Article III – Wages**

##### **City -**

- July 1, 2002 = 1% increase across the board
- July 1, 2003 = 2% increase across the board
- July 1, 2004 = 3% increase across the board +  
\$ 0.42 Cola Roll-in
- July 1, 2005 = 0% increase
- July 1, 2006 = 0% increase

In response, the Union has proposed the following:

#### **Article III – Wages**

##### **Union -**

- July 1, 2002 = 3% increase across the board

- **July 1, 2003 = 3% increase across the board**
- **July 1, 2004 = 3% increase across the board**
- **July 1, 2005 = 3% increase across the board**
- **July 1, 2006 = 3% increase across the board**
- **No change in current COLA provision.**

## DISCUSSION OF THE ISSUE

As justification for its position, the Union believes that 3% is the appropriate increase from the Panel. It states in support of its position numerous arguments, including, but not limited to, the difficult job faced by Patrol Officers, the increase in the Cost of Living, as well as the Comparables in support of its position that 3% across the board wage increases are appropriate. In summary, much of the Union's argument here is premised upon the risk of the job as well as external comparability. Those external comparables have been reviewed by the Panel.

On the other hand, the City's position is premised upon its ability to pay as well as internal comparability. The City also argues that the Union's position regarding increases in the CPI is not warranted.

As was stated above, the record has been painstakingly analyzed to determine whose position is warranted. The Panel has carefully canvassed the history of pay increases internally within the City along with the comparable communities, the City's ability to pay, as well as Dr. Wolkinson's Award in reaching its decision. While the Union has made a forceful and persuasive case for



its positions, the Panel cannot adopt its position here. Several of the reasons will be noted below as to why the City's position is most appropriate under Section 9.

The record reflects that all City Bargaining Units for the years July 1, 2002 to June 30, 2005 have received the 1% for July 1, 2002, 2% for July 1, 2003 and 3% for July 1, 2004 offered by the City. Additionally, virtually all of the bargaining units have engaged in the COLA Roll-In proposed by the City. There is not a single bargaining unit in the City which have received the 3% annual pay raises sought by the Union in this case. While the Union is correct in noting that some, but not all, external comparables have received 3%, the internal comparables do not support the position of the Union in this case.


Equally true, for the years July 1, 2005 and July 1, 2006, both the Police Command and the Fire Fighters have agreed on a 2 year wage freeze.

The reason why these internal comparables are so critical is that there is historical parity regarding wages demonstrated in this record going back in excess of 20 years involving not only the Police and Fire Departments but all City Employees. To grant the request of the Union in this case would break that historical parity. It would break this historical parity at a time where it is clear that the City is going through severe changes both economically and structurally in dealing with the new fiscal realities imposed upon it by many factors which are outside of its control such as cuts in State Revenue Sharing, increase in health insurance and the like.

To recall, Arbitrator Wolkinson's comments in the recently concluded Act 312 Arbitration Case involving the Lincoln Park Command Officers, to break historical parity could destabilize existing relationships. It was not warranted in his case, nor is it warranted in the case before this Panel.

As a result, the City's Last and Best Offer regarding wages is the offer adopted by the Panel. Particular attention to the recently negotiated Fire Fighter's Contract Extension as well as that of the Command Officers has been taken into account by this Panel in reaching its decision.

**Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Employer's position.**

  
EUGENE LUMBERG

Dated: 12/20/04  
☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04  
☒ Concur ☐ Dissent

  
JOHN VIVIANO

Dated: 12/20/04  
☐ Concur ☒ Dissent

**Employer Issue No. 5(a) – Senior Lead Officer**

**Union Issue No. 2(a)– Senior Lead Officer**

The position of the City regarding the Senior Lead Officer is as follows:

**Eliminate SLO pay.**

In response the Union has proposed the following:

**All SLO provisions to remain unchanged.**

**DISCUSSION OF THE ISSUE**

The essence of this issue is that a premium is paid to the 11 most senior members of the Patrol Bargaining Unit.

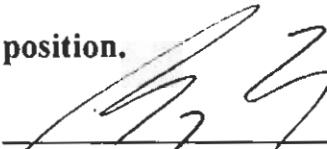
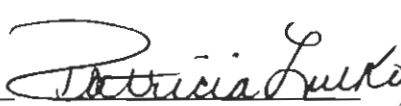
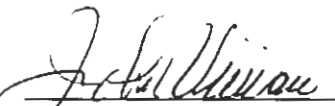
Historically, this pay was designed to reflect the fact that they had additional responsibilities as SLO Officers. The City has proposed eliminating this pay provision due to what it argues are changed circumstances regarding the SLO responsibility as well as external comparability. It argues that pay for such a position is not necessary in today's times.

On the other hand, the Union argues that there is a history of this position being paid and that with all the additional sacrifices its members have had to make it would be unfair to ask for a sacrifice on this issue. The Union also points out that no equal sacrifice in this area was made by any other bargaining unit. They also argue that some of the external comparables have more ranks than the City of Lincoln Park presently has.

On this issue, at the present time, the Union's position more closely matches the Section 9 factors. While there is a question as to whether the SLO

pay is necessary, at this time, in light of the sacrifices that have been made and the responsible actions by the Union in working with the City, this demand for Status Quo should be maintained and the Union's position adopted.

Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position.

 EUGENE LUMBERG	 PATRICIA LULKO	 JOHN VIVIANO
Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>
<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Dissent	<input type="checkbox"/> Concur <input checked="" type="checkbox"/> Dissent	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Dissent

**Employer Issue No. 5(b) – Special Assignments**

**Union Issue No. 2(b)– Special Assignments**

The position of the City regarding the Special Assignments is as follows:

**Detective Patrolmen assigned to the Detective Bureau will receive a 3.6% premium over a fully tenured patrolman.**

In response the Union has proposed the following:

**Detective Patrolmen assigned to the Detective Bureau will receive a 5% premium over SLO pay.**

**DISCUSSION OF THE ISSUE**

On this issue, the Union has argued that the premium should be 5% over an SLO. The City has argued that the Detective Patrolman assigned to the Detective Bureau should receive 3.6% premium over a fully tenured patrolman which would amount to SLO pay.

The party's position on this issue is not significantly far apart. Again, the City discusses its financial condition and points out that this position would be a special assignment and is a position where an individual will have working hours, that many individuals will like and that the pay offered by the City is more than fair.

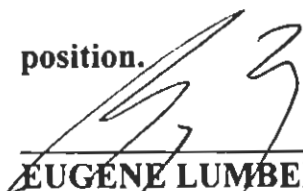
On the other hand, to summarize the Union's arguments, the Union argues that this is work formally performed exclusively by Command Officers and a premium above SLO pay is warranted. They point that many individuals do not want to work this shift and by taking this position may lose overtime opportunities.

The Union also points out, and this is the argument which tips the balance in favor of the Union, that the City – in its September 20, 2004 Settlement with the Fire Fighters in extending the Contract by 2 years – granted the two most senior engineers wage scale a 5% wage increase in paragraph (b) of that agreement.

The essence of the Union's argument is that if the Panel decides that the City is correct in utilizing internal comparability in adopting the City position on wages, it should adopt the Union's position on this issue due to the settlement with the Fire Fighters.

In sum, the Union, again, has the better of the arguments. Its offer most closely meets the Section 9 criteria.

**Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position.**

  
EUGENE LUMBERG

Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☐ Concur ☒ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☒ Concur ☐ Dissent

## **Employer Issue No. 2 – Compensated Fringe Benefits**

The position of the City on Compensation Fringe Benefits, Section 3 – Gun

Allowance is as follows:

**The current gun allowance shall remain in place for 02, 03, 04, 05 fiscal years. On July 1, 2006 the gun allowance shall be reduced to \$500 for all employees and the balance added to base pay.**

In response the Union has proposed the following:

**Status Quo.**

### **DISCUSSION OF THE ISSUE**

Under Article V, Section 3 of the expired collective bargaining agreement, a member receives 4% of his base pay for carrying a service revolver. It, too, has a counter-part in the Fire Department.

On this issue, the justification offered by the City is that no external comparable has such a payment. The City also argues that the Union seeks to have it both ways on this issue: First, they argue that they need to maintain their gun allowance and then, because it is not in base salary, they argue that they are underpaid in wages. The City is faced with always explaining to an Arbitrator that since it was part of their total compensation their total cash compensation is very competitive with all of the external comparables.

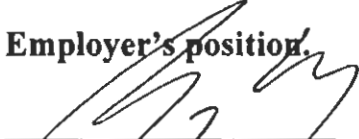
The Union argues for the status quo. They argue that there is no compelling reason for granting the request of the City. They also point out that historically this

has been in place and the status quo should not be disturbed. Other arguments have also been made.

The Panel is persuaded by the City's position on this issue. This does not reduce any members of the bargaining unit's compensation. By placing the gun allowance in base salary, the result will more accurately describes the cash compensation received by members of the bargaining unit and avoids confusion on this issue. Since there is no economic detriment to members of the bargaining unit, and since the external comparables do not overcome the rationale above, the position of the City will be adopted by the Panel based upon the Section 9 factors.

**Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the**

**Employer's position.**

  
EUGENE LUMBERG

Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☒ Concur ☐ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☐ Concur ☒ Dissent



**Employer Issue No. 8 – Retroactivity**

**Union Issue No. 4 – Full Retroactivity**

The position of the City on retroactivity is as follows:

**No retroactivity on wages.**

In response the Union has proposed the following:

**Full retroactivity on wages only.**

**DISCUSSION OF THE ISSUE**

The City argues that retroactivity is not appropriate. They argue that the delay in reaching an Agreement has deprived them of savings in other areas and the Union should not be allowed to delay savings by delaying an Agreement while other employees have made sacrifices in their Agreement.

The Union argues that they have made concessions in the Early Retirement Incentive and it would be unfair not to grant retroactivity to this Unit when other Units have only recently settled.

The Panel agrees with the Union. Concessions have been made, their position has been fair and the City cannot demonstrate significant lost savings. If the City could show such lost savings, or an unreasonable delay by the Union, this might require a different result.

**Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position.**

  
**EUGENE LUMBERG**

Dated: 12/21/04

☒ Concur ☐ Dissent

  
**PATRICIA LULKO**

Dated: 12/20/04

☐ Concur ☒ Dissent

  
**JOHN VIVIANO**

Dated: 12/20/04

☒ Concur ☐ Dissent

**Employer Issue No. 4 – Fringe Benefits**

**Union Issue No. 1 – Fringe Benefits**

The position of the City on Section 2 – Hospitalization Insurance is as follows:

**Section 2 Hospitalization Insurance –**

- 1. City – Change the current \$5.00 generic \$10 name Brand Blue Cross / Blue Shield drug provision to a \$10 /\$20 / \$30 Pharmacare or successor drug provision.  
To become effective July 1, 2005**
- 2. City Employees will co-share in health care increases 50 / 50 effective July 1, 2005.**
- 3. City The city has the discretion of choosing health carriers.**

(Each of these are separate issues).

In response the Union has proposed the following:

- 1. Status Quo.**
- 2. Status Quo.**
- 3. Status Quo.**

(The parties have agreed that each of the above issues are separate issues).

**DISCUSSION OF THE ISSUES**

The record in this case is replete with showing that the largest component of the increases in health insurance are in prescription drugs. The City of Lincoln Park, as well as all public employers, are experiencing significant increases in their health insurance costs. The record establishes that the percentage increase in

the cost of prescriptions is significantly higher than that on the medical side and is the prime culprit in rising health care.

As a result, the City argues, they need to put in place the \$10/\$20/\$30 Pharmacare formulary program which, in simple terms, requires beginning with the generic and then moving through other branded drugs if the treatment does not work. According to the City, this program will save money both because of the increases in the deductibles as well as the fact that it is a managed prescription program.

The Union strongly opposes this plan. They oppose the increases in the deductibles and indicate that the Employees are not in a position to bear the increases in the deductibles. They also argue that the increase in deductibles is too severe.

There are four (4) health insurance issues before this Panel. This issue, and City Issue No. 2, regarding Co-sharing and healthcare premiums, would increase the cost to members of this bargaining unit. Public Employers are looking at each of these changes and they are issues which are being raised in virtually every Act 312 Arbitration. Public Employers have limited funds. The City has made a compelling case regarding its ability to pay both today and in the future.

Both the City's and Union's arguments have been utilized by the Panel in granting the City's position regarding wages and have been taken into account in granting other issues to the City and to the Union. They are also important in deciding this issue and this Panel believes that the \$10/\$20/\$30 drug card is a fair

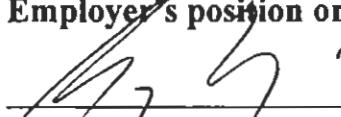
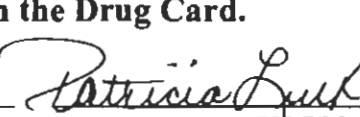
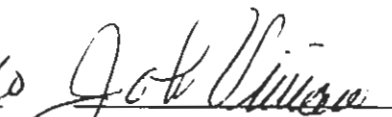
one. The cost of prescriptions will still be overwhelmingly borne by the City.  
This is a modest proposal compared to the overall increase in prescription drugs.

Moreover, this issue cannot be viewed in isolation. By granting this City issue, and in light of the wage freeze for the next two years granted previously by the Panel, the City's position on cost sharing in the next issue will not be granted by this Panel. It is incumbent on this Panel to not only review each issue, but to consider its entire Award.

The decision of this Panel mirrors the agreements on internal comparability reached with both the Fire Fighters and the Command Officers. They have agreed to this drug card. They do not have cost sharing of premiums. Thus, based upon the factors noted above, as well as internal comparability, the position of the City should be adopted on this issue.

Based upon the above, as well as all applicable Section 9 factors, the position of the City is adopted on Issue No. 1 regarding Section 2, Hospitalization Insurance.

**Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Employer's position on the Drug Card.**

 <b>EUGENE LUMBERG</b>	 <b>PATRICIA LULKO</b>	 <b>JOHN VIVIANO</b>
Dated: <u>12/17/04</u>	Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>
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DISCUSSION OF SECTION 2 HOSPITALIZATION INSURANCE  
ISSUE NO. 2

The discussion above reflects the fact that the applicable Section 9 factors requires adopting the Status Quo. The Union has the better of this argument at this time. The City's position is not reflected in the new collective bargaining agreements with either the Command Officers or the Fire Fighters Unions through the year 2007.

Based upon the above factors noted in this issue and the prior issue, the Union's position of Status Quo is adopted by the Panel.

**Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position on sharing of premiums and maintain the Status Quo.**

  
EUGENE LUMBERG

  
PATRICIA LULKO

  
JOHN VIVIANO

Dated: 12/21/04

Dated: 12/20/04

Dated: 12/20/04

☒ Concur ☐ Dissent

☐ Concur ☒ Dissent

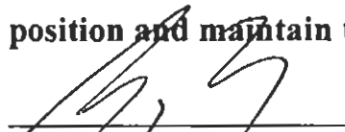
☒ Concur ☐ Dissent

DISCUSSION OF SECTION 2 HOSPITALIZATION INSURANCE  
ISSUE NO. 3

The Panel will not repeat the arguments and discussions above on the other health insurance issues. The Union position is the Status Quo. There is no agreement with either the Command Officers or the Fire Fighters reflecting a change such as that requested by the City.

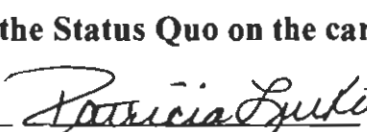
Based upon the above factors noted in this issue above and the prior issue, the Union's position of the Status Quo is adopted by the Panel.

**Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position and maintain the Status Quo on the carrier issue.**

  
EUGENE LUMBERG

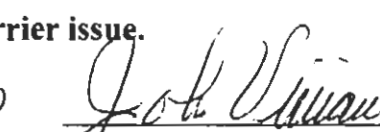
Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☐ Concur ☒ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☒ Concur ☐ Dissent

DISCUSSION OF SECTION 2 HOSPITALIZATION INSURANCE  
ISSUE NO. 4

**Employer Issue No. 4 – Fringe Benefits**

**Union Issue No. 1 – Fringe Benefits**

The Union has proposed the following:

**Article VII – Fringe Benefits**

- 4. Effective upon Award, or reasonably thereafter, all Officers shall receive Blue Cross Blue Shield Community Blue Option 2 Health Insurance at no employee cost.**

**Cops Trust shall be offered as an option. Employee to pay the difference between Cops Trust and BC/BS CBPPO2, the appropriate BC/BS drug provision shall be included in the cost. The City shall recalculate the difference annually.**

**Blue Care Network and HAP shall be offered as options at no additional cost.**

- II. Effective upon issuance of the Award, and for those retirees who retire thereafter, retirees would have the option to remain on the City's Optical and Dental Insurance. The retiree would be required to pay 102% of cost.**

**(The parties have agreed that each of the above issues are separate issues).**

The position of the City on Article VII – Fringe Benefits, Issue No. 4 is as follows:

- 4. Status Quo.**
- II. Status Quo.**  
**(Status Quo on both issues).**



## DISCUSSION OF THE ISSUE

On this issue, the Union argues that the two tier system for providing health insurance with mandatory HMO's for certain members of this bargaining unit should be eliminated. They argue several reasons for this:

1. It will eliminate traditional coverage for all active members, since Community Blue Option 2 will be put in place for all members of the bargaining unit;
2. Community Blue Option 2 will save the City money from traditional coverage and has a balanced 90/10 program;
3. Community Blue Option 2 will provide preventatives to members of its bargaining unit not presently being provided;
4. That eliminating the two tiers where there is a balanced proposal such as this which has both savings and increases to the Employer is appropriate at this time where the Union has been asked to make so many sacrifices and has stepped up to the plate.

In response, the City argues that at a time when there is rising healthcare costs and declining revenues, it is inappropriate to grant any increase in health insurance. They point out the possible long-term cost of granting this demand as well as the fact that it has not been provided for in either the Fire Fighters or Command agreements.

This is a very difficult issue for the Panel. The position of the Union on this issue appears to have the rationale which subtly suggests: “If you are going to give the City wages and their drug card, a proposal like this which has increases and decreases, should be given to members of this bargaining unit so that the two-tiers – the 2<sup>nd</sup> tier which is distasteful to members of the bargaining unit – should be eliminated”.

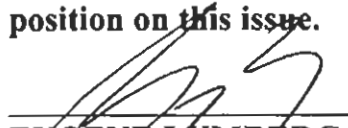
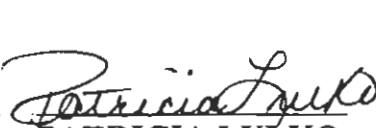
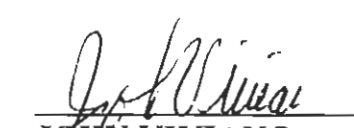
The Panel agrees. The record reflects that this will not result in significant, if any, increases for the City and in many ways will be savings because the savings between traditional and Community Blue Option 2 will be significant. On the other hand, it provides a significant upgrade for those individuals who were in the mandatory HMO whether it was Blue Care Network or Health Alliance Plan. Additionally, it provides COPS Trust, HAP and BCN as options which will not cost the City money.

In this instance the Panel is convinced that the benefits provided by the Union’s position outweigh the consideration of parity between the Fire Fighter’s Union and Police Command Union.

Overall, despite the well articulated arguments by the City, the Union’s position is the better one.

For the foregoing reasons which most closely comport with the Section 9 factors, the position of the Union is adopted by the Panel.

Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position on this issue.

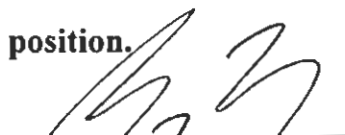
 EUGENE LUMBERG	 PATRICIA LULKO	 JOHN VIVIANO
Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>
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DISCUSSION OF SECTION 2 HOSPITALIZATION INSURANCE  
ISSUE NO. 4(II)

On this issue, the Union asked for inclusion of language in the contract which is already contained in the Command Contract. They argue that there is no cost to the City. They ask for the inclusion of this language. They recognize that as a practical matter it can only be accomplished for future retirees. If the Union had sought to have this applied to individuals who retired prior to issuance of the Award, this Panel would have denied their request.

Based upon the fact that it is in the Command Agreement and the Union did not seek retroactive application of this provision, the Panel believes that this most closely comports with Section 9 factors.

**Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position.**

  
EUGENE LUMBERG

Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☐ Concur ☒ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☒ Concur ☐ Dissent

**Employer Issue No. 3 – Article IV – Court Duty**

**Union Issue No. \_\_\_ – Article IV – Court Duty**

The position of the City on Court Duty is as follows:

**District Court O.T. reduced to 3 hours minimum at time and one half (1.5).**

In response the Union has proposed the following:

**Status Quo.**

**DISCUSSION OF THE ISSUE**

The next several issues have an impact on overtime. These issues are of grave concern to the City. The City argues that the compensation paid to members of the bargaining unit is very competitive. On the issue of overtime, however, they need to bring down the cost because of the City's serious financial condition. This is particularly true, they argue, because of the ever increasing costs of overtime in the Police Department.

They argue that in virtually every year the amount budgeted increases and, despite this, the budgeted amounts never appear to be enough to cover the cost of the overtime expended during the year.

In the present contract, District Court overtime is paid at four (4) hours minimum at time and one-half. The City also points out that some comparables are now only paying two hours minimum and many are only paying three hours minimum. The City points out that many Court appearances may only be for a very short period of time which has resulted in the District Court being treated

differently than other Court appearances. They also note they did not ask to change other minimums.

The Union counters that District Court overtime should be treated the same as all other overtime due to the fact that it interferes with an officer's day off. The essence of their argument is that it isn't economically worthwhile to appear at Court if they only receive three hours of overtime at time and one-half due to the disruption it causes in their life for child care or other reasons.

On this issue, the City has the better of the argument. There is a trend to reduce the time for District Court overtime that is based on common sense. District Court overtime is likely shorter than other court appearances due to the fact that it involves traffic violations. If for some reason the length of time that an individual is in Court is longer, the Officer receives the premium beyond the three hours in the City's offer. Paying an Officer four and a half hours for appearing on any traffic violation is, in the Panel's opinion, more than fair.

The City has demonstrated a problem in terms of overtime and this is a modest proposal which will help curtail those costs. For the foregoing reasons which more closely comport with the Section 9 factors, the position of the City is adopted by the Panel.

Based upon the foregoing, the Employer's argument is most  
persuasive. The Panel votes 2 to 1 to adopt the Employer's position.

  
EUGENE LUMBERG

Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☒ Concur ☐ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☐ Concur ☒ Dissent

**Employer Issue No. 6 – Article XII Working Conditions – Staffing**

**Union Issue No. \_\_ – Article XII Working Conditions – Staffing**

The position of the City on staffing is as follows:

**Article XII Working Conditions - Staffing**

**Shift Staffing to remain the same, provided that the 3<sup>rd</sup> shift (11:00 pm – 7:00am) may operate with 1 less man 3am –7am if on overtime.**

In response the Union has proposed the following:

**Status Quo.**

**DISCUSSION ON THE ISSUE**

The present language in the collective bargaining agreement has minimum staffing provisions for all shifts. In many cases, as both parties are aware, the Employer may take a position that these are not mandatory topics of bargaining and the jurisdiction of the Panel on these issues comes into question.

In this case, the City has indicated that, without waving its jurisdictional argument on this issue, it seeks only minimal relief on the third shift. The City argues that its restructuring has been designed not to reduce street presence, but rather, unnecessary rank and the streamlined delivery of service in the Police Department. The City points out that it has attempted to streamline its operations in all of its Departments without affecting services to the public.

The position advanced by the City in this case is a very narrow one which is designed to save some overtime at 3:00 a.m. to 7:00 a.m. which is typically the slowest time of night. The position of the City does not require it operate with one



less person, but rather, leaves it to management to decide whether it will fill that shift under the limited circumstances noted in its offer.

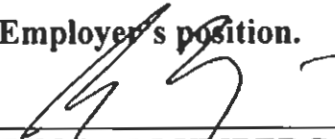
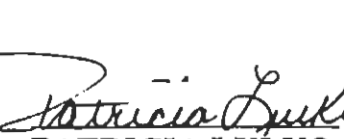
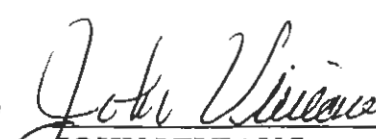
The Union's opposition to this change has been forceful. The difficulty with their disagreement is that the City has taken a very limited and focused attempt to curtail overtime costs. In light of the fact that it has not raised the jurisdictional issue, which it indicates it has not waived from future proceedings by stating that here, and the fact that it has taken a very narrow approach on this issue, it is the Panel's view that their position should be adopted.

Both the City and Union are concerned with having an adequate police presence on the street. The restructuring of the Police Department has been designed to keep officers on the street and granting this limited demand by the City is consistent with that commitment and is during the period of time where the Department will have the least likely demand for services.

For the foregoing reasons, as well as all the applicable Section 9 factors, the Panel adopts the position of the City on this issue.

**Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the**

**Employer's position.**

 <b>EUGENE LUMBERG</b>	 <b>PATRICIA LULKO</b>	 <b>JOHN VIVIANO</b>
Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>	Dated: <u>12/20/04</u>
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**Employer Issue No. 7 – Book Time**

**Union Issue No. \_\_ – Book Time**

The position of the City regarding Book Time is as follows:

**Book Time –**

**Current Book Time accounts are to be frozen.**

**Future postings to book time are to be paid out at the end of the fiscal year if not taken.**

**40 hours of book time may be carried over from year to year.**

In response the Union has proposed the following:

**Status Quo.**

**DISCUSSION OF THE ISSUE**

This issue concerns the ability of members to carry time through a concept called book time. Provisions contained in the prior contract for the ability of members to carry over time appear to the Chairperson have been very generous.

The City argues that this needs to be changed due to what are called the GASB requirements. This requires the City to show this as a liability on its financial statements and to actually set money aside for these balances each year. It is an increasing liability due to the increasing wages received by members of the bargaining unit. It also involves, according to the City, giving individuals time off and more than adequate time off is provided for elsewhere in the collective bargaining agreement. The City argues that all time off should be utilized in the year that it is earned and that overtime should be paid in the year it is earned subject to the limitations in this proposal.

The Union vigorously disputes this position. They argue that the status quo is warranted. They argue that the City has not made a compelling argument for changing this provision in the collective bargaining agreement.

On this issue, the Panel believes that the City's position is the better one. The GASB requirements, the City's changed financial conditions, the requirement that time earned be utilized in the year which it is earned, the leaner nature of the Department – all indicate to the Panel Chairperson that the City's position in reducing such liability is appropriate at this time.

Additionally, it does not take away anything that members presently earn whether it is time off or overtime. It simply means that it will be paid or used in the year that it is earned. The changed circumstances noted above require, in the Chairperson's view, adopting the position of the City on this issue.

For the foregoing reasons, as well as all applicable Section 9 factors, it is the position of the Panel that the City's position be adopted here.

**Based upon the foregoing, the Employer's argument is most persuasive. The Panel votes 2 to 1 to adopt the Employer's position.**

  
EUGENE LUMBERG

Dated: 12/20/04

☒ Concur ☐ Dissent

  
PATRICIA LULKO

Dated: 12/20/04

☒ Concur ☐ Dissent

  
JOHN VIVIANO

Dated: 12/20/04

☐ Concur ☒ Dissent

## **CONCLUSION**

The Panel wishes to thank all of the parties and delegates for their assistance in the case and for a job well done.