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Act 312 Arbitration

Between

City of Holland

And

Police Officers Labor Council

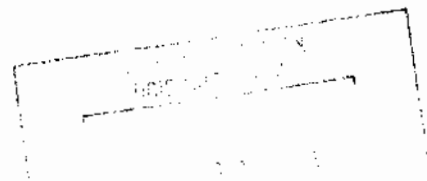
(MERC Case No. LO2-A-4099)

Chairperson: Dr. Benjamin Wolkinson

City Representative
Michael Snapper, Attorney

Union Representative
Mark Douma, Attorney

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Background

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969 as amended. The Union filed a petition for Act 312 arbitration with MERC on August 20, 2002. The impartial arbitrator and the Chairperson was appointed via correspondence from the Employment Relations Commission dated November 22, 2002.

The Chairperson and the parties held a pre- Act 312 conference on March 12, 2003 at which time the issues in dispute were identified. Union issues included canine officer pay, payment for court appearance, payment for subpoenas issued, retiree health insurance, reduction in employee contributions to pensions, payment for accrued sick leave, clothing allowance, and wage increases effective July 1, 2002, July 1, 2003, and July 1, 2004. Employer issues in dispute were implementation of a wellness program and employee co- pay for purchase of generic and brand-name drugs. The parties agreed that all issues in dispute were economic in nature.

Prior to the Act 312 hearing, the parties agreed that the following communities were comparable: Grandville, Grand Rapids, Kentwood, Muskegon, Muskegon Heights, Norton Shores, Walker, and Wyoming. Hearings were held on July 23 and November 18, 2003. The parties exchanged last best offers of settlement on December 19, 2003. In its last best offer, the Union withdrew the following issues: payment for subpoena service, standby pay, and pension. Accordingly, the City's position on these issues that the status quo be retained will be incorporated in the new agreement. Additionally, Union has accepted the Employer's final offer on the issue of prescription co-pay. The Union submitted its brief in support of its last offer on January 13, 2004 and the City with the Union's and Chairperson's consent submitted its brief in support of its last offer on

February 6, 2004. The Panel Delegates met with the Chairperson to review the award on April 16, 2004.

Statutory Criteria

Section 9 outlines the list of factors upon which the Panel should base its findings, opinions, and award. These include:

- (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 government to meet these costs.
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and other employees generally: (i) in public employment in comparable communities (ii) in private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays, and other excused time, insurance and medical hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (g) Changes in any other foregoing circumstances during pendency of the arbitration proceeding.

(h) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

The Financial Condition of the City of Holland

Like many other communities currently in the state, the City of Holland is confronting a more difficult economic situation. The City has experienced a decline in state revenue sharing. Between fiscal year 2001 and 2004 state revenue sharing funds declined from 3.9 to 3.5 million or a loss of approximately \$400,000. In addition as interest rates have declined, interest earnings into the general fund have dropped from over \$1,000,000 to less than \$400,000 annually. The termination of Federal grants has also resulted in a reduction in revenues available to support police department salaries. As a result, the City has engaged in some fiscal belt tightening. The City has cut funding for various social service and welfare agencies, has frozen out-of-state travel, reduced capital outlay, and filled only eight of 12 openings.

At the same time, the City is not claiming inability to pay. The City maintains two reserve funds. The City has been able to maintain a fund balance of somewhere between 12 and 15 percent of a fiscal year's total expenditures. Currently there is \$2.2 million in the general fund balance. In addition as far back as the mid-1980s the City created a budget stabilization fund. While not a legal requirement, its goal has been to maintain a 10 percent balance of that year's expenditures. Currently, in the budget stabilization fund there is approximately \$1.8 million or 10 percent of 2003 general fund expenditures. Monies from these funds have and can be used to fund needed expenditures.

In addition, the City has some leverage in terms of tax revenues. It has approximately three mills by which it could increase its tax rate without exceeding any charter limitation. As a result, the City Council would have the discretion to raise taxes without requiring a vote. At the same time, militating against any effort to significantly increase taxes is the consideration that the City of Holland currently has the highest tax rate of any surrounding governmental unit.

In summary, while the City is facing tougher economic times, it has the resources to satisfy its fiscal obligations. It is within this economic context that the Panel will examine whether the City's and Union's positions are justified by statutory criteria.

Court Service

Union's Final Offer

The Union's final offer is as follow:

Effective the first full pay period after (date of award), the Union requests that Article VIII, Section 9 be modified to read as follows:

It is agreed that the following policy will be followed with regard to court service: When an officer is required, because of his law enforcement duties, and upon written notice and/ or subpoena, to appear in court in criminal or civil infraction cases at times other than his assigned working hours, he will be paid his regular straight time hourly rate (or overtime if required as provided in Section 4), provided, however, that the officer will be guaranteed a minimum payment of two hours of base pay. All hourly pay, straight time, and/or overtime shall be exclusive of lunch recesses and without reimbursement for meal costs. All mileage fees or reimbursement, and all witness or court service fees, shall belong to the City, and shall promptly be assigned over to the City, when necessary. Civil court appearances shall not be reimbursed by the City, except that such appearances which arise out of the performance of official duties shall be reimbursed for more than four (4) hours. Provided that reimbursement for no more than four (4) hours will be paid if the subpoenaed officer advises the Chief of the subpoena as soon as it is received, and the Chief has the opportunity to review and approve the court appearance. An on duty officer shall receive only his regular salary for court appearances. Fees paid shall be in accordance with the departmental policy and shall be computed on the bases of actual hours and not number of cases or subpoenas. On pre-trial hearings, unless expressly authorized by a command officer, only the assigned investigating officer shall attend and shall represent the other involved officers.

City's Final Offer

The City proposes no change from the current contract.

Discussion

Currently bargaining unit members receive a guaranteed minimum of \$40 for court appearances. The Union seeks to modify the contractual language to change the \$40 minimum to a minimum of two hours of base pay. Internal comparables are not relevant, as the City has no other group of employees required to make court appearances. At the same time, considerations of external comparability strongly support the Union's request. In all the comparable communities, police officers received at least two hours of base pay for court appearances. The City also acknowledges that the difference between a minimum payment of \$40 and a minimum of two hours is not significant. Given these considerations, the Panel adopts the Union's last offer on this issue.

Canine Officer Pay

Union's final offer

The Union is requesting that the current letter of understanding regarding canine pay be incorporated into the collective bargaining agreement as Article 8 (New Section) and be amended to read as follows:

Effective the first full pay period after (date of award), activities related to the care of canines assigned to police officers, which are outside of the officer's regular or overtime work hours, shall be compensated by paying the officer for an additional 30 minutes for each calendar day. The additional 30 minutes per calendar day shall be paid at the straight time rate of pay and shall not be considered time worked for purposes of overtime.

City's Final Offer

The City proposes to continue the status quo. The City is willing to have the current letter of understanding incorporated into the contract, although it is not proposing that this should occur.

Discussion

Currently, there is a letter of understanding between the parties that canine officers are compensated at a rate of 15 minutes per day at time and one-half for canine care and handling activities outside of the officer's regular tour of duty hours. The Union's proposes that canine officer pay be modified to reflect 30 minutes of straight time pay per calendar day. Utilizing 2001 pay rates, the canine officer receives approximately \$3239 per year. Utilizing the Union's proposal, canine officer pay would rise to \$4319 per year (\$ 23.73 per hour x 3.5 hours x 52 weeks).

On the surface, considerations of external comparability do not support the Union's demand. Police departments in Grandville, Muskegon, Norton Shores, and Walker do not provide this benefit. In Muskegon Heights the canine officer receives only \$1200 per year. Only in one community, Grand Rapids, does the canine officer receive compensation at a level equal to or above that which the Union is demanding here, while in Wyoming canine officer pay is \$3586 per year. At the same time, reliance on external comparability may lead to speculative or unreliable conclusions, as there is no evidence in the record that police departments in Grandville, Muskegon, Norton Shores, or Walker use canines for law enforcement duties. Consequently, the Panel is not inclined to give controlling weight to this consideration.

At the same time, there are equity considerations strongly supporting the Union's position. Officers should be paid for the work that they perform. It is undisputed that the

canine officer spends between 30 and 45 minutes per day caring for the dog on his off-duty hours. This time includes feeding, cleaning, bathing a German shepherd as well as training it. Additionally, the canine officer must spend time maintaining a kennel and a dog track. As the time and effort expended by an officer in caring for a dog serve the department's interests, it is reasonable that pay for such work be commensurate with the amount of time actually expended on such efforts. Indeed, even under the Union's proposal, all such time would not be fully compensated. Given these considerations, the Panel adopts the Union's last offer on this issue.

Health Insurance- Retirees

Union's Final Offer

The Union requests that Article XI be amended to add the following language:

For all bargaining unit members who retire on or after (date of award), the Employer will pay 75 percent of the monthly cost for single or double (couple) coverage.

City's Final Offer

The City proposes to increase its contribution for retiree reinsurance, by adding the following language to Article XI, section 2 (b):

Effective upon issuance of the Act 312 award in Case No. A- 4009, Employer reimbursement will increase to \$200 per month for single coverage and \$400 per month for double (couple) coverage.

Discussion

Under the last agreement, the City's contribution to retiree health insurance is \$145.00 per month for single coverage and \$300 per month for double coverage. The City's current proposal would increase this amount to \$200 per month for single coverage

and \$400 per month for double coverage. The Union's proposal would require the City to pay 75 percent of the cost for either single or double coverage.

The Union has contended that six of the eight comparable communities provide fully paid health care at retirement. Given these considerations, it maintains that the overwhelming majority of comparable communities provide superior health care coverage for retirees than the Union is requesting.

At the same time, Holland police officers are able to retire at age 50. While this right is afforded police officers in Grand Rapids, Kentwood, Muskegon Heights, Norton Shores and Wyoming, police officers in Walker, Muskegon and Grandville must wait till age 53 or older to retire. Since cost of retiree health insurance for the party bearing this obligation is significantly greater where police officers can retire at a younger age, it is appropriate to focus on the level of retiree health insurance benefits in Holland in comparison to other communities allowing police officers to retire at age 50.

Looking at the communities in which police officers can retire at age 50 -- Grand Rapids, Kentwood, Muskegon Heights, Norton Shores, and Wyoming-- we observe that the employer provides full payment for retiree health insurance for a police officer and his spouse only in Grand Rapids and Norton Shores. In Kentwood, the Employer contributes \$10 per year service. Assume a police officer retires after 20 years, that city's maximum contribution would be only \$200, a significantly smaller contribution than the City of Holland is offering currently. In Muskegon Heights, while the Employer provides the full contribution for the employee, the retired officer is responsible for 100 per cent of the increases in spousal coverage above the 1992 premium level. In Wyoming, the maximum contribution is \$300 per month, \$100 less than what the City of Holland is

proposing for couple coverage. Given these considerations, the Panel is not persuaded that considerations of external comparability support the Union's position.

At the same time, considerations of internal comparability support the City's position. Currently, the City contributes \$145 for single and \$300 for double coverage for employees in the firefighters' bargaining unit and for all non-Union workers. For employees in the utility workers bargaining unit, the City contributes \$120 for single and \$250 for double coverage, while for employees in the clerical unit, the City contributes \$115 per month for single coverage and \$230 per month for double coverage. The City's current offer to contribute \$200 for single and \$400 for couple coverage would provide Holland police officers with benefits significantly superior to that enjoyed by all other City employees.

There is another consideration that argues against the Union's proposal. The Union has not presented any data which would demonstrate that either at the current or the new contribution levels offered by the City, police officers' retiree health benefits are inadequate or expose employees to serious economic disadvantage. In the absence of any such information, the Panel is reluctant to impose on the City a totally new approach for the payment of retiree health insurance benefits.

Given the above considerations, the Panel adopts the City's last offer on this issue.

Sick Leave Payout

Union's Final Offer

The Union requests that the current language of Article XIV, Section 2(p) be replaced with the following language:

Effective (date of award) the accrued sick leave of a bargaining unit member whose service with the Employer is terminated due to retirement shall be paid 40 percent of all unused sick leave. Bargaining unit members whose employment is terminated for any other reason shall forfeit all accumulated sick leave.

City's Final Offer

The City proposes that there should be no change from the current contract.

Discussion

Considerations of internal comparability support the City's final offer. Currently, police officers are able to accumulate 120 hours of sick leave annually, with a total allowable maximum accumulation of 720 hours. In addition, annually accumulated unused sick leave in excess of 720 hours is paid at the rate of 50 percent of an employee's straight time hourly earnings up to a maximum not to exceed 52 hours at the end of each calendar year. (Article 14, Section 1) This same benefit is afforded all other Union and non-Union workers employed by the City. No other bargaining unit within the City enjoys the benefits sought by the Union.

Yet when we look at sick leave payout at retirement that Holland officers receive in comparison to payouts received by officers elsewhere, it is apparent that officers in Holland are at a distinct disadvantage. Currently, Holland officers are afforded no credit and receive no payout for unused sick leave at the time of their retirement. In contrast, Grand Rapids entitles police officers to use up to 2080 hours of unused sick leave, which is equivalent to a year's worth of service, as credit towards retirement. In Norton Shores and Wyoming, there is no limitation on the accumulation of unused sick leave and employees are paid for 50 percent of the unused days. In Walker, Muskegon Heights,

and Muskegon employees may only accumulate 120 to 132 days, but also receive compensation of 50 to 75 percent (Walker) of unused sick days. In Grandville, employees with 10 to 25 years of service are paid for one third of their unused sick leave up to 180 days and receive 1/2 pay when they retire with 26 or more years of service.

The City has suggested that Holland police officers are not disadvantaged economically, because they receive an annual payout for unused sick leave whereas employees in all of the comparable communities besides Muskegon Heights and Muskegon do not. Yet this benefit comes into play only after an employee has already accumulated 720 hours or 90 days of unused sick leave. Even then, an employee is only entitled to 50 percent of the unused sick leave in excess of 720 hours with a maximum payout of compensation for 52 hours.

The City has noted that a substantial sick leave payout might actuarially affect the annual cost of funding of the retirement plan. At the same time, neither the Union nor the City has presented any data to identify current sick leave usage or the degree to which employees currently bank sick leave. Additionally neither party has presented any kind of actuarial estimates of any such costs. As a result, it is impossible for the Panel to assess the cost implications of this benefit. Under the circumstances, the Panel declines to view potential costs as a basis for rejecting the Union's position on this issue.

The Panel does note that in one respect the Union's proposal deviates from the benefit provided elsewhere. In nearly all the comparable communities there is a cap on the number of unused sick leave days for which there is a payout. There is no such cap incorporated in the Union's proposal. Yet this consideration is mitigated by the lower

level of compensation for unused sick leave that the Union is seeking in comparison with the higher rate of compensation prevailing in nearly all other communities.

In summary, the evidence is balanced between considerations of internal comparability that support the City's position and considerations of external comparability which favor the Union's proposal. There is one other factor that supports the Union's proposal. The City has placed great stock in a Wellness Program designed to ensure that all employees are physically fit. This program is designed to reduce health care costs by ensuring that employees are physically fit. As a motivating factor to encourage participation in this program, employees face a financial penalty if they do not maintain required physical fitness standards. Thus the City pays the full cost of employee health insurance only when employees satisfy all components of the Wellness Plan. By giving credit to employees at retirement for their unused sick leave, the City provides a further incentive to employees to maintain a lifestyle that will minimize absences due to illness or disability. With a reduction in sick leave, employees benefit by receiving a sick leave payout upon retirement. At the same time, the City benefits as lower sick leave usage should result in lower health insurance premiums and in a reduction in overtime costs that are typically triggered by the unavailability of employees to report to work because of illness or disability. This factor and considerations of external comparability persuade the Panel to accept the Union's last offer on this issue.

Clothing Allowance

Union's Final Offer

The Union proposes, effective with the date of the award, that Article XXIV, Section 2 be amended by raising the clothing allowance from \$550 to \$650.

City's Final Offer

The City proposes no change.

Discussion

The City acknowledges that no other employee group or bargaining unit is comparable on the issue of clothing allowance. At the same time, external comparability data do not-for provide overriding support for either the City or the Union's position. In Grandville and in Norton Shores, plainclothes officers receive significantly less or no compensation for clothing. In two other communities, Walker and Wyoming, plainclothes police officers receive approximately the same amount of compensation as is currently received by plainclothes officers in Holland. On the other hand, in Grand Rapids, Kentwood, Muskegon, and Muskegon Heights, plainclothes officers receive a higher clothing allowance than do police officers in Holland. Given that the Union has relinquished voluntarily some its demands previously presented in arbitration, it is appropriate to award this issue in favor of the Union.

Wages

Union's Final Offer

The Union requests the following across the board wage increases:

Effective July 1, 2002: 3 percent

July 1, 2003: 3 percent

July 1, 2004: 3 percent

City's Final Offer

Effective July 1, 2002 increase wages for all bargaining unit members by 1.5 percent.

Effective July 1, 2003, and increased wages for all bargaining unit members by 2.1 percent.

Effective July 1, 2004, increase wages for all bargaining unit members by a minimum of 1 percent and a maximum of 5 percent based upon the CIPU (US Average) for the preceding 12 month period.

Discussion

The parties have agreed that wages for all three years of a collective bargaining agreement shall be considered as a single issue. The Union is proposing a 3 % wage increase for each year of the collective bargaining agreement. The City is proposing what amounts to a 1.5 % increase in the first year the contract, a 2.1 % increase in the second year of the contract, and an increase ranging from 1 to 5 % based on the consumer price index in the third year of the contract.

The City's wage offer is generally consistent with wages provided to employees in other bargaining units. Effective July 1, 2002, the firefighters received an increase of 1.5 percent. Members of the BPW utility bargaining unit received an increase of 1.6 percent effective April 1, 2002 as part of their contract settlement with the City. Only employees in the clerical bargaining unit received a significantly higher percentage wage increase effective July 1, 2002. The City's wage proposal effective July 1, 2003 of 2.1% which is equal to the increase in CPI-U for the preceding 12 months, parallels the wage increase provided the firefighters and is close to the 2.4 % provided employees in the BPW utility bargaining unit.(JE1, Tab 34, p.23). The City's offer to increase police officers wages effective July 1, 2004 by the amount of any increase in the CPI is identical to the benefit provided employees in BPW utility bargaining unit.

It may be contended that the City's proposal is inadequate, as many non- Union workers received wages increases that were determined not only by increases in the CPI,

but also additional increases that were the product of the City's wage audit. Yet the record indicates the presence of unique considerations that preclude these increases from being utilized as a basis for evaluating the reasonableness of wage increases provided or offered to the City's bargaining units. The City had not conducted a wage survey in over 17 years to evaluate whether its non-Union workforce was receiving wages that were comparable to that provided other non-Union workers elsewhere. Having determined that its employees were not receiving the market wages in various occupations, the City acted to afford to these employees greater wage equity, by providing them with "catch up" increases. At the same time, the effort to ensure that police officers are compensated fairly is protected by the Panel's reliance not only upon internal comparability criteria, but upon external comparability data as well.

In July 2001, a patrolman in Holland at the top rate earned \$49,358. When comparing Holland patrolman wages to that received by a patrolman in the eight other comparable communities in July 2001, Holland police officers ranked second. Acceptance of the Union's last best offer would ensure that Holland patrolmen would remain the second highest paid in the comparable communities in 2002 and 2003. At the same time, adoption of the City's wage proposal for July of 2002 would result in Holland officers receiving an annual wage of \$50,098. At this level, patrolman in Holland would receive wages roughly equal to that received by officers in Kentwood, and employees in both cities would share the ranking as the second highest paid among the comparable communities. For 2003, they would be receiving approximately \$600 less in wages than officers in Kentwood. Assuming the same rate of increase in the CPI in 2004 as in the prior year, officers in Kentwood would receive effective in 2004 approximately \$800

less than officers in Kentwood.¹ At the same time, when factoring all sources of compensation and deductions including employee pension contributions (5% in Kentwood vs. 3.1% in Holland) and educational allowances in Holland (up to \$2500 annual tuition reimbursement), the Panel concludes that the City's wage offer maintains the favorable status of Holland patrolman when compared to most other comparable bargaining units including Kentwood.

On balance, the City's proposal is supported by internal wage comparisons and provides officers with a wage package that is favorable when compared to most other police bargaining units in the comparable communities. As a result, the Panel adopts the City's last best offer on this issue.

Wellness Program

The parties have mutually agreed upon a new Wellness Plan which will be incorporated as an appendix to the parties' contract. Under the Wellness Program, an employee will continue to have the City pay 100 percent of the costs of health-care coverage for the employee and his/her dependents provided the employee satisfies the requirements of the Wellness Program. The only issue in dispute is how the program will apply to a newly hired employee.

City's Proposal

A newly hired employee will be required to note the percentage contribution to the cost of their health insurance until the start of a plan year (January 1) following the employee's fulfillment of the Wellness Participation criteria. For example, an employee hired on July 1, 2004, will be required to make the percentage contribution at least until

¹ This is likely a conservative estimate. In March 2004, the CPI-U rose 1.7% from a year earlier. If this rate of increase continues, the rise in the CPI for 2004 would exceed the 3% rate increase that the Union has sought.

January 1, 2005. If the employee has fulfilled the criteria as of January 1, 2005, then the City will pay the full premium cost during 2005. However, if the employee has not fulfilled the criteria as of January 1, 2005, then the employee will continue to pay the premium contribution through 2005.

Union Proposal

A newly hired employee will have the health insurance premium contributions waived for a minimum period necessary for such employee to fully meet the wellness participation criteria.

Discussion

None of the other employers and unions in the comparable communities have negotiated a wellness program and as a result considerations of external comparability have little relevance in considering the Union's or the City's proposals on this matter.

At the same time considerations of internal comparability strongly support the City's position. Employees in the firefighters' unit are covered by the Wellness Program, including the requirement that new hires pay premiums up to 20 percent, until such time they fulfill the wellness requirements. All non- Union new hires as well as new hires in the BPW Utility's unit must pay premiums until they qualify under the Wellness Plan. The only exception is the BPW clerical unit which negotiated some years ago. As that contract is open for renegotiation in 2004, it is reasonable to assume that the City will seek to effect this requirement within this unit as well.

The Union acknowledges that the Wellness Program benefits both the City and bargaining unit members. By helping to ensure that current employees maintain their health and fitness, it is anticipated that health-care costs will be kept at a minimum. The

Union has suggested, however, that this requirement is unnecessary, as new police employees, who have just satisfied the physical demands of the Police Academy, will be in better physical condition than other newly hired municipal employees.

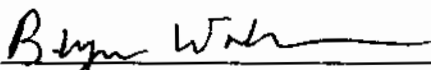
While the Union's observation may be valid when applied to recent graduates of the Police Academy, it may not hold true in the case of veteran police officers seeking employment in Holland. Additionally, even firefighters who typically will be in good physical condition are subject to this requirement. Furthermore, allowing exceptions for the police may render it difficult for the City to maintain this requirement in other units in which new hires may not be in the best physical condition. Additionally, as the City has committed itself to paying 100 percent of the health-care coverage for employees and dependents, it is not unreasonable for the City to implement a strategy that will maximize the incentive of new hires to participate in the wellness program and thereby help reduce health-care costs for the City.

Given these considerations, the Panel adopts the City's last best offer on this issue.

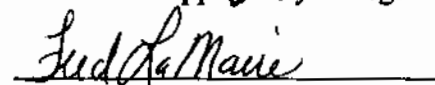
In summary, the Panel makes the following decisions.

- (1) On the issue of court service, the Panel, with the City delegate dissenting, adopts the Union's final offer.
- (2) On the issue of canine officer pay, the Panel, with the City delegate dissenting, adopts the Union's final offer.
- (3) On the issue of health insurance for retirees, the Panel, with the Union delegate dissenting, adopts the City's final offer.
- (4) On the issue of sick leave pay out, the Panel, with the City delegate dissenting, adopts the Union's final offer.
- (5) On the issue of clothing allowance, the Panel, with the City delegate dissenting, adopts the Union's final offer.
- (6) On the issue of wages, the Panel, with the Union delegate dissenting, adopts the City's final offer.
- (7) On the issue of the Wellness Program, the Panel, with the Union delegate dissenting, adopts the City's last offer.

April 16, 2004


Benjamin Wolkinson, Chairperson


Michael Snapper, City Delegate


Fred LeMaire, Union Delegate