IN THE MATTER OF THE
ARBITRATION BETWEEN:

City of Detroit

and MERC Case No. D06 B-0169

Detroit Police Lieutenants and Sergeants Association
_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Opinion and Award

Arbitration Panel

William E. Long
Arbitrator/Chair

Barbara Wise-Johnson
City Delegate

John A. Lyons
Union Delegate

Appearances

Kenneth Wilson, Attorney
City of Detroit

J. Douglas Korney, Attorney
Detroit Police Lieutenants and Sergeants Association

Date of Award: December 15, 2008

City of Detroit

and MERC Case No. D06 B-0169

Detroit Police Lieutenants and Sergeants Association

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Index

NON-ECONOMIC ISSUES

INTRODUCTION

The Detroit Police Lieutenants and Sergeants Association (referred to as the Association) is recognized as the exclusive representative for collective bargaining for police officers of the Detroit Police Department holding the ranks of Police Investigator, Sergeant and Lieutenant in various positions in the Department as specified in the Recognition of Association clause of the contract entered into by the parties for the period July 1, 2001 through June 30, 2006 (J-32, pg. 2).[*1] The parties began negotiating a successor agreement prior to the expiration of the July 1, 2001 – June 30, 2006 contract but several negotiation sessions resulted in no settlement. The Association petitioned for Act 312 arbitration May 10, 2006. As required by Section 13 of Act 312, the 2001-2006 agreement has continued in effect. This impartial arbitrator was appointed by MERC April 19, 2007.

A pre-hearing conference was held May 25, 2007. The Association chose John A. Lyons as its Arbitration Panel Delegate. The Employer initially chose Allen Lewis as its Panel Delegate but Mr. Lewis was later replaced by Barbara Wise-Johnson (Tr. 8, pg 3). During the pre-hearing fourteen hearing dates were scheduled between August 2 and October 26, 2007. At the request and agreement between the parties the initial number of hearing dates were reduced and rescheduled so that eleven full or partial hearing days were held between the dates August 7, 2007 and April 3, 2008. The City was represented by Attorney Kenneth Wilson. The Association was represented by Attorney J. Douglas Korney. The record consists of 1,156 pages in 11 volumes. Eighty Exhibits were accepted into the record; 5 Joint Exhibits, 7 Association Exhibits and 68 City Exhibits. Last offers of settlement were submitted by the parties on June 10, 2008 and post-hearing briefs, at the request of and stipulation of the parties for extensions, were submitted September 15, 2008. A post hearing conference of the panel was held November 19, 2008. By written stipulation, which is contained in the case file, the parties waived all time limits applicable to this proceeding, both statutory and administrative. The panel delegates have placed their signatures on each specific Award in support of or in opposition to the finding and award on each issue and have also placed their signatures at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on each issue presented.

[*1] Throughout this Opinion references will be made to Exhibits as (Exhibit J, U, E #, pg #) and Transcripts as (Tr. #, pg#).

ORGANIZATION OF OPINION AND LISTING OF ISSUES BEFORE THE PANEL

The Opinion first discusses the statutory criteria to be applied and then addresses the Panel's findings and opinion on the comparables. The ability to pay is then addressed followed by each of the issues presented to the panel for decision. Economic issues are addressed first, followed by non-economic issues.

A number of issues that were identified as issues in dispute at the May 25, 2007 pre-hearing conference were resolved, withdrawn, or stipulated to by the parties. They will not be addressed in this Opinion and Order. The parties agreed to develop a list of agreements entered into by stipulation and acknowledged that any of those issues initially identified in the petition that are not stipulated to or submitted to this panel will be considered withdrawn. Issues which the parties reached agreement on through negotiation and a stipulated agreement will be incorporated into the new agreement. One of those issues agreed upon by the parties was the effective date and duration of the agreement. The parties agreed that the contract effective date and duration will be July 1, 2006 until 11:59 p.m. June 30, 2009. In addition to those issues agreed to by the parties during this proceeding, contract provisions not before the panel for determination that are in the current collective bargaining agreement will be advanced into the new agreement the same as under the old agreement.

In a post-hearing conference call between the Independent Arbitrator and legal counsel representing the parties, ten economic and ten non-economic issues remaining for the Arbitration Panel determination were identified. They are listed below in the order in which they will be addressed in this Opinion and Order.

Economic

Article	**Issue**
31	1 Union – roll call prep time
35K	12 Union – use BV to allow in conjunction with furlough
37(F)	2 Union – add Easter
38	3 Union – add furlough days based on seniority
44	4 Union/2 City – health & hospital
48	13 Union – optional annuity withdrawal
49	14 Union – military service credit
51	5 Union/1 City- retirement eligibility at 20 yrs
54A	6 Union/ 4 City – wages
54B	7 Union/ 5 City – eliminate differential

Non-Economic

Article	**Issue**
8	8 Union – grievance procedure require review above Lt.
10A	8 City - discipline procedure – skip commander hearing

10B	7 City – allow appeal to deputy chief
17	3 City - residency requirement)
17	10 City –MCOLES
23	9 Union – transfers – dept to provide list monthly
23F	9 City – transfers – add "working" days to 75 days
35F	10 Union – mutually agreed physician re: sick leave
35M	11 Union – use of sick leave- require review above Lt
Exhibit III	6 City – Promotion to rank of Lt, allow city to schedule at its discretion

STATUTORY CRITERIA

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. The section provides that "as to each economic issue, 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 prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and 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 prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

COMPARABLE COMMUNITIES

Section 9(d) of Act 312 directs the panel to consider a comparison of 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 with other employees generally in public and private employment in comparable communities. Each of the parties has presented evidence supporting their respective positions on what they believe the panel should consider as comparable communities. Each party has proposed what are referred to as "national" comparable communities and "intra-state" comparable communities.

Both the Employer and the Association have proposed the following communities as comparable communities in this proceeding: The national cities of Cleveland, Pittsburgh, Baltimore, Philadelphia, and Chicago and the intra-state cities of Flint, Pontiac and Saginaw. The Association, in addition to those agreed upon by the parties, proposed the following national and intra-state communities as comparable communities: the national Cities of Boston, Los Angeles, New York, Miami, Oakland and Toledo and the intra-state cities of Ann Arbor, Dearborn, Grand Rapids, Livonia, Southfield, Sterling Heights and Warren. The Employer, in addition to those agreed upon by the parties, proposed the following national and intra-state communities as comparable communities: the national city of St. Louis. Neither party has presented evidence relative to private employment in comparable communities.

The Employer presented testimony and evidence on this issue through employer witness Demographer Patricia C. Becker (Tr. 1, pgs 1-61) who presented demographic data in E-1c. The Association presented testimony and evidence on this issue through association witness Barbara Hathaway (Tr. 10, pgs 3-14; 76-78; 96-99) who presented demographic data in U-68.

Detroit City and Detroit Police Lieutenants and Sergeants Assoc.
MERC Case No. D06 B-0169 (Act 312)

Chart 1

City and Union	Population 2000	% Population Change 2000 - 2006/2007 Estimate	Households % change 1970-2005	Median Household Income 2005	% of population in poverty 2005	Unemployment rate 2005	2006 Violent crimes per 1000 population	2006 Property crime per 1000 population	Assessed Valuation Per capita 2006
National									
Cleveland (C&U)	478,403	-7.2%	-28%	$24,100	32%	17%	16	64	
Pittsburgh (C&U)	334,563	-6.4%	-23%	$30,300	23%	11%	11	49	
Baltimore (C&U)	651,154	-3.1%	-16%	$32,500	23%	11%	17	51	
Philadelphia (C&U)	1,517,550	-4.5%	-12%	$32,600	25%	12%	16	43	
Chicago (C&U)	2,896,016	-2.1%	-10%	$41,000	21%	11%	12	46	
St. Louis (C)	348,189	-0.3%	-34%	$30,900	25%	12%	25	117	
Boston (U)	589,141	0.3%	1%	$42,600	22%	9%	13	42	
Los Angeles (U)	3,694,821	4.1%	24%	$42,700	20%	8%	8	30	
Miami (U)	362,470	11.4%	12%	$25,200	28%	9%	15	50	
New York (U)	8,008,278	2.5%	7%	$43,400	19%	8%	6	19	
Oakland (U)	399,484	-0.6%	8%	$44,100	18%	11%	19	60	
Toledo (U)	313,619	-4.9%	3%	$33,000	23%	12%	N/A	N/A	
Michigan									
Flint (C&U)	124,943	-6.3%	-26%	$28,000	26%	12%	N/A	N/A	$16,633
Pontiac (C&U)	67,506	1.0%	-10%	$31,200	22%	N/A	N/A	N/A	$29,361
Saginaw (C&U)	61,799	-7.7%	-17%	$26,485	29%	N/A	N/A	N/A	$13,840
Ann Arbor (U)	114,024	-0.6%	41%	$45,800	22%	7%	3	26	$51,961
Dearborn (U)	97,775	2.5%	-3%	$45,300	18%	8%	N/A	N/A	$54,229
Grand Rapids (U)	197,800	-2.4%	17%	$38,200	21%	11%	10	50	$27,790
Livonia (U)	100,545	-4.1%	36%	$66,500	2%	6%	N/A	N/A	$61,796
Southfield (U)	78,322	-0.2%	65%	$49,400	9%	N/A	N/A	N/A	$56,579
Sterling Heights (U)	124,471	2.4%	206%	$60,000	8%	7%	2	27	$46,935
Warren (U)	138,247	-1.5%	12%	$44,900	12%	10%	6	36	$40,800
Detroit	951,270	-9.5%	-38%	$28,100	31%	21%	25	71	$15,446

Previous Act 312 panel decisions pertaining to external comparables were referred to in testimony, exhibits and closing briefs in this proceeding as suggested guidance for this panel in reaching its decision on comparables. It is noted that in the Act 312 proceeding in MERC case D 04-D 0919 City of Detroit and DPOA 2006 (E-58) both parties offered Baltimore, Chicago and Philadelphia as comparables. The panel in that case found the cities of Baltimore, Boston, Chicago, Cleveland, Milwaukee, Pittsburgh, Philadelphia and St. Louis to be external national comparables. It rejected as comparable the national cities of Los Angeles, New York, San Antonio and San Jose. That panel did not address intra-state communities. The opinion and award in that case (E-58) also referred to prior Act 312 panel decisions on this issue pointing out that the 1995 Roumell panel decision limited the national comparables to Chicago, Cleveland, Milwaukee, Pittsburgh and St Louis; the 2000 Sugarman panel selected the cities of Baltimore, Cleveland, Philadelphia, Pittsburgh and St. Louis as national comparables; and the 2003 Long panel (J-79) selected the cities of Chicago, Philadelphia, Baltimore, Cleveland, St. Louis and Pittsburgh as national comparables. This evidence demonstrates a general consistency in the comparable communities presented to the panels in the preceding Act 312 cases and a general consistency in how each panel addressed and determined the comparables. These prior cases are of course instructive but the panel considers them as only one of several factors in considering external comparables in this proceeding.

The panel views its task in considering comparable communities as one of looking at similarities and differences of the communities. Only after the comparable communities are selected is a comparison of wages, hours and conditions of employment made with employees performing similar services within those communities. Both parties in this proceeding have proposed the national cities of Cleveland, Pittsburgh, Baltimore, Philadelphia and Chicago and the intra-state cities of

Flint, Pontiac and Saginaw as comparables. The panel will accept these cities as comparables. The Association's principle witness on this issue acknowledged that she prepared the data; she did not choose the Association's proposed comparables (Tr. 10, pg 96-97). The Employer's principle witness testified that she reviewed and considered census data and data involving reduction in population and households trends, percentage of population in poverty, unemployment rates, as factors in determining the national communities the employer advanced as comparable to the city of Detroit, including the three intra-state cities of Saginaw, Flint and Pontiac because they were the closest in population to the City of Detroit with similar characteristics (TR-1, pgs 62-92).

In analyzing the issue of external comparables, the panel has considered the findings and analysis of previous panels; the testimony of witnesses; and in particular the data presented in Exhibits U-68 and E-1c. Based on the record information the national external comparable communities were compared to Detroit using population, population and household trends, median household income, percentage of population in poverty, unemployment rates and crimes per 100,000 population. Using the data provided in the Exhibits the panel charted a comparison of these factors (Chart 1). The independent arbitrator realizes that record testimony revealed some of the figures contained in these Exhibits might not be 100% accurate, but it is reliable evidence and the best the record contains.

A review of Chart 1 leads to panel to conclude that only three communities, in addition to the five national and three intra-state communities that were chosen by both of the parties, are found to be comparable to the city of Detroit. Those three communities are: the national cities of St. Louis and Toledo and the intra-state city of Grand Rapids. The rational for the selection of the two additional national cities will be discussed first followed by a discussion of the basis for selecting the additional intra-state city of Grand Rapids as a comparable community.

A review of the percentage population change from 2000 to the estimate for 2006 reveals that of the national cities, only St. Louis, Oakland and Toledo had a population decline over this period similar to the national cities agreed upon by the parties. Oakland's decline in population during this period was slightly more that that of St. Louis but Oakland's median household income is higher than any other comparable city and its percentage of population in poverty lower than any other comparable city chosen in this proceeding. And the percentage change in the number of households from 1970 – 2005 shows St. Louis closest to the City of Detroit in the decline in the number of households. While Toledo had a slight increase in the number of households during this period, the panel gives more weight to the more recent decline in population between 2000 -2006 than to the 35 year period describing the change in the number of households. In this case, Toledo had a more significant percentage decline in population between 2000-2006 than did Baltimore or Chicago. Another major factor in selecting Toledo and St. Louis is the comparison of median household income. Of the national cities, both of those cities have median household income closest to Detroit and the cities chosen by the parties. It is true that Miami also has a median household income even lower than Detroit but Miami's population has grown significantly recently and its unemployment rate is among the lowest of the national cities. The percentage of the population in poverty and the unemployment rate in St Louis and Toledo is equal to or exceeds four of the five national comparable cities chosen by both parties. The violent and property crimes per 1000 population for St. Louis exceeds that of Detroit and all other comparable national cities proposed by both parties.

Using these criteria and considering additional factors such as the major differences in location and size of several of the proposed national cities, the panel finds it reasonable to exclude the national cities of Boston, Los Angeles, Miami, New York and Oakland from consideration as comparables.

In considering the Michigan-based cities proposed by the parties, a review of chart one leads the panel to conclude that only the city of Grand Rapids is comparable to the intra-state cities mutually agreed to by the parties. It of course is the largest city in population of those considered. Its median household income is also closest to those Michigan cities chosen by the parties and to the city of Detroit. Its percentage of population in poverty and unemployment rate is also most comparable to the cities chosen by the parties as is its violent and property crimes per 1000 population. Grand Rapids assessed valuation per capita in 2006 is also most in the range of that of the other intra-state cities chosen by the parties. The remaining intra-state cities proposed by the Association have significantly different economic experience by way of median household income, poverty rates, crime rates and population trends from those of the City of Detroit or the other intra-state cities mutually agreed to by the parties.

Finally, it is acknowledged that the parties did not focus significant attention to external comparable communities in this proceeding beyond submitting their respective proposed comparables and supporting documentation. Chart one demonstrates that in several comparative categories, i.e. percentage of population decline from 2000 to 2006/2007; percentage of households decline from 1970-2005; unemployment rate in 2005; Detroit stands apart from any of the comparables. For this reason, the panel suggests the determination of external comparables in this proceeding should not be given considerable weight as precedent in future proceedings.

Viewing the comparable factors contained in the Exhibits, along with the testimony offered in this proceeding, the panel chooses the following communities as comparable to the City of Detroit in this proceeding: the national cities of Cleveland, Pittsburgh, Baltimore, Philadelphia, Chicago, St Louis and Toledo and the Michigan cities of Flint, Pontiac, Saginaw and Grand Rapids. Therefore, the panel chooses the following communities as comparable to City of Detroit:

The Cities of Cleveland, Pittsburgh, Baltimore, Philadelphia, Chicago, Flint, Pontiac and Saginaw

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

The City of St. Louis

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

The City of Toledo

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

The City of Grand Rapids

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

ECONOMIC ISSUES

ABILITY TO PAY

Among the factors to be considered by the panel in its Findings and Order is the interest and welfare of the public and the financial ability of the unit of government to meet the costs of any wage and benefits award [Act 312, Section 9(c)]. The case record contains extensive evidence and testimony on this issue. Principal city witnesses on this issue were demographer Patricia Becker, City Budget Director Pamela Scales and Consultant Edward Rago. The Association's principle witness was paralegal Barbara Hathaway who testified to materials presented in U-68. The Exhibits reviewed and relied upon in analyzing this issue included U-68, E-1b, E-2, E-3, E-25, E-28, E-45 – 52, E-54 (H) and E-54 (I). Previous Act 312 panel Award's treatment of this issue was also reviewed and considered (J-79) (E-80).

The Independent Arbitrator in this proceeding was the Independent Arbitrator for the Act 312 case involving the City of Detroit and the Detroit Police Officers Association, Case No. D01 D-0568, (J-79) issued August 28, 2003. The Opinion and Award in that case noted, "It has been helpful and instructive to review the economic situations confronting previous Act 312 panels as they struggled to balance the factors outlined in Act 312, Section 9(c)." The Opinion and Award referred to a review and comparison of an Act 312 case covering the period July 1, 1992 to June 30, 1998, Case No. D92 C-0554, with discussion of this issue in an Act 312 Opinion issued July 21, 2000, D98 E-0840, and noted "the economic condition of the City was much worse at that time (meaning the earlier 1992-98 period) than it appeared to be five years later." The Panel, in Case D01-O568, concluded at that time, August, 2003, that "the city has experienced and is in the latter stages of experiencing another cycle of economic decline impacting the City's budget for fiscal years 2000, 2001, 2001-02, 2002-03. But the impact of this downturn, both in depth and duration, is not as devastating as the situation confronted by the panel in Case D92 C-0554. And while the economy appears to be slowly recovering from an extended downturn, it is not likely to do so with great vigor during the full third year of this contract, fiscal year 2003-04" (J-79, pg25). Unfortunately, the evidence presented in this case reveals that the Act 312 panel's expectation in Case No. D01 D-0568 in August 2003 of slow recovery from an extended economic downturn did not occur.

In fact, evidence in this case demonstrates a further decline in the City's economic health. Employer exhibit E-1b, pg 6, reveals Detroit's unemployment rate

went from 12.2% in 2002 to 13.4% in 2003; 15.1% in 2004; and 14.3% in 2005. Its population declined from 951,270 in 2000 to 871,121 in 2006 (E-25, A-1). As chart one shows, Detroit's percentage of population decline between 2000 and 2006/2007 was -9.5%; the largest decline among all of the proposed comparable communities. The City's general fund surplus or deficit as a percent of total expenditures showed -4.31% for 2002-03; -6.02% for 2003-04; -10.41% for 2004-05; -11.42% for 2005-06 and a projected –5 to-6 % for 2006-07 (E-25, B-28). Detroit's employed labor force declined by 4.7% from 333,758 in 2004 to 317,997 in 2006. Less than 37% of those living in Detroit are employed (E-25, A-5). Chart one also reveals that among the proposed Michigan comparable communities only Saginaw had a lower assessed valuation per capita in 2006 than that of Detroit. The number of income tax returns processed from residents of the City declined from 951,270 in 2000 to 871,121 in 2005, an 8.4% decline (E-25, A-23).

The Employer offered two relatively recent Fact Finding Reports and Recommendations as evidence in support of others observations on the City's current and projected economic condition. Those were the Fact Finder Reports of George Roumell issued June 19, 2006 (E-54H) and Michael Long issued June 30, 2006 (E-54I). Just as it was helpful and instructive to review the economic situations confronting previous Act 312 panels as they struggled to balance the factors outlined in Act 312, Section 9(c) in Case No. D01 D-0568, (J-79) issued August 28, 2003, so too is it helpful and instructive to review the findings of the Fact Finders in these two cases. George Roumell, in his June 19, 2006 Report noted:

> "The cause of the deficit is twofold, namely, increasing expenditures for a City that is reducing in population, but still has an infrastructure covering the same geographical as when the City was approaching two million inhabitants, as contrasted to a city that is now below 900,000 inhabitants. The second prong of the financial problem is the changing nature of the City's sources of revenue.
>
> The City sources of revenue include property tax, income tax, state shared revenue, utility tax, garbage and the wagering tax. As indicated, the city has experienced a drop in population. It also has experienced from 1972 to 1977 a 65% drop in total business establishments and this drop continues.
>
> Whereas in 2005 that national unemployment average was 5.1%, and the State of Michigan was 6.7%, the average unemployment average in the City of Detroit was 14.2%.
>
> These general economic conditions have impacted on the City's sources of revenue. In fiscal year 1950, 61% of the City's General Fund budget relied on property taxes. By fiscal year 2005, 11% of the City's General Fund budget relied on property taxes. In fiscal year 2006, this increased to 12%. " (E-54 (H), pg 3,4)

Michael Long, in his June 30, 2006 Report noted:

> "Over the last 30 years, Detroit has lost 65% of its businesses in all categories, including retail, service, manufacturing, wholesale and trade, with the a corresponding decline in its labor force. These losses over the last 30 years continue a pattern that began in the early 1960s. As a result, the City's population and labor force shows an unavoidable decline, Along with a loss of population in the City came a loss of income. Many of the people that have left the City have been gainfully employed with middle or higher incomes. In contrast, a disproportionate percentage of those who have remained are unemployed, live in poverty, and are less able to contribute to the City's finances than the people who have left.
>
> One result of the declining population and labor force is that there has been a decline in housing stock with the corresponding decrease in property tax revenues. This has left Detroit with hundreds of thousands of un-taxable vacant homes and building. Evidence establishes that the City has been forced to demolish 157,438 housing units. Though evidence shows that there has been a great increase in residential building permits in the last 4 years, there have been many years where no single residential building permits have been issued to off-set this widespread demolition of housing. The result is that the state-equalized value of City property (adjusted for inflation) has plummeted from $4,807,697,730 to $1,525,690,369 in the last 35 years." (E-54 (I), pg 11,12)

Further evidence of the City's financial situation was contained in Employer exhibit which is a Standard & Poor's publication dated November 21, 2005 announcing it had lowered the City's ratings on unlimited and limited tax general obligation debt to 'BBB' and 'BBB-'from 'BBB+' and 'BBB' respectively, based on "the ongoing deterioration of the city's financial position due to a prolonged structural imbalance" (E-25, E43.6). That report also said:

> "The magnitude of the city's structural imbalance has affected short-term operations and cash flow, resulting in liquidity issues. Detroit's finance team has weekly meetings concerning the cash flow levels, and pooled cash is projected to be sufficient to meet obligations for the next several months. The city projects issuing about $120 million in cash flow notes next May to alleviate end-of-year financial pressures. The other low balance point during the year is December 2005, where pooled cash is expected to be drawn down to only $4 million in available resources before property tax payments start coming in during January 2006.
>
> The administration continues to develop and refine long-term solutions to the problems. These include the renegotiating of contracts to do more health care cost sharing, as well as the potential to move the required funding date of employee pensions out beyond the current 13 years. Union negotiations appear hopeful because the contracts are currently expired, and should no agreement be made between the two sides a last-best offer (determined by the arbitrator) could be imposed. Since new contracts will be in place by March 1, 2006, the city has assumed some savings in contract costs during the last four months of the fiscal year. If the pension funding date is moved out, the city could also

> gain saving through refunding the outstanding pension bonds, as well as seeing annual pension payment savings. However, if theses and other longer term strategies do not result in improved short-term financial performance, the rating will be pressured further." (E-25, E43.5, E43.6)

Other indicators project a continued or declining economic situation, not just for Detroit, but for the entire Detroit Metropolitan Area and State during the duration of this contract and perhaps beyond (E-2, pg 13; E-28, pg 5). The Association, while pointing out the need for a police force sufficient to provide the critical public service of safety to the citizens of Detroit, in general did not refute the economic evidence provided by the Employer.

The Panel is very conscious of the current and projected fiscal situation the Employer faces. It is also sensitive to the responsibilities of the Employer to provide essential services to its residents and visitors, not the least of which is safety. Employer exhibit E-5 presented the sworn manpower levels for the police department from June 30, 1987 to June 30, 2007. The total police manpower levels declined from 5211 in 1987 to 3078 in 2007. From June 2005 to June 2007 the number of Lieutenants had declined from 142 to 123; Sergeant's from 598 to 534 and Investigators from 120 to 97. Police Chief Cummings testified on April 3, 2008 and referred to Employer exhibit E-71 which revealed that there were 106 active Lieutenants and 516 active Sergeants listed on the payroll on March 28, 2008 (Tr. 11, pg 15). Additionally, as Chart one reveals that, with the exception of St. Louis, the City of Detroit had the highest number of violent and property crimes per 1000 population of any of the proposed comparable communities. Section 9(c) requires the Panel base its findings, opinion and order by balancing the interests and welfare of the public and the financial ability of the unit of government to meet those costs. The Panel believes it has done that.

ECONOMIC ISSUES

Article 31
Roll-Call Preparation Time

Association Issue 1

The Association proposed modifying the roll call preparation time contract provision. Article 31 currently provides that the roll call preparation time payment shall be paid for fifteen (15) minutes of overtime for those so assigned. The Association, at hearing, proposed that time be changed to twenty-five (25) minutes. The contract currently also provides that "The number assigned to roll-call in the precincts shall be three (3)." The Association, at hearing, proposed that number be changed to five (5). The City, at hearing, proposed the current contract language remain unchanged.

The Association, in its last offer of settlement, proposed the second line of Article 31 be revised to read: "Roll-call preparation time shall be paid as twenty (20) minutes of overtime for those assigned," and "The number assigned to roll-call preparation in the precincts shall be five (5)."

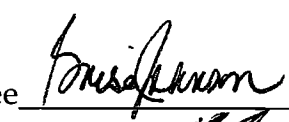
The Employer, in its last offer of settlement, accepted the Association's last offer of settlement with the understanding/modification that "precinct" means district and these shall be five assigned to roll call preparation in each district.

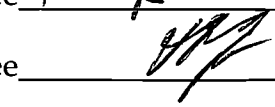
The Panel finds the Association's last offer of settlement, with the clarifying modification sought by the Employer to be reasonable.

Therefore, Article 31 will be amended to read:

> **The City Agrees to discontinue requiring sergeants and lieutenants to report for work twenty (20) minutes prior to roll-call unless they are being paid for roll-call preparation time.**
>
> **Roll-call preparation time shall be paid as twenty (20) minutes of overtime for those so assigned.**
>
> **Except in the districts, the number so assigned will be determined as needed by the commanding officer but shall not exceed five for each formal stand-up, on duty roll-call. The number assigned to roll-call preparation in the districts shall be five (5).**
>
> **The assignment of roll-call preparation time shall be rotated among supervisors insofar as is practicable.**

Effective Date: The date this award is issued.

Employer: Agree  Disagree_____

Union: Agree  Disagree _____

Article 35 K
Sick Leave
Bonus Vacation Days

Association Issue 12-allow BV days in conjunction with furlough

Article 35 K currently states that Officers who have accumulated a minimum of fifty (50) sick days including both current and seniority days and have a minimum of six (6) years of service on July 1st of each year will be credited with one-half of the unused current sick time from the previous fiscal year up to six (6) days. An officer may request to take his bonus vacation days in any sequence by submitting a request in writing to his commanding officer. The request will be reviewed for the availability of personnel by his commanding officer. The department must insure that bonus vacation days are expended proportionately throughout the year and are not carried until the last month of the fiscal year; therefore, on May 1st, the commanding officer shall assign the remaining bonus vacation days at his discretion. Seniority will be a prime consideration when several officers request the same period of time off. When granted time off, bonus vacation days will be deducted from a member's bank before compensatory time is deducted.

The Association proposes to amend Article 35 K by adding the following language:

> "A member may use up to three (3) bonus vacation days in conjunction with a furlough.
>
> Any request to utilize unused bonus vacation days in conjunction with a furlough scheduled during the months of May or June must be submitted to the commanding officers by May 1st or those bonus vacation days will be assigned."

Lieutenant Eugene Goode testified on behalf of the Association in support of this proposal. He testified that officers receive two furlough (vacation) periods per year of 10 days each and that what the Association was seeking was to provide an officer who had accumulated bonus vacation days (which could total up to a maximum of 6 bonus vacation days) the opportunity to use up to three (3) of these in conjunction with a furlough (Tr. 11, pg 79). Lt. Goode testified that the intent of the language was that if an officer requested to use up to 3 days in conjunction with his/her furlough, the Department could not refuse that request (Tr. 11, pg 81). Lt. Goode testified that the proposed language is the same as that currently in the DPOA contract (Tr. 11, pg 82). He said the Association is seeking this language to enable officers who may want an

extended vacation beyond the 10 day furlough period to have an additional 3 days if desired.

The Employer opposes the Association's proposal because it says it must retain its authority to schedule bonus vacation days in a manner that least affect its operations. The Employer points to Employer exhibit E-71 that indicates there were 106 active Lieutenants and 516 active Sergeants listed on the payroll on March 28, 2008 and the testimony of Chief Cummings who testified that even these numbers may be high because some may be on family medical leave or on long term sick leave (Tr. 11, pg 15). The Employer says if this proposal is awarded it could hinder operations and impairs its ability to protect its citizens.

The panel recognizes the desire of members of this bargaining unit who have 3 or more bonus vacation days to seek the opportunity to have a contract provision that would require the employer allow them an additional 3 days vacation as an extension to their regular furlough days if the employee requests it. One might consider this equitable because the internal comparable of the DPOA contract contains this provision.

But the panel must also consider the responsibility the Employer has to its citizens and its employees to maintain management control and supervision sufficient to ensure the safety of its citizens and employees. Chief Cummings testified to the role of both the Lieutenants and Sergeants in the Detroit Police Department. She said, "Well, the best way I can describe it is what I tell Lieutenants and Sergeants – when they're first promoted and then they're in training – I have explained to them that they are the most vital entity in the police department. It's not the chief, it's not the deputy chief, it's not the commander; we come and go. The mainstay in the police department is the backbone, which are the police officers, and the supervision, which are the sergeants and lieutenants. They are indispensable. They're vital. If they are not there, you will have pretty much chaos in the police department. Their responsibility is so critical, especially on the streets, for the safety of the officers, to ensure that citizens are receiving quality service. I don't know how else to say it, you know. They are, as far as supervision and management is concerned in this police department, the most critical pieces that exist" (Tr. 11, pg 10, 11).

The panel concludes that on this issue, safety of the citizens and the police officers is a stronger factor in determining the more reasonable position of the parties than the desire of some employees to have three additional days of vacation added to their furlough vacation days. A review of Article 38 in the Contract reveals that each furlough period shall contain ten consecutive days and leave days may be added to a

furlough. There was no evidence presented to demonstrate the percentage of bargaining unit employees who found the current number of consecutive furlough days to be insufficient. It is also noted that Lieutenant Goode acknowledged management could permit these bonus vacation days to be added to a furlough but testified that officers are asking for these days in conjunction with a furlough but being denied (Tr. 11, pg 81). There was no additional evidence offered to substantiate this statement and no external comparable evidence to support the Association's position.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 35 K of the Contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree 

Article 37 F
Holidays and Excused Time
Excused Time Days

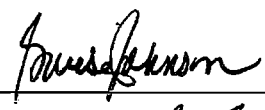
Association Issue 2-add Easter as Holiday excused time

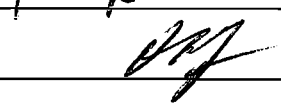
The current contract, in Article 37 F, grants employees eight (8) hours of "Excused time" for certain holidays or on the last scheduled day prior to a holiday identified in this section. The Association, in its last offer of settlement, proposed adding an additional eight hours of Excused time on Easter.

The Employer, in its last offer of settlement, accepted the Association's proposal provided it takes effect Easter 2009.

The Panel finds the Association's proposal, with the Employer's proposed effective date reasonable.

Therefore, Article 37 F will be amended to include the following language: "Employees shall also be granted eight (8) hours of "Excused Time" on Easter" Effective Date: The date this award is issued.

Employer: Agree  Disagree_____

Union: Agree  Disagree_____

Article 38
Vacation Selection and Cancellation Procedure

Association Issue 3

The current contract provides two furlough (vacation) periods divided into two seasons, summer and winter. Each furlough period can be up to 10 consecutive days, giving each bargaining unit member a total of 20 furlough days per year. Additionally, as noted previously, Article 35 K grants Officers who have accumulated a minimum of fifty sick days and have a minimum of six years of service, one-half of the unused current sick time from the previous fiscal year up to a maximum of six days. These days are credited to the Officer's vacation days on July 1st of each year and the Officer may request to take those bonus vacation days throughout the fiscal year. Also, currently, paragraph D of Article 38 specifies that all units may have ten percent (10%) of their investigators and Sergeants on furlough at any one time unless Management makes a good faith determination that manpower conditions require otherwise.

The Association proposes to revise language in paragraph D of Article 38 so that it would read "All units may have FIFTEEN percent (15%) of their Investigators and Sergeants on furlough at any one time unless Management makes a good faith determination that manpower conditions require otherwise. The Association also proposes adding language to paragraph H of Article 38. That paragraph currently provides that effective July 1, 2003 members with twenty-five (25) years or more of seniority have the option each year of banking one of their two furlough periods with approval of management. Once banked the member cannot use the time but will be paid a lump sum payment for the banked furlough time upon retirement. The language the Association proposes to add would specify additional furlough days would be added to each officers furlough periods based on seniority so that officers with 10 years of service would receive 22 furlough days per year; those with 15 years of service would receive 24 days; those with 20 years of service would receive 26 days; those with 25 years of service would receive 28 days; those with 30 years of service would receive 30 days and those with 35 years of service would receive 32 furlough days annually.

The Employer, in its last offer of settlement, proposes to maintain the status quo.

The Association presented U-68 providing a chart showing how Michigan Comparable communities addressed furlough days per year as of June 30, 2007. Using the Michigan comparable communities of Flint, Grand Rapids, Pontiac and Saginaw data from this chart reveals the average furlough days provided by these communities

based on sonority is 19.4 furlough days after 5 years; 23.4 after 10 years; 27.4 after 15 years; 29.75 after 20 years and over. Averaging these results produces an average of 27.02 furlough days per year per officer depending upon the overall average seniority of the members of the bargaining unit. The exhibit did not address whether the contracts for these comparable communities had a provision similar to Article 35 K in this contract which grants Officers who have accumulated a minimum of fifty sick days and have a minimum of six years of service, one-half of the unused current sick time from the previous fiscal year up to a maximum of six additional vacation days per year.

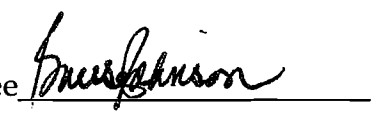
The Employer argues that the additional furlough days by way of Bonus Vacation Days should be considered when evaluating this issue. The Employer also says this issue should be viewed in the context of overall days the employees are provided time off noting that members are granted 9 holidays and beginning in 2009 will be entitled to 4 excused days. The Employer refers to Employer exhibit E-60 and points to the comparison holiday hours granted by six of the seven national comparable communities chosen by the panel with holiday hours granted by Detroit. That comparison reveals that the average holiday hours granted by those six comparable communities is 11.3 hours compared with 16 hours granted to members of this bargaining unit. The Employer also refers to (E-78) which estimates the cost of this proposal. That exhibit describes the financial impact of this proposal given years of service of the current active employee members of this bargaining unit and of the Detroit Fire Fighters allied unit, to which this provision would apply if granted. The estimated annual cost would be $1,753,387 if the panel granted no wage increases and obviously more if wage increases are granted.

Adding the potential 6 bonus vacation days to the current 20 furlough days provided bargaining unit members in the current contract produces and average of 25.14 furlough days per year per officer depending upon the overall average seniority of the members of the bargaining unit. If the Association's proposal were to be granted this overall average would increase to 31.14 furlough days per year per officer depending upon the overall average seniority of the members in the bargaining unit. The average among the Michigan comparable communities is 27.02 days. Two communities; Flint and Grand Rapids, have a maximum of 25 days after 20 years of service. Pontiac has a maximum of 30 days and Saginaw a maximum of 39 days. Detroit's maximum, if this proposal were granted would be 32 days.

Neither party provided a full comparison of total potential time off granted annually to employees in the national or Michigan comparable communities to that for

the employees of this bargaining unit. But Employer exhibit E-60 does compare holiday time to 5 of the six national comparables. And (E-78) provides an estimate of cost to the Employer if this proposal were to be granted. Upon considering Section 9(c) – the financial ability of the unit of government; Section 9(d) – the comparison with other employees performing similar services in comparable communities; and 9(f) and 9(h) – overall compensation for these employees, including the panels' decision on wages and health benefits, the Panel finds the Employer's position on this issue more convincing. The current furlough days, when the additional bonus vacation days are considered, are closer to the number of furlough days currently provided by the Michigan comparable communities than would be the case if this proposal were to be granted. Also, the application of this proposal would apply differently to members of this bargaining unit depending upon seniority whereas the use of limited financial resources to grant wage increases would apply more uniformly.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 38 of the Contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 44
Hospitalization, Medical Insurance and Optical Care

Employer Issue 2/ Association Issue 4

Both the Employer and the Association made proposals addressing health benefits. The Association presented (U-77) as its proposed health plan, which would essentially continue the same coverage and institute a 10% premium sharing by the employee and also proposed adding language to paragraph C of Article 44 (U-68). Paragraph C describes the health care premium payment responsibilities of the City and retirees. The sharing of the cost of the premium payment varies in the current contract depending upon the date an employee retired. The language proposed by the Association states: "The City will pay lifetime health benefits for current and future retirees and their spouses under the Blue Cross/Blue Shield Comprehensive Master medical (CMM)" (U-68).

The Employer, in its last offer of settlement, proposed a more comprehensive revision of Article 44. The Employer presented extensive testimony and evidence in support of its proposal through witnesses Alan Lewis, Anita Berry and Nathan Anderson and Employer exhibits E-53 through E-61.

Employer Witness Lewis, then employed by the City Labor Relations Department, described the background leading up to the Employer's proposal.

> "About 2 ½ years ago, maybe a little longer than that, we hired the Mercer Company to look at our healthcare benefits and to give us some suggestions of what, number one, what is common out in the working world, out there, and how we compare to that, to what was out there. They did a report for us and suggested changes, and those suggested changes became known as the Mercer plan. I think at that point we had, we invited all the unions for a meeting with the Mercer people – I believe this union was there, I'm pretty sure they were – and they went over the changes; and they were much more – I don't know the right word to say – they were much more severe benefit changes than what we're proposing right now. ---- More extensive. So that was our initial proposal to our unions, because we were beginning a contract negotiation. We had severe budget problems. We're looking to save; I forgot the number, 40, 50 million in our healthcare expenses, so we had proposed the so-called Mercer plan to our unions."
>
> "Over the course of negotiations, particularly with AFSCME, those changes were modified somewhat, and the end result was, or is what we call the alternative, which is kind of identified in City Exhibit 53, alternative plan, in the back pages there. So that's kind of what it is called, the alternative plan, alternative healthcare plan; and that is what eventually the AFSCME and 90 percent of the rest of our civilian groups are under" (Tr. 7, pgs 15, 16).

The Employer's proposal would essentially shift the responsibility for premium payment for health coverage from the current 100% of premium paid by the City for active employees of this bargaining unit to 80% paid by the employer and 20% paid by the employee under the Blue Cross/Blue Shield CMM and Traditional Plans and 90% paid by the employer and 10% paid by the employee under the BCBS Community Blue PPO Plan. The Employer proposes this change take effect upon the issuance of this Act 312 Award (E-53, E-55, E-57) (Tr. 7, pgs 36-37).

Through the testimony of Employer witness Anderson and (E-59) the City demonstrated that costs for health care have consistently been higher than inflationary cost increases. Testimony and evidence presented in this case on the City's overall financial condition as discussed within the "Ability to Pay" section of the opinion and award demonstrated the difficulty the City is experiencing in meeting its financial obligations. Employer exhibit (E-60) presented comparative costs for health care for

comparable employees in 5 of the 6 national comparable communities. Those figures demonstrated that the City's annual cost per employee effective July 1, 2005 was $13,815 for family coverage compared to the average for the comparable communities of $9,548.

Health care benefits were an issue presented to fact finders in two separate fact finding proceedings in reports issued in June 2006. The "alternative health care plan", which was an alternative to the health plan the City had proposed during bargaining, was presented in the course of these proceedings and considered by each of these fact finders. The "alternative health care plan" presented to these fact finders was essentially the same as that being proposed by the city in this proceeding. The fact finders in each of these proceedings recommended the parties adopt the "alternative health care plan."

Employer exhibit 54(H) is the June 19, 2006 fact finder report of George T. Roumell, Jr. addressing the contract bargaining between the Detroit Building Trades Council and the City. Fact finder Roumell addressed heath care as follows:

> "There were changes in health care insurance in the Tentative Agreement. The City came in with the Mercer Plan. However, the bargaining committee of the DBTC prevailed on the City to offer an alternative health care plan.
>
> In order to analyze the health care plan, it must be recognized that, as a general proposition, health care insurance premiums have been escalating at a rapid pace, causing employers (both private and public) in Michigan and elsewhere to seek cost constraints. As indicated, Detroit has experienced an annual increase of 12% to 15%, causing the City to address the need for cost constraints. On this basis, in the last three years, the health care insurance cost has increased at least 30%, if not more.
>
> The City offers its employees, including employees represented by the DBTC, five plans, namely, a Traditional Blue Cross Plan, and three HMOs, namely, Blue Care Network, HAP and THC.
>
> It is against this background that the Fact Finder proceeds to analyze the Alternative Health Care Plan that was agreed to in the Tentative Agreement, as contrasted with the Mercer Plan.
>
> The Alternative Health Care Plan was presented by the City following the DBTC bargaining team's concern about the initial offered Mercer Plan. There is no question, as will be pointed out, that the Alternative Health Care Plan is more favorable to employees than the offered Mercer Plan, which explains why the Alternative Health Care Plan became part of the Tentative Agreement.
>
> The Alternative Health Care Plan addresses two areas of cost constraints that have developed in insurance plans throughout the nation. One if the area of drug co-pays. The Alternative Health Care Plan tentatively agreed to provides for a $5 generic, $15 brand and $15 formula drug co-pay. The Fact Finder takes notice that $10 generic and $20 brand co-pays and even $15 and $30 co-pays, are not unusual. Thus, when the City in the Alternative Health Care Plan provides for a $5 and $15 plan, this plan is indeed modest. It is a change over the current plan, but it is still on the lower end of what is the growing prevalence in drug co-pays.

The second change is that the health care programs, namely, the PPOs and the HMOs, are developing more co-pays to restrain costs and to provide that the users share in the cost. This is not unusual. All one has to do is to review the current products of Michigan Blue Cross Blue Shield to observe this trend. It does constrain health care costs and requires that users to make some contribution toward the services performed. For example, the Alternative Plan provides for a $10 co-pay for office visits and a $75 emergency room visit unless admitted to the hospital. There are some other co-pays. But, as the PPO Plan presented to the Fact Finder noted, if the services are in network, there is a limit of individual out-of-pocket expenses of $1,000 and family expenses of $2,000. Again, this is consistent with the Plans being developed by Michigan Blue Cross Blue Shield and are designed to control costs and seem reasonable when such co-pays are the trend in health insurance nationally.

There is one other feature of the Alternative Health Care Plan, namely, that employees would pay 10% toward the premiums of a PPO and 20% toward the premiums of an HMO and continue the same formula as presently for the payment of premium co-pays for those in the Traditional Plan. The reason for the contribution is a matter of plan design. It is consistent with the health insurance plan that the Council members had in their previous contract. The difference is that there is a higher percentage of contribution for HMOs that previously with a lesser contribution for PPOs. The reason for this is to encourage more individuals to go to PPOs as this will broaden the risk group for a number of pensioners are in the PPOs."

Fact Finder Roumell recommended the Tentative Agreement reached between the parties, including the alternative health care plan, be adopted by both parties (E-54 (H), pgs 13-19).

Employer exhibit (E-54(I)) is the June 30, 2006 fact finder report of Michael P. Long addressing the contract bargaining between AFSCME and the City. In his report, fact finder Long stated:

"The City has few alternatives and does not appear to be doing everything it can to minimize reduction of wages and benefits. However, the magnitude of the current financial crisis is too great to allow for current spending levels to continue. The City is now refinancing its unfunded accrued liabilities of its pension funds. The City of foregoing depositing money in its Risk Management Fund for 2005-2006. The City has borrowed money by issuing deficit-funding bonds and it is noteworthy that its bond rating has dropped. Additionally, the City is attempting to sell off excess inventory and real estate holdings.

Presently, the City is borrowing $130,000,000 to cover immediate and overdue bills. However, there can be no effective response without substantially reducing health insurance premiums for active employees and reducing wages in the short term.

I find that the City's proposed efforts to control health care costs are reasonable. The City has proposed changes in premium sharing and

plan design that are not overly severe, and are necessary in light of the magnitude of the fiscal crisis.

The City of Detroit has proven that its financial condition necessitates severe reductions in expenditures. Solvency of the City as well as an improved outlook for the job security of its employees necessitate immediate changes to the City's Health Care Design Plans together with the enforcement of qualifications such as verification of continued eligibility of dependents. Considering the rising cost of health care in light of the City's financial condition, a change is imperative. The City must take prudent measures to insure that its health care plans are operating in the most cost effective manner. Increased employee cost sharing is a national trend from which the City is not insulated. In the fiscal year 2005-2006, the City spent $184 mission in health care coverage and the cost if projected to increase.

Therefore, this fact finder recommends the Alternative Health Care Plan as proposed on April 27, 2006 be adopted by the parties. As presented, the Alternative Health Care Plan provides the City with an overall saving of approximately $31,000,000. As is relatives to AFSCME, for fiscal years 2006-2007 and 2007-2008, the City will realize a cost saving of $5,093,501."

Employer exhibit (E-58) is the Act 312 Arbitration Award issued by the panel chaired by Richard N. Block on March 8 2007 covering the contract between the Detroit Police Officers Association (DPOA) and the City for the period July 1, 2004 – June 30, 2009. Health care was an issue in that proceeding. The health plan proposed by the City in that proceeding was essentially the same as the plan proposed by the City in this proceeding. In addressing the health care issue, after extensive analysis, the Award stated:

"Based on the foregoing, it is clear that the City's LBO would provide cost relief to the City over the life of the contract regardless of which plan an employee chooses. Thus, the City's hospitalization LBO is more consistent with the factor of ability to pay than the Union's hospitalization LBO.

The record contains no evidence on the health care plans offered by the external comparables. Thus, the analysis of comparability will be limited to internal comparables.

With respect to the internal comparables, Fact-Finders Michael Long and George Roumell recommended that the City adopt health care plans for the AFSCME and the Building Trades units similar to that recommended in the City's LBO, with 10% and 20% cost-sharing (City Exs. 556 A, 556H, 5561I). Thus these internal comparables favor the City's hospitalization LBO."

Turning to the City's LBO, a majority of the panel finds that the City's LBO balances the interests of the Union and the City. The City's LBO gives the employees the option of enrolling in BC/BS Community Blue at a cost-sharing rate of 10%. It is conceded that under the City's LBO, police officers will pay more than they currently pay. Under the same assumptions as above, on average, an officer who chooses the

BC/BD Community Blue policy with the 10% cost-share will pay an additional $155 in cost-share in 2006-07, an $681 in cost-share in 2007-08, and an additional $749 in cost-share in 2008-09. These numbers will be greater the greater the premium increase, and less the lower the premium increase. They will be greater for two-person and family coverage, and less for one-person coverage. With additional co-pays over and above the COPS Trust plant, this is a noticeable increase in the burden on the employees.

The City's LBO also creates a mutual incentive for the parties to reduce health care costs. Employees and the City will share in any decrease.

Conclusion. The record does establish that the health insurance LBO of the union would result in a per policy cost that is likely slightly below the per policy cost of the health insurance provided through BC/BS CMM in the LSA agreement awarded in Act 312 in 2003 (City Ex. 358). The record establishes however, that the City's financial situation was far worse in 2005 and 2006 than it was in 2003. Moreover, as noted, there is nothing in the record that indicates that the City's financial situation will improve during the life of DPOA award. The State-imposed limits on personal income tax and property tax revenues are in place and the record provides no basis for concluding these limits will be eliminated by the State Legislature. Revenue sharing will also likely decrease. Thus taking into account the expenditures associated with health insurance, the statutory factor of ability to pay must be given greater weight that the statutory factor of comparability as it applies to the DPOA vis-à-vis the LSA.

Under the assumptions discussed above, it is estimated that the City will spend approximately $20 million less for health care insurance for the DPOA through June 30, 2009 under its health insurance LBO than under the Union's health insurance LBO. Given the city's financial situation distress, denying the City such savings cannot be justified. Accordingly, a majority of the panel finds that the City's LBO is more consistent with the statutory factors than the Union's LBO. Therefore, a majority of the panel will accept the City's health insurance LBO." (E-58, pgs 117,118,120,121)

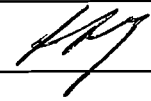
There is little more this panel can add to the findings and conclusions of fact finders George Roumell and Michael Long and of the Act 312 Arbitration Panel Award chaired by Richard Block. Considering the Employer's financial ability to pay, the rising cost of health care, the internal and external comparables, the panel majority finds substantial record evidence to support the Employer's last offer of settlement on this issue. The Association, in (U-68), did provide an exhibit showing that of Michigan comparable communities chosen in this case, none required premium sharing for retirees. But (U-68) also contains an exhibit showing that six of the seven national comparable communities require some measure of retiree premium cost sharing. Also, the internal comparables, discussed extensively above, reveal that the panels' decision

on this issue will result in the members of this bargaining unit and its retirees having nearly the same health care benefits as provided other employees of the City.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Employer Issue 2/Association Issue 4-Hospitalization, Medical Insurance and Optical Care to more nearly comply with the applicable factors in Section 9. Therefore, Article 44 will be amended by replacing the current contract language with the language as proposed by the Employer in its last offer of settlement on this issue.

Effective Date: The date this award is issued.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 48
Optional Annuity Withdrawal

Association Issue 13

The Association proposed the following language be added to Article 48:

> "J. Effective July 1, 2007, and each fiscal year thereafter a retiree who elects to leave a balance in the Defined Contribution Plan (Annuity Savings Fund) would have the option of receiving a quarterly payment of interest earnings only or quarterly withdrawals of interest plus a principal amount in addition to a one-time complete withdrawal. Members must make their selection a minimum of thirty (30) days before the beginning of a quarter. (Quarters defined as March 1, June 1, September 1, and December 1). In any case, the option must adhere to all Internal Revenue Service (IRS) provisions governing such withdrawals."

The Employer, in its last offer of settlement, accepted the Association's proposal but requested a modification to the language to make it consistent with the language adopted on this same issue in the Act 312 Panel Award for the DPOA (E-58). The Employer says adoption of the exact same language will facilitate administration and the DPOA contract language allows employees the option of receiving a quarterly payment of interest earnings, or, to receive periodic withdrawals of principal in addition to the one-time complete withdrawal already provided by Article 48(I). Discussion among panel members during post hearing panel meetings revealed the Association did not object to the Employer's proposed revision of language. In addition, the parties agreed to treat this issue as a non-economic issue for purposes of reaching final agreement in this order.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on Association Issue 13 – Optional Annuity Withdrawal, as modified by the Employer's proposed language, to more nearly comply with the applicable factors in Section 9. Therefore, Article 48 will be amended by adding the following language:

> **"J. In the manner provided in PFRS Board Resolution: at meeting 2566 Re: Option of leaving Defined Contribution Plan (Annuity Saving Fund) Balance in the Defined Contribution Plan after retirement, DPLSA retirees who retire after the effective date of this award and who elect to leave the balance in the Defined Contribution Plan (Annuity Savings Fund) would have the option of receiving a quarterly payment of interest earnings only or to allow periodic withdrawals of principal, in addition to a one-time complete withdrawal. Members must make their selection a minimum of thirty days before the beginning of a quarter; quarter defined as beginning March 1, June 1, September 1 and December 1."**

Effective Date: The date this award is issued.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Article 49
Military Service Credit

Association Issue 14

The Association proposed the following language be added as a new sub-section C to Article 49:

> "Effective July 1, 2007, a member who has performed any honorable military service may claim up to thirty-six (36) months service in the pension system for time spent in the military."

The Employer, in its last offer of settlement, accepted the Association's last offer of settlement provided the language be modified to take effect the date of the Award and clarified to ensure it reflected that it only superseded the provisions of City Ordinance 356-H as it applies to limiting this credit to veterans of only certain conflicts, not the language requiring the Association member to purchase the credit.

Discussion among panel members during post hearing panel meetings revealed the Association did not object to the Employer's proposed revision of language. In addition, the parties agreed to treat this issue as a non-economic issue for purposes of reaching final agreement in this order.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on Association Issue 14 – Military Service Credit, as modified by the Employer's proposed language, to more nearly comply with the applicable factors in Section 9. Therefore, Article 49 will be amended by adding the following language:

> **"C. Effective on the date of the Panel's award in MERC Case No D06 – B-0169, a member who has performed any honorable military service may claim up to thirty-six (36) months service in the pension for time spent in the military. However, those provisions in Ordinance 356-H of the Ordinances of the City of Detroit requiring the Association member to purchase this military service credit are not modified by this change."**

Effective Date: The date this award is issued.

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

Article 51
Pensions

Employer Issue 1 – elimination of pension benefit escalator
Association Issue 5 – eligibility for retirement upon 20 years service

The Employer, in its last offer of settlement, proposed to add a new paragraph in Article 51 as follows:

> "Elimination of Escalator. Pension benefits earned based on service rendered after July 1, 2006, will no longer receive a 2.25% per annum escalation amount. The 2.25% per annum escalation amount shall continue to apply to pension benefits earned based on service rendered before July 1, 2006."

The Association, in its last offer of settlement in response to the Employer's proposal, proposed maintaining the status quo.

The Employer, in its post hearing brief, points to Association exhibit (U-68) as evidence in support of its proposal. That exhibit provides data on Michigan comparable communities addressing pension benefit contract provisions. The Employer says this exhibit shows no Michigan comparable community has a cost of living enhancement as great as Detroit and none have an annual escalator that is compounded as Detroit's is. The Employer also refers to Employer exhibit (E-60) comparing various employee

benefits provided to members of this bargain unit with those of comparable employees in 6 of the 7 national communities chosen as comparable communities in this proceeding. The Employer points out that Detroit's 2006 pension contribution for members of this bargaining unit was over twice the average paid by these six comparable communities.

A review of Union Exhibit (U-68) reveals that two of the Michigan comparable communities provide an annual cost of living adjustment for pension benefits and two do not. One community, Saginaw, provides a 2.5% adjustment which is 0.25% above Detroit's 2.25%. But Detroit's is compounded each year and Saginaw's is not. This is not overwhelming evidence in support of the Employer's proposal. The panel has also considered the Employer's argument on this issue relative to its overall annual pension contribution costs compared to the national comparables. It is clear that the Employer's pension contribution costs are high in comparison to other comparable national communities. But the reason for these costs being higher can be attributable to multiple factors. There may be a larger number of recipients of pension benefits; returns on investment of benefit funds may have differed over the years, and actuarial calculations may differ. The Employer did not put forth evidence to demonstrate the relationship of the COLA provision to the overall cost of the City's pension contribution obligation.

On the other hand, it is evident that adopting the City's proposal will have an impact on the employees who are depending upon sufficient income upon retirement. This proposal would have more negative impact on those employees with the least seniority since the 2.25% per annum escalation amount would continue to apply to pension benefits already earned but not to benefits earned following the issuance of this opinion. The Employer spoke forcefully in opposition to the Association's proposal to lower the eligible retirement age to age 20 in large part because of the potential of loosing a sizable number of members of this bargaining unit. Chief Cummings, testifying in opposition to the Association's proposal for full retirement benefits at age 20, felt that the Department would be devastated if it were to loose one third or one half of its Lieutenants and Sergeants at once. She stated: "You have to look the officers, our ability to recruit, because it's – you know, you can't move people up if you don't have anybody to fill back in. So it's just a number of different things. But right now, just based upon the number of people that are currently eligible, if folks were to get a 20 year, even if it's 50 percent, it would have a tremendous impact in positions that I feel are very – I mean, they're just critical. They're very vital to the efficient running of the department" (Tr. 11, pgs 26, 27). It is of course difficult to determine, if this proposal

were to be granted, how it might influence these same officers decision, who are eligible for retirement, whether to retire now or not. It certainly does not add to the value of remaining.

A review of the discussion of this issue in the most recent Act 312 Award involving the City and the DPOA; MERC Case No. D04 D-0919, the Block panel (E-58), is informative and instructive on this issue. The City presented this same proposal to that panel. The panel reviewed the proposal in light of three factors contained in Act 312, Section 9; ability to pay, comparability, and fairness and equity. On each of these factors the majority of the panel supported the Union's LBO, the status quo. Much of the evidence and arguments presented by the City in that case was similar to that presented in this case. Of particular note was the observation by the panel that, if awarded, it would make the pension system administratively complex and, considering the internal comparables, that retirees from units from LSA, DPCOA and DFFA all enjoy this escalator benefit (E-58, pg 55). The Block panel found the Union's LBO, the status quo, more consistent with the statutory factors than the City's LBO. This panel, for many of the reasons sighted in the Block panel decision and based on the analysis of the evidence presented in this case also finds the Association's last offer of settlement the more reasonable.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 51 of the Contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree _____

The Association, in its last offer of settlement, proposed to add a subparagraph 3 to Section K of Article 51 as follows:

> "Effective July 1, 2007, members with twenty (20) years of credited service (including members on reduced disability retirement) shall have the option to choose a twenty (20) year full service retirement. This option in no way affects any other provisions of this agreement."

The Employer, in its last offer of settlement in response to the Association's proposal, proposed maintaining the status quo.

The Association presented the testimony of Lieutenant Goode and exhibits U-73 and U-68 in support of this issue. During Lt. Goode's testimony it was noted that the Block Act 312 panel decision in the recent Act 312 Case involving the City and the DPOA awarded the Union's proposal that upon the effective date of that decision DPOA members would be eligible to retire after twenty (20) years of service regardless of age (E-58, pg 136). The Association took the position that the same opportunity to retire after 20 years of service should be available to members of this bargaining unit. Exhibit (U-73, pg 2) described the number of Sergeants and Lieutenants and Investigators that would be eligible to retire as of April 3, 2008 if this proposal were awarded by the panel. That exhibit was compared with (E-71) which identified the actual number of Lieutenants, Sergeants and Investigators working in those positions on March 28, 2008. This comparison revealed the following number of officers would be eligible to retire with 20 years of service: 1) 72 of 106 Lieutenants; 292 of 516 Sergeants; and 77 of 96 Investigators. The Association also presented (U-68) which provided an analysis of Michigan comparable communities' contract provisions for comparable employees on this issue. Of the four Michigan comparable communities, one had a 23 and out provision or 25 and 50 years of age; one had a 25 and out provision, one had 10 years and 50 years of age, and one, Saginaw, had a 20 and out provision. Neither party presented external comparable data on National comparable communities.

Chief Cummings testified on this issue on behalf of the Employer. She acknowledged that, as a result of the Act 312 award the DPOA members could retire at 20 years and based on the data in the exhibits presented in this case, at this point a sizable number who were eligible to retire at 20 years service had not done so. But Chief Cummings drew a distinction between the DPOA and members of this bargaining unit. She noted that it is important "especially when you have a young police force out there, when you have senior officers at one point on the street. Somebody with two and three and four years on the job, it is critical to have an experienced supervisor leading these young officers. At that point in time, there's been a substantial investment in our lieutenants and sergeants. But what's even more important is the supervision and direction and command and control they provide the police officers, which make up the bulk of the department. If sergeants and lieutenants were to just up and leave you would create a huge gap in the department if there was no transition of the experience. There's a lot that they've learned over the years that is so important that it has to be shared or else you will have chaos internally. And I

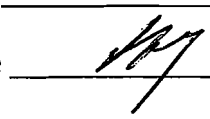
believe you would increase issues with officer safety and performance on the streets if you don't have that" (Tr. 11, pg 12).

In comparing personnel in this bargaining unit with those in the DPOA Chief Cummings stated, " I believe that if a 20 – if lieutenants and sergeants were given 20 and out with their full pension, you would see a lot more leaving, for a number of reasons. First, they'd leave with their full pension. Second, as a lieutenant and sergeant, you've got more time on the job, so you've had more time to develop financial stability in your life, I would hope, you know. And I think you would see more people exercising a 20 year retirement in those two ranks than you see in police officers" (Tr. 11, pg 23). The Employer points out, in its post hearing brief, that the wage provisions of the contract provides a high differential between sergeants and lieutenants and members of the DPOA and argues this is due to the recognition of the critical supervisory role they play. The Employer says this proposal undermines the rationale for that differential. This position is not without some merit.

The panel recognizes that an important internal comparable, the DPOA, has this provision in their contract and understands the rational for the panel in the most recent Act 312 for the DPOA granting that proposal. However, the majority of this panel finds the impact of granting this proposal to this bargaining unit on the health and safety of the officers in the Department and the citizens of the city is far greater than the impact of granting the 20 year retirement eligibility to members of the DPOA. Given the number of personnel in this bargaining unit eligible to retire with 20 years of service and given their differential in pay and potential retirement pay it is far more likely that greater numbers of personnel would retire prior to age 25 from this bargaining unit than from the DPOA. With the current number of personnel eligible to retire under this proposal equaling 50% or more of the total personnel within those respective ranks, the potential impact of this proposal could severely impact the Employer's ability to ensure the safety of its employees and citizens. Section 9(c) requires the panel to consider the interests and welfare of the public and Section 9(f) the continuity and stability of employment and other benefits received. Given the testimony and evidence presented in this case the panel finds the granting of this benefit to the members of this bargaining unit at this time outweighed by the potential impact of the interests and welfare of the public.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 38 of the Contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 54
Wages and Differential

Association Issue 6/ Employer Issue 4 – Article 54A – Wages

Both parties proposed wage revisions. The Association proposed the following:

Association
- July 1, 2006 = 0%
- July 1, 2007 = 0%
- January 1, 2008 = 3%
- July 1, 2008 = 3%

Employer
- July 1, 2006 = 0%
- July 1, 2007 = 0%
- July 1, 2008 = 3%

The parties stipulated that the panel, when considering this issue, must choose the last offer of settlement on this issue as one proposal for the entire contract period and not year by year.

The Employer, in its closing brief, reiterates the stressful financial situation the city faces, noting annual budget deficits of $155,588,100 for FY 2005-06 and an $88,620,000 projected deficit for FY 2006-07 (E-25, B 28). The Employer says any award given in this proceeding should be consistent with past awards given during fiscal crisis. It equates this period with the July 1992–1995 period and points out that Arbitrator Roumell, in an Act 312 Case involving the DPOA, concluded there could be no increase for that period because the city did not have the ability to pay (E-80). The Employer says the current financial climate is worse than that which the Roumell called a crisis. The Employer points out the city will have experienced five consecutive years of annual budget deficits from fiscal year 2003 through fiscal year 2007 and says to award wage increases while experiencing budget deficits would undermine the notion that local governments must be fiscally sound.

The Employer refers to Arbitrator Michael Long's AFSCME Fact Finding Report and Recommendation in which he noted that if the City were unable to implement health care changes and wage savings for its non-Act 312 bargaining units no wage or other economic improvements could be offered. Arbitrator Long recommended the following relative to wages in the AFSCME fact finding report:

- July 1, 2005 = 0 %
- July 1, 2006 = reduction in pay of 10% in the form of reduced work hours
- July 1, 2007 = 0% but the reduced work hours cease
- July 1, 2008 = 4%

The Employer also refers to Arbitrator George Roumell's Building Trades Fact Finding Report as it addressed wages. Arbitrator Roumell recommended the following relative to wages:

- July 1, 2005 = 0%
- July 1, 2006 = reduction in pay of 10% in the form of reduced work hours
- July 1, 2007 = 0% but the reduced work hours cease
- July 1, 2008 – 4%

The Employer argues that Act 312 requires the panel to consider all benefits presently received by the employees including pensions, medical and hospitalization benefits when considering wages (Act 312, Sec.9 (f)). The Employer refers to (E-60) which compares, as of July 1, 2006, the annual average compensation, including base wage, holiday pay, longevity and shift differential pay, pension and health care costs of Lieutenants and Sergeants in this bargaining unit with comparable employees in five of the six national comparable communities chosen in this case. The Employer notes that when all benefits are included, the average cost to the comparable communities is 17% less than the cost to the City of Detroit. The Employer urges the panel to adopt its last offer of settlement on wages saying it is the more consistent with the City's goal of getting Employer costs aligned with revenues.

The panel considered various Act 312, Section 9 criteria in reaching a decision on this issue. Section 9(c) requires consideration of the interests and welfare of the public and the financial ability of the unit of government to meet those costs. The financial situation confronting the Employer has been discussed elsewhere in this report. Fact Finder Roumell summarized it well in his Report when he said, "The City's finances are most difficult. The City is in a financial readjustment period in a state that is economically well behind the rest of the nation, with high unemployment, plant closings and plant movings. These facts just cannot be ignored" (E-54-H, pg 12). But the financial difficulties cannot negate the fact that the City must also provide for the

"interests and welfare of the public." It is in the City's interest to insure the safety and security of its residents and businesses. It can do so only through an adequately staffed, trained and experienced police force.

As to comparability, Section 9(d) of Act 312, the panel has reviewed exhibits (E-60), (E-54-H), (E-54-I), (E-78), (U-68 H-K, M) and (E-58). These exhibits provide external and internal comparisons. Exhibits (E-60) and (U-68) provide information on external national comparables. The Employer argues that overall compensation should be considered in these comparisons and the panel has considered that. But it is noted that, if wages alone are considered, when comparing the six national comparables to the wages alone for a six year Sergeant working one premium holiday as of July 1, 2006, the wage for the City of Detroit Sergeant is only 1.2% above the average wage of the national comparables. A comparison of the Michigan comparable community wages is more difficult. U-68M reveals wage data for July 1, 2006 on only two of the four Michigan comparable communities. The average of those communities for a Sergeant is $62,569 compared to the Detroit Sergeant of $64,055.

The panel acknowledges that Sec. 9(f) of Act 312 requires a consideration of overall compensation and all other benefits received by employees. Clearly, Employer exhibit (E-60) comparing the costs of overall benefits among the national comparables supports the City's last offer of settlement. Section 9(d) of Act 312 also requires a comparison of the wages, hours and conditions of employment with the comparable communities. The panel has compared the percentage wage increases these external comparable communities have experienced since July 1, 2006. A review of (U-68-H) describing the national comparables reveals that the average percentage increase among five of the seven (there was no data for Cleveland and St. Louis) national comparables considered in this proceeding from July 1, 2006 to the present is 5.6%. The Michigan comparable community data only provided data for July 6, 2006 forward for two of the four communities. Flint experienced a 5% increase and Grand Rapids a 3% increase in wages since July 1, 2006 for an average increase of 4% (U-68-M).

The panel gave significant weight to the internal comparables when considering both the issue of wages and health care. The internal comparables for this time period were considered and discussed above in reference to the Fact Finding reports of Michael Long (E-54-I) and George Roumell (E-54-H). Additionally, this panel has considered the determination of wages in the March 8, 2007 Act 312 Award from the Block panel (E-58). The Block panel and award on wages was:

July 1, 2005 = 0%

July 1, 2006 = 0%
January 1, 2007 = 3%
July 1, 2007 = 2 %
January 1, 2008 = 3%
July 1, 2008 = 3%

Considering Section 9(f), Employer exhibit (E-31) provides information on the change in the consumer price index so that it can be determined that the CPI rose approximately 3.2% from 2005-06 to 2006-07 and approximately 1.9% from 2006-07 to 2007-08 for an overall increase of 5.1%. Section 9(h) also provides the panel the opportunity to consider other factors as well. It is important to note that the panel has awarded the Employer's proposal on healthcare. Going forward, the Employer will experience significant cost savings attributable to the cost of this change for this bargaining unit. The DPOA's members experienced similar additional costs as a result of the same proposal being awarded in its proceedings. As a result, this bargaining unit should receive a wage increase similar to that received by the DPOA. Additionally, the wage increases received by the non-uniformed employees are less relevant because the changes from the healthcare benefits that they were then receiving were not as significant as those changes awarded to the uniformed. The non-uniformed employees were already subject to premium sharing obligations not that dissimilar to those ultimately recommended by the fact finders. The internal comparables and the CPI data support the Association's proposal more that the Employer's proposal. A six percent increase over three years provides an average 2% increase per year versus a 1% increase per year under the Employer's proposal and is similar to that provided to the DPOA who received similar changes in healthcare benefits while obviously subject to the same changes in the CPI.

The panel recognizes the burden this may place on the Employer, but the panel also believes awarding the Association's proposal on wages is the more reasonable finding in light of the internal and external comparables, the cost of living increases, and the additional cost the employees will bear, as well as the savings the Employer will likely experience in its health care costs. The panel believes this is the more likely result in the type of normal give and take that would occur through voluntary collective bargaining between the parties (Section 9(h).

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on Employer Issue 4/ Association Issue 6 –Wages, to more nearly comply with the applicable factors in Section 9. Therefore, Article 51 will be

amended by replacing the current contract language with the language as proposed by the Association in its last offer of settlement.
Effective Date: The date this award is issued.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Association Issue 7/Employer Issue 5 – Article 54B – Differential

Both parties proposed modifications to Article 54B of the contract. Article 54B requires that a set percentage difference be maintained between the salaries of members in this bargaining unit and police officers in the DPOA bargaining unit. That percentage difference specified in the current contract calls for a 20% difference – higher salary – for a Sergeant upon promotion and a 1% increase each year for the next four years following promotion to a maximum of 24% difference. The percentage difference specified for the rank of Lieutenant is 35% upon promotion and 1 % increase each year for the next four years following promotion to a maximum of 39% difference.

The Association proposed that each of those percentages be modified by increasing the percentages by 1% so that upon promotion the Sergeant's assured percentage difference would be 21% to a maximum in four years of 25% and the Lieutenant's would be 36% upon promotion to a maximum in four years of 40%.

The Employer proposed eliminating the provision completely from the contract.

The panel has reviewed Employer exhibits (E-65, E-66) and Association exhibit (U-68L&M) in analyzing this issue. The Employer exhibits reveal that the current in July 2005 a Sergeant, on average, received 34% more in wages than a DPOA member and a Lieutenant, on average received 50% more in wages than a DPOA member each with six years in their respective classification. The exhibits also compare the wage differentials between similar ranks in six of the seven national comparable communities, which reveal that the average differential among those communities is 18.7% for Sergeants and 34% for Lieutenants. Association exhibit (U-68M) also provides information on the national comparable communities on this issue. It reveals that none of the national comparable communities has a maximum differential for either Sergeant or Lieutenant equal to or greater than that of Detroit. Chicago comes the closest for

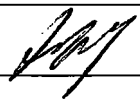
Sergeant with an 18% maximum differential and Toledo comes closest for a Lieutenant with a 31% maximum differential.

The Employer, in its post-hearing brief, in arguing for elimination of this provision in the contract, refers to (E-66) and says among the national comparables only Pittsburghh has a differential specified in its contract, as does Detroit. However a review of (U-68M) indicates that three out of the seven national comparable contracts have a contractual provision. The Employer also notes in its post hearing brief that the overall benefits received by members of this bargaining unit compared to others in the comparable national communities does not justify an increase in the percentages proposed by the Association.

The panel finds the evidence does not support a modification of the language in Article 54B as proposed by the Association. The principal evidence comparing comparable national communities with Detroit on this issue shows Detroit already has the greatest differential. The panel also finds the evidence does not support the Employer's proposal to eliminate the language from the contract. Even though a majority of the national comparable communities did not have this provision in their contracts, the fact that this provision is and has been in the contract between these parties is important. This opinion has previously referred to the testimony of Chief Cummings relative to the importance of members of this bargaining unit to the management of the Department. The differential is a recognition and reflection of that importance. Removing the language from the contract would send the wrong message and be contrary to the goal of retaining the experience of these bargaining members needed to ensure the operations of the Department.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement – to retain the status quo - in response to the Association's last offer of settlement to increase the percentages - on this issue the more reasonable position. Therefore there will be no change in Article 51 of the Contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement—to retain the status quo—in response to the Employer' last offer of settlement to eliminate this contract language - on this issue the more reasonable position. Therefore, there will be no change in Article 51 of the Contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree _____

NON-ECONOMIC ISSUES

Article 8
Grievance Procedure

Association Issue 8 – Article 8 – Add language to Grievance Procedure

The Association proposed the following language be added as a new paragraph to Article 8:

> "To avoid any possibility of a conflict of interest or an appearance thereof, in all instances commanding officers, as it relates to responding to grievances oral or written, shall hold the rank above that of a Lieutenant."

The Employer's last offer of settlement is to maintain the status quo.

Lieutenant Eugene Goode testified on behalf of the Association in support of this proposal. He noted that with the downsizing of the Department, lieutenants have become commanding officers in a lot of locations. And some lieutenants are also union representatives, as well as union members. Grievances are filed because there is an alleged violation of the contract. The Association believes there is a conflict if a lieutenant answers a grievance in that the lieutenant is then put in a position of interpreting or writing opinions based on a violation of the contract that the lieutenant is also governed by (Tr. 11, pg 44). The Association says its proposed language would ensure that people responding to grievances on behalf of the Department would not be members of the bargaining unit.

The Employer, in its post hearing brief, notes that Lieutenant Goode testified that this has nothing to do with writing a person up for disciplinary charges, but the Employer says the handling of grievances is integral to the disciplinary process. The Employer also says that the record shows, through the testimony of Chief Cummings in

particular, the importance of the supervisory functions for lieutenants and sergeants (Tr. 11, pg 5-7, 10-12). The Employer points out that current contract language in Article 8 C. specifies that "Immediate supervisors, commanding officers and reviewing officers shall consider promptly all grievances presented to them and, within the scope of their authority, take such timely action as is required" (J-32, pg 8). The Employer says this language shows that it is expected that members of the Association will have a role in handling grievances since many of the "immediate supervisors" are lieutenants and sergeants.

The panel finds the Employer's position on this issue convincing and supported by the evidence. The contract language is clear that it was not contemplated that members of this bargaining unit would have no role in addressing contract grievances. Additionally, Lieutenant Goode's own testimony acknowledged, "with the department being short the way they have, lieutenants have become commanding officers in a lot of locations" (Tr. 11, pg 44). There was no evidence presented that demonstrated the lieutenants in these positions could not carry out their responsibility "within the scope of their authority" in these positions involving grievances as objectively and professionally as they do in carrying out any other responsibilities. Given the reduction in staff over the past years, the panel believes it would be an additional and unnecessary burden on management to require the procedure proposed by the Association.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 8 of the Contract.

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

Article 10
Discipline Procedure

Employer issue 8 – Article 10A (2) – Commander's Hearing

Article 10A of the current contract addresses the procedure and hearing "steps" involving disciplinary matters. Paragraph 2 refers to the Commander's hearing as the second form of discipline and empowers the Commander to conduct a hearing and render a disciplinary penalty. It also contains the following language:

"It shall be the member's option whether to proceed with a Commander's Hearing or to proceed directly to Trial Board."

In no case shall the penalty rendered at a Commander's hearing exceed three (3) days per charge with a maximum of two charges.

The member may elect to appeal any decision from a Commander's hearing to a trial board when a penalty of more than three (3) days has been rendered.

Any penalty of three (3) days or less will be considered final and binding with no right of appeal."

The Employer proposes to delete the sentence reading: "It shall be the member's option whether to proceed with a Commander's Hearing of to proceed directly to Trial Board."

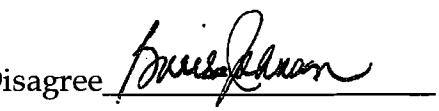
The Association proposes the status quo.

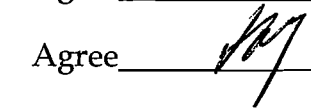
The Employer says it makes this proposal in an effort to expedite the discipline process without compromising the rights of Association members. The Employer says under the current language the member may appeal any Commander's hearing decision to the Trial Board and that can result in poor use of a Commander's time if many of the Commander's decisions are appealed therefore detracting from the ability to carry out their other responsibilities.

Neither party presented any comparable community or internal comparable evidence on this issue. While the Employer states its intention is to streamline the process without compromising the rights of Association members, its proposal does have the potential to compromise the rights of Association members more so than if the language remained in the contract. The current contract language states, "any penalty of three (3) days or less will be considered final and binding with no right of appeal" (J-32, pg 8). The hearing before the Commander may involve a potential penalty that is less than three (3) days. If the member does not have the option to proceed directly to the Trial Board he/she loses the opportunity to appeal that sanction imposed by the Commander. Additionally, Employer witness Gail Wilson Turner, the Commander in charge of legal affairs for the Department, testified that since 2003 she has been working on resolving the backlog of cases. She stated, "I had approximately 800 cases that had not been reviewed in quite a long time. I was able to clean those up in a year" (Tr. 5, pg 31). She further testified, in the context of discussing the experience of scheduling a chief's hearing, "But unfortunately, since we don't have a lot of written reprimand appeals – because normally we don't have that many LSA members – it's just very difficult to try to get on her schedule to hold those appeal hearings" (Tr. 5, pg 35).

The panel finds the Employer has failed to present sufficient evidence to justify its making the change it proposes. There does not appear to be a significant problem in administering this process within the current procedure and the panel is reluctant to make this change in language that is on an issue in which the parties could more likely reach a better balance of interests through the voluntary collective bargaining process.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on this issue the more reasonable position. Therefore there will be no change in Article 10 A of the Contract.

Employer: Agree_____ Disagree 

Union: Agree  Disagree _____

Article 10
Discipline Procedure

Employer issue 7 – Article 10 B (1) – Appeals

The employer proposes to amend Article 10 B (1) of the collective bargaining agreement which currently reads:

> "Any member not satisfied by a superior's written reprimand may appeal the decision to the Chief of Police who shall consider the merits of the case and afford the member and/or his representative an opportunity to be heard. Such appeal must be in writing within ten (10) calendar days of the service of the written reprimand to the member. The decision of the Chief to sustain or dismiss the written reprimand shall be final."

The Employer proposes to replace the words "Chief of Police" with "Deputy Chief." Employer witness Gail Wilson Turner, the Commander in charge of legal affairs for the Department, testified in support of this proposal. She stated that the Department of Justice consent decree requires the department to schedule disciplinary hearings, trials and appeals at appropriately frequent intervals to prevent a disciplinary backlog from developing. She said that scheduling the Chief's time to conduct these hearings is sometimes difficult so that they do not occur that frequently and therefore there is sometimes quite a long period of time between the request for the hearing and the date the hearing is held. The Employer says if Deputy Chiefs could hear these appeals from a written reprimand it could be done more timely.

The Association opposes the Employer's proposal and proposes the status quo.

On cross examination witness Turner acknowledged that from January 1, 2007 to the date she was testifying, October 7, 2007, there were "maybe six" written reprimands

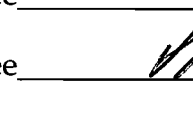
were appealed to the Chief (Tr. 5, pg 42). She also testified that "probably in the last year – I would say since January – I have scheduled two chief's hearings on written reprimand appeals, and those cases were probably a year old. We did them – I think we had one in January – maybe January – and then one in June" (Tr. 5, pg 34).

Testimony also revealed that there could be occasions when the Deputy Chiefs within the districts might order a lieutenant to issue a warning and in that case the Deputy Chief would be the one who would be conducting the appeal hearing. Witness Turner testified that "It normally doesn't occur like that. We're talking about a rarity. I think the Union is saying that always occurs, and that's not always the case" (Tr. 5, pg 51).

The panel finds the Employer's proposed language change is not sufficiently supported by the evidence. Employer witness Turner's own testimony revealed that she had made great progress in clearing up the backlog of cases and in meeting the requirements of the Department of Justice consent decree (Tr. 5, pg 31). Testimony also reveals that hearings with the Chief on these written reprimands are held approximately every six months and that there have been only 6 such requests for hearings in the most recent 9 month period. Additionally, the possible conflict of interest that might occur, even if infrequently, if a Deputy Chief had ordered a lieutenant to issue a written reprimand, makes the proposal problematic.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 38 of the Contract.

Employer: Agree_____ Disagree 

Union: Agree  Disagree _____

Article 17
Miscellaneous Items

Employer issue 3 – Residency Requirement

The Employer proposed adding a new section to Article 17 to read as follows:

> "Residency Requirement: In accordance with Act 212 of 1999, 15.602(2), all employees must reside within 20 miles from the nearest boundary of the City of Detroit, unless the employee is married and both of the following conditions are met:

1. the employee's spouse is employed by another public employer, and;
2. the employee's spouse is subject to a condition of employment or promotion that, if not for statutory restrictions, would require him or her to reside a distance of less than 20 miles from the nearest border of the public employer" (E-15).

The Association opposes the Employer's proposal and proposes the status quo.

Employer witness Ralph Godbee, Assistant Chief of Police for the Department, testified in support of the proposal. Witness Godbee stated the City's proposal was made because in the event of a natural or man made disaster it is critical that the supervisors – members of this bargaining unit – be available to supervise the rank and file (Tr. 5, pg 80,81). The Employer referred to various Arbitration awards prior to enactment of Michigan Public Act 212 of 1999 that upheld the City's position to require residency of its employees, including members of this bargaining unit (E-7 – E-12). Witness Godbee described the procedure for mobilization of the police force in these situations (E-18-21). He said the need to have that mobilization capability, including calling in off duty personnel, is as important now as it was when the previous arbitration awards were issued upholding language in the various collective bargaining agreements containing a residency requirement (Tr. 2, pg 81,82).

Public Act 212 of 1999 however prohibited public employers from requiring an employee to reside within a specified distance from his or her place of employment within the employer's boundaries or less than 15 miles outside those boundaries (E-13). The City therefore put forth this proposal on the basis that it is necessary to carry out its mobilization efforts if needed and still be in compliance with Public Act 212 of 1999. The Employer says it believes its proposal is reasonable because it allows employees to live anywhere within 20 miles of the City's borders. The Employer presented (E-16) which described the number of officers in this bargaining unit who, as of August 2, 2007, lived outside the city and the number who lived outside a 20 mile radius of the city. Those numbers were: officers living outside the city – lieutenants = 46; sergeants = 205; investigators = 20; and those living outside a 20 mile radius of the city = 28. (E-16).

On cross examination, witness Godbee acknowledged that in situations requiring mobilization, members of this bargaining unit responded appropriately (Tr. 2, pg 121). The association notes this point and says this proposal is unnecessary and would needlessly and negatively impact those 28 members who currently reside outside the 20 mile radius of the city.

The panel has carefully reviewed the testimony and evidence on this issue, including the arbitrator decisions dating back to 1975. This is not a new issue, but much has changed since 1975. The racial and gender composition of the department personnel and the number of personnel in the department has changed greatly since that time. One thing has remained constant however, and that is the need for the city, in emergency situations, to be able to mobilize its personnel to meet the safety needs of its citizens. The Employer acknowledged that on occasions necessitating such mobilizations after the enactment of Public Act 212 of 1999 the city was able to adequately carry out that mobilization. The city says it was lucky on some of those occasions due to the timing of the event and availability of personnel (Tr. 2, pg 103 - 105). It was also noted that members of this bargaining unit have been responsive during mobilization demands. Assistant Chief Godbee said, "We don't have problems with you coming to work. They come to work. Very few DPLSA officers live outside of that 20 mile radius. It's very few. I mean, they have demonstrated their commitment to the city" (Tr. 2, pg 94).

A review of exhibits (E-71) and (E-16) shows that whether you compare the 28 DPLSA members living outside the 20 mile radius with the budgeted personnel or the actual positions occupied by members of this bargaining unit on March 28, 2008; either comparison results in less than 4% of the personnel in this bargaining unit living outside of the 20 mile radius of the city. The Association offered the Block Arbitration Award as evidence that a recent Act 312 panel rejected the city's similar proposal in that proceeding. That award stated: "It must be noted, however, that on January 31, 2006, almost six years after the effective date of Public Act 212 of 1999, 93% of the bargaining unit members still live within the 20 mile limit that the City's LBO would require" (E-58). In the case of DPLSA members, that figure is 96%. An additional point of difference between the city proposal with the DPOA in the Block proceeding and this proceeding is that in the city proposed that the 20 mile radius requirement apply only to employees entering into the bargaining unit after the date of that award. The City's proposal in this proceeding applies to all bargaining unit members.

The Employer has argued that members of this bargaining unit should be distinguished from the DPOA members because of their critical supervisory skills that would be needed during mobilization. And the Employer says the pay differential that members of this bargaining unit receive is in recognition of the value of that supervisory skill and therefore the Employer is justified in demanding this provision for members of this bargaining unit. The Employer also says that it is concerned that even

though the current members of this bargaining unit have been responsive and have "demonstrated their commitment to the city," future members may not be so committed (Tr. 2, pg 94-95).

The majority of the panel finds the Employer has not provided sufficient support for this proposal. There is no evidence that the current contract language has hindered the Employer's ability to respond to emergency situations. The fact that currently less than 4% of the members of the bargaining unit reside outside the 20 mile radius of the city does not impose a severe limitation on the Employer to mobilize members of this bargaining unit when needed. And there is no evidence that future members of this bargaining unit would likely reside further than 20 miles from the city borders in higher percentage numbers than do the current members. Even though the number of members who would be impacted by this proposal is small, the impact on them would be great, particularly in the current economic climate. The impact might be so great that they would choose to leave the department, which would only add to the risk of reaching a staffing level that could not maintain adequate supervision and safety.

Taking all of these factors into consideration, the panel finds the Association's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 17 of the Contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree _____

Article 17
Miscellaneous Items

Employer issue 10 – MCOLES

The Employer proposed to add language to Article 17 as follows:

> "A member who is decertified by the Michigan Commission on Law Enforcement Standards (MCOLES) shall be separated from the department. If recertified, the member shall no longer be disqualified from re-employment on these grounds."

The Employer says its purpose in inserting this language in the CBA to reflect the law and public policy of the State and to avoid unnecessary disciplinary proceedings.

The Association proposes the status quo.

Employer witness Deborah Robinson, second deputy chief in charge of training, testified in support of this proposal. She described the current State law and policy involving MCOLES and explained that under that law MCOLES can revoke the certification of a law enforcement officer for conviction of a felony and other offenses. Under the law, if certification is revoked that person can no longer act as a law enforcement officer (Tr. 6, pg 16) (E- 38). The Employer pointed out that presently, if a police officer has had her/his certification revoked the City still has to go through the grievance procedure to establish good cause to separate the person. The city is merely attempting, by this proposal, to expedite the process by avoiding an unnecessary proceeding (TR. 6, pg 19). If MCOLES has decertified the police officer he or she by law cannot perform the functions of a police officer. There was also testimony that all members of the bargaining unit are certified police officers (Tr. 6, pg 18).

The Association conducted cross examination of the witness but offered no testimony or exhibits.

The panel finds the Employer's proposal reasonable. There appears to be no negative impact on members of the bargaining unit and its placement into the contract should permit the Employer to avoid processing grievances for which, through the action of MCOLES, the outcomes are a forgone conclusion.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Employer Issue 10 – MCOLES to more nearly comply with the applicable factors in Section 9. Therefore, Article 17 will be amended by adding the following language:

> **"A member who is decertified by the Michigan Commission on Law Enforcement Standards (MCOLES) shall be separated from the department. If recertified, the member shall no longer be disqualified from re-employment on these grounds."**

Effective Date: The date this award is issued.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 23
Transfers

Association issue 9 – Department to provide monthly list of assigned out members

The Association proposed to add a new subsection to Article 23 as follows:

"The Department will provide a list of Association members in assigned out status on a monthly basis. The list shall include rank, name, assignment, assignment assigned-out to and date assigned-out."

The Employer opposes the Association's proposal and proposed the status quo.

Association witness Eugene Goode testified in support of this issue. Lieutenant Goode stated the intent of the proposed language is to monitor the length of temporary assignments (Tr. 11, pg 73). He said sometimes these temporary assignments, which the current contract limits to seventy-five (75) days, go longer than 75 days and sometimes when they exceed 75 days they cause problems because of either causing more overtime in the members original assignment of having the assigned out member able to draw holidays based on seniority in the members original assignment. "And the guys are not happy. You know, I've been waiting around and then you come back – you've been gone for six months and you come back and get your holiday" (Tr. 11, pg 69). Exhibit (U-74) identifies the number of grievances that were filed on this issue during the 2002-07 period. The exhibit shows 14 grievances filed during that period. Lt. Goode testified that the exhibit had been prepared by the Association and represented the ones the Association new about, where someone had come forward to say I've been assigned out more than 75 days (Tr. 11, pg 66). He also stated "My experience, and when I've looked at it, most of the time we bring it to the department's attention, they resolve it. Almost 90 percent of the time, it's resolved" (Tr. 11, pg 66). On cross examination, Lt. Goode acknowledged that most of what the Association perceives to be the problem is not in the eyes of the transferee and that in a majority of those complaining are not the transferee (Tr. 11, pg 131,132).

The Employer, in its post hearing brief, says the evidence in this case demonstrates the manpower reductions that have occurred and continue to occur in the department already puts a strain on the department. This proposal would require the department to generate additional reports when that manpower could be better used to ensure the protection of its citizens. The Employer also says the Association failed to demonstrate any difficulty in obtaining the status of Association members on temporary assignment.

The panel finds the Association has not provided sufficient evidence to support granting this proposal. Exhibit (U-74) reveals relatively few grievances on this issue and Lt. Goode that when the Association brings an issue to the department's attention it is resolved almost 90 percent of the time. Lt. Goode also testified, with respect to (U-74), in response to a question as to why only 14 grievances were listed on the exhibit stated, "It's because we computerized this. Before, they were done by hand. As you can see, this is computerized-generated. We haven't been able to get them all in" (Tr.11, pg 63). It appears the Association has, or has the capability of having the means to generate the information it seeks to have generated by the department. The information that is sought may aide in determining the extent of compliance or non-compliance with the seventy-five day limit on temporary assignments. If the Association believes that information is important it should use its resources to generate that information. It did not, on this record, present sufficient evidence to demonstrate a problem to the extent that the department should use its limited resources to develop additional reports at this time.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore there will be no change in Article 23 of the Contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 23
Transfers

Employer issue 9 – Article 23 F. – extending the number of days for temporary transfer

Article 23 F of the current contract states, in its first sentence:

> "Should the need arise for a temporary assignment (not transfer), except a temporary assignment of a limited duty member in accordance with Article 35, E, the temporary assignment may not exceed seventy-five (75) days."

The Employer proposes to add the word **"working"** before the word days.

The Association proposes the status quo.

The Employer says the record clearly reflects that the department has had to downsize and consolidate functions and points to the reorganization of the department

from 13 precincts to six districts (Tr. 2, pg 6, 7). Employer witness Dennis Fulton, Commander of the investigative operations, testified on behalf of the Employer in support of this proposal. He pointed out that with the downsizing of the Department over the past several years and with those reductions the department has responded by establishing task forces or teams on a temporary basis in order to address a specific need (Tr. 2, pg 9). Examples of task forces or teams were described as pattern crimes in which the criminal or criminals commit multiple crimes in various parts of the city, such as robberies or homicides (Tr. 2, pg 12-14). Witness Fulton testified to the importance of having a team leader, (members of this bargaining unit) assigned to supervise the task force or team with continuity and that oftentimes those task forces or teams need to function longer that 75 calendar days. Teams need to be trained and the effectiveness of the team is dependent upon leadership and continuity of staff though completion of the task force work (Tr. 2, pg 18, 19). Witness Fulton also indicated the team members are almost always volunteers and if a member asks to return to their normal assignment they are returned. As to the value of the task forces, Commander Fulton stated, "This is a win-win for everybody, because the district investigative units' caseloads go down. We talked about caseloads. They go down because they're no longer investigating. Our closure rates go up. The citizens – the violent criminals are taken off the street" (Tr. 2, pg 28, 29). The Employer says in its post hearing brief that this proposal is designed to help the department accomplish its core mission: improving public safety.

The Association did not dispute the value of the task forces. The Association did during the course of this proceeding submit a proposal to reduce the maximum number of days for a temporary assignment from seventy-five (75) to forty-five (45) days. It withdrew that proposal during the course of the proceedings. In the context of the discussion on the Association's proposal to have the department provide a list of those members on assigned out status, discussed previously in this opinion and order, the Association pointed out the concern it had with temporary assignments extending beyond seventy-five (75) days.

The panel finds the Employer's testimony on the value and importance of this proposal convincing. There was convincing testimony that the temporary assignment of members to these task forces for up to seventy-five working days was valuable to ensure both the safety of the officers and the effectiveness of the department to combat crime. This testimony was not rebutted. It is noted that Commander Fulton referred only to the importance of members of this unit to be available for longer periods than

seventy-five working days for these special task forces and teams. The Association can monitor whether the length of time temporary assignments are occurring in other situations moving to customarily reach 75 working days and if so may want to address this issue in future negotiations. At this point however, the panel believes it is important for the safety and continuity of these task forces that the Employer have the ability to maintain a continuity of staff for up to seventy-five working days.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Employer Issue 9 – extending the number of days for temporary transfer - to more nearly comply with the applicable factors in Section 9. Therefore, Article 23 F will be amended by adding the word "working" in front of the word "days" in the first sentence of Article 23 F.
Effective Date: The date this award is issued.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Article 35
Sick Leave

Association issue 10 – Article 35F – mutually agreed physician

Article 35 F of the current contract describes how and who makes a determination when a member allegedly sustains an original injury or illness in the performance of duty and is unable to complete his tour of duty, whether the illness or injury is duty incurred. The current contract language states, " It is the responsibility of a Department physician to determine whether the illness or injury of a member is duty incurred." The Association's last offer of settlement proposed deleting that sentence and inserting:

> "In the event a dispute arises as to whether the illness or injury of a member is duty incurred, the dispute shall be resolved by an independent physician appointed mutually by the Association and the Department."

The Employer opposes the Association's proposal and proposes the status quo.

The Association, through the testimony of Lieutenant Goode, said the purpose of this proposal is insure that, if there is a dispute over whether or not the illness or injury was duty related that a third party, independent of both the city and the Association, be

appointed to determine whether the injury or illness was duty related. During cross examination the witness stated there were numerous grievances where members have objected to the findings of the Department physician but no evidence was presented in support of that statement (Tr. 11, pg 134).

The Employer points out that even though the Association witness' testimony referred to splitting the cost of the independent physician (Tr. 11, pg 75) there is nothing in the proposal that refers to that. Neither is there anything in the proposal to describe how a physician is chosen if the parties do not mutually agree on a physician.

The Association witness acknowledged that currently the department sends an Association member who questions the department physician's determination to an independent medical examiner from a list of medical personnel provided to the member to review the matter but the witness said some members have had a negative experience with that (Tr. 11, pg 137). Witness Goode also acknowledged that currently, if a member disagrees with the Department physician's determination he or she can obtain a medical examination from his/her own medical expert and submit that evidence as part of a grievance of the department physician's determination (Tr. 11, pg 135).

The panel finds the Association has not presented sufficient evidence to justify its proposal. There was no quantitative evidence to determine the extent of a problem. There was evidence that under the current contract the Association member has a means of challenging the determination of the department physician through the grievance procedure. There was also testimony that the current language has been in the contract for 20 years, apparently without major problems (Tr. 11, pg 134). The panel recognizes this is a non-economic issue and could alter the language of the last offer of settlement. But the panel is reluctant to do so in this case given the nature of the issue. The Association is not deprived of a means of resolving a disagreement with the department physician's determination under the current contract language. It is better that the parties arrive at mutually agreed upon language during future negotiations if possible than impose language in this proceeding.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, there will be no change in Article 35 F of the Contract.

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

Article 35
Sick Leave

Association issue 11 – Article 35 M (2) – review of use of sick leave benefits

Article 35 M of the current contract states:

> "1. General: The Detroit Police Department is responsible for providing efficient law enforcement services. Maximum attendance is required from all members if this responsibility is to be fulfilled.
>
> 2. It is therefore, necessary to identify and correct members who have developed a pattern of regularity in the use of their sick leave benefits. Therefore, all commanding officers are to review the records of their member's quarterly: each January 10th, April 10th, July 10th, and October 10th."

The Association's last offer of settlement proposed adding the following:

> "To avoid the possibility of a conflict of interest, in all instances commanding officers referred to in this article shall hold the rank above that of Lieutenant."

The Employer opposes the Association's proposal and proposes the status quo.

The Association presented minimal testimony and evidence in support of this issue. However the Employer, in its post hearing brief, notes this is similar to the Association's proposal on Association issue 8 in which it sought language that would have required someone holding the rank above that of a Lieutenant to carry out the responsibilities of Commanding officers as it related to responding to grievances, oral or written. The Employer says its response to this issue is the same as that for Association issue 8; i.e. the handling of attendance issues is part of lieutenants' and sergeants' supervisory function regardless of whether these issues are with police officers or members of the supervisor's own bargaining unit. The Employer notes that the commanding officer, whether it be a lieutenant or sergeant, is not in any way reacting to a position taken by the Association in this situation, which was one of the reasons the Association advanced Association issue 8. The Employer says in this situation the lieutenant or sergeant is merely carrying out his/her supervisory functions to determine whether members of the Department have developed a pattern of regularity in the use of their sick leave benefits. The Employer again notes the total staff reductions in recent years and says if is foolhardy to believe the few members above the rank of lieutenant can supervise the attendance and this proposal, if adopted, would impede the Department's ability to address attendance issues.

A review of Article 35 M in its entirety reveals that the functions a commanding officer must perform in compliance with this provision are primarily ministerial. Subsection 2 merely says they are to regularly review the records of those under their supervision in the use of sick leave and, upon review, subsection 3 requires them to counsel subordinates whose records show an indication of a pattern of regularity in the use of their sick leave benefits (J-32, pg 40). Subsections 4 and 5 are quite explicit in describing the procedure to be used to measure whether improvement is lacking or has improved. The supervisor, in carrying out these responsibilities appears to have little discretion. It is true the language doesn't describe precisely how the use of sick leave reaches a "pattern of regularity" but it is likely if a subordinate felt a supervisor was not applying this policy uniformly he or she could use the grievance procedure.

It is also interesting to note the exchange between Association witness Goode, when testifying on Association issue 8, and Association Counsel Korney:

"Korney: Now, you also draw a distinction between addressing a grievance under how the contract should be interpreted, but at the same time, the lieutenant has the authority to supervise both the investigator and the sergeant?

Goode: That is correct, as well as discipline them.

Korney: Okay, and discipline the individual.

Goode: That is correct.

Korney: You're not objecting to that at all.

Goode: Not at all " (Tr. 11, pg 45).

The panel finds the Employer's position on this issue convincing and the Association's position lacking support. The panel finds, as it did in addressing Association issue 8, there was no evidence presented on this issue that demonstrated the supervisors carrying out the responsibilities required in Article 35 M involving a review of use of sick leave benefits could not do so as objectively and professionally as they do in carrying out any other responsibilities. Given the reduction in staff over the past years, the panel believes it would be an additional and unnecessary burden on management to require the procedure proposed by the Association.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore there will be no change in Article 35 M of the Contract.

Employer: Agree _____ Disagree _____

Union: Agree _____ Disagree _____

Exhibit III
Promotion to the Rank of Police Lieutenant

Employer issue 6 – Exhibit III C – allow Employer to schedule exam at its discretion

The Employer proposes to revise the first and third paragraphs of Exhibit III C. The first paragraph would be revised from:

> "Written examinations established for Police Lieutenant shall be job related and objective. Said examinations shall be administered during the month of April, bi-annually. The promotional rosters shall be announced on or before July 1st of the year the examination is administered to be effective for a two year period."

To:

> "Written examinations established for Police Lieutenant shall be job related and objective. The promotional rosters shall be announced within 180 days from the date of the last appearance of an applicant before the Assessment Center to be effective until the day before a new examination is given."

And the Employer proposes to revise the third paragraph from:

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

To:

> "Should the promotional roster be exhausted prior to the administering of a new examination, such that the department's needs cannot be fulfilled, the Department will re-assess the amount of potential vacancies to ensure an adequate pool of candidates during the remainder of the life of the register and process that amount of candidates from those candidates who are next in rank scoring order from the same examination. A promotional examination shall be administered at the department's discretion."

The Employer proposes to modify the language to remove the requirement of biannually administering a promotional exam to Lieutenants in April and allow the Department to schedule the exam at its discretion. The Employer says nothing in the proposal alters the substance of the exam or the criteria used to evaluate candidates for promotion to Lieutenant. Employer witness Deborah Robinson, second deputy chief in charge of training, testified in support of the proposal. Witness Robinson described the process of administering examinations for promotions. She described the process and value of using people from outside the testing city for this process because it eliminates

the risk of bias in promotional decisions and is considered best practice in the industry (Tr. 6, pg 46). She stated that after promotional exams are administered the Department compiles a list of names who are eligible for promotion based on candidate's scores (Tr. 6, pg 54-56). Employer witness Lawana Ducker, director of police personnel also testified to the procedure and costs involved in actually conducting the examination (Tr 6, pg 58 – 63). Employer exhibits (E- 42-44) revealed that the costs for the 2000 exam for the lieutenant's and sergeants exam was $624,000 and the costs for the 2004 exam was $306,000. Witness Ducker noted that the 2004 test resulted in a promotional roster that contained 153 names and at the date of her testimony 33 lieutenant's had been promoted and approximately 110 names remained on the register eligible for promotion (Tr. 6, pg 64-65).

The Employer, in its post hearing brief, says it does not make financial sense to administer a test when there are sufficient candidates on the list to fill all vacancies. The Employer says the proposed change to allow the City to announce the within 180 days from the date the assessment center concludes its investigations of the candidates is consistent with the change permitting the City to schedule the examinations and assessments at its discretion. The Employer says the proposal accommodates the interests of the City by affording it flexibility to manage its costs without denying the opportunity to bargaining unit members to be tested and eligible for promotion when vacancies occur.

The Association did not present significant evidence on this issue. There was some question as to the relationship of this proposal, if it were to be granted, and the testing requirements specified in the DPOA contract but there was no definitive evidenced presented as to whether there would be a conflict between the two contracts relative to scheduling promotional testing and if there was what implications that might have for accommodating each schedule (Tr. 6, pg 69).

Based on the evidence presented in this record the panel finds the Employer's proposal reasonable. It appears to be a practical and more cost effective way to maintain an adequate roster of candidates eligible for promotion. There was also testimony that the current requirement for testing every two years was not in previous contracts but had only been included in the most recent contract at the urging of the former Police Chief (Tr. 6, pg 68).

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Employer Issue 6 – to allow Employer to schedule the promotional exam for lieutenant at its discretion - to more nearly comply with the

applicable factors in Section 9. Therefore, Exhibit III C will be amended replacing paragraph one and paragraph three with the following language:

> **"Written examinations established for Police Lieutenant shall be job related and objective. The promotional rosters shall be announced within 180 days from the date of the last appearance of an applicant before the Assessment Center to be effective until the day before a new examination is given."**
>
> **"Should the promotional roster be exhausted prior to the administering of a new examination, such that the department's needs cannot be fulfilled, the Department will re-assess the amount of potential vacancies to ensure an adequate pool of candidates during the remainder of the life of the register and process that amount of candidates from those candidates who are next in rank scoring order from the same examination."**
>
> **"A promotional examination shall be administered at the department's discretion."**

Effective Date: The date this award is issued.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the award as recited in this opinion and award is a true restatement of the award. All agreements reached in negotiations during the course of this proceeding and within the submission of last offers of settlement and stipulated to by the parties as noted herein, as well as all mandatory subjects of bargaining contained in the prior contract, will be carried forward into the collective bargaining agreement reached by the panel.

Re: City of Detroit & Detroit Police Lieutenants and Sergeants Association
MERC Case No. D06 B-0169(Act 312)

Date: 12/15/08

William E. Long
Arbitrator/Chair

Date: 12/15/08

Barbara Wise-Johnson
Employer Delegate

Date: 12/15/08

John A. Lyons
Association Delegate