

261

STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION

CITY OF GARDEN CITY

June 29, 1988

-and-

Case No. D86 F-1494

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN

Rec'd 7-1-88

Panel of Arbitrators

Richard Fritz, Employer Delegate  
Robert Wines, Union Delegate  
Ruth E. Kahn, Impartial Chairman

OPINION AND AWARD OF THE ARBITRATION PANEL

I. INTRODUCTION AND BACKGROUND

The City and the Command Officers of the Police Department had worked under a prior collective bargaining agreement for the term July 1, 1983 through June 30, 1985. The City and the Association were unable to agree on all terms of a successor contract. The Michigan Employment Relations Commission was petitioned by the Association, on December 15, 1986, to institute Act 312 proceedings. The City's responsive filing is dated December 29. The above-named Panel was established pursuant to Michigan Public Act 312 of 1969, as amended.

The Command Officers bargaining unit consists of fourteen members, currently: four Captains, three Lieutenants, and five Sergeants. The Department has two divisions, Uniformed and non-Uniformed, the latter being the Detective Bureau. Uniformed command is assigned thus: on day shift, the command consists of one Captain and three Sergeants; on the remaining two shifts -- afternoons and nights -- the command is made up of a Captain, a Lieutenant, and a Sergeant. The Detective Bureau command is made up of a Captain and a Lieutenant; they work only days.

At a pre-hearing conference held on March 2, 1987, the issues to be arbitrated were identified.\* Hearings were held on the following dates: May 1, June 17-18, June 26, October 19, October 21, and December 7, 1987. Final offers from each party were submitted to the Panel on January 27, 1988. Each party then filed a post-hearing Brief in support of its offer, on or about March 11, 1988.\*\*The Panel met in executive session on April 6 and June 29, 1988.

This portion of the Opinion will briefly identify the issues that are before the Panel for decision. The issues are grouped by subject matter and not as numerically listed by each party.

1. Duration. The parties agree that the starting date for the new contract is July 1, 1985. The City seeks an expiration date of September 30, 1987. The Union asks that the term of the contract run to June 30, 1988.

2. Wages. It is agreed that the wage increase awarded in this proceeding will be effective retroactively to July 1, 1985. The particulars of the parties' respective wage offer/demand will be discussed in full below. Suffice to say, the City offers less than the Association demands.

3. Retirement benefits.

(1) Pension benefit formula. Presently a pension benefit is based upon a formula multiplying final average earnings by the sum of 2.0 percent times the first twenty-five years of service, and 1.0 percent times years of service in excess of twenty-five. The Union seeks to increase the multiplier for the first twenty-five years from 2 percent to 2.5 percent. The City opposes the change.

(2) Duty disability retirement. Article XVI of the expired contract provides for an employee who retires due to a duty disability an annuity of two-thirds of his final average compensation until the employee becomes eligible for normal retirement benefits. The City seeks to delete the provision from the Agreement. The Union opposes such action.

The parties provided testimony and exhibits regarding two other pension-related issues -- a "pop-up" clause and

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\* Statutory time limits were waived at this time as to all aspects of the proceedings.

\*\* Strictly, there are three "parties" to this Proceeding: the State, the City and the Association. Nonetheless, in this Opinion the word "party" or "parties" refers to the City and/or Association (at times, Union).

annuity withdrawal. Subsequent to the hearings and prior to submitting final offers, these issues were withdrawn, apparently satisfactorily resolved.

4. Insurance.

(1) Health protection (hospital-medical-surgical) for retired employees and dependents. Under the expired contract (Article XIII), the Employer is liable only for payment toward the insurance of an employee retiring at age 55 or with twenty-five years of service. A retiree's dependents are not covered. The Association demands continuation of the same health coverage provided to active employees for retirees and their dependents. The City opposes the expansion.

(2) Predetermination rider. The City wants the right to add this Rider to the current health protection insurance. The Association is opposed.

(3) Accidental death and dismemberment protection. The Association demands additional life insurance benefits to cover the contingencies of accidental death and dismemberment. The City is opposed.

Several health insurance-related issues were dealt with during the hearings and later withdrawn. These were an increase in the co-payment for drugs (\$1 to \$3), and changes involving the dental and optical programs.

5. Step-Up Pay. The Association seeks a provision in the Agreement that will state that a member who fills a higher ranking position for more than four hours of an eight-hour shift be paid the rate for the higher position. The City's offer would limit step-up pay to a single situation, namely, when the Sergeant works as Shift Commander.

6. Use of sick days to supplement disability protection. Existing sickness and accident benefits commence on the second/ninth days of the disability. They pay out a benefit amounting to 65 percent of the employee's wages. The Association seeks to have employees allowed to supplement the benefit by opting to use three and one-half days in a two-week period from his accrued sick days. The City opposes such supplement.

7. Compensatory time. The City seeks to change current contract language (Article VI.4) with respect to payment/com-

pensatory time off when an employee attends training classes and/or breathalyzer recertification. The Association is opposed to any change in Article VI.4.

8. Lateral Transfers. Article XV.19 limits lateral transfers between the Uniformed Division and the Detective Bureau, requiring a minimum duration of 12 months, unless the employee and the Chief agree to something less. The City seeks to have the twelve-month minimum duration eliminated. The Association is opposed.

9. Fixed Shifts. Currently command officers rotate their shifts, approximately every month. Non-command police officers represented by the FOP are on fixed shifts. The City seeks to have the command officers required to work fixed shifts. The COAM opposes such change.

10. Residency. Article XV.6 of the expired Agreement requires all members to live "within the boundary lines of the City... for the duration of their employment". The Association asks that members with fifteen or more years of service be permitted to maintain residence within a twenty-mile radius from the Police Station and not be required to live within the City. The City opposes the change.

11. Drug-Alcohol Testing. The Employer proposes a "'For Cause' Program for Drug-Alcohol Testing and for Rehabilitation". No such program currently exists, for this bargaining unit or any other. The Association opposes the Program as enunciated in the City's proposal.

One other issue, concerning an allowance for weapon proficiency, was considered in the hearings and was later withdrawn, apparently resolved by the parties as a result of further negotiations, prompted by an exchange of preliminary "final" offers. Presumably it was these same negotiations which produced resolution of certain pension and insurance issues, as well.

## II. STATUTORY CRITERIA

Section 9 of Act 312 requires that the findings and orders of this Panel be based upon the "...following factors, as applicable".

### **423.239 Findings and orders; factors considered.**

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) 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.

HISTORY: New 1989, p. 804, Act 312, ILL. CH. I

The Panel has examined the parties' positions as expressed in the evidence contained on the record and in the arguments articulated in the post-hearing briefs with respect to the Section 9 applicable factors. The relative pertinence and weight of each factor varies according to the particular issue being argued and under scrutiny. The Panel makes the following general commentary concerning the Article 9 factors in this case.

(a) No dispute exists concerning the "lawful authority of the employer" nor is reliance placed upon this factor as a basis for decision.

(b) The parties have stipulated to certain procedural matters with which the Panel has complied and to certain substantive matters which are noted.

(c) The public "interest" is specifically cited by the City in connection with its opposition to loosening the residency requirement. It notes that the requirement was enacted in the Charter and by ordinance. These "interests" are also referred to as part of the Employer's argument in seeking to contain the cost consequences of benefit improvements.

The City's post-hearing brief asserts that the "current economic recession has had a devastating impact on Garden City's citizens". (Br., 14) Its contention is wholly unsupported by any factual evidence on the record; it had presented no unemployment data, no statistics showing that a disproportionate segment of its population is on welfare, no evidence that household income has taken a sharp drop. If indeed Garden City residents are "experiencing hard times", the City should have been able to demonstrate the allegation with credible data. It has not, and the Panel rejects the bald assertion of "hard times". The ability to pay for reasonable improvements is not at issue.

The City also asserts that "taxpayers cannot afford more taxes", that given the "hard times" Garden City citizens are experiencing, they cannot be expected to pay higher taxes. It is noteworthy in this regard that the City's Brief points out that its millage rate is below that of a number of its selected comparable communities. Undoubtedly it is a safe assumption that many in the public would rather not pay higher taxes. That is not the same as the assertion that they "cannot afford" them. It would be a mistake to equate the public interest with low taxes and cost containment alone. The public is well served by a leadership unit in the Police Department whose wages and benefits constitute remuneration appropriate to the importance of their contribution to the community.

(d) The Union's exhibits concerning comparisons with other communities listed these: Allen Park, Dearborn Heights,

Inkster, Lincoln Park, Romulus, Southgate, Trenton, Wayne, Westland, and Wyandotte. The Employer used Allen Park, Inkster, Lincoln Park, Southgate, Wayne and Wyandotte, all of which appear in the Union's selections. The Union's post-hearing Memorandum states that the "mutually designated match-overs form a group sufficient in weight and number to permit detailed analysis by the Panel". Accordingly, no determination need be made by the Panel on the question of the appropriate comparable communities. They are: Allen Park, Inkster, Lincoln Park, Southgate, Wayne and Wyandotte.

The City challenges comparisons made between/among the comparable communities as to wages for the different levels of the command units. It maintains that the current Sergeant, Lieutenant and Captain classifications were just a few years ago corporal, sergeant and lieutenant classifications, respectively. The positions were renamed with no change in duties or pay. The City urges, therefore, it is improper to compare a Sergeant in Garden City with a Sergeant in Inkster, for example, absent proof of like job descriptions.

The Panel rejects the City's argument as without merit. The City possesses the information to explain why the classification change was made, but provided none. It must be presumed that the City believed that the then-corporal was misclassified and rectification of that error occurred, for each of the three positions. Without contrary evidence, this Panel will assume parity of job responsibilities among the comparable communities for each of the three classifications.

Internal comparability -- Garden City and its other bargaining units (AFSCME, IBT (clerk/dispatchers), FOP (police patrol), Firefighters, and the Supervisory/professional employees -- was cited by the parties from time to time, as deemed relevant to the particular issue under consideration.

No data on private employment were presented for consideration.

(e) The cost of living data were submitted by the City, using the U.S. Department of Labor Consumer Price Index, for

Detroit, All Items, Urban Consumers. The annual average increase between 1984 and 1985 was 3.5 percent; between 1985 and 1986, it was 1.4 percent. Between 1985 and 1986, it was 3.1 percent, according to the City's brief. The Association does not challenge the Employer's data for this factor.

(f) "Overall compensation" includes many items -- wages, pensions, insurance, vacation pay, holiday pay -- "and all other benefits received". In the instant proceeding, the parties are in dispute over improvements in some of these "other benefits". Where costs of such benefits are pertinent and available, they will be discussed in relation to the specific issue.

This factor includes also the "continuity and stability of employment". It is not disputed this bargaining unit has had stable employment with no recorded layoffs.

(g) "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings". It appears from the testimony that there is ongoing study at the City of a reorganization of the Police Department, with several different plans having been submitted to the governing body for approval. The parties have also been in negotiation, or consultation, concerning impact on the COAM unit. As of the close of the hearings, no definitive scheme had yet been adopted. The prospect of such reorganization was linked to the issues concerning transfers and scheduling, most particularly.

The Employer's Brief seeks to include within this category pessimistic economic forebodings for the City, based upon the President's and the Governor's state of the economy messages. These considerations are speculative at best, and clearly prospective. They form no reliable basis for decision.

(h) The final criteria mandated by Section 9 are broad: all "other factors...normally...taken into consideration" when a new contract is being bargained or arbitrated. To the extent these factors have a bearing on a particular issue, the Panel will treat them at the appropriate place.



### III. DISCUSSION AND FINDINGS

Before considering the merits of the specific demands/offers, it is necessary to comment upon the City's construction of its final offers with respect to duration/wages/ Predetermination Rider.\* The City placed this "FINAL LAST BEST OFFER OF SETTLEMENT" on the matter of wages before the Panel:

"The City offers the following wage increases;

- 3 percent effective 7/01/85
- 3 percent effective 7/01/86
- 1 percent additional effective 7/01/86 conditional upon acceptance of contract extension to 9/30/87
- 1 percent additional effective 7/01/86 conditional upon acceptance of predetermination program for Blue Cross/Blue Shield
- 1 percent special adjustment effective 7/01/86" (underlining added)

In its Memorandum in Support of Final Offer of Settlement, the Union comments upon this Employer offer thus:

"The Employer made a final offer on the issue of wages which the Panel cannot award as it violates issue-by-issue determination by the Panel as mandated by the Act."

The Union cites Section 423.238 in support of its view:

"...As to each economic issue, the arbitration panel shall adopt the last offer of settlement..." (underlining by Union)

In an earlier portion of 423.238 it is stated:

"...the arbitration panel shall ...direct each of the parties to submit...its last offer of settlement on each economic issue."

The Statute does not instruct the arbitration panel as to its authority where the party, as the City has done here, merges several economic issues, making the wage award contingent upon adoption of its duration and Blue Cross Rider demands.

It is the Panel's view that the City's attempt to tie three economic issues together runs contrary to the Statute. If carried to its extreme, the City's construction could convert issue-by-issue arbitration to an all-or-nothing determination, clearly not within the contemplation of the

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\*It was settled during the proceedings that each -- duration, wages, the Predetermination Rider -- is an economic issue.

Legislature. The Statute directs the arbitration panel to adopt the last offer of settlement "[a]s to each economic issue..."

The Employer's shaping of its final offer moves toward the all-or - nothing posture, and the Panel rejects that move. The matter was discussed by the Chair with Panel members, and it was decided in the interests of timely resolution of these proceedings that the Panel will disregard the conditions imposed by the City upon its wage offer. Wages, Duration and the Pre-determination Rider continue to be separate economic issues, as was clearly established early on in these proceedings.

1. Duration. The starting date for the new contract will be July 1, 1985, a matter not at issue. The Union seeks a three-year contract, with a termination date of June 30, 1988; the Employer believes the contract should expire on September 30, 1987, which is the date all other City collective bargaining contracts terminate. The Union notes that adoption of the City's offer would establish a contract that would have expired some months earlier. (The precise time would depend, obviously, on the date this Award issues.) It contends the longer period would permit time for adjustment before embarking upon negotiations for the next contract.

As noted earlier in this Opinion, the hearings for this proceeding required seven days, spread over many months, a schedule that accommodated the parties' wishes. Briefs supporting the Final Offers were exchanged in the second week of March 1988, closing that segment of the record. The time necessary to review the transcripts together with more than seventy multi-page exhibits, consisting of extensive data, actuarial reports, contracts, makes it highly improbable that the Union's argument for a 'breathing space' -- otherwise a sensible consideration -- has much applicability. In all likelihood, given the need for Panel meetings and consultation, this Opinion will issue at most a month or two before the Union's proposed expiration date.

Furthermore the knowledge that the parties are meeting concerning contractual implications of departmental reorganization persuades the Panel that the earlier date for expiration of this Agreement is a reasonable one, one that will permit immediate attention to matters affected by such change.

AWARD: The expiration date of the Agreement is September 30, 1987.

2. Wages. The Employer Final Offer as construed by the Panel is:

3 percent effective July 1, 1985  
6 percent effective July 1, 1986

The six percent consists of the 3 percent unconditionally offered, the two one-percent conditioned-offers, and the one-percent "special adjustment", nomenclature which is unexplained and will be regarded simply as 'one percent'.

The Union wage demands for the same time periods are:

<u>Rank</u>	<u>Effective 7/1/85</u>	<u>Effective 7/1/86</u>
Sergeant	\$31,523.	\$33,099.
Lieutenant	33,410.	35,080.
Captain	35,034.	36,786.
Deputy Chief	36,683.	38,517.

The July 1985 wage level sought by the Union represents a nine percent increase over 1984 wages; the July 1986 wage level is a five percent increase over the preceding year.

The Union submitted an exhibit detailing a comparison of its wage demand, the City's offer and the wages in the selected comparable communities. For ease of presentation, only the Sergeant wages will be shown below:

<u>Community</u>	<u>July 1, 1985</u>	<u>July 1, 1986</u>
Garden City		
Union demand	\$31,523	\$33,099
City offer	29,810	31,599
Allen Park	30,925	32,250
Inkster	29,825	expired
Lincoln Park	35,724	expired
Southgate	29,770	31,544
Wayne	32,217	33,345
Wyandotte	29,474	30,514

The Association also seeks a July 1, 1987 increase that would establish the Sergeant wage at 12.5 percent above the top patrolman rate. The City makes no offer for that time period. The only community showing a 1987 wage on the Union's exhibit is Wayne, at \$34,512.

The Union seeks to support its Offer by computing the "average" of the wages paid by the comparable communities, e.g. the sergeant "average" is \$31,323. It notes that the Union's demand (\$31,523) is "right on the mark".

A different method of viewing the "average" yields a different result. Using the median as the "average", it can be seen that the City offer is "right on the mark"; Inkster, Southgate and Wyandotte pay at or below the City's offer for that year.\* The reason for the Union's result can be seen in the fact that Lincoln Park wages are substantially higher than the other communities -- by six-thousand dollars over the median. Inclusion of this figure in calculating the arithmetic average necessarily raises that sum. That becomes apparent in calculating the arithmetic average for the second year of the contract, July 1986, excluding Inkster and Lincoln Park, whose contracts had expired. That average is \$31,913, or just three-hundred dollars higher than the City offer.

The median for 1986 is consistent with 1985 results. Four communities are reported: two are lower than the City's offer, and two are above. Inkster and Lincoln Park can reasonably be expected to be at the average and above, if the 1985 levels are used as a predictor.

Hence, comparison of the wages paid to command officers in comparable communities -- the factor relied upon by both parties -- supports the City position. Further, the Union provides no other reason for the nine percent increase in the first year of the contract, which the Panel views as an increase far in excess of the patterns currently operating in the local, state or national settlements.

AWARD: The City's Offer on wages for the years commencing July 1, 1985 and July 1, 1986, three and six percent increases respectively, is awarded. No increase for the period commencing July 1, 1987 is awarded.

### 3. Retirement Benefits.

The Multiplier Formula. The Union seeks to raise the current two-percent multiplier factor to 2.5 percent. The Employer's contribution toward pensions would be increased by 4.575 percent. Overall contribution would go from 13.97 percent of wages to 18.545 percent.

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\*The "median" is a point in a series where half are on one side and half are on the other.

The Union notes that the higher Employer contribution is two percent below the average cost for pensions among the comparable communities. Further the Union urges, the Employer has profited from substantial pension cost savings in recent years, and an equitable split of such savings is appropriate.

Cost comparisons are only one of the considerations to be examined in an evaluation of a proposed improvement. Only one of the comparable communities -- Allen Park -- is shown to include Social Security benefits within its retirement benefit system. Social security payments are a valuable supplement to employer-based retirement systems. They contain a basic benefit, with protection against erosion by inflation; they, of course, raise the total retirement income package. And they represent an additional contribution, from both the Employer and the employee.

Given these factors-- the contribution required for both the Garden City pension plan as well as for Social Security, the relatively high proportion of wages returned, the protection against inflation-- the Panel is not persuaded that a change in the multiplier is warranted at the present time.

AWARD: The Union's demand for a change in the multiplier is denied.

Duty disability benefit. This benefit provides a valued protection. The Employer presents no reason to eliminate it. The Panel therefore finds no basis in the statutory factors for its deletion.

AWARD: The Employer's demand for elimination of the duty disability benefit is denied.

#### 4. Insurance.

Health insurance for retirees and dependents. Currently the City contributes toward the health insurance of the retired employee only; no dependent coverage is allowed. The Union wants the City to pay for the health insurance of the retiree and spouse.

According to the Union's exhibit on the provision of this fringe benefit by comparable communities, Allen Park, Dearborn Heights, Lincoln Park, Southgate and Wyandotte pay the full cost of such coverage. Inkster pays fifty percent of the cost; Wayne limits its contribution to the retiree only. The Employer opposes the benefit because its costs are "open-ended", an argument

equally applicable to insurance protection for active employees as well.

The Employer's post-hearing Brief introduces for the first time data regarding possible escalation of costs of this insurance benefit. These are facts not on the record and for which the Union had no opportunity to examine/verify and possibly refute. It would be wholly improper for the Panel to include such data within its decisional process.

The Panel is, of course, aware that health care costs mount each year. Nonetheless, this is valuable protection, one that is clearly widespread for public employees, as is substantiated by the record in this case, notably that five of the six comparable communities provide what the Union asks of this Employer. Section 423.239 factors (c), (d)(i), (f) and (h) provide a basis for award of the Union demand.

AWARD: The Union demand is awarded.

Predetermination Rider. Few details on this Rider are contained in the record of this case. The City initially had demanded to add a PREVENT Rider, which the Union opposed on the grounds of its being burdensome to the insured, i.e., the potential for a substantial insured payment if certain procedures were not fully adhered to. Both riders -- Prevent and Predetermination -- are offered as a possible means to save on costs. The following excerpt from the transcript is relevant:

Q (by Mr. Mack continuing [of Ms. A. Maurer, Association witness]) So as I understand your position, the Union doesn't have any problem with Predetermination; it's just the Prevent that they have the problem with?

A That is my understanding. The Union is willing to talk. In all the instances where I have been involved, the Union has been willing to talk about Predetermination. (Vol 4, p. 64)

This testimony of course is not a commitment to the Rider, but surely it suggests that Predetermination is not unsupportable.

Given at least the possibility for cost containment, and absent evidence that this Rider would impose a significant and unfair burden on the insured, the Panel, relying on factors (c) and (h), will adopt the Employer's demand to have the Predetermination Rider as a part of the health insurance package.

To the extent that the Association's opposition is based

upon its contention that Predetermination is a "new" issue, the Panel holds that the demand simply represents a 'step back', that consideration was given to two different riders -- Prevent or Predetermination, that the Association expressed less concern with the latter, and the Employer shaped its demand accordingly. The Panel does not find that to be a reason to reject the Employer's demand.

AWARD: The City demand for a Predetermination Rider is adopted.

Accidental Death and Dismemberment. The insurance language in the Agreement contains no provision of this benefit. The Association believes the current insurance policies make some allowance (\$8500.) for this contingency. Neither party supplied cost figures for the benefit. The only comparable unit offered into evidence is the Garden City firefighters, which has this insurance protection.

The Employer offers no reason for its opposition to the Union demand for AD&D insurance. While, as noted, no cost information is provided, the Panel takes 'arbitral notice' that this insurance is not a costly one. (See, similarly, the 'arbitral notice' of rising health care costs, page 14, above.)

Comparability within the City -- i.e., that a like benefit is provided to other employees -- is an acceptable factor under Section 9. Accordingly, pursuant to factors (c), (d)(i), and (h), the Panel will adopt the Union's demand.

AWARD: The Union's demand for provision of accidental death and dismemberment insurance in Article XIII, 13.2 of the Agreement is adopted.

5. Step-Up Pay. The issue dividing the parties is whether step-up pay will be ordered in all situations (beyond four hours' fill-in) when a member fills a higher-ranking position, as the Union seeks, or only in the event the Sergeant serves as Shift Commander. Currently, no step-up pay is provided under the Agreement.

Given the Panel's knowledge of the contemporaneous efforts to reorganize the Department, and given the lack of a

clear record containing evidence of defined job duties that would clarify how the Union's demand, if adopted, would be effectuated, the Panel will adopt the Employer's proposal as best suited to the immediate circumstances, relying on factors (g) and (h) of the Statute.

AWARD: The City's offer with respect to Step-up Pay is awarded.

6. Use of Sick Days to Supplement Disability Protection. Employees accrue sick days and they are also protected by a temporary disability ("sickness and accident") protection program. The S&A benefits have a waiting period; benefits amount to 65 percent of wages. The Union seeks to use sick days to fill in on the waiting period and also to supplement payout. It states the Firefighters have this option.

An employee's use of sick days or eligibility for S&A is subject to verification. Hence concern that an increase in benefit may increase utilization is countered by the ability to require proof. Given this safeguard, it would seem that the Union's demand, which would enable the employee to maintain his income level during a period of disability, is a reasonable one. The Employer provides no persuasive argument to withhold this protection. Relying on factors (d)(i), (f) and (h), the Panel will award the Union its demand.

AWARD: The Union's Demand for amendment of Article X to permit the use of sick leave to supplement the disability plan is adopted.

7. Compensatory Time. The City seeks to amend current contract provisions on this subject. The Union wants no change.

The Panel is presented with no persuasive reasons to make a change in this Article. Accordingly, finding no basis under the Statute, the City's demand will be denied.

AWARD: No change in Section VI. 4 concerning the Compensatory Time Off Option is awarded.

8. Lateral Transfers. The City seeks to eliminate the twelve-month minimum duration presently required for an involuntary transfer. The City urges the need for greater flexibility. Existing language allows for a shorter duration with agreement of the officer and the Chief. It was the Chief's



testimony and the Panel's sense that the existing contract language has not presented a serious obstacle to management. This issue falls within the broad area of assignment and scheduling, the City having expressed some concerns with the possibility of being required to go to overtime (although the current contract authorizes discretion by the watch commander). As has been expressed in other related areas, it would seem this issue should be decided in favor of the status quo, given the pendency of departmental reorganization. Relying on factors (g) and (h), the Panel will deny the City demand.

AWARD: No change in the provisions of Article XV is adopted.

9. Fixed Shifts. Patrolmen work fixed shifts. Officers work rotating shifts. The City seeks to bring the Command unit in line with the patrolmen.

The record contains no information on how long this situation has existed, whether at one time patrolmen and officers rotated together, and if so, when and why it was changed to permit the differing pattern of shift assignment, given the present concern for a constancy in supervision.

The Panel can see merit in the Departmental concern for a more stable supervisor/ patrolman relationship. At the same time, this issue, as was discussed in connection with the issues of lateral transfers, step-up pay, and compensatory pay, ties closely to matters of reorganization. Given that consideration, the Panel will not adopt the City demand. The circumstance that the parties will be negotiating a new agreement together with whatever matters of reorganization have been resolved persuades the Panel that this issue is best left to the parties and that the status quo will remain.

AWARD: The Panel does not award the City's demand for change in Article XV regarding fixed shifts.

10. Residency. This is a requirement imposed on all City employees by Charter and ordinance. The Union's attempt to demonstrate that not all persons working for the

City have been held to the requirement is weak, at best. It appears those few persons -- perhaps only one -- worked for a period on an independent contractor basis or as a consultant. Certainly it cannot be seriously claimed that the Command unit is singled out unfairly.

The evidence before the Panel on this issue presents no compelling reason to change the status quo. Accordingly, the Union demand will be denied.

AWARD: No change in the residency requirement is awarded.

11. Drug-Alcohol Testing. The City seeks to have the Panel adopt a proposed plan -- encompassing testing, rehabilitation, and discipline -- that it believes will enable the Department to deal with the problem of substance abuse. The Union is opposed. It contends that the particular plan put forward by the City with its Final Offer had not hitherto been entered on the record, depriving the Union of the opportunity for study and for examination of the City witness with respect to its elements. The Association also challenges the program as "boilerplate" unsuited to the specific characteristics of this bargaining unit. Finally, the Association urges, the Employer has failed to demonstrate a need for such a program.

The Panel takes notice of the nationwide concern with substance abuse and the impact on the work place. At the same time notice is taken that plans which are worked out by a joint effort of the parties will most likely win the confidence of the employees, who are, after all, the object of the program. This consideration would mitigate against the Panel's imposition of such a plan.

Another reason also persuades the Panel against support of the Employer proposal, namely, that the plan as it is set forth appears at odds with its stated purpose. Specifically the plan purports to seek to "detect...non-prescribed [substance] abuse and ... assist employees in recovery ... and ... maintain confidentiality". However, the plan threads a number of disciplinary measures throughout its elements, e.g., promising discipline for refusing to cooperate on testing. "An employee who refuses to participate in the EAP ... will be terminated". An employee who does not complete the re-

habilitation program, or remain free of dependency for the "agreed period", "will be terminated". At the very least, some joint discussion and further examination of the wisdom of combining summary discharge provisions within a plan assertedly to promote recovery would seem merited.

The Panel is not convinced that the Employer's demand for a "'For Cause' Program for Drug/Alcohol Testing and for Rehabilitation" , given its internal deficiencies and the inability of the Association to have any input, should be adopted.

AWARD. The City's offered drug testing language is rejected.

## AWARD

Each of the rulings set forth in this Award constitute the majority decisions of the Panel.

The following is a statement of the Panel Award as to each issue:

1. Duration. The expiration date of the Agreement is September 30, 1987.

2. Wages. The City's offer on wages for the years commencing July 1, 1985 and July 1, 1986, three and six percent increases, respectively, is awarded. No increase for the period commencing July 1, 1987 is awarded.

3. Retirement Benefits.

Multiplier Formula. The Union's demand for a change in the multiplier formula is denied.

Duty Disability Benefit. The Employer's demand for elimination of the duty disability benefit is denied.

4. Insurance.

Health insurance for retirees and dependents. The Union demand is awarded.

Predetermination Rider. The City demand for a Predetermination Rider is adopted.

Accidental Death and Dismemberment. The Union's demand for provision of accidental death and dismemberment insurance in Article XIII, 13.2 of the Agreement is adopted.

5. Step-Up Pay. The City's offer with respect to Step-up Pay is awarded.

6. Use of Sick Days to Supplement Disability Protection. The Union's demand for amendment of Article X to permit the use of sick leave to supplement the disability plan is adopted.

AWARD (cont.)

7. Compensatory Time. No change in Section VI.4 concerning the Compensatory Time Off Option is awarded.

8. Lateral Transfers. No change in the provisions of Article XV is adopted.

9. Fixed Shifts. The Panel does not award the City's demand for change in Article XV regarding fixed shifts.

10. Residency. No change in the residency requirement is awarded.

11. Drug-Alcohol Testing. The City's offered drug testing language is rejected.

*Ruth E. Kahn*

RUTH E. KAHN, CHAIRMAN

For the Union:

*Robert Wines*

ROBERT WINES, UNION DELEGATE

A WRITTEN DISSENT TO  
FOLLOW, TO BE INCLUDED IN  
FILE, CONCERNING ITEMS (1) DURATION  
(2) WAGES, (4) IN REGARDS TO PREDETERMINATION,  
(5) STEP-UP-PAY AND (10) RESIDENCY.

For the City:

*Richard Fritz*

RICHARD FRITZ, CITY DELEGATE

I dissent re the following numbered items:

No. 3 only in relation to the award of duty disability benefit.

No. 4, only in relation to the award of health insurance for retirees and dependents

Nos. 6, 7, 8, 9 AND 11.

EXCEPT AS DISSENTING ABOVE,  
I CONCUR WITH THE AWARD.

*Richard Fritz*  
CITY Delegate

JUNE 29, 1988