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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

DEPARTMENT OF LABOR

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, LOCAL 214,

Union,

and

CITY OF ANN ARBOR,

Employer,

CASE NO. D78 0728

POLICE SUPERVISORY
COMMAND UNIT

OPINION AND AWARD

This arbitration under Act 312 was assigned on December 6, 1978, after the parties were unable to resolve the issues between them. The panel consisted of Allen J. Kovinsky, designee of the Union, Sylvester Murray, designee of the City, and Richard Strichartz, chairman of the arbitration panel by appointment of the Commission. A preliminary hearing was held to discuss the issues on December 28, 1978, and again on January 29, 1979. Six hearings were held in Ann Arbor on February 3, 5, 6, 13, 14, and on March 20th. At the end of the testimony the parties were given until April 13th to submit last best offers on economic issues and to file briefs after which the hearings would be formally closed.

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

The panel has benefited from the hard work that LIBRARY into the preparation of the 29 Union exhibits and 56 City exhibits. The witnesses were prepared to discuss these exhibits and related matters in order that the 44 issues to be considered by the panel

Ann Arbor, City of

Strichartz, Richard

were presented in an understandable sequence and within a relatively short time frame.

At the outset Mr Valenti in presenting the Union's case was opposed to a three year contract. However, on March 20th the Union and the City stipulated that the length of the contract shall be for three years commencing July 1, 1978.

While there were many issues presented by both sides, it was made clear from the preliminary discussions and the extent of the exhibits and testimony that the two primary issues were a modification in the Pension Plan and compensation. Capt. Robert Conn testified for the Union about the background of the present pension plan. (Union exhibits 1-4). Under the old plan (prior to January 1, 1954) there was no minimum age before retirement. As modified the new plan required either age 55 or a reduction in benefits if retirement is taken after age 50 with 25 years of service. The last best offer submitted by the Union on this issue was to permit retirement at age 50 with no reduction in benefits and with no minimum time beyond the 10 year service qualification for the pension plan. The Union offered to increase employee contributions in a two-phase approach from the present 5% to 8% while still retaining the right to withdraw the employee annuity at retirement.

The benefits earned under the pension plan are 2.75% for the first 25 years and then 1.5% for each year thereafter. Thus, a

retiree who retires at age 55 with 25 years of service would receive 68.75% of final average compensation based on the best 5 years of the last 10 years of service. The exhibits and testimony disclosed that no other police department of comparable size gave as generous benefits primarily since the 2.75% per year of service is more than other departments (Union exhibit 22 and testimony of J. Katherine Sonnanstine, actuary with Gabriel, Roeder, Smith & Co.). The pension plan has been funded primarily from a 2.5 millage amendment to the charter approved by the voters of Ann Arbor. However, there are problems in funding the pension plan at the level recommended by the City's actuaries since the funds derived from the millage are not adequate. The City will likely have to resort to the general fund in the future to pay for the amounts required to fund properly the pension plan. The city is at its maximum rate for property tax millage and proposals to increase the rate or impose an income tax have been rejected by the voters of the City. This is a problem of substantial dimensions which will have to be addressed by the City.

Assuming an average 2.21% yearly service toward retirement, and without comparing the lower compensation paid in the comparable cities, a member of the Union who retires at age 50 with 26 years of service would have a higher percentage accumulation in retirement than in the average of the cities in Union exhibit 22 due to the 2.75% factor. When adjustment is made for the higher compensation

paid to members of this Union, it is clear that the City has been fair to the members of this Union. Ms. Sonnanstine testified that the City's contribution to the pension plan will be an increasing percentage due to some faulty assumptions related to accumulated sick leave and unused vacation time being computed in final average compensation at a higher amount than assumed, and a lag in the payments by the City to the pension plan fund. In addition, due to inflationary factors the salary adjustments have exceeded the assumed 5% annual adjustment. Any improvement in the pension plan would require more money and the change in the Federal Social Security Act with increase in rate and base comes from the funds derived from the 2.5 millage on property, discussed above, which includes general city employees pension and social security payments as well as members of this Union. Testimony by the City Controller and the Assistant City Manager for Budget and Administrative Services described the City's fiscal problems. The city has cash flow problems, is at the maximum millage rate on property, can't get voter approval for an increase in the income tax or property tax, and the surplus is shrinking as revenues do not keep up with inflation. At the same time general fund employees have shrunk in number by 10% over the last 5 years. Various city exhibits supported these assertions. (City exhibits 3-5). The City's brief discusses these issues very clearly at pp.20-28 and their relationship with the pension plan.

In the light of all of the evidence it would be unwarranted at this time to make any changes in the pension plan and the Union's last best offer on this issue is denied.

The other major issue presented to the panel was wages.

In the last best offer the City presented a proposal which would have resulted in a 20.79% increase in salary for all members of the unit for the period June 30, 1978 to June 30, 1981. The Union's last best offer for the same period would result in a 25.46% increase. In addition, the Union included a demand for a cost of living allowance to be included in the hourly rate with a maximum of 40¢ per hour for the first year and a maximum of 50¢ per hour during the second year but with the adjustments to be made on December 30, 1979 and December 28, 1980. The panel considered both these proposals at the same time.

In view of the present level of compensation for members of this unit which is on the average higher than for other comparable cities, and in view of the condition of the City's fiscal position, and with a concern for the public welfare as well as to provide some protection from the erosion which is affecting all public employees caused by inflation, the panel has accepted the Union's last best offer on wages for the members of the unit and has denied the demand for a cost of living allowance.

Evidence was introduced to support the Union's demand for an increase in the uniform allowance by \$50. and the Union demand on this issue is granted (Union exhibit 6-7).

Both the City and the Union submitted proposals to change present contract language regarding leaves of absence for union business. The language contained in the City's last best offer is granted since it provides adequate flexibility in the administration of the unit while giving recognition to the need for time to attend union meetings.

The Union sought to increase the amount of vacation based on years of service but this is denied since the present vacation allowance is adequate and gives recognition to the stress associated with police work.

Similarly, the Union sought to accumulate vacation to 3 times the annual vacation from 2 times but this is denied even though the Administrative Command Unit in the Department is permitted this privilege. That unit has only 3 members and there are proper reasons for making an exception such as differences in responsibility and in computation of compensatory time and call back.

The Union sought a modification in the method for scheduling vacations. The first paragraph of Article XI, Section 4 was modified by stipulation. The remainder of the Union's proposal

is denied since it, inter alia, seeks to make an administrative practice into binding contract language and may create problems in the proper management of the Department.

Other issues relating to holidays included a request by the Union to add 1 additional holiday which is denied since the unit presently receives 10½ holidays, and City proposals to change contract language regarding holiday compensation and to change rates for employees who do not respond to emergency calls. Both of these proposals are denied since they would substantially alter the present method of compensating members of this unit.

In Article VI, Section 5 the Union proposed a modification in the language regarding layoffs which is denied as being too restrictive and ^{may}/inhibit future reorganizations of this unit.

When filling vacancies the City wished to retain the existing language which permitted it to go outside Ann Arbor Police Department for Staff Sergeants. The Union proposed deleting that exception and the testimony indicated the Department had not gone outside the Department to fill vacancies for this position. It seemed reasonable to change the language in Article VI, Section 9(b) as suggested by the Union and we believe it will help the morale of the Police Department to adopt this change; granted. Another Union change in language as to unit work is granted in Article VI, Section 9(c).

Various changes were proposed to Article VIII, Section 3 which would have incorporated the 28 day rotation, 10 hour shifts and starting time of shifts (subparagraph (a), but this is denied as being too great a restraint on the operational requirements of Department which may require a change in these factors. So also is the proposal to change subparagraph (c) regarding filling vacancies/^{denied}for the same reasons. As to subparagraph (b) the stipulated language is incorporated in the contract. Subparagraph (d) regarding trading of shifts or positions is denied as going too far. Also the introductory paragraph to Article VIII, Section 3 suggested by the Union is denied; the language in the present paragraph is retained.

The existing contract "Article XII - LONGEVITY" should be properly renumbered to read "Article XIII -LONGEVITY" but the Union's proposal to increase the amounts to be paid and the periods of service are denied as not being warranted when consideration is given to total compensation and other fringe benefits.

In the scheduling of overtime in Article VIII, Section 5 the Union sought to make special provision for overtime related to special events and also impose a manning requirement on the Department. This proposal is denied as not affording the flexibility the department must have to meet varying operational requirements.

Both the City and the Union sought a change in Article VII, Section 7 regarding personal leave days with the Union asking for an increase in time to 40 hours and the City asking to retain the present language at 3 days but to change the language to give priority to personal leave time over compensatory time. Both the City and the Union requests are denied as not justified.

Mr. Valenti, on behalf of the Union, characterized the need to change the present language in Article XVI, Section 2 relating to subcontracting as a cornerstone of the agreement. The Union's proposal was modified as to the last best offer by the Union designee on the panel by striking the last 2 words: "our position" and with this modification the Union's proposal is granted.

Various discussions were had on health insurance improvements suggested by the Union. The City opposed them as being too costly. There was little testimony about the need for a change and in view of the increased costs this demand is denied. There were certain stipulations as to the change of carrier and as to retirees which are incorporated into the award. Clarifying language was agreed to by the parties as to Article XIV, Section 3.

The City proposed a change in language in Article VI, Section 8(b) which would permit sergeants to take the promotional examination and be eligible for promotion to captain thus broadening the pool of candidates. This proposal is denied as being inimical to the best interests of the Department.

Another change proposed by the City to add a new subparagraph to Article VII, Section 9 (c) to require an agreed upon service following reimbursement for education by unit members or a payback provision. This is denied since no testimony was presented showing there is an abuse of the present system.

The City requested a change in language to set up a new procedure for determining fitness for duty which is granted.

With respect to a City proposal to add new sections providing for training at straight time rather than time and one half, the panel rejected this proposal but granted a modified proposal requiring firearms qualification in accordance with standards established by the educational committee.

Substitute language was agreed upon as to Article VIII, Section 3(b) and that stipulation is made part of the award

The City requested a change in the language in Article VIII, Section 4(a) to require City approval before overtime hours are paid by means of compensatory time off rather than in cash. This request is granted.

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There are some problems in the administration by the city of its personnel functions as it relates to separate files in the Police Department which are not generally available to other city employees performing that role. Since the files contain a great deal of personal material the Union opposed the City's demand that the police files be merged into the general city personnel files. Article XVI, Section 7 is modified to grant access to these files by the Personnel Director of the City in addition to the other named individuals.

The City made 2 proposals which would have changed the way sick leave is accumulated. The result of these proposals would have limited the payment on retirement for sick leave to 1200 hours and only count 600 hours of sick leave in computing final average compensation. Both of these proposals are denied. While these proposals would have a substantial impact on the pension plan if granted, they did not appear to be fair to the members of this unit who have been accumulating this time and making certain assumptions as to these sick banks being paid off and counted in final average compensation.

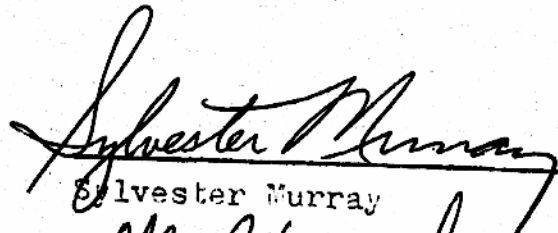
The City wished to modify the present arrangements governing parking for members of this unit. The City's proposal is granted but not made effective unless a comparable change is made in the Police Officers contract coming up for consideration.

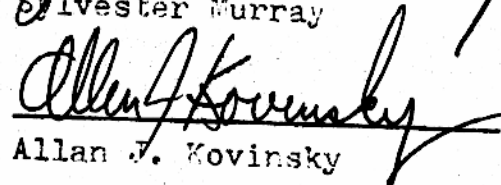
The City's last best offer proposed a change in Article VIII,

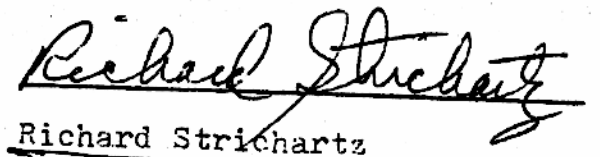
Section 1 which would permit the city to change the number of days and hours per day an employee shall be assigned. This proposal is granted with the specific understanding that it is subject to specific relation with the "arbitrary and capricious" language of Section 3 of this article. The City has indicated its concurrence in this understanding.

As chairman I wish to express my appreciation to all who took part in this arbitration. The materials were well prepared by both sides and the discussions were lively.

The award is attached. All portions of the existing contract remain the same except as modified by the award.


Sylvester Murray


Allan J. Kovinsky


Richard Strichartz

AWARD

The following modifications to the contract are made:

Article VI - SENIORITY

Section 9

Substitutions:

(b) Any and all positions or rank which are part of this bargaining unit must be filled either by promotion or transfer from the qualified members of the Ann Arbor Police Department who have full seniority with the Ann Arbor Police Department as required in Section 8 and are on the eligibility list maintained annually by the Department.

(c) Except in an emergency, no person(s) shall perform wholly the duties of a member of this bargaining unit and only then can the position of Major or Chief perform these duties.

Article VII, Section 4 - UNION LEAVE

The Employer agrees to grant a leave of absence for not to exceed three (3) days unless additional days are approved by the Chief in any one (1) calendar year with pay to two (2) employees designated by the Union to attend a Union convention provided said employees give ten (10) days written notice of their intent to attend said convention and provided further that said employees can be spared without the curtailment of operations or the necessity

of overtime pay on behalf of the Employer.

Section 9 (b)

All applications must be submitted to the educational committee for approval prior to enrollment. The educational committee is comprised of the Chief, Executive Major and Union Steward.

Article VIII. Section 1 HOURS (effective 1979-80)

The work day consists of ten (10) hours per day for employees assigned to the patrol and communications divisions. The work day consists of eight (8) hours per day for employees assigned to the investigation section, staff services, special services, traffic and special assignments. However, the Employer shall have the right to change the number of days and hours per day an employee shall be assigned. The regular work week shall be forty (40) hours per week. This shall not preclude the Employer from reducing its work force, in accordance with Section 5 of Article VI.

Article 8, Section 3

(b) Platoon or Section Commanders will submit leave day schedules to their Division Commander. He in turn shall submit them to the Administrative Services Division Commander no less than 14 calendar days before the next scheduled shift change. The appropriate Division Commander shall have the right of approval, disapproval, or modification of such leave day schedule submissions. Such disapproval shall not be arbitrary nor capricious.

Article VIII, Section 4 (effective 1979-80)

(a) Overtime shall be compensated by payment at the appropriate rate in cash unless compensatory time off, is requested by the employee and approved by the Division Major. Compensatory time accumulation shall not exceed one hundred and twenty (120) hours. However, time earned in excess of one hundred and twenty (120) hours will automatically be paid at the appropriate rate in cash. Upon termination or death all compensatory time accumulated will be paid in full. However, if the Federal or State Law changes so as to make the present system for granting and administering compensatory time and time off illegal the Employer shall be allowed to change the existing system so as to comply with said law. Employees shall not be allowed to take more than forty (4) hours compensatory time-off in conjunction with vacation leave or at any other single occasion. All employees who possess more than one-hundred and twenty (120) hours of accumulated compensatory time-off at the effective date of this agreement shall not be allowed to accumulate more compensatory time-off until said accumulated compensatory time is used to a level below one hundred and twenty (120) hours at which time they shall be allowed to accumulate up to one hundred and twenty (120) hours. Compensable time-off shall be considered as time worked for the purpose of computing benefits under this Agreement.

Article IX, Section 6 (effective 1979-80)

Each employee covered by this agreement shall receive a clothing and equipment purchase and maintenance allowance of seven hundred and fifty dollars (\$750) annually.

- (a) The clothing purchase and maintenance allowance shall total six hundred dollars (\$600) annually. Fifty percent of said allowance shall be paid on or about July 10 of each year and fifty percent shall be paid on or about January 10 of each year.
- (b) The equipment purchase and maintenance allowance shall total one hundred and fifty dollars (\$150) annually. On or before August 1 of each year employees shall receive said allowance in a lump sum to cover the maintenance and expenses of both on and off duty equipment.
- (c) If an employee quits or is discharged prior to receiving his clothing and equipment purchase and maintenance allowance, he shall not be entitled to any portion thereof, nor shall he be required

Article XI, Section 4

The Chief shall determine the number of employees who can be assigned for vacation purposes at any one time, agreeing that an effort shall be made to schedule vacation leave in accordance with the manpower and work load requirements as determined by the Chief. Vacation leaves shall be granted giving preference to senior employees. A seniority list shall be posted not later than December 1 of any calendar year. Supervisors on a given shift or section shall, by seniority, select their desired vacation. A final vacation list shall be prepared by the Chief and posted not later than January 31 of each year.

Article XIV, Section 1 Add to introductory paragraph the following:

The employer may change insurance carriers for health or dental coverage provided that the level of benefits remains the same. In the event a benefit is denied by the new carrier which would have been paid by the former carrier, the City shall be responsible for its payment.

Delete the last sentence is existing Section 1 a, and add the following new Section 3.

Effective July 1, 1979, the Employer agrees to provide retirees, their spouse and dependent children under the age of 19 years with the same level of Blue-Cross-Blue Shield health insurance as received by employees.

Article XVI, Section 2

The Union recognizes that the City has a statutory and Charter rights and obligations in contracting for matters relating to municipal operations. The right of contracting or sub-contracting shall not be used for the purpose nor intention of undermining the Union nor discriminate against any of its members nor shall it result in a reduction of the present work force nor reduce any member(s) rank classification.

Article XVI, Section 3 (effective 1979-1980)

The Employer reserves the right to suspend or discharge employees who are not fit to perform their duties in a satisfactory manner. Such action shall only be taken if a medical examination performed

by a qualified doctor of the Employer's choice at the Employer's expense reveals unfitness. If the employee disagrees with such doctor's findings, then the employee at his own expense may obtain a medical examination from a qualified doctor of his choice. Should there be a conflict in the findings of the two (2) doctors, then a third doctor mutually satisfactory to the Employer and the Union shall examine the employee. The fee charged by the third doctor shall be paid by the Employer and his findings shall be binding on the employee, Employer and the Union. In the event an employee's seniority is terminated pursuant to this Article he shall be afforded the opportunity to apply for and the Employer will attempt to place him in a position with another department with the Employer and if he is employed by another department he shall retain all accrued benefits.

Article XVI, Section 7 - add "City Personnel Director" on line 2 following "City Administrator,"

Article XVI, Section 13 (effective 1979-1980) and subject to the understanding set forth in the opinion:

add the following:

A reasonable distance shall include the William and Fourth parking structure and any other facility or lot within a radius of 1600 feet from City Hall.

Article XVI, Section 25 (new) (effective 1979-1980)

All employees will be required to qualify, on a range selected and provided by the Employer, twice yearly with all authorized or assigned weapons. The qualifying score will be determined by the educational committee.

Article XVII -Duration

Change the dates to read on line 1: 1st day of July, 1978;

Change the dates to read on line 2: 30th day of June, 1981.

Appendix A

Effective 7-1-78*

Staff Sergeant	\$24,534
Lieutenant	\$25,794
Captain	\$27,242

Effective 7-1-79*

Staff Sergeant	\$25,515
Lieutenant	\$26,826
Captain	\$28,332

Effective 1-1-80*

Staff Sergeant	\$26,536
Lieutenant	\$27,576
Captain	\$29,465

Effective 7-1-80*

Staff Sergeant	\$27,597
Lieutenant	\$28,679
Captain	\$30,644

Effective 1-1-81*

Staff Sergeant	\$28,701
Lieutenant	\$29,826
Captain	\$31,870

* Employees who possess a Bachelor's Degree from an accredited college or university shall receive a three (3) percent education bonus in addition to the above specified salary after they have completed one (1) year of continuous service with the Employer.

The following proposals were denied:

Article	Section
VI	5 8(b)
VII	7 9(c)
VIII	3(a),(c),(d) 5
X	1 2 3
XI	1 4 5
XII	3 5
XIII	1
XIV	1
XVI	9 25

Appendix D

Various other proposals were deleted by the parties.

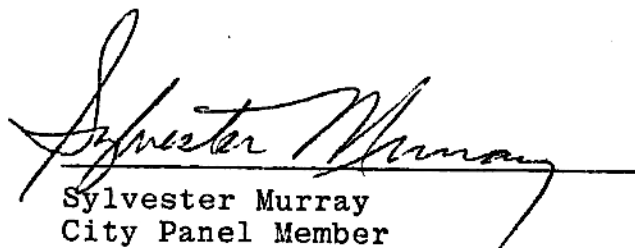
ADDENDUM DISSENT OF CITY PANEL MEMBER

Case No. D78-0728

I have signed the Opinion and Award as required by the rules of the Michigan Employment Relations Commission for Act 312 Arbitration. However, please let the record show that I dissented both during panel discussions and the vote on those Union demands that were granted.

I also dissented in the decisions of the Panel Majority to deny a number of demands requested by the City. I feel that each of the City demands was reasonable and should have been granted.

In some of the requested City demands, the Panel Majority, in my opinion, did not give sufficient consideration to the need for correcting current situations where need, legal opinion, economics, and operations management dictate such corrections. Significant examples include the City's request for (1) a cap on the number of sick leave days accumulated, (2) restricting sick leave calculations in the pension system to five years, (3) allowing management more flexibility in scheduling leave days usage, and (4) adjusting the holiday/overtime/compensatory time earning formula.


Sylvester Murray
City Panel Member

April 30, 1979

ADDENDUM DISSENT OF UNION PANEL MEMBER

Although I have signed the Opinion and Award as dictated by the panel member selected through the office of the Michigan Employment Relations Commission, it should be noted that with respect to each Union demand which was denied, I have dissented both during the panel discussions and the vote of the panel members. It should also be noted that with respect to each city demand which was granted I have likewise dissented during the discussions of the panel members as well as the final vote.

In particular, I feel that the decision of the majority of the panel with respect to the issues concerning pensions, cost of living, hours of work and health benefits are grossly inappropriate.

With respect to pensions, the Union proposal merely sought to obtain for all of its members a benefit which is enjoyed by its members who were hired prior to 1954 and which was changed not through the process of collective bargaining but rather by a vote of the citizens of the City of Ann Arbor on an entire charter proposal. I do not feel that the City, in any way, adequately presented sufficient reasons for the denial of this benefit, especially in view of the fact that the Union members were willing to assume approximately 50% of the estimated costs. In addition, I question the accuracy of the presentation of the city's actuaries. I believe that their assumptions were grossly inadequate, one example of which is an assumption that the fund will only return 6% annually on investments when the money managers of the City are able to invest the assets in certificates of deposit, treasury notes and other prime investments which currently would return between 9% and 10% annually. The difference in that assumption alone would have paid for the benefits sought by the Union many times over.

In addition, I have dissented in particular from the

panel's determination with respect to cost of living since, again, it is my view that the Union presentation was more reasonable than that of the City and certainly more nearly complied with the statutory tests set forth under the terms of Act 312. The evidence clearly demonstrated that over the past six years the cost of living has increased more rapidly than the wage increases enjoyed by the Union members. The Union cost of living proposal over the three year period would have resulted in a maximum additional cumulative income of no more than \$1,700.00 per member. Based upon the current rate of inflation it is fair to assume that in terms of real spendable dollars the Union members will suffer an annual loss of approximately \$2,500.00 per year. The total wage increases granted by the panel will not equal the loss suffered as a result of the inflationary spiral. The only realistic method of protecting the members current salary status would have been to grant a cost of living. The panel's failure to do so will, in my opinion, result in a gross injustice.

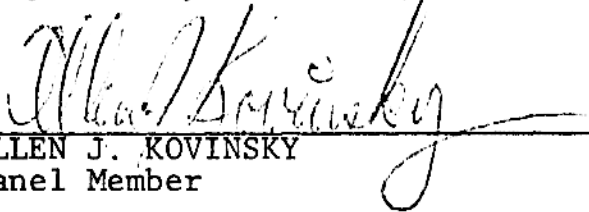
The panel's decision with respect to both the pension and cost of living issues based upon the Union's reasonable proposal and stipulation for a three year contract has effectively barred the Union from obtaining for its members those two benefits for a period of at least four years from the date of termination of the last collective bargaining agreement. While this obviously results in an economic savings to the city, it will, in my opinion, create a unnecessary and undue hardship upon the Union members.

Finally, I wish to note my dissent with regard to the panel's granting of the city's proposal to be able to unilaterally change hours of work. In my opinion, the city never indicated that that current hours of work created an inefficiency which hampered the administration of the department. The city's presentation was based upon "maybe's, possibilities and could have beens". The simple fact of the matter is that the four day, ten hour day provision which

was formerly in the contract was the result of many studies and negotiations between the parties. There was no indication that the efficiency of the department was reduced as a result of that provision. Any problems encountered in the department in my opinion, were solely as a result of the city's unilateral decision to reduce its overall command manpower. I do not believe that should the city determine to go to a five day, forty hour week, any greater efficiency will occur. Moreover, I do not believe that it is appropriate for the panel to allow as wide a degree of flexibility as the majority has voted for. It can only result in chaos and uncertainty within the unit.

Accordingly, as enumerated hereinabove, I must respectfully dissent from the panel's decision.

Respectfully submitted,


ALLEN J. KOVINSKY
Panel Member