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In the Matter of Act 312 Arbitration
Between:

MERC Case No. D89 K-2707

CITY OF LINCOLN PARK

-and-

LINCOLN PARK COMMAND OFFICERS ASSOCIATION

FINDINGS AND OPINIONS

Arbitration Panel

Samuel S. Shaw, Chairman
Richard A. Huebler, City Designee
Charles Kaminski, Association Designee

Hearing Held
September 19, 20, & 26, 1991
October 15 & 16, 1991

Appearances

For the City	For the Association
Kenneth D. Kruse, Attorney	Benard Feldman, Attorney

Witnesses

Charles Kaminski	Pete McInchak
Donald Gentner	Gordon Krater
John Martin	Joseph Vargo
Ernest Kazensky	John R. Kerekes
Ronald Tank	Mark Nottley

Preface

This arbitration of a dispute between the city of Lincoln Park, Michigan (hereinafter referred to as the City) and the Lincoln Park Police Command Officers Association (hereinafter referred to as the Association) was held in accordance with the provisions of the State of Michigan's Compulsory Arbitration Act (Act 312, Public Acts of 1969, as Amended).

As required by the Act, the arbitration was preceded by collective bargaining and mediation. However, as several issues still remained open, the matter was referred to the Michigan Employment Relations Commission to be resolved through arbitration.

The Arbitration Panel members were: Arbitrator Samuel S. Shaw, appointed by the Commission as neutral member and Chairman; Richard A. Huebler, selected by the City and Sergeant Charles Kaminski, selected by the Association.

The arbitration involved seven meetings; a pre-hearing meeting on May 28, 1991, five hearing meetings on September 19th, 20th and 26th, and October 15th and 16th and, following the submission of the last best offers and briefs, a meeting

of the Panel members.

The meetings in September and October were held at the Holiday Inn, in the Fairlane area of Detroit. The City was represented by Attorney Kenneth D. Kruse, and the Association by Attorney Bernard Feldman, both of whom were provided with ample opportunity to enter all relevant documentary evidence, and to examine and cross-examine witnesses. In accordance with the requirments of Act 312, the witnesses were duly sworn and the proceedings recorded by MERC court reporters Supervisor Raymond Marcoux and Reporter Marcia Greenough.

Considering the number of issues involved, a detailed account of the hearing proceedings will not be included in this discussion. As the principals actively involved in the case attended each meeting and were supplied with copies of the exhibits, plus a transcript of the testimony, they have all vital information should any questions arise. Therefore, a detailed report of the Parties' presentations, and their positions, contentions and claims, would only serve to further lengthen this review by simply providing information already available without serving any useful purpose.

However, a brief review of the financial issue that underlay the majority of positions taken at the Hearing, and became the crux of most of the arguments presented, might be helpful.

In essence, the basic position of the City was centered around the Section 9(c) of the Act which provides that ability to pay must be considered in arriving at any conclusions. This position underscored many of the City's arguments, particularly those dealing with economic questions.

Also submitted was an extensive survey of its financial condition, in support of its position that it would be unable to meet any significant cost increases now, or in the foreseeable future. Extensive testimony from both an outside accountant and the City's Controller was offered in support of this claim.

The command police contracts of Allen Park, Wyandotte, Southgate, Trenton, and Taylor were introduced by the City as "comparables" in the consideration of wages and other benefits.

As many of the issues were City proposals requesting the elimination or changes in various contractual benefits, to a

major degree the Association's arguments and assertions were directed at countering the City's claims.

Briefly, the Association contended the City's financial difficulties were overstated, and offered relevant wage and benefit settlements of the recent Lincoln Park Chiefs' and Police Officers' contract in support thereof. The Association also introduced an accountant, reportedly versed in public sector financial problems who did not fully concur with the claims put forth by the City.

In addition to the two organizations mentioned above, although only occasionally referenced, the other internal comparables submitted by the Association were the AFSCME units working for the City, and the Lincoln Park Board of Education. However, the City objected to the latter contract as being irrelevant.

At the conclusion of the final meeting, the Parties mutually agreed to mail their last best offers to the Panel members, postmarked no later than November 6, 1991, and their post-hearing Briefs thirty days folowing receipt of transcripts. These Briefs were received on December 17,1991, and the Hearing finally closed as of that date.

Background

Lincoln Park is a relatively heavily populated charter city covering approximately six square miles in Southeastern Michigan, with its northern limits bordering the southern limits of the city of Detroit. The City is generally residential in character, and according to the last census, has a population of approximately 42,000.

Although not specifically "on" the Detroit River, it is nevertheless one of seventeen "down river" cities that under an intergovernmental agreement are members of the Downriver Community Conference. Along with the other cities it belongs to a mutual aid pact that covers all police and fire departments..

The Lincoln Park Police Command Officers Association, which at present consists of 22 members, has been the exclusive bargaining representative for lieutenants and sergeants of the Lincoln Park Police Department since 1978, The last labor agreement between the City and the Association covered a period of three years and expired on June 30, 1989. However, the terms of the Agreement were extended pending conclusion of a new agreement.

As an impasse was reached in early 1991, pursuant to a

petition by the Parties, in March the Michigan Employment Relations Commission invoked binding arbitration under Act 312 by appointing an impartial Chairman for an arbitration panel.

Initially, thirty-two unresolved issues were presented to the Panel for arbitration, fifteen by the Association and seventeen by the City. As a result of continued discussions between the Parties, both before and during the actual Hearing, the final number of issues presented for consideration was reduced to nineteen, five by the Association and fourteen by the City.

The final issues submitted by the Association were:

1. Wages
2. Optical/Dental
3. Non-Residency
4. Holiday Pay
5. Clothing Allowance

Those submitted by the City were:

1. Wages
2. Duration
3. Maintenance of Differential
4. Maintenance of Differential (New Members)

5. Wages and Benfit Language
6. Cost of Living Allowance
7. Call-Back
8. Staffing
9. Furloughs
10. Emergency Personal
11. Sick Leave Usage Policy
12. Permanent Shifts
13. Discipline and Discharge
14. Over-Time

Discussion and Conclusions

In the following, the issues are not presented in the order submitted, the non-economic issues being presented and reviewed first, followed by the last best offers of each economic issue.

The factors upon which the findings in each issue are to be based, and which are clearly set forth in Section 9 of Act 312, are familiar to all the principal in this case. Therefore, no useful purpose would be served by repeating them here. Suffice to say, they were fully and carefully considered in reaching a conclusion in each non-economic issue, as well as in each economic issue.

Although it may be argued with some merit that all issues in a labor contract have an economic persuasion, under the Act all issues in a dispute must be identified as either economic or non-economic. Accordingly, in this case the conclusion was reached that of the nineteen issues in dispute, eight are non-economic and eleven economic.

Non-Economic Issues

No.1 Non-Residency (Union Issue No. 3)

Both the City and the Association agreed to replace Article XXXVII of the current Agreement with a new provision as it appeared in an arbitration award issued on March 6, 1980 and now included in the labor contract between the City of Lincoln Park and the Lincoln Park Police Officers Association.

Although both Parties questioned the possible effective date of such a provision; a review of all briefs plus the pertinent section of the transcript indicates that on this matter they actually were not in disagreement. The only question, if any, is to what extent it might affect any violations committed prior to the subject effective date.

After considering the various ramifications of this question, there seems to be no unusual condition that would warrant deviating from the normal and accepted practice.

Therefore, Article XXXVII of the current Agreement shall be replaced by a new residency provision, incorporating the language submitted in the Association's last offer as received on November 8, 1991.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (Oppose.)

Richard A. Huebler

Charles Kaminski

Charles Kaminski

No. 2 Call-Back (City Issue No. 8)

This proposal submitted by the City applies only to the first paragraph of Section 4 of Article VIII. As in Issue No. 1, there was no apparent disagreement between the Parties relative to the substance of this replacement for Paragraph One of Section 4. Furthermore, the language proposed by each was identical making it unecessary to designate a preference.

For the above reasons, the City's Issue No. 8 and its language as it appears in the City's last best offer, is awarded.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (Concur)

Richard A. Huebler

Charles Kaminski

Charles Kaminski

No. 3 Staffing (City Issue No. 10)

Section 1, Article XXX of the current Agreement establishes a command officers quota for "each platoon, division or bureau." The City requests this Section be amended to permit the number of command officers assigned to be at the discretion of the City. The Association asks that the present language of Section 1 be retained.

In view of the evidence it has to be acknowledged, as claimed by the Association, that this provision and its prior letters of understanding had been in effect for an extended period covering several contracts. Furthermore, no particular problems with this provision had ever been reported.

Nevertheless, based upon custom, practice, and usage, in almost all business activities any decision as to the necessary level of supervision generally rests with management. Granted, the Lincoln Park Police Officers' contract, introduced by the Association in support of its position, provides for required staffing. However, comparing the contract of a police officer with that of a command officer is at best questionable. The job responsibilities of the two are dissimilar, and an even greater example of their noncomparability, a police officer rarely, if ever, has supervisory responsibility.

In the consideration of this issue, a factor of much greater influence was the analysis of the command officer contracts for the five down river cities introduced as comparables. None of these contracts included any provision that the number and distribution of command officers was to be determined by the command officers themselves. On the contrary, in all cases this right was assigned to management. It is a reasonable conclusion therefore, that not only in the private sector, but in the public sector as well, the assignment of supervision is regarded as basically a management function.

It would not be an unreasonable assumption that when the subject language of Section 1 of Article XXX was first included in the Contract, the prevailing conditions of such as manpower and budget were not as paramount as they are today. Consequently, a contractual provision directing the number and placement of the command officers may not have been regarded as effecting Departmental performance.

However, conditions have changed, particularly in the last few years. More and different problems now challenge law enforcement, demanding a more knowledgeable and efficient operation,and to complicate matters, often with a reduced budget.

Therefore considering the current picture and its attandant problems, the City's request for the authority to address these problems without the contractual restraints of an infexible command structure, does not seem to be completely unfair or unreasonable.

Accordingly, for the reasons discussed, Section 1, Article XXX of the current Agreement is to be amended with the provision proposed by the City in its last best offer as received on November 8, 1991.

However, it is understood this amendment is to include this final sentence of proposed language: Any reduction in the number of command officers under this section will be done only through attrition.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (concur)

Richard A. Huebler

Charles N. Kaminski

Charles Kaminski

(DISSENTING)

No.4 Furloughs (City Issue No. 11)

The City claimed that under the language of Section 11, Article XV a furlough (vacation) could be taken with as little as one day's advanced notice and in increments of a single day. This led to difficulties in scheduling, plus it increased the overtime.

The Association opposed this demand of the City, contending that for no substantial reason, a long established benefit would be removed from the contract.

Although the City advanced the claim the interpretation creating the problem and which bound the City, resulted from an arbitration award, absent any explanation of the rationale applied by the arbitrator, it is difficult to question the award. Nevertheless, irrespective of the subject interpretation, the language clearly states that although a member may use any portion of an open furlough period, it is only with permission.

Presumably a refusal would have to be for good reason such as lack of adequate manpower, unjustified overtime, or equally valid reasoning. Therefore, it would seem the present language, if followed, should be adequate to avoid the claimed problems.

Turning to the various command officer contracts of the "comparable" cities, it is true as claimed by the City, that none have contract language that allows a furlough practice such as that at issue. However, it appears with one exception, none have any language defining in what increments furloughs, or vacations, have to be taken.

Therefore, although the possibility of problems may exist under the present language, it is believed they would only surface if the current provision is not adhered to, keeping in mind the needs of the Department. However, if it should be found that problems still arise even though the current language is consistently applied, clarification should be requested at the next contractual negotiations.

For the reasons discussed City Issue No.11 is denied. The language appearing in Section 11, Article XV is to remain as it now appears.

Samuel S. Shaw

Richard W. Hubler (opposed)

Charles N. Kaminski

No.5 Emergency Personal Leave (City Issue No. 12)

The City claimed the present provision for personal emergency leave in Section 13, Article XV had been abused by members who had used this leave for such as "golfing", "going to Las Vegas", etc. Therefore, it is requested that an addition, defining an "emergency" be added. The Association objected, contending the City offered no proof of the claimed abuse, making such a definition unecessary and redundant.

It is quite apparent the language in Section 13 already establishes that the subject leave is only for emergencies. Webster's Collegiate Dictionary defines an emergency as: "1.an unforseen combination of circumstances or the resulting state that calls for immediate action; 2.an urgent need for assistance or relief."

Therefore, it would seem this implied definition which is already included in the language of Section 13 would, if applied, be sufficient to control any potential abuse.

For the above reason the City's requested addition to Section 13, Article XV is denied.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (oppose)

Richard A. Huebler

Charles N. Kaminski

Charles Kaminski

No.6 Sick Leave Usage Policy (City Issue No. 13)

The City requested the addition of a Section 8 that would limit the number of non-duty sick leave days in a calendar year to sixty. The City argued that this request was to correct the present policy which now provides unlimited paid sick days for non-duty illness or injury. The Association contended the Chief's testimony confirmed the present policy had not been abused. Furthermore, it would be patently unfair to make the Command Officers an example, as the subject unlimited policy was recently continued in both the City's Police Officer's and Fire Fighter's contracts.

Unquestionably the sick leave policy at issue is extremely liberal, particularly when compared with the comparable down river communities. A review of their contractual sick leave provision indicates that although there may be a few that have no limitations, many if not the majority, do provide for a cap in the number of sick days that can be accumulated, a cap similar to that now being requested by the City.

Granted, the potential problem posed by the City cannot be lightly dismissed. However, according to the testimony of

the Police Chief, although one member has been on an extended leave due to a heart condition, no other problems have materialized. In fact, this one may likely be resolve through a provision the pension plan for disability.

As was noted, although the lack of a cap, either of the number of sick days that may be accumulated, or of time, may raise some difficulties in the future, considering the prevailing conditions and the fact both the police and fire department contracts were recently resolved with no change in this provision, the arguments advanced on the request for the addition of a Section 8, were not sufficiently convincing to to persuade that a change of this degree was justified.

For this reason, it is directed the request of the City be denied, and no addition be made to Article X.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (opposed)

Charles Kaminski

No.7 Permanent Shifts (City Issue No. 14)

Article XXXIX now provides that every six months, shift assignments will be open for bid by seniority. The City claimed that because of this provision there was practically no shift movement, with the resulting loss of administrative communications and control, particularly with the night shift. It was requested, therefore, that this Article be amended by adding no member could work "more than three consecutive periods on the same shift." The Association opposed this request, contending that because officers adjusted their life routine to their shift hours, repeated changes from one shift to another was detrimental to their health and well being.

It is acknowledged that studies seem to confirm that a family's routine is adjusted to accommodate the working hours of the wage earner. Furthermore, that continual changes in these working hours could sometimes create family problems because of these repeated changes. Consequently, once adjusted to a shift most employees will refuse change unless required. Therefore, from the Command Officer's point of view, it appears the City's request offers little if any, incentive.

However, the arguments of the City were not without merit; therefore, there is no question they warranted full consideration.

The problem described is not unique to Lincoln Park inasmuch as it is commonly recognized that because most administrative personnel work days, any midnight shift may lose important contacts and vital communications. It would seem therefore, if it has now reached the critical stage, rather than a wholesale change in the basic program, it probably could be corrected at its point of origin. For example, one way this might be accomplished would be for Management to exercise its right to adjust a shift assignment when an individual fails to perform at the level required to maintain the shift's overall performance.

Finally, the fact that the permanent shift provision remained unmodified in the recently ratified Lincoln Park Police Officer's contract, raises some question as to just how critical this problem is, at least with respect to the Police Department as a whole.

Considering all elements of this issue, it is concluded that at this time there is insufficient evidence to warrant adding a manditory shift change provision.

Therefore, Article XXXIX is to remain as is, and the City's request is hereby denied.

Samuel S. Shaw

Richard A. Huebler (opposed)

Charles Kaminski

No. 8 Discipline and Discharge (City Issue No. 15)

The City requested that a new paragraph be added to this Article providing that no benefits other than medical and life insurance be accumulated to any member suspended for twenty or more work days.

The Association did not disagree with the basic concept of the City's proposal, but submitted a slightly different language content with a limit of thirty days, the limit recently negotiated in the Police Officers contract.

The Association's primary argument was that a twenty day limit for Command Officers and a thirty day limit for Police Officers was unfair.

However, although the Association's argument is understandable it does not take into account that as the subject contract covers only ranking senior officers, it would not arbitrarily follow that its disciplinary provisions would automatically parallel those in the Patrol officer's contract. Furthermore, why if they do not they should be characterized as being obviously unfair.

The interrelationship between some Police Officer contractual provisions and those of a Command Officer is accepted without question. However, this relationship is not unlimited. Because of a Command Officer's higher rank, more is expected, including a greater respect for rules and regulations. Consequently, violations that require disciplinary action are often viewed more seriously when committed by a Command Officer than when committed by a young patrol officer. Therefore, it follows that disciplinary actions for a Command group that may be somewhat stronger than those for a Patrol group is neither unreasonable nor unfair.

In this case, despite the difference in the time element, as both Parties are in agreement as to the substance of the proposal, and for the reason reviewed, the language submitted by the City is accept.

However, to prevent any future misunderstanding, the following language should be added: "Regardless of how or why, should a suspension be canceled or withdrawn, the member will be reimbursed retroactively for benefits lost as a result of the suspension."

This language can be subject to adjustment by mutual agreement of the Parties, providing the intent is retained.

City Issue No 15 as submitted by the City in its last best offer as received on November 8, 1991 is granted, providing language similar to that suggested above is added.

Samuel S. Shaw

Richard A. Huebler (Concur)

Charles Kaminski

No. 9 Overtime (City Issue No. 16)

In this issue the City requested the addition of a new Section to Article VIII that would provide all overtime be paid in cash, rather than including a "book time" option as in the prior Agreement.

The Association objected, again arguing that as the Police Officer's contract provided for "book time", it would be discriminatory to deny the same benefit to the Command group. Furthermore with one exception, it was a benefit provided in the respective contracts of each of the comparable communities.

It is true, as claimed by the Association, that many of the community police command officer contracts introduced as comparables, provide that overtime may be accumulated as compensatory time. Moreover, it is a provision not uncommon in police contracts throughout Michigan. However, the majority of these contracts provide for anywhere from sixty to ninety-six hours as the maximum that can be accumulated on the "book" as compensatory time, whereas the provision in the previous Lincoln Park Command Officer's contact provided no maximum.

The City's argument turned primarily upon the testimony of the Deputy Chief who contended that maintaining the book time was an "administrative nightmare." Furthermore it "causes financial problems" because officers can cash in at a rate of pay higher than the rate at the time the overtime occurred.

There is no question that maintaining a book time record would generate an additional responsibility; however, to what extent is. In any event sick time records would still have to be maintained; therefore, dropping the overtime records might not effect as much time saving as might be anticipated.

In addition, the Lincoln Park Patrol Officer's control permits book time. Granted, this time has a cap of one hundred and sixty hours; nevertheless, it still involves a certain amount of record keeping. It would seem there might be a possibility of working all these various time records together, thereby effecting some saving in both administative and actual record keeping time.

Also, in conjunction with the alleged "financial difficulties, it was claimed that "one lieutenant at the present time * * has 477 hours on the books".

This claim is not questioned, but in view of Section g of Article VII, which provides a procedure for keeping overtime on a relatively reasonable basis, it is difficult to understand how this one lieutenant apparently accumulated so much more overtime than anyone else.

Even under the prevailing language of Article VII, an inequity of this degree should not exist. However, if such is the present interpretation of the prevailing language, it is recommended it be reviewed and clarified at the next negotiations.

In the meantime, the reason presented were not sufficiently convincing to warrant the removal of a benefits that is well established at Lincoln Park, and to a varied degree in all of the Downriver communities.

Therefore, for the reason discussed, the City's requested addition in Article VIII is denied.

Samuel S. Shaw

Richard A. Huebler (Opposed)

Charles Kaminski

Economic Issues

As previously pointed out, Section 9 of Act 312 provides ten factors which are to be considered when evaluating all disputed issues. However, except for the admonition "as applicable", no guidelines are provided with respect to the degree of weight to be applied to each Factor.

Nevertheless, regardless of the weight given the other Factors, in view of the current economic conditions Factor (c), which reads in pertinent part, the "financial ability of the unit of government to meet the costs" takes on increased importance. This is particularly evident as the income of municipalities from local sources declines, and State and Federal subsidies are substantially reduced. It is obvious, therefore, that any action that extended a community's financial obligations beyond its ability, would be contrary to the intent and purpose of Act 312.

It was with this in mind that in considering the various economic issues, Factor (c) was given a relatively high priority. This is not to imply that other applicable factors were ignored, or not considered, only that Factor (c) was higher on the list than would have been the case had "ability to pay" not been an issue.

Finally, an additional factor that was considered in reviewing these economic issues was not only the issue individually, but in addition, the relative economic status overall.

Of the total number of issues, it was determined the following ten were primarily economic. Six of these were submitted by the City and four by the Association. However, both Parties submitted two issues involving wages; one for a three year period and one for a five year period. The following presents a discussion and conclusion in each of these proposals, although not in the order introduced.

Economic Issues

1. Maintenance of Differential (City No. 2)
2. Maintenance of Differential (City No. 3)
3. Wages & Benefits (Language Elimination) (City No.4)
4. Cost of Living Allowance (City No. 5)
5. Clothing/Cleaning Allowance (Asso. No.7)
6. Holiday Pay (Asso. No. 6)
7. Optical/Dental (Asso. No. 2)
8. Duration (City 17)
9. Wages-Three Years (City No. 1)
10. Wages - Five Years (Asso. No 1)

No.1 Maintenance of Differentials (City Issue No.2)

This was a proposal by the City to change the language in Section 3, Article VII. The City contended the current language lacked definiteness, in that it provided that the differentials between Sergeants and Lieutenants and the maximum salary of a Senior Lead Officer shall not be less than 20% and 30% respectively. The City requested this language be changed to read the differential "shall be" rather than "shall not be less than".

As claimed by the Association, it appears the language in dispute has been included without change in several contracts. Moreover, no evidence was offered to indicate it had been the cause of any prior problems or challenges.

Also, this proposed change included the elimination of a provision that would have a significant impact on the current cost of living roll-in provision, as it removed a roll-in from being included as a part of any salary.

It cannot be denied that the Lincoln Park Command Officers are high on the local area police pay scales, at

least when compared with the various down river communities submitted as comparables. Therefore, notwithstanding the fact the language in question may not be as tightly limiting as desired, and that the roll-in provision adds a small amount to the pay level, without more and stronger reasons why this Section should be restructured, it would be difficult to find the justification for acceeding to this request.

Accordingly, the request of the City for a change in Section 3 of Article VII is denied, and the provision is to remain as it now reads.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (Opposed)

Charles Kaminski

No. 2 Maintenance of Differential (New Members)

City Issue No. 3

This was a request by the City for a new provision as (a) of Section 3, in Article VII in which effective January 1, 1992 new members would be paid five percent less than the regular rate for the duration of their probation period.

The City argued that as the Police Chiefs and the Patrol Officers, plus several Lincoln Park AFSCME units, did not receive full pay until completion of their probationary periods, neither should the Command Officers when promoted to Sergeants and/or Lieutenants.

Article VII of the prior contract requires that all promotions be from within. Furthermore, although no direct evidence was presented, it was indicated that upon promotion an officer was expected to, and did, take responsibility for the full duty content of the classification. In view of the "within" promotion requirement, this would not be an unreasonable expectation, as it assures experienced candidates.

However, when this responsibility is assumed, in all likelihood by an officer with several years of Departmental experience, it is not reasonable to expect him or her to work

for an extended period at a reduced rate. This would not be unreasonable in the case of Patrol Officers or the AFSCME units, as both have threshold classifications for the inexperienced.

Also, this proposal might be considered to be in conflict with the "Out of Class Pay" provision in this same Article. That Section provides if an officer is assigned to a higher classification, after thirty days he or she will receive the rate of the higher classification. Under the proposal in question, if an officer is promoted to a higher classification, he or she will not receive the rate of the higher classification for at least a year.

Considering all aspect of this proposal, for the reasons discussed, City Issue No. 3 is denied.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (opposed)

Charles Kaminski

No. 3 Wages and Benefits (City Issue No. 4)

The City requested the elimination of Section 1, titled Wages and Benefits, from Article VII. This Section provides that should any Lincoln Park bargaining unit be granted a wage increase or other benefit, the Command Officer contract will be re-opened to negotiate the same increase.

The Association's contention that this "me too" provision continues a long-standing relationship between the various Lincoln Park bargaining units cannot be denied. However, a comparison with the comparable communities' contracts amd reasonable practical considerations, raises the question of whether under the prevailing conditions, such a provisiion can be justified.

First, it is universally recognized the wages and benefits assigned to a job or classification are based, or should be based, almost entirely upon the job's content in terms of the knowledge required, the effort demanded, the responsibilities assumed, and the type of working conditions. Furthermore, unless the job contents are the same or similar, there is no legitimate reason why two or more classification should receive the same wage rates and the same benefits.

In this case, although there is an understandable relationship that justifies wage and benefit parity between the Police Patrol Officers and the Police Command Officers, it is difficult to understand the rationale that would justify parity between Command Officers and Firefighters. Their working conditions are entirely different and the content of their jobs are not remotely comparable. This same thinking would also apply when considering Command Officers with any typical AFSCME unit. In short it is difficult, if not impossible, to find a supportable reason why a wage and/or benefit, given to one bargaining unit could automatically lead to the time and expense of a negotiation with each of the other Lincoln Park units, when from a work standpoint the only thing they had in common was that they had the same employer.

Although it is appreciated this was a very important issue to the Association, considering the circumstances it has to be concluded the City's request was not unreasonable. Therefore, lacking persuasive evidence this provision should be continued, the City's request for its removal is approved.

Samuel S. Shaw

Samuel S. Shaw

Richard A. Huebler (Concur)

Charles Kaminski (Dissenting)

No. 4 Cost of Living Allowance (City Issue No. 5)

On this issue both Parties agreed to freezing the amount of COLA, effective October 1, 1990; however, the Association added: "Effective, July 1, 1991, $.90 shall be rolled into the base wage before the 4½% increase". In addition it was requested "the remaining COLA ($.50) will be paid as per the above paragraph".

After reviewing the available evidence, including that relative to the general economic picture, it is concluded the Association's roll-in request should be denied.

First, is the question of the cost. According to the figures presented, this roll-in would cost the City $561.60 per man per year, or a total of $12,355.00. This may appear to be a relatively insignificant amount, but it would be an amount added to the mutually agreed upon 4½% wage raise, or simply an increase of the agreed upon 4½%.

Second, it would change the differential between the Patrol and the Command, a differential that is claimed to be a well established "traditional" yardstick. In fact, the "maintenance of differential" was a subject at issue in this arbitration, and much evidence was presented to attest to

the mutuality and viability of this well established understanding.

Finally, it is not disputed a roll-in provision was included in the last Chief's settlement. However, no evidence was presented to rebut the City's claim that this provision was the result of a trade-off for an early retirement that saved the City $169,400.00. Moreover, the COLA freeze provision was included in the Patrol units last agreement with no roll-in of the balance included.

Considering all the above, including the fact a pay-back of the increases in COLA, received since 10/1/90 would not be required, it is concluded the City's last best offer must be accepted.

Samuel S. Shaw

Richard B. Hubbell
(Concur)

Charles N. Kaminski
(Dissenting)

No. 5 Clothing Allowance (Association Issue No. 2)

The Association requested that Section 2 of Article XII be amended to provide each member with a cleaning/clothing allowance of 2% of a Sergeant's base wage, payable annually on March 1st. The Association contended that a percentage increase would not only enable the members to keep up with clothing and cleaning cost increases, but would in the future eliminate this issue from the bargaining table.. The City's counter offer was $562.50 payable 1989,and $662.50 payable in 1990.

Notwithstanding the logic in the Association's reasoning, applying the requested two percent would produce an amount that by any criterion would be considered as having exceeded a reasonable increase.

For example, using the mutually proposed 1989-90 annual Sergeant's salary of $40,205.00, a 2% multiplier would produce an allowance of $804.10. As the previous allowance was $450, this new allowance of $804.10 would be an increase of 79%. For '90-'91, a salary of $41,411.15 would produce $853.22, or an increase of 84% above the previous $450.

It cannot be denied that clothing replacement and cleaning costs are higher now than when the prior contract was negotiated, nor that the Lincoln Park allowance is lower than practically all of the comparables. However, although this disparity cannot be denied, it cannot be ignored that several Lincoln Park fringe benefits are sufficiently higher to keep the Lincoln Paark Command unit at the top of the list.

. It is doubtful the City's offer of a twenty-five percent increase for the first year will cover the increase in costs, nevertheless, it is still more acceptable than the 79% proposed by the Association, particularly with its built in escalator.

Therefore, although it was concluded that neither of the submitted proposals were adequate, under the circumstances and for the reasons reviewed, the City's last best offer is accepted.

Samuel S. Shaw

Richard C. Huebner (Concurs)

Charles N. Kaminski

No, 6 Holiday Pay (Association Issue No. 6)

Under the current contract, Command Officers who are required to work on a holiday, are paid time and one-half. In this issue the Association requested that holiday pay, when worked, be increased to double time. This request was based primarily upon the argument that as Patrol Officers received double time, a Command Officer was paid less then his subordinates, or the officers for whom he was responsible.

The City rejected the increase simply on the basis of cost. It claimed that if an officer worked an average of six holidays per year for three years, the increase would cost the City $35,530.00.

It is not disputed that even though a Command Officer's base rate is higher than that of a Patrol Officer, at one and one-half times it is less than the Patrol rate doubled. This difference, although it may not be substantial, is still approximately seven percent.

It is well understood in business that when supervision receives less money than the people they supervise it has aa negative impact and moral suffers. There is no reason to presume it would be any different in a police department.

Therefore, there should be a very substantial reason why the inequity existing at Lincoln Park should continue.

Initally, it was felt the financial crunch argument more than offset this question of equity. However, after reviewing the comments and thinking of the full Panel, it was concluded the potential cost was not sufficiently convincing to justify its continuation.

Finally, it is acknowledged that for Command units in the surrounding communities, time and one-half for holiday work is the norm. However, unlike Lincoln Park, their Patrol units also only receive time and one-half. Therefore, for a problem such as that at issue here, they do not serve as comparables.

After considering all aspects of this issue, it is concluded that Association Issue No. 6 should be accepted.

Samuel S. Shaw

Richard A. Huebler (opposed)

Charles Kaminski

No. 7 Optical/Dental (Association No. 2)

This request involved two questions and were presented as two separate issues. First, was the matter of orthodontic coverage and, although submitted by the Association, it was agreed to by both Parties. However, the Association attached an additional condition by requesting that any personal funds paid out after July 1, 1989 for orthodontic treatment that would be subsequently covered, was to be reimbursed by the City.

The City offered as the effective date "upon notification" from the insurance company, not to exceed 60 days from the date of the agreement. With respect to the reimbursement condition requested by the Association, the City rejected it out of hand.

The second item submitted was a request by the Association to replace the present optical program with an insurance program now being provided some Lincoln Park units, and referred to as Coverage Number 68089-0001. The same reimbursement provision as above was also included. No counter offer was submitted by the City.

As these requests involved two separate contract provisions, and as the offers and counter-offers were treated separately, it was necessary they be considered separately. First obviously, was the addition of the requested orthodontic coverage amendment to the dental provision in Article XIII.

As both Parties were in agreement with respect to its inclusion, the only issue is the question of retroactivity, or effective date. There is no denying it has been a well established understanding in the labor contract field, that an insurance benefit becomes effective upon notification from the insurance company, and not before. No evidence was presented that would justify changing this long standing precedent.

However, more important was the absence of any figures, even approximate, of the liability this retroactivity might generate. Granted, it might be zero, but given the potential of both orthodontic and optical, it could be substantial. Therefore, to issue an award that would establish an obligation for an unknown liability would not only be an inequity, but unjustifiable.

However, in the matter of the optical request, there is no choice but to accept the Association's position. The City's claim that its omission of a counter-offer was

justified because the Association failed to properly submit a definative request was unpersuasive. Also, the City's contention the situation was compounded by the Association's failure to file the 1986-89 Chief's and Patrol unit contracts was irrelevant. These two contracts were both official exhibits and, although they may have been submitted by the City, does not preclude their being referenced by the Association.

Therefore, after reviewing the transcript it is concluded that the testimony provided a full and ample definition of the Association's request, and between the examination and cross-examination, no one should have had any reservations with respect to the nature and content of the Association's optical request.

Therefore, for the reasons discussed herein, in the matter of orthodontic coverage, the City's last best offer is accepted. In the matter of optical, also for the reasons discussed, the last best offer of the Association is accepted.

Samuel S. Shaw

Richard A. Huebler (Concur)

Charles Kaminski

No. 8 Duration (City Issue No. 17)

The Union proposed this contract be effective for a fourth and fifth year. It was the Union argument that as it is required the Parties start negotiations ninety days prior to the expiration of the old contract, in this case negotiation would have to start within a couple of months following receipt of this award. A five year contract would give the Parties"relative labor peace for two and a half years".

The City rejected the Union's position, contending the history of past bargaining was always three year contracts, all other settled City contracts were for three years, and all the comparable community's police command contracts were for three years. Therefore, there was no reason to effect a change at this time.

It is admitted that a three year span has been the labor contract standard for many years, and under normal circumstances the City's arguments might be persuasive. However, as this award will be submitted in late January, with only five months before it expires, and only two months before negotiations would have to begin, the situation can hardly be considered normal.

With respect to the City's argument that the Association had inferred the City was responsible for the present contract delay, no evidence was supplied that would permit such a conclusion. There is an old adage that "It take two to tango", and in this case if there is a blame, it has to be shared.

Irrespective of why, it cannot be denied that a three year agreement would result in almost perpetual negotiations, hardly a happy prospect from a point of either time or cost. Therefore, it seems obvious that as insofar as the Parties themselves are concerned, a little rest would be an advantage.

For the above reason, the five year contract duration proposed by the Association is approved.

Samuel S. Shaw

Richard A. Huebler (Concur)

Charles Kaminski

No. 10 5 Year Wage Proposals (Union Issue No. 1)

It being decided that under the circumstances a five year agreement would be more appropriate, City Issue No. 1, a Three Year Wage Proposal, is moot. Furthermore, as the Parties were in complete agreement with respect to the wages for the first, second and third years, a review of offers for these years would be unnecessary,

In its five-year proposal, the Association offered a wage increase of 4% for each of the last two years, or years '92 to '93 and '93 to '94. As a counter-offer the City proposed that for the two years in question, the traditional differential of 20% above the maximum salary of a Senior Lead Officer, and 30% for a Lieutenant be maintained.

Considering the prevailing situation, arriving at a decision as to which of these proposals would prove to be the most equitable for all concerned was most difficult, as even the experts do not agree as to the economic picture over the next two years. However, no one predicted any major upturns, so to be realistic any plan must accept the present economic level as its benchmark.

Following this rationale, it would be more reasonable

to accept the proposal that offered the maintenance of the differentials. This conclusion is based upon the fact that even by as short a future period as this early summer, a major number of cities, even including Lincoln Park, may find it impossible to assume any cost increases. If such was the case, they would not be saddled with an extended wage increase they could not handle.

On the other hand, if a wage increase was reached with the Patrol unit, the same amount would automatically apply to the Command. Consequently, either way provides reasonable protection to the City, while assuring the Command of receiving equitable treatment.

Therefore, for the reasons expressed, the five year wage schedule offered by the City is accepted. However, to avoid any future question this wage proposal was accepted by the Panel with the understanding the differentials existing at the present time is the benchmark, and any Patrol increases above this level will apply, both as to amount and time, to the Command unit.

Samuel S. Shaw,

Richard C. Huebel

Charles N. Kammeyer

The enclosed nineteen (19) issues were properly signed by each member of the arbitration Panel on:

1/27 1992

1/27/92

and the Award submitted to the Parties on:

1/27 1992

1/27/92

Samuel S. Shaw

Samuel S. Shaw, Chairman