492

IN THE MATTER OF THE ARBITRATION

between

LIVONIA POLICE OFFICERS ASSOCIATION
and THE CITY OF LIVONIA, MICHIGAN

Under Act No. 312, Michigan
Public Acts of 1969

TABLE OF CONTENTS

May 9, 1970

LIVONIA POLICE OFFICERS ASSOCIATION -and- CITY OF LIVONIA, MICHIGAN	Arbitration Proceeding Pursuant to Act No. 312, Michigan Public Acts of 1969

APPEARANCES

For the Livonia Police Officers Association: Lemberg, Gage & Brukoff, Attorneys, by Noel A. Gage and Gary Rentrop; and Daniel E. Wilcox, President, Livonia Police Officers' Association.

For the City of Livonia: Harry C. Tatigian, City Attorney; Robert M. Feinberg, Assistant City Attorney; and James L. Miller, Personnel Director.

OPINION

This arbitration proceeding has been conducted pursuant to Act No. 312, Michigan Public Acts of 1969, and upon the initiation of Livonia Police Officers Association (hereinafter called "the Association" or "LPOA"). The members of the Arbitration Panel are: Winston L. Livingston (Delegate of the Association); David E. Burgess (Delegate of the City of Livonia); and Russell A. Smith, Chairman (appointed by the delegates of the parties).

This Opinion has been written by the Chairman of the Panel, but account has been taken of the valuable suggestions of the other members of the Panel. Concurrence by the other members of the Panel in the award does not necessarily indicate that they agree with everything stated in the Opinion, but does indicate agreement, in general, with the stated basis for disposition of the issues under submission.

The Association is the collective bargaining representative, under Michigan law, of all employees of the Police Division of

the Department of Public Safety of the City of Livonia, Michigan (hereinafter called "the City"), holding the rank of Patrolman, Policewoman or Corporal. The Association and the City have been parties to collective bargaining agreements since 1965 (Tr. I, 32). Their last agreement (LPOA Ex. 5) was entered into July 9, 1968 and extended through November 30, 1969. Certain of its provisions, including those providing salary rates, were made effective as of December 1, 1967.

Procedural Matters

By letter dated September 30, 1969 the Association advised the Michigan Employment Relations Commission of the existence of a dispute "as to wages, hours and other conditions of employment" between the Association and the City and of the Association's desire to "submit the dispute to mediation and fact finding" and, if necessary, to invoke arbitration under Act No. 312, Michigan Public Acts of 1969, which was to become effective October 1, 1969 (LPOA Ex. 1). The Commission assigned one of its staff mediators, Mr. Leon Cornfield, to the case, but at a meeting called by Mediator Cornfield, held October 8, 1969, the City took the position, later reiterated in a letter dated October 15, 1969 addressed to the Commission (City Ex. 1), that mediation was inappropriate because negotiations had not taken place. By letter dated October 27, 1969 addressed to the Commission, the Association made its formal response to the City's letter of October 15, 1969 and contended that mediation efforts had been futile (LPOA Ex. 2).

By letter dated November 7, 1969, addressed by Hyman Parker, Director of the Commission, to the City receipt was acknowledged of the City's letter of October 15, 1969, and of the Association's letter of October 27, 1969 (LPOA Ex. 4). Mr. Parker's letter included

the following statement:

> Under the provisions of Section 3 of the Compulsory Arbitration Act, either party may initiate arbitration by an appropriate request and the Employment Relations Commission has no authority to pass upon the request for arbitration.

By letter dated November 8, 1969 addressed to the Commission, the Association requested arbitration under Act No. 312 (Tr. I, 41). The City, by letter dated November 17, 1969 addressed to the Commission, took the position that arbitration should not proceed because, in the City's view, there had not been the prerequisite good faith collective bargaining and mediation had been invoked prematurely, but that the City would "appear and comply with the procedures required under the Compulsory Arbitration Act No. 312," although "under protest" and without waiving its right to challenge the legal propriety of the proceeding (City Ex. 2). The parties proceeded to appoint their respective delegate members of the Arbitration Panel, and such delegates by letter December 23, 1969 advised the Chairman of his designation as such by them (Tr. I, 3).

The Arbitration Panel met in executive session January 13, 1970. By letter dated January 13, 1970 the Panel advised the Michigan Employment Relations Commission of the constitution of the Panel (Tr. I, 6), and by letter also dated January 13, 1970, gave notice to the parties that arbitration hearings would begin January 27, 1970, at the Detroit offices of the Commission (Tr. I, 4-5). Such notice included the following statement:

> The purpose of the initial hearing will primarily be to determine procedures to be followed and, hopefully, to define the issues to be decided. It must also be determined whether a transcript of the hearing is desired by either party or by the Panel.

At the January 27 hearing the Panel was advised by the parties that a large number of issues were in dispute, based upon proposals

made by the Association and counterproposals or other responses made by the City. The Panel proposed to the parties that they engage in further negotiations in an effort to narrow the issues before proceeding further with the hearing, and that, if this proposal were accepted, they stipulate that the time for concluding arbitration hearings be extended to March 27, 1970 (Tr. I, 45-46). The Association indicated it would accept this proposal, and the City indicated it would state its response within 24 hours (Tr. I, 45). By letter dated January 28, 1970, the City accepted the proposal (City Ex. 5).

The parties thereafter agreed upon a schedule of negotiations which would extend from February 10 through February 25, 1970 (City Ex. 6). Following receipt of this information the Panel took account of the practical problems which would be encountered in attempting to schedule arbitration hearings following the conclusion of the parties' negotiations, and the Chairman, by letter dated February 13, 1970, addressed to the parties, proposed, on behalf of the Panel, that the parties stipulate prior to February 25, 1970 that the Panel be granted a further extension of time within which to conclude such further hearings as might be necessary (Tr, II, 9).

The Panel met informally with the parties on February 25, 1970 to receive a progress report. At this meeting it was indicated that, with the valuable assistance of Mediator Cornfield, the parties had succeeded in reaching tentative agreement on a substantial number of issues, but that the remaining issues, principally "economic" in nature, would have to be decided by the Panel. The Panel and the parties reached certain procedural agreements, which were reflected in a letter dated February 26, 1970, addressed by the Chairman to the parties, reading as follows (Tr. II, 10-11):

> The purpose of this letter is to indicate my understanding of the agreements reached at the meeting held yesterday with the parties by the members of the Arbitration Panel in the above matter:
>
> 1. The parties agreed to extend to May 1, 1970 the period of time during which the Arbitration Panel will conclude hearings in the matter;
>
> 2. The next hearing date will be Thursday, April 2, 1970, beginning at 9:30 A.M. at the offices of the Michigan Employment Relations Commission, Detroit;
>
> 3. In the interim the parties will prepare further written submissions, in the following sequence: The LPOA will prepare its submission by March 9, 1970, and will deliver a copy to the Chairman (by personal delivery) on or before that day; the City will prepare its response by March 13 and will deliver a copy to the Chairman (by personal delivery) on or before that day; copies will, of course, be delivered to the other members of the Arbitration Panel.
>
> It will be appreciated if you will confirm the above and the foregoing, and cause the parties to execute a stipulation extending the date for conclusion of the hearings as above indicated.

Subsequently, the parties entered into a stipulation, undated, reading (Tr. II, 11-12):

STIPULATION FOR EXTENSION OF TIME

> NOW COMES the LIVONIA POLICE OFFICERS ASSOCIATION herein, by and through their attorneys, LEMBERG, GAGE & BRUKOFF and the CITY OF LIVONIA by and through their attorneys, HARRY C. TATIGIAN and stipulates to extending the time for arbitration hearings until May 1, 1970.

Subsequently, the time for filing the requested written submissions was extended, and, in consequence, the Panel decided that the hearing scheduled for April 2 should be cancelled and that hearings should be held Monday, April 20 and, if necessary, Tuesday, April 21, 1970. This decision was communicated in a letter from the Chairman to the parties dated March 24, 1970, reading as follows (Tr. II, 12-13):

> You will recall that the next scheduled formal hearing date in the above matter was Thursday, April 2, 1970. The members of the Arbitration Panel, meeting in executive session today, concluded that the hearing scheduled for April 2 should be cancelled and that hearings should be held Monday, April 20 and, if necessary, Tuesday, April 21, 1970. The hearings will begin at 9:30 A.M. and as before will be held at the offices of the State Labor Relations Commission in Detroit.
>
> One important reason for rescheduling the hearings is the fact that the LPOA extended the time for submission of its written presentation to Friday, March 13, and the City, in turn, extended the time for presentation of its supplemental written submission until Friday, March 27. We think it desirable to have these submission in hand and thoroughly digested prior to the convening of any further hearings. We have decided, additionally, that a deadline of Friday, April 10, should be set for concluding all written submissions except, possibly, for the filing of post-hearing briefs. We would expect that these written submissions would include any and all documentary data or other written evidence which either party may wish to present, and that, with the introduction of these materials into the record, the record will be complete with respect to such data except as the Panel may wish to have supplied additional data. We hope this procedure meets with your approval.

At the informal meeting held with the parties on February 25 each party, as had been requested, presented a written statement of the issues remaining in dispute and of the principal arguments in support of positions being taken with respect to those issues. These submissions were made part of the record at the hearing held April 20, and are identified, respectively, as LPOA Exhibit 8 and City Exhibit 7. Also made part of the record at the April 20 hearing were additional written submissions which had been delivered to the members of the Panel prior to the April 20 hearing. These consist of an Association "Brief in Support of Association's Economic Demands" submitted March 13, 1970 (LPOA Ex. 9), a submission by the City dated March 27, 1970 (City Ex. 8), a document dated April 2, 1970 submitted by the City purporting to constitute "corrections" in the City's presentation of March 27, 1970

(City Ex. 9), a supplemental brief submitted by the Association presenting, among other matters, the Association's "Retirement Demands" (LPOA, Ex. 10), and an additional presentation by the City dated April 17, 1970 (City Ex. 10). Meanwhile, by letter dated April 14, 1970, the Panel requested the City to supply certain additional information as follows (Tr. II, 13-14):

> The members of the Arbitration Panel constituted in the above matter, having taken account of the written submissions presented thus far, believe it may be helpful to have the following additional information, insofar as it can be supplied:
>
> 1. The total increased cost to the City, per contract year, of the economic 'package' agreed upon in the negotiation of the 1967 agreement, with a breakdown as to each item.
>
> 2. A breakdown of the police force represented by LPOA by years of service, and the City's 'turnover' experience, during each of the past five years, by years of service. (This kind of information may be useful in estimating the cost of 'longevity' pay.)
>
> 3. Present weighted averages in cost, per hour, of (1) salaries, and (2) fringes.
>
> 4. Information concerning the possible scope and cost of insurance coverage which would provide protection of the individual officer against judgments.
>
> 5. The City's 'overtime' experience during 1969 in the case of police officers (again to help us in estimating costs). If possible, the information should be of the following kinds:
>
>   a. Total hours worked beyond the regular shift.
>   b. Call backs- total number, total hours, and average number of hours per man.
>   c. Average number of hours per man per week on overtime for 'training' purposes.
>
> Your cooperation in supplying this information prior to or at the April 20 hearing will be appreciated.

The City responded with a document dated April 17, 1970 (City Ex. 11).

Hearings in this matter were concluded April 20, 1970. The City indicated its desire to make one additional written submission

which would be restricted to its response to the Association's retirement demands. The Association objected on the ground of lack of timeliness (Tr. II, 16-17), but this objection was overruled (Tr. II, 18), and the City was given until April 27, 1970, to file its submission, which, it was understood, would become part of the record in this case.

Eleven issues remain in dispute and must be decided by the Panel. With one exception they are all "economic", i.e., involving Association demands which would call for increased salary or "fringe" benefits which, to the extent awarded, would involve increased costs to the City and increased benefits to the members of the Police Division represented by the Association. They will be considered, seriatim. Before proceeding to a consideration of the issues, note should be taken of the pertinent provisions of Act No. 312 relating to the procedures of an arbitration panel constituted under the Act and the standards to be applied by it in deciding issues under submission.

Section 6 of the Act provides, among other things, that "any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence" and that "technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired." In light of this authority, it is the judgment of the Panel that the written submissions of the parties, which have been made part of the record in this case, are to be deemed "evidence" to the extent that they include or refer to data or documents in support of particular contentions subject, of course, to appropriate evaluation for probative weight.

Standards for Decision

Section 6 of Act No. 312 also provides that a panel's "majority actions and rulings shall constitute the actions and rulings of the Arbitration Panel," and, under Section 8, that an arbitration panel "shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it..." Section 8 further provides: "The findings, opinion and order shall be just and reasonable and based upon the factors prescribed in sections 9 and 10." Sections 9 and 10 provide as follows:

> 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.

Sec. 10. A majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitation shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

Under Section 10 "a majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties..." Section 9 states that determinations shall be based upon the "factors" specified therein, "as applicable." Sections 9 and 10, read together, leave some doubt about the question of the extent to which a specified "factor" may be considered in a particular case unless urged by a party or brought into the case by the panel and buttressed by some "evidence" in the "record". But in any event it seems reasonably clear that not every "factor" specified in Section 9 must be considered by a panel, since the specified factors are to be considered only "as applicable". Applicability of a

factor depends in part upon its having been urged by a party or introduced by the panel, but also in part upon the panel's judgment concerning its weight in the particular case. Moreover, in considering a particular factor, a panel, although bound to support its determination by the evidence of "record", must surely be entitled to take judicial notice of certain kinds of information which are a matter of public record.

Section 9 includes among the "factors" specified, the following:

> (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.

In their respective written submissions each of the parties has submitted salary and other pertinent data for groups of Michigan municipalities in the Detroit metropolitan area, including Wayne County as a distinct political subdivision, and, in addition, the State of Michigan. The comparisons are to salaries and fringe benefits in effect at an identified time for police officers. The City has submitted data, taken from information published by the Michigan Municipal League in January 1970, for two categories of such municipalities or authorities: (1) Cities over 50,000 population in the Detroit Metropolitan Area plus the State of Michigan and Wayne County; and (2) cities within approximately 15 to 20 miles of Livonia (City Ex. 7, pp. 32-33). The Association appears to agree that these two comparison groups may appropriately be considered (cf. LPOA Ex. 9, pp. 8-9). The Panel agrees, although recognizing that the probative value of the comparative data

remains to be determined and that other "factors", as outlined in the statute, may appropriately be considered with respect to the various issues presented for decision.

The two comparison groups of jurisdictions are the following, exclusive of Wayne County and the State of Michigan:

Group (1): Cities Over 50,000 Population In The Detroit Metropolitan Area

Ann Arbor	Roseville
Dearborn	Royal Oak
Dearborn Heights	St. Clair Shores
Lincoln Park	Warren
Livonia	Westland
Pontiac	

Group (2): Cities Within Approximately 15 to 20 Miles of Livonia

Allen Park	Lincoln Park
Beverly Hills	Melvindale
Birmingham	Northville
Dearborn	Novi
Dearborn Heights	Oak Park
Detroit	Plymouth
Ecorse	Southfield
Farmington	Southgate
Garden City	Wayne
Inkster	Westland

In the discussion which follows, account will be taken of the comparative data submitted with respect to these two groups in each case in which either party has made reference to such data.

Alleged Changes In Position By The Association Since The Parties Concluded Their Last Negotiations

With respect to a number of the issues to be considered the City claims that the Association, in its written submissions to the Panel, has changed its demand or demands as contrasted with the proposals last made by the Association during the parties' negotiations ending February 20, 1969. In most such instances, according to the City, the Association has "reverted" to its original proposal

or proposals with respect to the particular subject matter. The City takes exception to this alleged change of position on the part of the Association, and contends that in every such instance the only issue properly before the Panel is that which has arisen out of the last bargaining proposal made by the Association, and the City's response thereto, prior to the conclusion of the parties' negotiations.

This matter was discussed at the hearing held April 20, 1970. The Association vigorously disagreed with the City's position, asserting that while, during the course of the parties' attempts to settle issues, there were proposals and counter-proposals on both sides, in some instances constituting departures from original positions, all were contingent upon reaching agreement on the particular issue. In the Association's view, since agreement was not reached on the issues under submission to the Panel, neither party may properly be held to a position taken during bargaining which, had it settled the matter, would have represented some change from an original proposal. In response, the City conceded the right of the Association, or the City, in this proceeding, to revert to its original proposal on any issue under submission, but contended that the Panel should, nevertheless, take account of each party's bargaining proposals (Tr. II, 26-31).

The Panel has concluded that the issues before it are those which derive from an analysis of the written submissions which have been presented to the Panel. The Panel understands that in most if not all instances the Association's written submissions represent, in essence, its original proposals to the City, or such proposals with only minor modifications, and that the City's written submissions indicate both its original responses and subsequent modifications

or counter-proposals. The Panel will take account of departures from an original position only to the extent it deems any such modification to be inherently reasonable or supportable by reference to factors which the Panel, under the applicable statute, may or must take into consideration.

Framing of the Issues: "Carry-Over" of Undisputed Provisions of Prior Agreement

In most instances, the Association's proposals concern subjects which were covered by the parties' prior agreement. With respect to some of such subjects the Association's proposals represent in form and substance substitutions for the counterpart provision of the prior agreement. In other instances the Association's proposals represent modifications of the counterpart provision, but not a revision of the entire counterpart provision. The Panel understands that, with respect to any provision in the prior agreement which neither party, as indicated by its submissions, has expressed a proposed modification, the parties intend that that provision, which may consist of some particular subpart or subparts of a section of the agreement dealing with a particular subject, is to be carried forward into the new agreement unchanged (Tr. II, 45-46).

Item 1: Representation

Prior Contract Provision

Section 6 of the parties' prior agreement, entitled "REPRESENTATION," read:

> The President and other officers of the Association shall be allowed reasonable time off during working hours without loss of pay to conduct negotiations and handle grievance matters, with the approval of the officer in charge or Police Chief. In negotiations, members of the negotiating team shall be allowed one (1) hour before the scheduled time of negotiations and one (1) hour after completion of a negotiation session, subject to the operating needs of the Police Division.

Association Demands

In its written submission the Association demand is that the above provision be rewritten to provide as follows (LPOA Ex. 9, p. 36):

> The president, officers of the Association, and members of the bargaining team shall be allowed reasonable time off during working hours without loss of time or pay to conduct negotiations and handle grievance matters. Those officers are to receive compensatory time for off duty hours spent in the above activities, such time to be maintained in a separate account. The president, officers of the association and appointed members shall be credited with four hours total compensatory time per week to be accounted for separately said hours to be used for the sole purpose of police officer's business. Any accumulation beyond the term of office is to stay with the office, not to be transfered to the individual officers.

City Position

The City contends (City Ex. 8, p. 35) that "as of February 20, 1970, the Association had withdrawn their demand for a compensatory time bank for Association business" ... and that "their demand was that Police Officers Association representatives pick up compensatory time at straight time for any time spent outside of working hours on grievances or negotiations." The City's proposal is to continue in effect the provision in the prior agreement.

Association Arguments

The Association contends, as a matter of principle, that "with the inception of the arbitration act as well as the advent of more complexities in negotiations, the need for representation time is

greater than it was in the past," that it is necessary for the Association's president and others involved in negotiations to use their vacation time and court time as Association representatives, and that "if good representation is a desire of the Police Officer's Association in future years as well as intelligent informed bargaining, it will be necessary for additional time to be granted to the Association for such purposes." The Association also asserts that various cities among the comparison groups have provided allowances of time off outside of working hours for the conduct of Association business. Cited are Lincoln Park, Pontiac, St. Clair Shores and Southfield. (LPOA Ex. 9, pp. 36-38)

City Arguments

The City notes that the prior contract provision did allow reasonable time off without loss of pay during working hours to conduct negotiations and handle grievance matters and, with respect to negotiations, made an allowance of one hour before and after negotiating sessions, subject to the operating needs of the Police Division. The City's view is that these are reasonable provisions and that there is no justification for imposing upon the City to any greater extent the cost of conducting Association business or affairs, in terms of time spent by officials of the Association. The City takes the position that this is an internal matter, to be resolved by the Association. (City Ex. 8, pp. 35-36)

Findings and Conclusions

The Association's proposal, as related to the allowance of time off during working hours without loss of pay to conduct negotiations and handle grievance matters, would continue the prior contract provision except for the deletion of the qualification that such allowance should be "with the approval of the officer in

charge or Police Chief." There has been no claim by the Association that the requirement of such approval has been a problem or that approval has been withheld arbitrarily. Hence, there is no justification on the record for eliminating this qualification.

The Association's proposal for compensatory time off for off duty hours spent on such activities, or other Association affairs, and for the crediting of four hours of compensatory time per week as a kind of "bank" to be used "for the sole purpose of police officer's business" has not been justified as a matter of principle, particularly with regard to the aspect thereof which would provide for compensatory time off unrelated even to negotiations or grievance matters. The City is correct in its claim that, in general, the cost of handling Association affairs, in terms of off duty time spent by Association officials, is a responsibility of the Association.

Nor are the Association's demands shown to be supported as a matter of practice in the comparison communities. The illustrations cited by the Association represent a minority of the total group, and even among those cited none goes so far as the Association's demands.

Item 2: Salaries

Existing Scale

The parties' prior agreement (a two year agreement covering, as to salaries, the period December 1, 1967 to December 1, 1969), provided, in Section 28 ("SALARY RATES") the following:

Effective December 1, 1967, the following salary rates shall apply during the period from December 1, 1967, through November 30, 1968:

	Minimum 3	4	Maximum 5
Patrolman	$8,049.60	$8,382.40	$8,715.20
&	309.60	322.40	335.20
Policewoman	3.87	4.03	4.19
Corporal			$9,152.00
			352.00
			4.40

Effective December 1, 1968, the following salary rates shall apply during the term of this Agreement:

	STEPS			
Minimum 1	2	3	4	Maximum 5
$8,236.80	$8,569.60	$8,902.40	$9,235.20	$9,609.60
Corporal				$10,800.00
				388.00
				4.85

For the December 1, 1968 rate adjustment, employees at $8,049.60 would be placed at $8,902.40; employees at $8,382.40 would be placed at $9,235.20; employees at the maximum of $8,715.20 would be placed at $9,609.60; new employees would be hired at $8,236.80.

Association Demands

The Association requests a maximum rate of $13,650 for Patrolman or Policewoman, to be attained after four years of service, and a differential of ten percent over this as the rate for Corporal (LPOA Ex. 9, p. 21).

City Position

The City has proposed "two options", the first consisting of a scale to be retroactive to December 1, 1969, the other to be a scale commencing with the effective date of a new agreement. Each of these scales would contain a starting rate and four steps, as under the prior agreement, with the maximum to be attained after four years of service. (City Exs. 7, p. 31; Ex. 8, p. 9) For Patrolman or Policewoman the proposed maximum, if retroactive to

December 1, 1969, would be $10,129.60 (representing an increase in the maximum of 5.2%) and the maximum under the second of the options would be $10,233.60 (representing an increase of approximately 6%). For Corporal the proposal is a flat rate of $10,649.60 under the first option or $10,753.60 under the second option, representing a 5% differential, as under the prior agreement, over the maximum rate for Patrolman.

Association Arguments

The Association, with reference to the data on salaries revealed by the City's (and its own) surveys of the comparison communities in the Detroit Metropolitan Area, asserts that "the Association finds itself at a distinct disadvantage" inasmuch as most of these communities "have contracts which will be ending June 30, 1970, as compared to Livonia whose contracts will be ending December 31, 1970", and that "to refer to statistics from surrounding communities with regard to police wages means that the comparison will be based upon wages that are six months behind the time" (LPOA Ex. 9, p. 21). Thus, the Association in effect asks the Panel to reject these comparative data as a factor in the determination of the wage issue except as the Panel extrapolates these data by taking into account, on some reasonable basis, wage increases which will become effective in such communities during 1970. In this connection, the Association notes that one such community, the city of Pontiac, has negotiated a contract with its police officers' association for the fiscal year commencing January 1970 fixing the "base wage" (presumably meaning the maximum salary) at $11,550 together with a "gun allowance" of $365, for "a total salary of $11,915," and the Association suggests that the Panel consider other communities' contracts as they settle during this arbitration in an effort to

reach a decision which is based at least in part upon current wage rates" (Ibid, p. 21). Furthermore, the Association argues that there is a "basic fallacy" in the City's attempt to support its wage proposal by use of the comparison data from surrounding communities in that, according to the Association, "the salaries to date (pre-arbitration) of policemen are universally inadequate" and "this is one of the very reasons for compulsory arbitration" (Ibid, p. 24). Even using such comparative data, however, the Association asserts that the Livonia Police have been "traditionally underpaid".

The Association notes that under Section 9 of Act No. 319 an arbitration panel may take into account salary or wage levels for private employment for similar services in comparable communities. Accordingly, it asks the Panel to consider wage rates for the "skilled trades" in the Livonia area and, in this connection, observes that police officers in Livonia attain the maximum level of pay after four years of service, in this respect following the pattern of the skilled trades in connection with their apprenticeship programs. The Association submits certain data concerning 1970 settlements for the skilled trades in the Detroit area (LPOA Ex. 9, Ex. A).

In addition to its contentions in relation to the use of "comparable" wage and salary data, the Association points to the recent sharp increase in the cost of living and, with respect to the basic "duties and responsibilities of a policeman", contends that the requested base salary and other requested "fringe benefits" are fully justified "as a matter of equity in fair compensation for services rendered". The Association states that "the question is whether payment of this salary should be a priority demand on city

resources". Stress is laid upon the nature of the policeman's job in today's society and, particularly, the increased demands made upon the policeman. Asserting that "everyone and the City off the record admits patrolmen are entitled to $13,650 per year salary", the Association refers among other things to the report of the Michigan Commission On Law Enforcement And Criminal Justice rendered pursuant to an executive order of former Governor George Romney issued in November, 1969, which, according to the Association, states:

> Salaries for police officers should at least be competitive with salaries paid to craftsmen and other skilled labor if we are to attract competitive and qualified men to police work..."

City Arguments

The City relies in substantial part on the comparison data submitted by it, showing minimum and maximum salaries in the comparison communities as of December 1, 1969, and for Wayne County and the State of Michigan (i.e., the Michigan State Police) (City Ex. 7, pp. 32-33). These indicate a range in the maximum salary rate from $9,650 to $10,800 for Group I cities (i.e., cities in the Detroit Metropolitan Area of 50,000 population and over) and a range in maximum salaries of $8,800 to $11,271 for Group II cities (cities within 15 to 20 miles of Livonia). On the basis of this analysis, the City asserts that its proposed maximum of $10,129 is fully supported, as well as its proposed starting rate of $8,652, each of which, it contends, would be at the level of the average of the comparision jurisdictions. The City asserts that the Panel should use these data, which show salary rates as of December 1, 1969, since the Association is making its salary demand on the basis of retroactivity to that date.

The City contends "that the Panel should not look prospectively to changes which might occur in July 1970 or later", since "these are changes which could be relevant to salary adjustments which might be effective beginning December 1, 1970, but certainly not December 1, 1969" (Ibid, p. 34). Most of the comparison communities, according to the City, have a fiscal year beginning July 1. The implication sought to be drawn from this is that it would be unfair to Livonia to take into account on a conjectural or other basis increases which may become effective as of July 1, 1970, since Livonia's fiscal year begins December 1 (City Ex. 8, p. 10). The City refers to two 1970 settlements which had occurred prior to February 25, 1970, one for the City of Pontiac, which increased the maximum salary of police officers, effective January 1, 1970 from $10,300 to $11,400, and one for the City of St. Clair Shores, which increased the maximum salary effective January 1, 1970 from $9,650 to $10,300, and provided for an additional increase to $11,200 effective July 1, 1970 (City Ex. 7, p. 34).

The City also refers to a compilation of salary rates for 133 cities in Michigan as of December 1, 1969, obtained from a survey conducted by the Michigan Municipal League, broken down by population groups and wage areas, and, by implication, contends that its proposals are fully justified in terms of the salary ranges and averages revealed by these data (City Ex. 7, pp. 33-34).

The City denies that the Livonia Police have been "traditionally underpaid" asserting, to the contrary, that "our rates have been above average with Livonia being among the better-paid police departments in the state" (City Ex. 8, p. 10). It rejects the validity of any attempt to compare the rates for police officers with rates paid for the skilled trades, noting that the latter

in part reflect the fact that tradesmen are not assured full employment on a year around basis. The City also denies that police salaries are regarded as "universally inadequate", as the Association contends.

The City notes that under Section 9(c) of Act No. 312 one of the "factors" to be considered by an arbitration panel is "the interests and welfare of the public and the financial ability of the unit of government to meet those costs". The City has submitted an analysis of its fiscal position, which in effect purports to show that all available City funds are presently allocated under the budget adopted for the fiscal year ending November 30, 1970 without, apparently, any provision for wage or salary increases beyond the levels of December 1, 1969 (City Ex. 4; City Ex. 7, pp. 12-15; and City Ex. 10). However, the City does not "take the position that our financial limitations are an obstacle to a 'just and reasonable' determination of salaries and benefits". It does contend that "the Arbitration Panel, as the substitute for the employer in these proceedings, must be cognizant of these limitations, and must act as prudently in making its decisions as the public would rightfully expect the City of Livonia to act". (City Ex. 7, p. 13) In this connection, it notes that the determinations of the Panel "will inevitably affect" negotiations with the Police Lieutenants and Sergeants Association, having 20 members, and the Fire Fighters Association, having 73 members, since "their salaries are all interrelated and it has been the police of the City over its history to apply benefits uniformly and to observe certain salary relationships" (Ibid, p. 14). Reference is also made to impending negotiations with another union, which represents the City's 225 "general employees", and to the necessity of a "review" of the

salaries of another 100 professional, supervisory, and administrative personnel. The implication is that what is awarded to the police in this proceeding will of necessity have a rolling impact on salary and fringe benefit determinations made with respect to these other groups. These are considerations which, according to the City, "simply cannot be ignored or considered as irrelevant". (Ibid, pp. 14-15)

Findings and Conclusions

(1) The City in its written submission of April 17, 1970 (City Ex. 10) indicated that it would prefer a two-year to a one-year agreement, stated that it had proposed this during the negotiations, and asked the Panel to "give serious consideration" to a two-year agreement as a "possibility". At the April 20 hearing the Association strongly objected to this on the ground that this was a "new issue" which had not been placed before the Panel for consideration. (Tr. II, 20) The Panel agrees. All of the submissions made prior to April 20, 1970 were predicated on the assumption that there would be an agreement expiring November 30, 1970, and, to the extended agreed upon or determined by the Panel, retroactive to December 1, 1969. The City conceded that this was so, and that the question of a two-year contract could not properly be made an issue in this proceeding over the objection of the Association (Tr. II, 21). Obviously, the parties remain free to negotiate a two-year agreement even after receiving the Panel's decision in this proceeding.

(2) The problem before the Panel, therefore, is to determine a salary schedule effective for a period ending November 30, 1970 and, if deemed justified, retroactive in whole or in part to December 1, 1969, when the parties' prior agreement expired. In resolving this issue, the Panel believes that, of the various

"factors" specified in Section 9 of Act No. 312, the following may appropriately be considered, in the light of the record:

> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (d) Comparisons /with other communities/.
>
> (e) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (f) The overall compensation /direct wage compensation and fringe benefits/" received by employees.
>
> (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
>
> (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(3) "Ability to pay." As noted above, the City does not in fact plead "inability to pay", although its presentation implies that this could be a problem, and that under Section 9 of Act No. 312 consideration of ability to pay is arguably a factor which the Panel must take into consideration. Obviously, the City believes it can find ways of meeting the cost of the (approximately) 5% increase it has proposed, retroactively to December 1, 1969, and such additional costs as may be incurred as the result of negotiations with other organizations representing City employees, and pursuant to such adjustments for non-represented employees as may be deemed necessary.

Precisely how the City would accomplish this is not indicated. Apparently, it is currently using the full millage which, under its Charter, can be levied as a property tax, and any significant increase in revenues in relation to costs would have to come either by virtue of a charter amendment increasing the maximum

millage or from other sources, the most obvious being a readjustment of the budget by changes in revenue allocations, the issuance of additional general obligation bonds, or a reduction in City services either generally or on a selective basis. Whether the voters of Livonia would approve an increase in the maximum millage is, of course, conjectural. Whether the City actually would propose such a referendum has not been indicated to us.

Under these circumstances, it must be concluded that the City can find ways to absorb the cost of a reasonable increase in the salary level of police as well as increases granted to other City employees. Accordingly, the City's fiscal position should not, except by way of indicating the propriety of some degree of caution, be deemed to impose a constraint on the Panel such as to preclude an award of a wage increase otherwise clearly justifiable.

(4) Wage comparisons. As previously noted, the parties have referred to two principal comparison groups of communities or jurisdictions restricted, except for the reference to the State, to those within the Detroit Metropolitan Area. The data presented, except for a few instances where there have recently been increases, show salary levels as of December 1, 1969, as derived from a publication of the Michigan Municipal League (City Ex. 7, pp. 32-33). The data thus submitted show the following:

Cities Over 50,000 Population

Jurisdiction	Minimum	Maximum
Detroit	$ 8,000	$10,800
Ann Arbor	8,400	10,484
Dearborn	9,201	10,500
Dearborn Heights	8,500	10,200
Lincoln Park	9,400	10,400
Pontiac	8,500	10,300
Roseville	8,850	10,100
Royal Oak	9,152	10,325
St. Clair Shores	7,500	9,650

(Cities Over 50,000 Population-continued)

Jurisdiction	Minimum	Maximum
Warren	$ 8,625	$10,225
Westland	8,826	10,438
Wayne County	7,500	10,300
State of Michigan	8,582	10,649
Livonia	8,236 - Now	9,609 - Now
	8,652 - Proposed	10,129 - Proposed

Cities Within 15-20 Miles of Livonia

Jurisdiction	Minimum	Maximum
Oak Park	$ 9,256	$11,271
Beverly Hills	8,869	11,000
Detroit	8,000	10,800
Birmingham	8,749	10,503
Dearborn	9,201	10,500
Southfield	9,138	10,500
Westland	8,826	10,438
Lincoln Park	9,400	10,400
Wayne	9,570	10,310
Allen Park	9,100	10,300
Dearborn Heights	8,500	10,200
Garden City	7,700	10,150
Farmington	8,150	10,100
Plymouth	7,800	10,010
Melvindale	Flat Rate	9,850
Northville	8,008	9,698
Livonia	8,236	9,609
Inkster	8,177	9,490
Ecorse	Flat Rate	9,429
Novi	7,500	9,100
Southgate	7,800	8,800

These data are exclusive of a separate gun allowance, which is provided in a few of the municipalities.

These data show that as of December 1, 1969, Livonia was the lowest in salary level in the first group, and toward the bottom in the second group, and that the Livonia scale was some $500 below the average of the maximums of the two groups, without taking into account, in determining the average maximums, of the gun allowance provided by a few of the municipalities. It can be argued on this basis that a corrective or "inequity" increase in the Livonia scale, effective as of December 1, 1969, is called for, quite apart from

any other consideration, to bring Livonia to an appropriate level among the comparison groups. On the other hand, a complicating element in any attempt to make reasonable use of these comparative data arises out of the fact that most jurisdictions in the comparison groups have fiscal years beginning July 1, in contrast with Livonia's December 1. This means that the data submitted for December 1, 1969, must necessarily reflect increases granted by most of the cities effective July 1, 1969 or later, and that if a comparison had been made as of June, 1969, Livonia's position, vis-a-vis the others, would have been different and more favorable. But the further problem is that, by the same token, it may reasonably be presumed that if Livonia's position were compared with that of the other jurisdictions as of the preceding December 1, 1968, its relative position would no doubt again be found to be low. In other words, Livonia is either "behind" or not, depending on the point in time that is selected.

Wage comparisons of these kinds are nevertheless factors to be taken into account both under the statute and in terms of recognized collective bargaining principles, so long as they reflect judgments reached in collective bargaining on the appropriate wage level for an occupation and also take due account of the ingredients of comparability, which would include such matters as comparative working conditions and, in the case of police, the size of the community. Thus, by way of illustration, it may reasonably be contended that a large metropolitan city like Detroit, facing the problems of law enforcement characteristic of large cities with diverse population groupings, is substantially different in terms of the element of comparability, than most smaller communities, including even those located near Detroit. Detroit's salary level for its police officers will doubtless have some impact on salary

levels in surrounding communities, but probably ought to involve, as relevant factors, considerations, including different kinds of comparisons, not applicable in the case of communities like Livonia. Even within the comparison groups here under consideration, it may be appropriate to draw distinctions based on differences in the kind of community and its law enforcement problems. In this regard, Livonia asserts, and the Association does not deny, that, on a comparative basis, working conditions for police officers are good, with a relatively low crime rate as compared, for example, with Detroit and Pontiac (City Ex. 7, pp. 13-14).

(5) Additional considerations. Contrary to the position taken by the City, the Panel believes that it should take into account trends in collective bargaining settlements in the area, and even elsewhere, during 1970, and, as a matter of common understanding, the fact that within the comparison groups there will almost certainly be negotiated (or awarded) salary increases effective as of July 1, 1970, or perhaps later, in the case of municipalities having July 1 fiscal years. The only specific evidence of record reflecting 1970 experience among the comparison group cities is with respect to the cities of Pontiac and St. Clair Shores. The Pontiac settlement, effective January 1, 1970, reflected a salary increase in the maximum rate, exclusive of a negotiated gun allowance, of $1,100 over the prior $10,300 figure. St. Clair Shores, as of January 1, 1970, went from a maximum of $9,650 to $10,300, and, effective July 1, 1970, to $11,200. (City Ex. 7, p. 34) These represented increases effective January 1, 1970 of about 10% (or over 14% including the gun allowance) and about 7%, (and more over the year) respectively. We think these are some indications of the 1970 trend, that in all probability the 1970 increases in salary

levels in the comparison groups, excluding Detroit, will probably be around 10-12%, and that the overall economic "package" will be somewhat higher than that.

We regard as clearly applicable, both under the statute and as a matter of ordinary industrial relations experience, the factor of increase in the cost of living during theperiod from the last wage adjustment to the point where the next wage adjustment becomes effective. We take judicial notice of the fact that the Consumers Price Index, All Cities, published by the U. S. Department of Labor, shows an increase of about 6% during the period November-December, 1968, to November-December, 1969. We also take notice of the fact that the CPI has continued to advance during 1970, despite major efforts at the federal level to reduce the rate of increase. This latter fact is an appropriate factor to be taken into account in a determination that there should be a two-step adjustment, one effective as of December 1, 1969, and the second effective as of July 1, 1970.

The Panel notes as a factor of arguable significance that the parties, in negotiating their last agreement, provided for increases of some 5% for the first fiscal year, and 10% for the second fiscal year. How much weight to attach to this "history", however, is speculative, since there is no evidence of record to show what factors the parties relied upon in reaching their wage bargain.

The Panel finds no justification, at least on the basis of any evidence of record, for the claim that rates for Livonia police officers should be at the levels established for the skilled trades in the Livonia area. It is not ostablished that there is comparability in terms either of job content or working conditions.

The Panel also finds unpersuasive, again on the record made in this case, the Association's claim that police officers are

"universally underpaid". This may be the fact, and it may be that this could be demonstrated in terms of sound, analytical comparisons. But the basis for any such judgment is lacking in this case.

(6) Ultimate conclusions. Based on all of the foregoing, the Panel has concluded that the award with respect to salary levels should provide for a two-step increase, the first retroactive to December 1, 1969, the second effective July 1, 1970. This approach is predicated on the principle that, in view of the predominance of July 1 as the fiscal year date among the comparison groups of municipalities, it is desirable to establish two different bases for comparison with the groups, in order to make such comparisons more realistic. (The parties may or may not, in their future bargaining, wish to preserve this distinction.)

(a) Effective December 1, 1969, the increase in maximum salary for Patrolman and Policewoman should reflect the following factors:

Increase in cost of living from November, 1968 to November, 1969.....	$500.00
An "inequity" adjustment, reflective of the relatively low position, among the comparison cities, of the City of Livonia, but reduced somewhat because of the award of a $200 gun allowance.....	250.00
A "real earnings" increase factor allocable to the period up to July 1, 1970.....	140.00
	$ 890.00

This will bring the maximum salary to approximately $10,500 as of December 1, 1969, which is an increase of approximately 9.26%. The beginning and step rates for one, two and three years of service, should be adjusted by

corresponding percentage amounts. The Corporal's rate should continue to reflect the existing 5% differential above the maximum set for Patrolman and Policewoman, and hence should be $11,025. No justification has been shown for increasing the differential.

(b) Effective July 1, 1970, an additional increase should be placed in effect in the maximum salary for Patrolman and Policewoman reflecting the following factors:

Increase in cost of living from December, 1969, through June, 1970 (estimated at 3%).....	$315.00
An additional and "inequity" and "real earnings" adjustment.....	185.00
	$500.00

This will raise the maximum to $11,000. Other step rates should be increased correspondingly, and the rate for Corporal should be $11,550.

For a Patrolman or Policewoman at the maximum salary level these adjustments will provide a total dollar increase for the year beginning December 1, 1969, of $1,110 or approximately 11.5%. The increase for others will amount to a like percentage.

Item 3--Overtime

Provisions of Prior Agreement

Section 14 ("OVERTIME") of the parties' prior agreement provided as follows:

> A. An Employee who is required to work up to two (2) hours beyond his regular shift of eight (8) hours shall receive compensatory time at straight time.
>
> B. An Employee who is required to work over two (2) hours beyond his regular shift of eight (8) hours shall receive time-and-a-half in cash for the time in excess of the two (2) hours.

C. When an Employee is called back to duty, while off duty or on a leave day or a vacation day, he shall be paid in cash for a minimum of three (3) hours pay or at time-and-a-half (1 1/2), whichever is greater, except as follows:

1. When an employee is called back for appearances in Municipal Court or Circuit Court, he shall be paid in cash for a minimum of two (2) hours pay or at time-and-a-half (1 1/2), whichever is greater.

D. For all appearances in Court on civil suits, Employees shall receive two (2) hours of compensatory time and no other payment.

E. When an Employee is required to appear in Municipal Court during on-duty days (between two duty shifts), he shall receive in cash a minimum of two (2) hours pay or straight time, whichever is greater.

F. When an Employee is required to appear in Circuit Court during on-duty days (between two duty shifts), he shall receive in cash a minimum of three (3) hours pay or straight time, whichever is greater.

G. Employees required to make public speaking engagements during on-duty days (between two duty shifts) shall receive compensatory time at straight time for all hours on duty for such engagements. Where an employee is scheduled for speaking engagements while off duty or on a leave day or vacation day C will apply.

H. The provisions under A and B above shall apply to all training periods beyond regular duty hours required within the Police Division. Where employees are called back to duty for training, C will apply.

There shall be no overtime provision for other training outside the Police Division in which Employees receive regular salary and expenses while in attendance at such training sessions.

I. All overtime can be taken in compensatory time in lieu of cash payment at the same rate, whether earned at straight time or time-and-a-half, at the request of the employee. Compensatory time may be accumulated up to a maximum of forty (40) hours. If it is not possible, because of the operating needs of the Police Division, to take off compensatory time, Employees may be paid in cash for any excess over forty (40) hours.

J. For the purpose of computing compensatory time or the time for determining payment of time-and-a-half the following schedule will apply for fractions of an hour. This shall also be applicable where more than one (1) hour is worked:

1. Less than 15 minutes	0
2. More than 15 minutes, but less than 30 minutes	30 minutes
3. More than 30 minutes but less than 45 minutes	45 minutes
4. More than 45 minutes	60 minutes

K. Upon an Employee's retirement or separation from service, his accumulated compensatory time shall be paid to him at a straight time rate, or to his dependents; if designated, or his estate in case of death.

L. To the extent that is feasible and practicable, the Employer will attempt to equalize overtime in the various Bureaus of the Police Division. Overtime hours will be posted quarterly by Bureaus.

M. Where employees are placed on standby service, the following provisions shall be applicable:

1. Employees on vacation shall receive deferred vacation time equal to the vacation time lost because of standby service provided that no more than eight (8) hours for each day shall apply to vacation time. Use of deferred vacation time at a later date is subject to the operating needs of the Police Division.

2. Employees on standby service on either two (2) or four (4) day leave days, shall receive 20% of the time on standby in compensatory time. Such compensatory time shall be accumulated separately and without limitation by any other provision in this Agreement.

3. Where employees must forfeit deposits because of being placed on standby, the City will pay the employee up to $50.00, if proof is submitted of payment of the deposit and the date of payment, and a valid statement is submitted from the proprietor that the deposit of a certain time was forfeited since the policy of the business establishment requires that notice was to be given by a certain date and cancellation was not made until after that date.

Association Demands

The Association seeks a revision of certain of the above-quoted provisions to the extent indicated by the following specific demands (LPOA Ex. 9, p. 3):

(a) An employee who is required to work over his regular shift of eight hours shall receive time and a half in cash for the time in excess of paid hours.

(b) When an employee is called back to duty while off duty or on a leave day or vacation day he shall be paid for a minimum four hours pay or time and a half whichever is greater; including but not limited to appearances in court and depositions or matters pertaining to criminal or civil cases; all matters incident or related to the employees job shall be considered call back.

(c) When an employee is required to appear in Livonia District Court during duty days (between two duty shifts) for the purpose of signing a complaint, he shall receive in cash, a minimum of two hours pay or time and a half whichever is greater.

(d) Employees required to make public speaking engagements shall be compensated in the same manner as provided for in call back.

(e) Up to two hours per week beyond the regular eight hours shift may be allocated for training purposes compensated by straight time, compensatory time. All training beyond two hours per week shall be compensated at a time and a half. Where employees are called back to duty or trained Paragraph (b) call back will be applied.

(f) Employees on stand by service on leave days or between duty shifts shall receive 50% of the time in compensatory time.

In terms of changes, as contrasted with the prior provision, these demands relate to the following kinds of "overtime" situations: (1) Overtime required to be worked beyond an employee's regular shift of eight hours; (2) "call-backs" to duty while an employee is off duty or on a leave day or vacation day; (3) appearances required of an employee in District Court during duty days, between two duty shifts; (4) public speaking engagements required of an employee on off duty time; (5) time required of the employee for "training purposes"; and (6) "stand-by service" on leave days or between duty shifts.

(1) Overtime Required To Be Worked Beyond An Employee's Regular Shift Of Eight Hours

Prior Contract Provisions

Under Subsection A the employee received compensatory time at straight time for such work up to two hours and, under Subsection B, time and one-half in cash for such time worked in excess of two hours.

Association Demands

Under Association proposal Subsection (a) the employee would receive time and one-half in cash for all time worked beyond his regular shift.

City Position

The City asserts that the Association's position as of the conclusion of negotiations on February 20, 1970 was that time and one-half should be paid in cash "if past 1/2 hour and from time when shift changed", and that the City's position was "one (1) hour cut-off not to revert back" (City, Ex. 7, p. 21). The City states that its original bargaining proposal was that there should be a 1-1/2 hour "cutoff", and that it later proposed a one-hour cutoff "as a reasonable compromise", and that this is its present position (Ibid). The Panel assumes that this, in essence, is a proposal that time and one-half in cash be paid in cases of overtime extending for more than one hour beyond the employee's regular shift, but to continue the practice of providing compensatory straight time for the first hour of work beyond the regular shift.

Association Arguments

The Association contends that the existing and previous method of compensating for this kind of overtime is "antagonistic and obsolete", and, in addition, "illogical, inequitable and inconsistent with sound management practices" (LPOA Ex. 9, p. 4). The Association also contends that on a comparative basis the City "is considerably

behind the times" in that, in general, "other communities begin paying overtime after the first eight hours or allow a 15 minute carryover past the eight hours shift" (Ibid, p. 4). The Association also claims that the existing practice in private industry clearly supports the Association's demand (Ibid, p. 5).

City Arguments

As noted above, the City considers its proposal to be a "reasonable compromise".

Findings and Conclusions

The Panel assumes that the parties contemplate continuing in their new agreement the substance of Subsection J of the overtime provision of the prior agreement. This would mean that there would be no overtime obligation with respect to the first 15 minutes beyond the end of an employee's regular shift unless the overtime required should extend beyond 15 minutes.

The Panel's conclusion is that time and one-half in cash should be paid whenever the employee is required to work beyond 15 minutes after the conclusion of his regular shift, subject to the breakdown by quarter-hours provided by Subsection J. The comparison data provide substantial support for this view (LPOA Ex. 9, p. 27; City Ex. 8, pp. 21-22), although it cannot be said there is a predominantly characteristic practice. The Panel takes judicial notice of the fact, in support of the conclusion reached, that industry practice under collectively bargained agreements is almost universally consistent with what is asked by the Association.

(2) Call Backs

Prior Contract Provisions

Under Subsection C an employee called back to duty, while off duty or on a leave day or a vacation day, was paid in cash

for a minimum of three hours' pay or at time and one-half, whichever was greater, except when called back for an appearance in municipal court or circuit court, in which case he was paid in cash for a minimum of two hours' pay or time and one-half, whichever was greater. Under Subsection D an employee, for all appearances in court on civil suits, received two hours of compensatory time.

Association Demands

Under Subsection (b) of the Association's proposal an employee called back to duty while off duty or on a leave day or on a vacation day would be paid a minimum of four hours' pay or time and one-half, whichever is greater, including appearances in court and depositions or matters pertaining to criminal or civil cases, and "all matters incident or related to the employee's job..."

City Position

The City asserts that the Association's demand is the same as it stood as of February 20, 1970, except that as of February 20, 1970 the Association was asking for a minimum of 2-1/2 hours' pay or time and one-half for call backs for District Court appearances (City Ex. 8, pp. 16-17). The City proposes to continue the prior provision for three hours' pay, or time and one-half, whichever is greater, but the parties have reached agreement to extend this provision to call backs for Circuit Court appearances (City Ex. 7, p. 4).

Association Arguments

The Association makes no specific reference in its basic presentation (LPOA Ex. 9, p. 5) to its demand for an increase in the basic call back minimum, which would call for a payment of four hours' pay or time and one-half, whichever is greater, instead of

three hours' pay or time and one-half, whichever is greater. The Association does, however, refer to certain data for the comparison communities (Ibid, p. 27). With respect to its demand concerning call backs for court appearances, its claim is that more often than not these appearances take at least four hours.

City Arguments

The City's written presentations with respect to the demand for four as against three hours' pay, or time and one-half, whichever is greater, on call backs are more general than specific. Reference is made to the increased cost that would be incurred, and it is claimed that the Association "has selectively cited cities which have provisions comparable to those which they demand" and that police officers are the only salaried employees of the City, with the exception of foremen, eligible for overtime payments at time and one-half (City Ex. 8, pp. 19-20). With respect to the matter of call backs for court appearances, the City contends that "many" of these are for appearances of 10 to 15 minutes to sign a complaint, and the City objects to the exhorbitant cost which would be incurred in connection with such appearances if the Association's demand were granted. Certain comparative data are submitted (Ibid, p. 21).

Conclusions and Findings

The Panel concludes that there is insubstantial support in the record for the Association's proposal, and that Subsection C of the prior agreement's provision, including Clause 1 thereof, should be continued in the new agreement.

(3) Appearances Required of An Employee in Livonia District Court During Duty Days Between Two Duty Shifts For The Purpose of Signing A Complaint

Prior Contract Provision

Under Subsections E and F an employee received for Municipal Court (now District Court) appearances under these circumstances a minimum of two hours' pay or straight time, whichever was greater, and for Circuit Court appearances under such circumstances a minimum of three hours' pay or straight time, whichever was greater.

Association Proposal

Under Subsection (c) the Association proposes that, for appearances in Livonia District Court under the stated circumstances ("for the purpose of signing a complaint"), he shall receive a minimum of two hours' pay or time and one-half, whichever is greater. No reference is made to required appearances in Circuit Court during on duty days, between two duty shifts, so, as to such appearances, we assume the Association intends that prior Subsection E would continue in effect.

City Position

The City proposes to continue the prior provision with respect to District Court appearances (City Ex. 8, p. 16), apparently referring to Subsection E of the prior agreement.

Association Arguments

The Association contends that its demands are supported on the same basis as its claims for compensation for time required to be worked after an employee's regular shift. It also claims that comparative data support its demand. (LPOA Ex. 9, pp. 5, 7 and 27)

City Arguments

The City contends that court appearances are usually "scheduled in advance" and do not interfere with leave days and it asserts that the existing minimum is adequate. It also refers to certain comparative data. (City Ex. 8, p. 21)

Findings and Conclusions

The Panel concludes that there is insubstantial support in the record for the Association's proposal, and that Subsection E of the overtime provision of the prior agreement should be continued in the new agreement.

(4) Public Speaking Engagements Required of Employees

Prior Contract Provision

Under Subsection G employees required to make public speaking engagements during on-duty days, between two duty shifts, received compensatory time at straight time for all hours on duty for such engagements. Employees scheduled for speaking engagements while off duty or on a leave or vacation day received call back pay under Subsection C.

Association Demands

The Association requests that employees required to make public speaking engagements be compensated in all instances as provided for with respect to its proposal as to a call back. Thus, the demand is that the employee shall receive a minimum of four hours' pay or time and one-half, whichever is greater.

City Position

The City proposes to continue in effect the prior contract provision.

Association Arguments

The Association asserts that the justification for its proposal is the same as with respect to call backs generally (LPOA Ex. 9, p. 5).

City Position

The City views the prior arrangement as "fair and adequate" (City Ex. 8, p. 19).

Findings and Conclusions

Neither party refers to any comparative data in support of its respective position. It seems to the Panel that speaking engagements constitute, at least in part, a kind of professional obligation to the public. The Association has not advanced any justification for its attempt to abolish the distinction, recognized up to this point, between public speaking engagements of employees during on-duty days, between two duty shifts, on the one hand, and speaking engagements undertaking while off duty or on a leave day or a vacation day. The Panel concludes that the prior contract provision should be continued in effect, which means that the only change will be with respect to speaking engagements on an off-duty or a leave day or vacation day, which, as in the past, are to be treated as call backs and subject to the increased minimum, with respect to call backs, provided for as to call backs generally.

(5) Training Time

Prior Contract Provision

Under Subsection H training periods occurring following the employee's regular shift were compensated for as provided in Subsections A and B, and training periods occurring when an employee was called back to duty while off duty or on a leave or vacation day were compensated for under the basic call back provision, Subsection (C).

Association Demands

The precise nature of the Association's proposals was clarified at the hearing held April 20, 1970 (Tr. II, 36-44). It is the intent of the Association's proposal that training time occurring up to two hours beyond per week beyond the employee's regular shift shall, as under the prior agreement, be offset by compensatory time at straight time but that any additional time spent per week in training beyond the employee's regular shift shall be compensated at the rate of time and one-half in cash, and that where an employee is called back for training while off duty or on a leave or vacation day, the Association's basic call back proposal shall apply.

City Position

The City's position is somewhat unclear (Cf. City Ex. 7, p. 21, and City Ex. 8, p. 19). The latter states: "Where training continues past the shift, officers now receive overtime in compensatory time at straight-time up to two (2) hours which permits an officer equal time off at a later date. There may be occasion when a training program runs two (2) evenings, for four (4) hours. We consider this to be a reasonable cutoff." It appears that what the City is proposing is that two training periods of two hours each may be required as an extension of the regular shift on the basis of compensatory time at straight time, but that any additional amounts of training time per calendar week occurring as an extension of an employee's regular shift shall be compensated for at time and one-half in cash. As to call backs for training, the City presumably would continue the prior provision as to call backs generally.

Association Arguments

The Association contends that allowing two hours of training time beyond the normal eight hour shift at straight time is "tantamount to subsidy for the City," and a "concession" made by the

Association in view of the importance of training. However, the Association contends that "to grant four hours time to the City on that basis is not justified and reeks of avarice". (LPOA Ex. 9, p. 6) The Association also asserts that "a review of the surrounding communities again fails to reveal a program so outdated and outmoded as the City of Livonia," and that "nearly all other surrounding communities provide for time and a half for training time in excess of eight hours...." (Ibid, p. 7)

City Arguments

The City asserts that "training rarely occurs beyond 2 hours a week" and that the City's proposal of four hours is "a reasonable cutoff". (City, Ex. 7, p. 21)

Findings and Conclusions

Data submitted by the Association cover eleven municipalities among the comparison groups deemed appropriate. (LPOA Ex. 9, p. 27) Of these, according to the Association, two provide for "straight time after shift" and seven provide for "time & 1 1/2 after shift or call back". The comparative data submitted by the City with respect to "overtime" do not indicate whether the other governmental authorities referred to make special provision for training time. (City Ex. 8, pp. 21-22)

The parties obviously agree that for a single training period during a week, which occurs following an employee's regular shift and lasts no more than two hours, he shall receive compensatory time on a straight time basis. This is what was provided in Subsection H of the prior agreement. Moreover, there appears to be no dispute that time and one-half in cash should be paid, as was required under Subsection H of the prior agreement, to the extent that a training period extends beyond two hours after an employee's

regular shift. The only areas of dispute, therefore, are with respect to that aspect of the Association's proposal which would call for time and one-half in cash for all time required for any training occurring during the week as an extension of the employee's regular eight hour shift beyond the first such period of two hours, and the difference between the parties concerning the minimum compensation to be provided for call backs generally. The latter point is covered above, and as to that the Panel's decision is favorable to the Association. Since the Panel has concluded that overtime worked following the conclusion of an employee's shift should, in general, be compensated for at time and one-half, in cash, there appears to be no reason to distinguish overtime used for training purposes. Hence, the Panel concludes that the Association, to the extent indicated by its demand, is in effect making a special concession to the City with respect to the initial weekly period of two hours, and the Panel believes this proposal should be adopted.

(6) "Standby Service" On Leave Days Or Between Duty Shifts

Prior Contract Provision

This matter was covered by Subsection M. Clause 1 made provision with respect to employees on vacation. Clause 2 made provision with respect to employees on standby service on either two or four leave days. Clause 3 dealt with situations where "employees must forfeit deposits because of being placed on standby".

Association Demand

The Association requests under its Subsection (f) that "employees on standby service on leave days or between duty shifts shall receive 50 percent of the time in compensatory time". This

proposal evidently has reference only to the situation covered, in part, by Clause 2 of Subsection M of the prior agreement, which provided for 20% of time on standby in compensatory time, to be accumulated separately and without limitation. Accordingly, the Association's demand would do two things. First, it would increase from 20% to 50% the amount of compensatory time to be provided. Second, the provision would apply to standby between duty shifts as well as on leave days.

City Position

The City proposes that the amount of compensatory time be increased from 20% to 25%, evidently referring, however, only to the leave day situations encompassed by Clause 2 of Subsection M of the prior agreement. (City, Ex. 8, p. 17)

Association Arguments

The Association bases its claim on the proposition that "while on standby an officer is not free to live his life nor enjoy his family and as such demand a 50% of the compensatory time is not unreasonable". (LPOA Ex. 9, p. 6)

City Arguments

The City notes that under the Association's proposal an officer on standby would actually receive more pay than an officer who has worked a regular shift during the same 24 hour period, whereas under the City's proposal of 25% in compensatory time an officer placed on standby for two days would be able to take a day and a half off at a later date. The City discounts the Association's argument insofar as based on the assertion that an officer on standby is not free to live his life nor enjoy his family, noting that when a man is on standby "he would be home with his family and would also have additional time at a later date with his family". (City Ex. 8, p. 19)

Findings and Conclusions

Neither the Association nor the City has presented any "other-city" comparisons in support of its respective position. There is no indication from the Association's presentation that the prior practice with respect to compensatory time for standby service has imposed any substantial hardship, or created any special difficulties. The Panel concludes that the Association's proposal should be rejected and that the parties should continue in their next agreement the provisions of Subsection M of the prior agreement.

Item 4--Vacations

Prior Contract Provision

The prior agreement, Section 19, provided for a vacation schedule as follows:

Years of Service	Vacation Days Per Year
1 to 5 years	20 days
5 to 10 years	22 days
After 10 years	24 days

Association Demands

The Association seeks a revision of the prior vacation schedule so that it will provide as follows:

Years of Service	Vacation Days Per Year
1 to 5 years	20 days
5 to 10 years	22 days
10 to 15 years	24 days
15 to 20 years	26 days
20 years or more	28 days

City Position

The City proposes that the prior provision be continued except that after 15 years of service there be granted, in addition to the 24 days provided under the prior agreement, one additional day per additional year of service up to a maximum of 25 vacation days (City Ex. 8, p. 30).

Association Arguments

The Association asserts that "a review of the Association's

statistics will show that many cities have vacation policies in excess of Livonia," and thus it takes exception to the City's claim concerning how its existing vacation policy and proposal compares with that provided by other comparison communities. The Association "urges that the Panel review its statistics and compare the statistics with those of the City and arrive at a fair and equitable policy". (LPOA Ex. 9, p. 39)

City Arguments

The City contends that comparative data show "conclusively", that the City's "vacation schedule compares very favorably with that of other cities". It therefore contends that its proposal is entirely reasonable and should be accepted.

Findings and Conclusions

The comparative data supplied (LPOA Ex. 9, p. 40) show that the City's proposal would produce a vacation schedule better than that existing in most of the comparison communities. The Panel concludes that the Association has not supported its demand, and that the City's proposal should be accepted.

Item 5--Workmen's Compensation

Prior Contract Provision

The parties prior agreement provided in Section 21 ("WORKMEN'S COMPENSATION") as follows:

> Each Employee will be covered by the applicable Workmen's Compensation Laws and the Employer further agrees that an Employee being eligible for Workmen's Compensation will receive, in addition to his Workmen's Compensation Income, an amount to be paid by the Employer sufficient to make up the difference between Workmen's Compensation and his regular weekly income based on forty (40) hours. The on-the-job injury shall not be deducted from the Employee's sick leave bank until seventy-five (75) calendar days have elapsed from the date when Workmen's Compensation payments began with the first working day for which he was paid counting as the first calendar day. After the sick leave bank of the Employee is reduced to forty (40) hours, the Employee will continue to pay the difference between the regular salary of the Employee and Workmen's Compensation until such time as the Employee begins a duty disability retirement or is returned to duty.

Association Demands

The Association proposes that the pertinent contract provision shall read as follows (LPOA Ex. 9, p. 15):

> Each employee will be covered by the applicable workmen's compensation law and the employer further agrees that an employee being eligible for workmen's compensation will receive in addition to his workmen's compensation his regular weekly income based on 40 hours. The on the job injury shall not be deducted from any employees sick leave bank. The employer will continue to pay the difference between the regular salary of the employee and workmen's compensation until such time as the employee begins a duty disability retirement or is returned to work.

Comparing this proposal with the prior provision, it is apparent that the difference relates to the deduction of on-the-job injuries from the employee's sick leave bank which, under the prior provision, occurred when "seventy-five (75) calendar days have elapsed from the date when Workmen's Compensation payments began with the first working day for which he was paid counting as the first calendar day".

City Position

The City has proposed the following changes from the prior provision (City Ex. 8, pp. 32-33):

(1) That in the interim period from the time of the on-the-job injury until Workmen's Compensation payments begin, no deduction shall be made from the employee's sick leave bank until the initial time off because of the on-the-job injury until the time and date the employee is considered able to return to work by the City medical examiner, or doctor treating the injury at a hospital or clinic to which the employee is sent by the City, and that should the employee not return to work by the specified

date and time, any further time off shall be deducted from his sick leave bank;

(2) An increase in the minimum sick leave bank of 40 to 60 hours; or alternatively, an increase in the sick leave bank to 80 hours provided there can be agreement on the use of a City medical examiner, with a suggested modification of the first proposal which would provide for an extension of the date and time the employee is certified as able to return to work by the City medical examiner upon receipt of a certificate from the employee's personal physician recommending such an extension, with the reservation of the right in the City in all cases, where it is considered necessary, to require the employee to be examined by the City medical examiner before an extension can be granted.

Association Arguments

The Association takes the position "that any deduction from sick leave is ill-conceived, ill-advised, and indefensible" since "sick leave is intended for sick leave and not intended to be applied to on the job injury" (LPOA Ex. 9, p. 15). The Association asserts that the prior provision with respect to deductions from the sick leave bank constituted in effect a penalty imposed upon an employee who, by great sacrifice, may have built up his sick leave bank in contemplation of additional income upon retirement. Further, the Association strongly opposes the City's proposal concerning the use of a City medical examiner, contending that "the person best suited to determine whether or not an officer is capable of returning to work is his own family physician who is familiar with the patient, and in many cases, is a specialist". (Ibid. p. 16)

City Arguments

The City takes exception to the Association's view that "sick leave is intended for sick leave and not intended to be applied to on the job injury", noting that "sick leave payment is payment for time not worked because of illness or injury and may be applicable to occupational illness or injury just as well as to other illness or injury" (City Ex. 8, p. 33). The City adds (Ibid, p. 34):

> Under our proposal there would be no deduction from sick leave for almost 3 months (82 days-initial 7 plus 75) and on a fractional basis (difference between Workmen's Compensation) until there are 80 hours left in the sick leave bank (2 weeks of sick leave) then full salary (including Workmen's Compensation) until return to duty or retired. It should be noted that during the entire period the employee is off on Workmen's Compensation he receives his full salary. This may run several months, a year or longer. Also, upon his return he would have a sick leave bank available rather than having it depleted.
>
> Our proposal represents the following improvement over the present provision:
>
> (a) No deduction from sick leave during the first few days of injury even when Workmen's Compensation is not paid.
>
> (b) An increase from 40 to 80 hours in the sick leave bank available to the employee.

Findings and Conclusions

Under the prior contract, Section 16 ("SICK LEAVE"), which, it is assumed, would be continued in effect, permanent full time employees accumulated sick leave at the rate of one working day for each complete month of service with unlimited accumulation, and 25% of the accumulated sick leave was paid in cash to the employee in the event of retirement or, in the case of death, to the employee's beneficiary or his estate. Obviously, under this provision, an employee who remains healthy can accumulate a

substantial nest egg toward his retirement or toward the value of his estate.

It is assumed that, under the prior Workmen's Compensation and Sick Leave provisions, an employee who suffered an on-the-job injury, and received no Workmen's Compensation payments for the initial period of a week or less, was entitled to draw on his accumulated sick leave bank for the initial period, and to this extent depleted the accumulation in the bank. The City's proposal with respect to this interim period would constitute a benefit to the employee.

The principal issue posed by the Association's demands arises out of its claim that there should be no deductions from an employee's sick leave bank in the case of on-the-job injuries compensable and with respect to which the City would be obligated, under the contract Workmen's Compensation provision, to make up the differential between Workmen's Compensation payments and the employee's regular weekly salary. The Panel is not persuaded that this contention has been adequately supported. On this issue the City's position seems the more meritorious, especially in the light of the fact that there is unlimited accumulation in the employee's sick leave bank.

The remaining question concerns the City's proposal concerning the use of a City physician to check on an employee's ability to return to work. It may be that under the Workmen's Compensation Act the City has this right in any event. But our conclusion is that the City should have this right, but subject to the right of the employee to carry through the contract grievance procedure for ultimate determination any difference of opinion as between the City's physician and the employee's own physician.

Item 6--Hospital-Medical

Prior Contract Provision

Under Section 19 of the prior agreement the City paid the full premium for hospitalization-medical coverage for permanent full time employees, spouses and dependent children under the Blue Cross-Blue Shield M-75 Plan.

Association Demands

The Association requests that the City agree to pay the full premium for hospitalization and medical coverage for permanent full time employees, spouses and dependent children, as defined in the present plan, but that the plan be Blue Cross-Blue Shield, MVF-2, with Major Medical and prescription riders (LPOA Ex. 9, p. 11).

City Position

The City states that the existing M-75 plan is expiring, and its proposal is to provide the Blue Cross-Blue Shield MVF-1 Plan, with continuation of a rider providing for a maximum benefit period of 365 days (City Ex. 8, p. 23).

Association Arguments

"Because of the hazard of employment of their occupation and increasing frequency of accidents and assaults on police officers and the resulting injuries that police officers are sustaining, it is the position of the /Association/ that additional coverage is necessary" (LPOA Ex. 9, p. 11). The Association points to "the financial drain which serious injury could cause upon an individual police officer and his family under the present system of hospitalization" and asserts that "it is in the interest and welfare of the public as well as the City of Livonia to provide the most complete hospitalization package for the officers as it possibly can" (Ibid). The Association contests the City's attempt

to justify its rejection of the LPOA demand on the basis that it would then be required, as a matter of policy, to extend similar benefits to other City employees. The Association also argues that comparative data indicate that "many other cities are providing more hospitalization insurance coverage than the City of Livonia", and that "the additional cost of MVF-2 with a Major Medical rider is very small when compared to the tragedy of a police officer severely injured requiring more hospitalization coverage than his present Blue Cross can provide" (Ibid, p. 12).

City Arguments

The City, in response to the Association's reference to the "hazards of employment" of police officers, notes that Blue Cross-Blue Shield does not cover occupational injury or disease, which is provided for under the Workmen's Compensation system. The City refers to the increased cost which would result even from the adoption of the MVF-1 Plan proposed by it, and to the substantially greater cost which would be incurred if the MVF-2 Plan were adopted. In this connection, the City notes that its present plan applies to all City employees who elect to come under the plan, and that the plan now has 482 subscribers. It therefore infers that whatever plan is agreed upon would, as a matter of policy, be extended to these other subscribers, with the resultant increase in aggregate costs.

Under the City's analysis, the MVF-2 plan would provide benefits beyond those provided by MVF-1 as follows:

a) 730 days of convalescent care
b) No waiting period for pregnancy (270 days under MVF-1)
c) Outpatient psychiatric care
d) Pre and post-natal care
e) 730 days of medical care in a convalescent facility

The City does not consider these additional coverages as essential to a "fairly young police force which is relatively free of major physical disorders". Referring to major medical, the City estimates that the additional cost for the 77 officers represented by the Association would be $3,538 per year, and for all 482 "subscribers", an additional $22,152 (City Ex. 8, p. 25). The City contends, further, that its proposal for MVF-1 would give the Livonia Police coverage comparable to that provided by other police departments in the Detroit Metropolitan Area.

Findings and Conclusions

The comparison data submitted by the Association cover ten jurisdictions in the Detroit Metropolitan Area (LPOA Ex. 9, p. 13). Of these, seven, according to the Association, have MVF-1 plus major medical, and three have MVF-2, of which one also has major medical plus a "drug rider". The City's comparison data cover eleven communities within the Detroit Metropolitan Area plus Wayne County and the State of Michigan (City Ex. 7, p. 25). Of the eleven municipalities, seven, according to the City, have MVF-1 and of these four have major medical. One municipality, St. Clair Shores, has MVF-2 plus major medical plus a drug rider.

The Panel concludes that, on the basis of the comparative data, the Association's proposal for the adoption of the MVF-2 Plan is not supported, nor does the Panel consider that the additional benefits provided by MVF-2, valuable as they undoubtedly are in the cases to which they apply, are as important to police as, perhaps, to other groups of people.

The Panel concludes, however, that major medical should be provided by the City in conjunction with Plan MVF-1. There is substantial support for this additional benefit in the comparative

data presented. Moreover, the Panel believes that a major medical plan is intrinsically meritorious and hence in "the interest and welfare of the public" within the meaning of Section 9 of Act No. 312. The additional cost to the City of adding this benefit would be minimal as compared with the value of the benefit to the persons affected. According to the City's estimate the cost for those represented by the Association, would be $3,538 per year, and even if extended to all 482 subscribers, the additional cost would be only some $22,000 more.

Item 7--Longevity Pay

Prior Contract Provision

Under Section 22 ("LONGEVITY PAY") of the parties' prior agreement longevity pay, which "is not a part of the base salary of an employee, but is a payment for length of service or seniority for the purpose of retaining and rewarding faithful employees for their City service" was established on the following scale:

Length of Service	Longevity Pay
7 to 14 years	2½% of base rate or $200, whichever is less
14 to 21 years	An additional like amount
21 years and over	An additional like amount

Association Demands

The Association requests that longevity pay be changed both in terms of schedule and in terms of amount. The scale requested is the following (LPOA, Ex. 9, p. 18):

Years of Service	Longevity Pay
4 to 8 years	2% of base rate
8 to 12 years	4% of base rate
12 to 15 years	6% of base rate
15 to 20 years	8% of base rate
20 years and over	10% of base rate

City Position

The City proposes to continue the schedule provided for in the prior agreement except for the addition of a provision for 1% of base rate or $80, whichever is less, after 5 years of service (City Ex. 8, p. 27).

Association Arguments

The Association points to the fact that, as recognized by the City, longevity pay constitutes an incentive to the employee to remain in the service of the City. The Association contends that the existing scale is inadequate, and that comparative data support its demand. One of the key points in the Association's claim is its position that the amount of the longevity payment should be a percentage of the employee's base salary existing at the time so that, appropriately, it will take into account any increases in base salary.

City Arguments

The City notes that longevity programs "can represent a substantial cost ... and are peculiar to each jurisdiction's compensation package". In this connection, the City asks the Panel to consider carefully the cost impact of the "completely new plan" proposed by the Association, making longevity pay a percentage of base rate, which, according to the City, "could double or triple our cost for longevity for all our employees depending on salary adjustments". The City asserts that the Association's comparative data are highly selective in that the Association has "cited only those cities that support their demands" and that of these, only three are in Livonia's population range (City Ex. 8, p. 28).

Findings and Conclusions

The more comprehensive comparative data are those presented by the City (City Ex. 8, p. 29). These data purport to show the

longevity payment programs of eleven municipalities in the Detroit Metropolitan Area and, in addition, those of Wayne County and the State of Michigan. These data show that there is no single program which is overwhelmingly predominant, and great variation both as to increments of service and with respect to the dollar amount of longevity pay. Ultimately a pattern may emergewhich could substantiate a claim that the City's program has become outmoded. But the Panel's conclusion is that for the present the Association's demands should be rejected and the proposals of the City accepted.

Item 8--Legal Expense

Association Demand

The Association's proposal is stated as follows (LPOA Ex. 9, p. 32):

> The employee is free to select the attorney of his choice in the defense of any and all claims or actions whether civil or criminal against an employee based on alleged acts or occurrences arising out of the employment or in the execution of upholding the law and the employer will reimburse the employee for any and all reasonable attorney fees incident thereto. Further, the Association requests insurance coverage for any judgments which may be levied against an officer arising out of the above.

City Position

The City regards the basic issue involved here as the scope of insurance coverage which is or may be provided to protect both the City and the police officer against judgments brought in civil actions against the City and/or the officer arising out of the officer's conduct while in line of duty. Thus, the City does not specifically respond to the demand of the Association that the employee be free to select an attorney of his choice in the defense of any claim, civil or criminal, brought against him based on alleged acts arising during the course of his employment, and the further

demand that the City should reimburse the employee for any and all reasonable attorney's fees incident thereto. However, the clear implication of the City's presentation is that it opposes these proposals.

With respect to the matter of insurance, the City was requested by the Panel at the informal meeting held February 25, 1970, to investigate the possibility of acquiring insurance to protect police officers from actions commonly referred to as "assault and battery". The City made such investigation, and the result is indicated in its communication to the Panel dated April 17, 1970, as follows (City Ex. 11):

> In response to a verbal request previously made by the Arbitration Panel to investigate the possibility of acquiring insurance that would protect employees of the Association from actions commonly referred to as "assault and battery," the City has contacted not only the present agent providing the false arrest coverage but the agent who formerly provided the City with false arrest coverage through Lloyd's of London. The previous Lloyd's of London policy had reference to "assault and battery" coverage within its limits. Our current false arrest coverage does not provide coverage against charges of "assault and battery". Both agents have checked with Lloyd's of London and the Gene Harris Agency in particular has responded with a communication from All Lines Underwriters, Incorporated, the Lloyd's of London local contact. Lloyd's of London no longer makes assault and battery coverage available. We must, then, refer to the City's position of March 27, 1970, and reiterate that the false arrest coverage now provided is the best available from any source for the purpose for which insurance can be obtained.
>
> Our presentation of February 25, 1970, stated, in part, as follows (Page 19):
>
> > "A letter dated December 17, 1968, from the carrier to the City provides additional explanation in that the company would defend the officer as well as the City in a pending false arrest and assault case. It did indicate, however, that it could not provide protection for the officer in the event it was shown the officer intentionally assaulted the plaintiff. It is the City's position that coverage is provided police officers within the scope of duties and hazards encountered in line of duty short of unprovoked and unwarranted acts of physical aggression."

Association Arguments

The Association expresses concern about the increasing number of criminal and civil actions brought against police officers, many of which are without merit, and states that "it is the position of the /Association/ that an officer is finding it increasingly difficult to do his job properly with the threat of a civil or criminal action hanging over his head and a potential legal fee arising therefrom". Accordingly, the Association stresses that "it is in the public interest and welfare that an officer be free to fullyexercise his duty and it is in this light that the attorney's fees and payment of judgment are requested". (LPOA Ex. 9, pp. 32) At the very least, according to the Association, the City should provide insurance coverage for cases of alleged assault and battery.

City Arguments

The City contends, as indicated above, that the insurance coverage now provided is the most that can be obtained, and, in essence, that this coverage provides protection with respect to duties and hazards encountered in line of duty short of unprovoked and unwarranted acts of physical aggression.

Findings and Conclusions

With respect to the matter of insurance coverage, the Panel must conclude that the City's coverage is as broad as can be obtained, as indicated in the City's communication of April 17, 1970. The Association has made no claim that the information there provided is incorrect.

The Association's request that the City subsidize a police officer's selection of his own attorney in civil or criminal cases evidently is a novel demand. The Association has not provided any support for this in terms of existing practices in other communities.

The Panel appreciates that police officers are perhaps increasingly subjected to civil and criminal actions arising out of acts performed in line of duty, and that this increases the degree of hazard associated with the officer's job. In terms of principle, however, there is distinction between those acts of physical force which an officer is legally entitled to invoke and those which he is not, although, from the point of view of the "man on the beat", the line may indeed be difficult to draw, and even a legal expert might not be able to predict, with any degree of certainty, the result of a possible action brought against the officer in certain circumstances.

This problem suggests that there perhaps should be an overall solution. Yet it would scarcely be consistent with the obligations of a municipality to its entire constituency to assure to an officer complete protection against judgments and costs, both in civil and criminal actions, where the ultimate decision is that the officer has gone beyond his legal rights and has violated the law. In any event, so far as insurance coverage is concerned, it is apparently the fact that the City is now providing all that can be obtained.

It seems to the Panel that the Association's request goes beyond what may appropriately be required of a City and that if police officers are to have this resource at their disposal, some other means for providing it should be made available (as, for example, through a state-wide association of police officers). In the case of civil actions against a police officer, it may be presumed that the insurance carrier will provide competent counsel unless it is clear that the officer has gone beyond his legal authority. It scarcely seems appropriate to impose upon the City the cost of reimbursing an officer for attorney's fees in defending

a criminal action brought against him, perhaps even by the City itself or by a higher authority, to wit, the State. Accordingly, the Panel concludes that the Association's requests should be denied.

Item 9--Penalty

Association Demand

The Association proposes that a provision as follows be added to the new agreement (LPOA Ex. 9, p. 34):

> In the event the employer fails to pay the employee for work performed, interest should be paid on all monies earned and owed at a rate of 1 1/2 percent per month.

There was no counterpart provision in the prior agreement.

City Position

The City does not agree with this proposal, has made no counter proposal with respect thereto, and believes the proposal should be rejected (City Ex. 8, p. 38).

Association Arguments

The Association claims that "failure by the City to pay promptly for monies owed has been a problem in the past" and "has placed the officer in a situation where he is the one having to pay the penalty of 1 and 1/2 percent because he is unable to make installment or credit payments on time and/or has had to borrow money as a result of the city's late payment" (LPOA Ex. 9, p. 34). The Association states that no other city, to its knowledge, has had a problem of this kind so that no supportive comparative provisions are available; however, it asserts that the proposed provision is widely prevalent in the private sector.

City Arguments

The City notes that the Association has only referred to two instances of delay in payments owing to an officer, one for a uniform allowance in the case of four officers in 1969, the other certain overtime payments for three months in 1968 and two months in 1969 (City Ex. 8, p. 38). These, according to the City, were the result of unusual circumstances. In effect, the City claims there is no "problem" such as that alleged to exist by the Association.

Findings and Conclusions

The Panel concludes that there is insubstantial support in the record for the Association's proposal, and that it should be denied.

Item 10--Gun Allowance

Association Demand

The Association seeks a "gun allowance" of $365 per year to be paid by December 10 each year (LPOA Ex. 9, p. 29; City Ex. 8, p. 14). There was no provision for a gun allowance in the prior agreement.

City Position

The City does not agree to this proposal, has made no counter proposal, and asks that the proposal be denied (City Ex. 7, p. 26).

Association Arguments

The Association predicates its case for a gun allowance on the fact that a police officer is required, while off duty and out of uniform, to carry a fully loaded revolver wherever he goes and, in appropriate circumstances, to intervene and respond as a police officer in situations which he happens to encounter. Thus, as the Association sees it, police officers are in effect "required to perform regular duties while on their own time" and for this additional

obligation there should be separate compensation for the "added responsibility, inconvenience and dangers". The Association contends that the long standing practice, noted by the City, of regarding the payment for this responsibility as part of the employee's base salary is no argument for continuing such an unrealistic position. The Association in this connection notes that the City is somewhat inconsistent, since under the prior agreement police officers were compensated in a certain ratio "for standby time". (LPOA Ex. 9, p. 29)

City Arguments

The City contends that, in accordance with long standing practice, carrying of a weapon while off duty is part of the police officer's "job" and hence must be presumed to have been taken into account in determining his base salary (City Ex. 8, p. 14). The City has presented some data from the comparison communities, and notes that only a minority of the group provide for a gun allowance (City Ex. 7, p. 27). The City also asks the Panel to be aware of the impact of granting a gun allowance in connection with the City's negotiations with the Firefighters Association, noting that the Firefighters are asking for a "food allowance" of $312, asserted to be their "counterpart" proposal (City Ex. 8, pp. 14-15).

Findings and Conclusions

It appears to be the general practice among the comparison jurisdictions, as of now, to consider the carrying of a gun, with attached responsibilities, while off duty a part of the police officer's job, for which his base salary supposedly compensates him as an ingredient of the job. But the data do show that the separation out of this ingredient, and provision of direct

compensation for it, was the practice as of December 1, 1969 in Dearborn Heights (allowance of $200), Lincoln Park (allowance of $150), and Westland (allowance of $200) (City Ex. 7, p. 27; City Ex. 8, p. 14);(LPOA Ex. 9, p. 9). In addition, Hazel Park provides an allowance of $365 (LPOA Ex. 9, p. 9), and the recently concluded Pontiac negotiations provided for an allowance of $365 effective as of January 1, 1970 (City Ex. 7, p. 27). So there is some precedent for a separate monetary recognition of this element of the police officer's job.

A sound case, in principle, exists for the separation out of this element of the job for the reasons indicated by the Association. If it is separated out, it is nevertheless part of the officer's total salary compensation, and due account should be taken of the amount of the gun allowance in determining the basic salary level for the job and in making comparisons with the salary levels of other communities. This we have tried to do. In our judgment there should be a separation out of this element if the association representing the police ask for it. We note the City's reference to the contrary conclusion reached in the recommendations issued February 27, 1968, by the Detroit Police Dispute Panel (City Ex. 7, p. 26). Our view obviously differs from the position taken by that Panel to the extent that the Detroit Panel considered it "inappropriate to break this element of the job out for special consideration" (Ibid). Since the Chairman of this Panel was also Chairman of the Detroit Panel, it is, of course, obvious that his position has changed in this respect. It is of interest to note, with respect to the Detroit Panel's disposition of the issue, that its ultimate judgment, and perhaps the most significant aspect of its analysis, was that "... it [the requirement of carrying a gun while off duty]

is one of the several considerations which argue for a substantial increase in the basic salary level" (Ibid). By the same token, we have concluded that the salary increases awarded in this case are justifiable apart from the aspect of a gun allowance. We conclude that there should be included in the new agreement provision for a gun allowance of $200.

Item 11--Retirement

Prior Contract Provision

Section 27 ("RETIREMENT") of the parties' prior contract read:

> Employees shall be entitled to receive benefits in accordance with the provisions set forth in Ordinance 77, as amended, the Retirement Plan Ordinance of the City of Livonia provided that the following provisions shall be applicable with respect to the pensions of employees and the rate of employee contributions:
>
> 1. On or after attainment of voluntary retirement age of fifty-five (55) a member shall receive a pension equal to two per cent (2%) of his average final compensation multiplied by the number of years and fraction of a year, (up to 25 years), plus one per cent (1%) of average final compensation for each year and fraction of a year thereafter.
>
> 2. On or after attainment of mandatory retirement age of sixty-five (65) a member shall receive a pension equal to one and thirty-five hundreds per cent (1.35%) of his average final compensation multiplied by the number of years of service and fraction of a year (up to 25 years) plus one per cent (1%) for each year and fraction of a year thereafter.
>
> 3. The contributions of a member shall be four per cent (4%) of annual compensation.

Association Demands

The Association, in its written submission of April 13, 1970, proposed substantial revisions of the prior provision as follows (LPOA Ex. 10, pp. 1-2):

The LIVONIA POLICE OFFICERS ASSOCIATION seeks a revision of the 1969 agreement with the CITY OF LIVONIA and proposes that this section read as follows:

(1) The voluntary retirement age reduced by five years to read:

"The voluntary retirement age of 50, a member shall receive a pension equal to..."

(2) A change in the pension formula in which the retirement ordinance should read as follows:

"A member ascertaining a voluntary retirement age of 50 shall receive a pension equal to 2% of his average final compensation. All applied by the number of years and fraction of years of service."

(3) Upon or after attainment of mandatory retirement age of 65 years a member shall receive a pension equal to 1.75% of his average final compensation multiplied by the number of years of service and fraction of years up to 25 years plus 2% for each year and fraction of year thereafter.

(4) An annual improvement factor to read that the pension provisions of demands 1.2 and 3 shall be adjusted upward each year at a rate of four per cent (4%) of the previous year's pension.

(5) The average final compensation shall use the best three of the last five years for determining the average final compensation period.

(6) The City shall provide hospitalization coverage for retired members. This coverage shall be the same coverage offered to those persons in the employ of the City and the full cost will be assumed by the City.

(7) The City shall provide for the retiree a death benefit of Two Thousand Dollars ($2,000.00) on each retired police officer. The cost for said death benefit shall be assumed by the City.

(8) Under the pension ordinance No. 77, as amended, section 218 entitled "Regular Interest", shall be changed to read as follows: "That regular interest shall not be less than three percent (3%) per annum nor more than six per cent (6%) per annum compounded annually."

(9) Retroactivity. The City will agree to provide all pension improvements for those persons now on retirement and for those who may retire prior to the agreement on the pension demands.

City Position

The City made an extensive response to these proposals in its written submission of April 27, 1970. In essence, the City asks that the Association's proposals be rejected, and that the prior provisions be continued, except that the City agrees to Association demands numbered 8 and 9.

Association Arguments

The Association contends that the existing pension plan is inadequate, less than is authorized by statute, and below the level of the comparison communities, both in benefits and in cost to the City. The Association claims that the cost of the existing plan to the City is 20% less than the City's estimates because the earning power of the retirement fund, originally estimated at 3% per annum, actually is substantially more than that. The Association also objects to the "tie-in" of the existing pension plan to the federal Social Security system. Apparently, it is the desire of the Association, although the matter is not altogether clear from its presentation, that the City should have a plan entirely independent of Social Security, the implication being that coverage under Social Security should be dropped, thus reducing the employee's contribution. (LPOA Ex. 10)

City Arguments

The City notes, first of all, that its retirement plan covers all employees in the City's service uniformly with the single exception that the voluntary retirement age for police and firemen is 55 whereas for other employees the retirement age is 60, thus increasing the City's contribution rate substantially for the former group. The City states that "any improvement made by the Arbitration Panel for Police Officers will inevitably affect retirement negotiations with all employees since the retirement system has always been uniform throughout the City service since the inception of the retirement program in 1953." (City Submission of April 27, 1970, p. 4)

In this connection, the City notes that "... every improvement in salary, longevity, holiday pay, and overtime ... costs 11.57 cents for each $1.00 of improved compensation" (Ibid, p. 8), and that the pension plan demands of the Association, if granted, could increase the City's costs substantially (Ibid, p. 11). The City also submits that its retirement system compares favorably with those in effect in the comparison jurisdictions (Ibid, pp. 13, 15, 16, 18, 20, and 23).

Findings and Conclusions

An examination of the data submitted by the City shows that the City's present plan holds up fairly well by comparison with others in the comparison groups. It is not as favorable to the employee as some; but it is better than others. The fact that the plan is City-wide cannot, of course, preclude negotiation for improvements at the request of any association or organization representing any group of City employees. Yet it may well be that improvements in the plan resulting from any such negotiation, or from an arbitration award in the case of police or firemen, would be extended, as a matter of tradition and policy, to all City personnel, or at least that there would be strong pressures in that direction. What may be implicit in this is that the various organizations having collective bargaining rights for groups of City employees ought to deal jointly with the City with respect to the retirement system.

The Panel has concluded, for the purposes of this proceeding, that the retirement plan issues should be resolved in the manner proposed by the City. Among the considerations inducing this finding is the fact that in our judgment the improvements in salary levels and in fringe benefits which we have awarded are fairly generous, and it has seemed to us that these are the areas which call for special attention in this proceeding.

Cost (Value) of Increased Salaries and Benefits

As noted above, the salary increases provided for in this award will amount to approximately 11.5%, spread over the two-step period. Certain minor "fringe" benefit increases were agreed upon in the parties' negotiations and certain other fringe benefit increases and a new benefit (Gun allowance) are provided for in this award. For a Patrolman or Policewoman at the maximum salary level, the following indicate the estimated costs of these benefits to the City for the year and correspondingly their value to the employee:

1.	Benefits agreed upon (City Ex. 7, p. 10)	$ 90
2.	Medical-Hospital (City Ex. 8, p. 24)	
	-Difference between M-75 and MVF-1 including "D" Rider.....$80	
	-Additional cost of Major-Medical..... 39.....	119
3.	Gun allowance.....	200
4.	Longevity.....	80
		$489

An additional item of cost to the City and corresponding benefit to the employee will be the increased contribution which the City will have to make to its retirement program even though the Panel has not upheld any of the Association's pension demands. The City estimates that its contribution to the retirement fund is 11.5% of salary and of certain fringe benefits (City Ex. 7, p. 10, and its written submission of April 27, 1970). Assuming the accuracy of this

figure, the increase in the City's contribution for the fiscal year for each Patrolman at the maximum salary level will be about $160 consisting of 11.5% of the aggregate increase of $1,110 for the year and 11.5% of the aggregate of the gun allowance and of the increase in longevity pay. On this basis the total increased cost to the City of pre-existing and new benefits will be approximately $649 for the Patrolman at maximum salary level. For the entire group represented by the Association, we estimate the increased cost per man for the year to be approximately $540.

Award

1. The award of the Panel with respect to the issues submitted is as indicated in the foregoing analysis, and shall be placed in effect as indicated.

2. The Panel reserves jurisdiction to settle any dispute which may arise concerning the interpretation or implementation of this decision.

May 9, 1970

David E. Burgess

Winston L. Livingston

Russell A. Smith, Chairman