STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Statutory Arbitration

In the matter of:

BIRMINGHAM POLICE OFFICERS ASSOCIATION

-and-

CITY OF BIRMINGHAM, MICHIGAN

OPINION AND ORDER[1]

APPEARANCES

For the Association:

Noel A. Gage, Esq.
G. R. Rentrop, Esq.

For the City:

Earl R. Boonstra, Esq.

INTRODUCTION

The City of Birmingham, Michigan (hereinafter sometimes called "City"), has recognized the Birmingham Police Officers Association (hereinafter sometimes called "Association") as the collective bargaining representative of its Police Officers. Pursuant to said recognition, the parties entered into a Memorandum of Agreement which expired on June 30, 1970. Prior to said expiration, the Association mailed to the City on or about May 4, 1970 a request to bargain for a new collective bargaining agreement. This request was received by the City on or about May 5, 1970.

[1]The dissenting opinion of Panel Member Norman L. Lippitt appears at the end of this Opinion

Subsequent events followed including the filing on or about June 10, 1970 by the Assocation of a lawsuit in the Oakland County Michigan Circuit Court (File No. 70-65594) against the City of Birmingham, its attorney and representatives of the Michigan Employment Relations Commission, apparently seeking to compel the continuation of the mediation process. Although not clear to the Panel on the record before it, apparently another purpose of the lawsuit was to invoke Compulsory Arbitration for the Order flowing from the suit encompasses Compulsory Arbitration.

On or about August 18, 1970, the Honorable James S. Thorburn, Circuit Judge for the County of Oakland in the above-mentioned case, issued an Order which among other things required the Association's delegate to the Compulsory Arbitration Panel, Norman L. Lippitt, and the City's delegate, David Burgess, to meet "in an effort to designate an impartial third person to act as Chairman of the Panel of Arbitration." Upon failure of Mr. Lippitt and Mr. Burgess to agree, the Order provided that the Chairman of the Michigan Employment Relations Commission appoint a third party to act as said Chairman.

Pursuant to Act No. 312, Public Acts of 1969, Chairman Robert G. Howlett, of the Michigan Employment Relations Commission, appointed George T. Roumell, Jr. on August 25, 1970 to serve as Chairman of the Arbitration Panel established to arbitrate the issues in dispute between the Association and the City.

The first hearing before said Panel was held on August 31, 1970. The parties were directed to file briefs and subsequent hearings were held.

Section 8 of Act 312 provides as follows:

> "Sec. 8. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, 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, and shall mail or otherwise deliver a true copy thereof to the governing body of the public employer and to the attorney or other designated representatives of the employees of the public employer. The findings, opinions and order shall be just and reasonable and based upon the factors prescribed in sections 9 and 10."

ARBITRABILITY

In addition to the mandate of Section 8, the Act provides certain jurisdictional requirements spelled out in Section 3 and Section 10 (both of which will be discussed in more detail later). It is well established that labor arbitrators have the responsibility to determine if they in fact have jurisdiction. United Steel Workers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed. 2d 1409 (1960).

Judge Thorburn of the Oakland County Circuit Court recognized the above duties of this Arbitration Panel for in paragraph F of his Order he ordered:

> "F. The Arbitration Panel is hereby directed to render its Award on all procedural and substantive points presented to it in accordance with the provisions of the Act, and specifically, to determine:

"(i) Whether or not the Association complied with the statutory requirements to properly invoke the Act prior to July 1, 1970.

"(ii) To render a total Award, including its effective date or dates, based upon all relevant material properly presented to it in accordance with the provisions of the Act."

The City has raised the question of the Panel's jurisdiction contending:

"that since the parties did not have a 'dispute' and did not submit to mediation as required by Section 3 of Public Act No. 312 prior to July 1, 1970, the Association has not complied with the statutory requirements to properly invoke the act prior to that date and any award which might increase rates of compensation cannot order them effective prior to July 1, 1971." (City's brief, page 7)

The City maintains that Act No. 312 provides "for compulsory arbitration of labor disputes" (preamble) and for the "resolution of disputes" (Sec. 1). Therefore, the City contends that there must be a labor dispute before the matter can be submitted to Compulsory Binding Arbitration under Act 312. The City points out that the Michigan Supreme Court in Garden City School District v. Labor Mediation Board, 358 Mich. 258 (1959) held that Public Act 336 of 1947 (C.L.A 423.21 Et. Seq.) refers to submitting "grievances" to the then Michigan Labor Mediation Board. The City then called the Panel's attention to Labor Mediation Board v. Jackson County Road Commissioners, 365 Mich. 645 (1962) wherein the Supreme Court, as it did in the Garden City case noted that the predecessor act to Act No. 336 of Public Acts 1947, namely, Act No. 176 of Public Acts 1939 used the word "disputes". Since both the Garden City and the Jackson Road Commissioners cases involved public employees and Act No. 336 of Public Acts of 1947 refers to public employees, the Supreme Court held that the term "grievances" was applicable. Apparently, the City is trying to say to the Panel that the word "disputes" as used in Act 312 should be given a more strict interpretation than

the Court in Jackson Road Commissioners and the Garden City School gave the word "grievances".

The difficulty with the City's legalistic position is that the Supreme Court in Garden City School District v. Labor Mediation Board, supra. used the words "grievances" and "dispute" interchangeably. A good example of this is a statement in the opinion of the Court in Garden City School District written by Justice George Edwards (himself coming from a labor background and obviously knowledgeable concerning labor terms) said at 263:

> "...The word 'grievance' must be read in the statute in a general accepted sense, rather than defined by usage in some contract cases. We know of no grievance more likely to provoke the sort of dispute which the Labor Mediation Board and P. A. 1947 No. 336 are designed to avoid than those concerning wages or salary ...." (emphasis added)

Thus, the Court was even willing to use the word "grievance" and "dispute" in the same sentence and to interchange them.

Furthermore, in the Garden City case, the "grievances" concerned wages just like the situation now before this Panel. The Jackson County Road Commission case apparently concerned matters which are more commonly thought of as grievances.

The fact that those who practice in the field of labor law would have a more refined definition between "grievances" and "disputes" is not relevant because the Supreme Court of Michigan has spoken. At a later date the Court may re-define the terms. But until it does so, the Panel must interpret the cases as they now stand to the best of its ability.

The City also contends that the basic jurisdictional requirement of Act No. 312 is set forth in Section 3 which is as follows:

> "Whenever in the course of mediation of a public police or fire department employee's dispute, the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation and fact-finding, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefore, in writing, to the other, with a copy to the labor mediation board."

In connection with this jurisdictional requirement, the City points out that Section 10 also has bearing on the point which in part reads as follows:

> "...Increases in rates of compensation awarded by the arbitration panel under Section 10 may be effective only at the start of the fiscal 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 increased 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."

To assist the Panel in ascertaining the issue of its jurisdiction or more properly termed "arbitrability", the parties did enter Joint Exhibit No. 3, termed "Chronological Sequence of Events," which apparently was an Exhibit introduced in the aforementioned Oakland County Michigan Circuit Court Case No. 7-65594. The Exhibit in full is as follows:

"CHRONOLOGICAL SEQUENCE OF EVENTS

"1. May 4, 1970 request by Association mailed to City. Received May 5, 1970. Meeting requested for May 8, 1970.

"2. May 8, 1970, telegram sent by Earl R. Boonstra to Noel Gage advising inability to meet on such short notice. Disputed fact: Time of receipt of telegram. Boonstra agrees it was apparently after Association representatives were observed at City Hall, however, May 4, 1970 letter contains no specified time for meeting or definite location. (Exhibit 2).

"3. May 8, 1970 letter, Gage to State Labor Mediation Board received on May 12, 1970. advising representation and submitting dispute to mediation and fact finding. Copy to City. (Exhibit 3).

"4. Association requested Mediator Cornfield on several occasions to schedule a mediation session after May 12, 1970 and before May 27, 1970, (testimony at hearing).

"5. May 15, 1970, Boonstra directed letter to Gage requesting meeting. This letter was never answered because the Association had already instituted mediation and Gage felt Boonstra was to suggest dates which had not been forthcoming. (Exhibit 4).

"6. Between the dates of May 15, 1970 and May 27, 1970, Boonstra states that he advised Mediator Cornfield that no effort had been made by the Association to meet and to negotiate and he raised objections to scheduling a mediation session prior to there being any collective bargaining.

"7. May 27, 1970 letter to City and Association scheduling mediation meeting for June 3, 1970 at 10:00 a.m. (Exhibit 5).

"8. June 1, 1970 letter Boonstra to Cornfield setting forth City's contentions with respect to propriety of mediation without prior bargaining. (Exhibit 6). No copy ever forwarded to B.P.O.A. or their representatives.

"9. June 3, 1970 meeting as per testimony of Cornfield.

"10. At the close of the June 3, 1970 meeting the

representatives of the parties scheduled a meeting to be held in the conference room of the City Hall at 9:00 a.m. on June 12, 1970.

"11. June 10, 1970 lawsuit commenced by B.P.O.A. against Employment Relations Commission to compel continuation of mediation process (lawsuit on file).

"12. June 11, 1970, Cornfield telegram scheduling a meeting for June 16, 1970 (Exhibit 7).

"13. June 12, 1970, Association telegram stating since Cornfield would not attend we assume June 12 session cancelled (Exhibit 8). Disputed fact: Cornfield telegram did not indicate his presence or absence.

"14. June 12, 1970, the City's negotiating team were present at 9:00 a.m., June 12, 1970. Disputed fact: The Association sent a telegram on June 11, 1970 cancelling meeting. The City claims it received the telegram at 9:45 a.m., June 12, 1970. (Exhibit 8).

"15. June 15, 1970, Boonstra requested Mediation for new date because of stated schedule conflict. No copy to B.P.O.A. or reps.

"16. Oakland County Circuit Court issued Order (Exhibit 9).

"17. Cornfield rescheduled meeting for June 26, 1970, by letter dated June 17, 1970 (Exhibit 10). The City appeared. The Association did not.
"17A. The City was present at the scheduled June 26, 1970 meeting. (Exhibit 10). The Association was not notified by either Boonstra or Cornfield, nor were any phone calls made to Assoc. at time of alleged meeting.

"18. Cornfield scheduled June 29 for meeting - Boonstra unable to meet.

"19. June 29 - arbitration requested by B.P.O.A.

"20. June 30th, meeting but nothing transpired because Boonstra insisted it was mediation. Assoc.'s position was asserted on record.

"20B. Meeting by Mediator convened and Association representative walked out without mediating or bargaining.

"21. Fiscal year of City starts July 1, 1970.

"22. July 7, 1970, City filed formal objection to Employment Relations Commission raising objections to the attempt of Association to invoke Compulsory Arbitration (Exhibit 11).

"23. July 15, 1970, letter from Employment Relations Commission declining to name Impartial Arbitrator (Exhibit 12).

"24. July 22, 1970, Cornfield scheduled another mediation meeting for July 22, 1970 at 10:00 a.m. The City appeared as scheduled. The Association did not appear."

The gist of the City's position is its claim that the "Chronological sequence of Events" indicate that there was little or no collective bargaining before the Association asked for Mediation and that in effect there was no mediation until two mediation sessions held August 10 and 11, 1970, held respectively in Judge Thorburn's office. The City argues that pursuant to Section 3 of Act No.312, the Association has not properly applied for arbitration as the application was not "within thirty (30) days of the submission of the dispute to mediation and Fact Finding". The City then proceeds at page 8 of its brief and interprets Section 3 to mean "that there be no less than thirty (30) days mediation".

The point made by the City about the existence of a dispute is to suggest that in the first place mediation was improperly invoked because there was no prerequisite dispute. But this point is far from persuasive. On May 5, 1970, the City received demands from the Association concerning salary and other conditions of employment which demands were not met at that time. This certainly indicates that there was a dispute between the parties. Furthermore, the Michigan Supreme Court of Michigan has used the term "grievance and "dispute" interchangeably. See Garden City School District v. Labor Mediation Board, 358 Mich. 258 (1959) and Labor Mediation Board v. Jackson County Road Commissioners 365 Mich. 645 (1962).

The Michigan Supreme Court also held in Garden City School District v. Labor Mediation Board, supra. at page 263 that:

> "Section 7 of P.A. 1947 No. 336 requires no preliminary steps to invoking mediation other than the filing of the petition or request provided therein..."

The Panel realizes that the Supreme Court of Michigan has not had the exact situation as now before this Panel. The Panel suggests, that perhaps on review, the Court may decide that the Association improperly invoked mediation because of failure to engage in collective bargaining as the term has been defined by such authorities as the Michigan Employment Relations Commission, the National Labor Relations Board and the Federal Courts. But until the Supreme Court rules on the point, in view of the language used in Garden City, this Panel is constrained to hold that the mediation process was legally invoked.

The Panel does not agree with the City that mediation must be for thirty (30) days. The language of Section 3 uses the term "within 30 days." Under these circumstances, the Panel concludes most reluctantly that the Birmingham Police Officers Association perhaps barely met the legal minimum requirement for invoking arbitration pursuant to Act 312 and that the Panel therefore has jurisdiction to hear the dispute and issue an order covering the current 1970-71 fiscal year.

In doing so, however, the Panel recognizes that the Courts may disagree with it or that another arbitration panel may disagree. Certainly, there was little collective bargaining or mediation prior to July 1, 1970. The Panel notes that Dr. William Gould, sitting as Chairman In the Matter of the Arbitration between the City of Marysville, Michigan and the Marysville Police stated in that Panel's award at Page 13:

> "The Panel reminds the parties that the expected procedure for resolving differences concerning new contract terms is, collective bargaining, not arbitration. Arbitration should be utilized by the parties only when all other procedures have been exhausted and been found to be wanting."

The Compulsory Arbitration Act is a last resort. It contemplates collective bargaining and, if necessary, mediation. What the Birmingham Police Officers Association apparently has done is to ignore the purpose of the Act and not engage in extensive collective bargaining and mediation as is normally practiced by other public employees attempting to resolve their disputes.

Even the Birmingham Police Officers Association admit that Act 312 is an alternative to a strike (see page 3 of their first brief). It is well recognized that many labor disputes are settled without the resort to a strike. Just as strikes should not be substitutes for collective bargaining, likewise, Act 312 should not be used as a substitute for collective bargaining. In fact a number of police and fire fighter contracts have been settled in Michigan through collective bargaining without resort to Compulsory Arbitration pursuant to Act 312.

Collective bargaining for public employees was reaffirmed by Act 379 of Public Acts of 1965. It was meant to be used and not to be abused. Likewise, Act 312 is a safety valve only to be used after all efforts at collective bargianing and mediation have failed.

THE ISSUES

Having decided the issue of arbitrability, the panel now turns its attention to the issues in dipsute.

The limited current bargaining history has intially clouded the issues before the Panel. The City's brief set forth some issues which were not raised in the Association's brief. Likewise, to a certain extent, the Association's brief apparently did not cover all the issues in dispute for at the hearings the Association introduced its Exhibit No. 1 which expanded the issues from those set forth in its brief.

As the Panel now understands it, the issues in disputes are:

1. Wages
2. Roll Call
3. Insurance
4. Holidays
5. Uniform Allowance
6. Longevity
7. Training Time
8. Gun Allowance
9. Sick Leave
10. Life Insurance
11. Compensatory Time
12. Court Time
13. Disability
14. Cleaning Allowance
15. Grievance Procedure

As to any other issue the Panel will order that the present practice under the 1969-70 contract continue.

THE APPLICABLE FACTORS

In enacting Act 312 the legislature established in Section 9 certain factors as applicable upon which "the arbitration panel shall base its findings, opinions and order." Section 9 is 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."

Section 9(c) refers to "The financial ability of the unit of government to meet those costs". The City states that it has the ability to pay. All the City asks is that whatever the Panel orders it be competitive with comparable communities.

There are two basic Section 9 factors applicable here, namely, the comparison factor of 9(d) and the past and present bargaining history of Section 9(h). It is noted that 9(h) specifically refers to "factors taken into consideration in the determination of wages, hours and condition of employment through .... fact finding". It is well recognized that Fact Finders frequently, in preparing their reports and recommendations, consider the past and present bargaining history of the parties. See, e. g. Stern, Fact Finding Under Wisconsin Law, 3rd Ed(1966).

Both the Association and the City have recognized the comparison factors.

The City has based their comparison on two comparables, to-wit, Detroit Metropolitan area cities having populations from $25,000 to 50,000 persons and communities in the so-called "Woodward Avenue Corridor". The Association has chosen to limit its comparison only to one other community, namely, Southfield, Michigan.

One of the difficulties with comparables is that sometimes the employer and the employees disagree as to the comparables to be used. Here, there is some disagreement although the area of disagreement is limited. The City recognizes that there might be different conditions in suburban communities servicing the Woodward Avenue Corridor as compared to communities in Macomb County and west Wayne County. Thus, the City has made separate comparables in the Woodward Avenue Corridor. The Association apparently recognized the Woodward Avenue Corridor comparison because by its reliance on Southfield, which, although not abutting Woodward Avenue, is close enough so that it can be used in conjunction with the same comparables.

The value of the past and present bargaining history factor will be explained throughout this opinion. It certainly gives a guide as to what the parties through bargaining were able to agree to and whether they were willing to make promises. It gives the Panel a guide as to what the parties would have arrived at absent compulsory arbitration.

BASE SALARY

Probably the most important issue between the parties is the question of base salary.

Here again the limited bargaining history has caused some confusion between the parties as to the framing of the wage issue. In its brief, the City believes that the Association demands are as follows:

> "The Association requests a maximum rate of $11,750.00 for patrolmen with maximum pay to be based upon 18 months of service. The Association also requests, although never discussed, a shift differential of increasing amounts ranging form 10 cents per hours on the afternoon shift during the week, to 60 cents per hour on the midnight shift on Sunday. The Association also seeks sergeant's pay for patrolmen acting as surgeants pursuant to directives."

The City then says that its position is as follows:

> "The City has proposed a maximum salary for patrolmen of $11,238.00 based on 36 months of service and has denied the Association's request to institute a shift differential. (The $11,238.00 figure is developed by extending the current base of $10,500.00 by 7%)."

Yet, on Association's Exhibit No 1, the Association apparently takes the following position:

> "$13,463.00 after 30 months or $11,800.00 with Southfield economic fringes".

It is clear that the Association is speaking in terms of 30 months as compared to the existing 36 months that it takes to reach the maximum in Birmingham. It should also be noted that in July, 1970, the City did give a retroactive unilateral pay raise of 6% terming it an "impasse general increase". Now, the police officers at the top rate are receiving $11,129. Apparently, the City would increase this by an additional 1% to $11,238. The majority of the Panel believes that there is a certain amount of unrealism in both positions but Panel Member Burgess questions this statement as completely applicable to the City's position.

The Association is basing its comparables on Southfield only, yet Southfield receives $11,750, after 30 months. The Association is demanding $11,800. The Association in the alternative is demanding $13,463., a base salary figures that has not been received by any of the present comparables. In regard to the City's position, the settled Woodward Avenue Corridor contracts are as follows:

Ferndale	$11,650.
Huntington Woods (Jan.)	$11,550.
Madison Heights	$11,500.
Pontiac (Jan.)	$11,400.
Royal Oak	$11,420.
Southfield	$11,750.

The $11,238.00 offered by the City does not compare with any of the other Woodward Avenue Corridor settled contracts. It is true that it may compare with Allen Park, Garden City, Inkster and Southgate but these are not the comparables. The comparables are the Woodward Avenue Corridor because this is a specific market place where other suburban communities have reached agreements having similar police problems caused by Woodward Avenue and a similar proximity to metropolitan Detroit.

Southfield's $11,750 is higher in comparison with the comparables but there is a reason for this. The Southfield Police Officers' Association and the City of Southfield negotiated an arrangement whereby on a weekly basis the City receives two hours of overtime work by its officers who , in turn, get compensatory

time off. This compensatory time off arrangement apparently saves the City of Southfield about $260 per man a year. In order to look at comparisons one must look at the entire situation. Thus, absolute comparison with Southfield is not possible because there is not a similar saving to the City in Birmingham.

The reason why the Chairman is willing to make comparison to Southfield, concurred in by Panel Member Burgess, is that based upon the past bargaining history Southfield was paying $10,500.00 beginning January 1, 1970. During the same period, the City of Birmingham was paying $10,503. Apparently both figures were arrived at through free collective bargaining indicating that the respective employers felt their wages should be competitive.

The majority of the Panel is ordering that the wage increase would be $11,500 per annum at the end of 36 months effective July 1, 1970. Panel Member Burgess would have a two step increase so that the sum of $11,500 would not take complete effect until sometime after January 1, 1971, but he will concur in the order as set by the Chairman.

The $11,500 figure is comparable to the bargaining history of Southfield and Birmingham. It gives recognition to the $260 saving in Southfield which apparently resulted in the $11,750 figure there.

From a percentage standpoint it represents 9.49% increase over last year's wage. This increase is above the cost of living which is about 6% (Cost of living is a factor under 9(e). It represents the cost of living plus a factor in recognition that police officers' compensation should receive relative improvement

as compared to other types of employees because of the changing duties and responsibilities of their jobs.

On a comparison basis with the Woodward Avenue Corridor it compares favorably with Madison Heights, Pontiac, Royal Oak and Huntington Woods as well as Southfield for the reasons stated. The majority of the panel will order that the 36 month period for reaching maximum remain. The comparison shows that in the Woodward Avenue Corridor there are some cities with 30 months and there are a number with 36 months. There was no bargaining history to show that the parties were willing to change this 36 month period. Furthermore, in Southfield apparently the 30 months was also part of the 1969-70 contract. This would indicate that the Birmingham police officers in 1969-70 were willing to accept in free collective bargaining, $10,503.00 over 36 months whereas Southfield Police at the same time accepted $10,500 over 30 months. This indicates that if there had been extensive bargaining and the City had to insist on 36 months, this insistence would not have been a barrier to settlement.

Therefore, to repeat, the Panel will order a base rate at the end of 36 months of $11,500. MOre specifically the order will be as follows:

Position	Min.	6 Mos.	12 Mos.	18 Mos.	24 Mos.	30 Mos.	36 Mos.
Patrolman	9,579	10,059	10,540		11,019		11,500
Juvenile Officer	10,905	11,271		11,637		12,002	
Detective	11,362	11,706		12,116		12,505	

ROLL CALL PAY

The Association has demanded twelve minutes per day at overtime pay for reporting 12 minutes before each shift for roll call.

It has been the practice in Birmingham for some time for the Police to report prior to their shift for purposes of roll call.

The City's position is that they do provide all police officers a half hour paid lunch period so that they, in effect, are only asked to work seven and one-half hours per shift except in emergencies. The City points out also that of the 22 cities analyzed 19 make no provisions in their agreements to pay for roll call. The Association does point out that in Southfield there are provisions to pay for roll call.

Although the above reference is made to Southfield, it is noted that this apparently has been a provision in the Southfield contract at least in 1969-70 and apparently prior as indicated by the 1969-70 contract sent to the Panel by the attorney for the Association under letter dated September 30, 1970. Again, this is an indication that the Birmingham Police Officers Association were willing, in 1969-70, to negotiate a contract without the provision for roll call pay even though Southfield had this provision. In view of this past bargaining history plus the fact that the comparables overwhelmingly indicate that there are no provisions for roll call pay and there is a provision in Birmingham for the half hour lunch period the majority of Panel will order that the present practice of roll call be continued and that there be no roll call pay.

GUN ALLOWANCE

The Association has demanded $305 per year for training time claiming that there is such a provision in the Southfield contract. In the alternative the Association has asked for a gun allowance of $365 apparently to be paid for wearing a gun off duty.

Previous to arbitration the regulation of the Birmingham Police Department was that off duty officers were to wear guns while within the City limits of Birmingham. Birmingham Police Officers' Association President Baker testified that he lived in Berkley, Michigan and that while in Berkley he was not obligated to wear a gun. Up until July 1, 1970 there were no provisions in the Birmingham contract for gun allowance.

In view of these above regulations, the granting of a gun allowance would be outright discrimination because it would discriminate against a resident versus a non-resident police officer. During negotiations, either at the August 10 or August 11 meeting the City offered to rescind any requirements for wearing guns while off duty. If this was accomplished there will be no necessity for a gun allowance. During arbitration the City announced a regulation removing the requirement of wearing a gun. Though the elimination of the regulation is not persuasive, the fact that there is discrimination if there was a gun allowance and the fact that the City was willing to eliminate the requirement and made this plain during negotiations, would emphasize that there is no necessity for a gun allowance. For this reason, the majority of the Panel will deny the request for a gun allowance.

TRAINING PAY

Turning to the alternative demand for $305 training pay, the Association again relies on the fact that such $305 is paid in Southfield. The weakness in the Association's postion is that

Southfield was paying this during the 1969-70 contract as set forth in the document of September 18, 1969 from the City of Southfield presented by the Association which reads:

"2. Overtime, Roll Call Time; and Training Time, There is no change contemplated in present procedures"

This apparently means that at least for one year, 1969-70 and perhaps for a longer period, this $305 training pay was paid in Southfield. Yet, the Birmingham Police Officers' Association chose to enter into their 1969-70 contract without including it. Past negotiation history thus indicates that the Association was willing to settle a contract without provisions for training time pay.

Also there is no showing that any comparable communities pay training time. The Association had the opportunity to prove this and chose not to.

Furthermore, it is noted that if the City does require training time beyond the individual officer's shift, they are willing to pay overtime. This is fair and equitable.

Under these circumstances the majority of the Panel will order that there will be no provisions for paying either a gun allowance or training pay.

CLOTHING AND CLEANING ALLOWANCE

In regard to a clothing and cleaning allowance, the Association has demanded the same provisions as in the Southfield agreement, namely $350 for the first year and $250 thereafter for uniform and $100 for cleaning. The City has responded by saying

that it now pays $125 toward a uniform and that it keeps this money in a "uniform allowance bank". City's Exhibit No. 21 illustrates that most if not all of the officers in the Department have a plus balance in their police uniform account. The comparables in the Woodward Avenue Corridor indicate that the uniform allowance varied from $125.00 up to $250.00

There is no persuasive evidence shown that there is a need for a substantial increase in the uniform allowance because of the plus balances in the "uniform allowance bank". Until this is done this Panel is in no position to make a substantial increase. However, the majority of the Panel will order an increase from $125.00 to $150.00 uniform allowance. This is in the recognition that uniforms are increasing in cost. However, in so ordering the majority will order that the present method of making this allowance available in Birmingham will continue. It may be that if this amount is not satisfactory the parties can negotiate increases in the next contract, but with the status of the various police uniform fund accounts it is clear that a substantial increase is not now required.

Birmingham pays no cleaning allowance now. An examination of the Woodward Avenue Corridor comparables would indicate that a cleaning allowance is far from universal. Only 5 of the 13 cities surveyed in the Woodward Avenue Corridor have cleaning allowances. Two cities pay $50.00 whereas three pay $100.00

But the City does require its police officers to look neat. Since cleaning does cost money

there is no equitable reason why a cleaning allowance should not be provided for. Despite the survey, it is obvious that there is a trend to pay a cleaning allowance. Therefore the Panel will order that there be a $100.00 cleaning allowance payable in $50 installments on November 1, 1970 and February 1, 1971 respectively.

HOLIDAYS

The Association has demanded ten and one-half paid holidays. Presently the City provides eight and one-half paid holidays, with eight being added to vacation time and a half holiday actually being paid at the officer's daily rate.

The Association again bases ten and a half days demand on the Southfield contract. It is noted, however, that Southfield was paying nine days holiday pay when Birmingham was providing eight and a half during the 1969-70 fiscal year. This indicates that Southfield apparently traditionally has been a half day ahead of Birmingham.

Exhibit No. 12 of the Woodward Avenue Corridor would indicate that the holiday pay varies from seven and a half up to ten and a half days, with the settled districts coming in between nine and ten and a half days.

Because it is clear that there is a trend to increase paid holidays a majority of the Panel will order ten paid holidays, nine of which will be added to the vacation days as is the custom in Birmingham, and one to actually be paid at the officer's daily rate.

VACATIONS

The Association demands twenty days vacation pay. The City pays vacation pay as follows:

1 to 9 years	ten working days
10 to 19 years	fifteen working days
20 or more years	twenty working days

The City maintains that this is within the province of the comparables including the Woodward Avenue Corridor.

The Association's demand is predicated on twenty days in Southfield after one year.

The Woodward Avenue Corridor would indicate that the amount of days provided is satisfactory but that it would be more consistent with the Woodward Avenue Corridor that the twenty days be made available at the end of ten years. Therefore, the Panel will order that the vacation pay provision be as follows:

1 to 4 years	ten working days
5 to 9 years	fifteen working days
10 or more years	twenty working days.

LONGEVITY PAY

Presently the City provides for longevity pay as follows:

(a) Longevity payments in accordance with the following schedule, payable in December according to established practice:

Less than 5 years service	None
5 through 9 years	$ 200.00
10 through 14 years	400.00
15 through 19 years	600.00
20 through 24 years	800.00
25 years and over	1,000.00

(b) Employees leaving service because of retirement may add their accumulated vacation to their last day of work, provided they have not used their vacation prior to that time, in order to qualify for a longevity payment date of December.

The Association has demanded:

1%	2%	4%	6%	8%	10%
3Yr	5Yr	10Yr	15Yr	20Yr	25Yr

The Association relies on the Southfield 1970-71 police contract which the Association represents as follows:

1%	2%	4%	6%	8%
3Yr	5Yr	10Yr	15Yr	20Yr

Obviously the Association is asking more than the Southfield police contract. In some respects the Birmingham Police contract in 1969-70 as to longevity pay was more generous than the Southfield Police contract because it went up to 25 years. This pattern of the majority of the Panel will not change. In observing the comparables there is a trend as to longevity pay that rather than following the flat rate of Birmingham most, if not all of the cities, follow a percentage increase. This percentage increase is normally 2% after five years, 4% after ten years, 6% after fifteen years and 8% after twenty years and after. Few, if any, cities go up to 25 years.

In view of the pattern in the comparables, and noting that few if any go down below five years, the majority of Panel will order that the same 5, 10,.15, 20 and 25 year longevity payment steps be maintained but that they will be on a percentage basis, namely 2% after five years, 4% ten through fourteen years, 6% fifteen through 19 years, 8% twenty through twenty-four years and 10% twenty five years and over.

COMPENSATORY TIME

The Association requests compensatory time off for overtime, namely, "overtime may be logged as compensatory time at one and a half time." Again the Association points out that this is the policy in Southfield. But this was the policy in Southfield in 1969-70 when it was not the policy in Birmingham during the same period when both associations did negotiate contracts.

The basic reason why there may be compensatory time in Southfield but none in Birmingham is because the Southfield Police Department is at least double the size of the Birmingham Police Department. Compensatory time may not be possible in Birmingham because of the size of the department. It may necessitate hiring more men which may not now be contemplated.

Furthermore, the comparables would indicate that compensatory time off is not universal. The basic reasons why the majority of the Panel will not order compensatory time off is because there is still provision for paying overtime of time and a half and because of the size of the police department in Birmingham which would not allow efficient administration of a compensatory time off program. Therefore, the majority of Panel

will order that the present system of overtime pay be maintained in 1970-71 contract and that there be no provisions for compensatory time off.

LIFE INSURANCE

The Association has asked for the following life insurance package:

6 Mo. or less	6-12 Mo.	12-30 Mo.	30 or over
5,000	8,000	10,000	20,000

As may be suspected the demand of the Association corresponds with their representation as to the contents as to insurance in the 1970-71 police contract. The City's position is set forth at page 27 of this brief wherein the City says as follows:

> "City Position: The City presently provides comprehensive life insurance coverage for its personnel. The life insurance package includes a $3,000.00 paid-up life insurance policy towards which the individual contributes $1.50 per pay period. In addition, there is an $8,000.00 term insurance rider covering accidental death and dismemberment on or off the job which is non-contributory and paid for entirely by the City. The combination of these two facets of coverage amounts to $11,000.00 worth of protection or $22,000.00 in double indemnity benefits."

In examining the Woodward Avenue Corridor only Southfield pays $20,000 life insurance benefits and Bloomfield Hills - $27,000. The remaining cities pay from $15,000 to as low as $5,000.

To the majority of the Panel it would seem that the term insurance should be increased to $12,000 so that the 1970-71 contract would be a $3,000 paid up life insurance policy toward which the individual contributes $1.50 per pay period and that there be a $12,000 term rider covering accidental death or dismemberment on or off the job which is non-contributory and paid for entirely by the City making a total of life insurance package of $15,000 with double indemnity benefits of $30,000. The majority of the Panel will so order.

SICK LEAVE

In regard to sick leave the Association has demanded the same provisions as are in the 1970-71 Southfield Police contract which according to the Association Exhibit 1 is:

> 12 day per year unlimited accumulation 75% paid on retirement 50% on resignation. A reserve of 7 days per year not subject to payout.

At page 28 of its brief the City describes its present sick leave as follows and suggests that it is adequate:

> "Presently, the City accumulates for the officers one day per month up to sixty days in total of sick leave. After a sixty bank is attached, the officer accumulates additional time at the time of four days per year. At any time the accumulated bank should fall below sixty days the officer then accumulates at the rate of one day per month."

In reviewing the Southfield plan as well as the those of the Woodward Avenue Corridors cities, the sick leave program of the City of Birmingham Police Department is competitive. For this reason the majority of Panel will order that the present 1969-70 sick plan remain during the 1970-71 contract year.

DUTY CONNECTED DISABILITY

In regard to duty connected disability the Association is making a demand which it claims is identical to the 1970-71 Southfield police contract and which the Association has described in its Exhibit 1 as follows:

"An officer shall be paid his full salary (city making up difference with workmen's compensation) with no deductions from sick leave, until the officer is returned to work or is given a duty disability retirement.

The City plan apparently provides that an officer receiving Workmen's Compensation benefits also receives supplemental allowances from his accumulated sick leave and that furthermore, "after the sixty-first day of absence, whether or not the injury was duty related, the officer receive benefits from the disability insurance program provided by the City." The Association also claims that the City pays the difference between Workmen's Compensation and salary for the first seven days that the police officer is off work.

The police representative on this Panel in his dissent believes strongly that the Southfield program should be adopted because of the fact that policemen are engaged in hazardous duties. There is much to be said for this. However, with a lack of bargaining history and the lack of comparisons with other communities not being made by either side, it is difficult to evaluate the argument. This argument may be best left to bargaining for the 1971-1972 contract.

In the meantime the present program seems to work and apparently it is the same program that has been followed in Birmingham for some time event though in fact Southfield in the 1969-70 contract followed the program urged now by the Association. Apparently the police were willing to accept the present program even though Southfield had a better program last year. Although there is much to be said for the position advanced by our colleague in his dissent the majority of the Panel will order that the present policy be continued, at least during the 1970-71 contractual year.

GRIEVANCE PROCEDURE

In regard to arbitration the City resists binding arbitration grievances whereby the Association has urged it. Specifically, the Association has urged in Exhibit 1 that the following program be adopted:

> "An officer may as an alternative step to going to council, go to arbitration with his grievance before the A.A.A. cost to be borne equally by the parties.

The City takes the position that very few of the Woodward Avenue communities provide for binding arbitration. It is correct in this in that only three out of thirteen provide for binding arbitration.

In fact, Southfield, the comparison relied on by the Association, does not have arbitration. The Panel Chairman is of the view that binding arbitration in public employment for grievances is desirable, and on a number of occasions he has so recommended it in fact finding opinions. However, there is no clear bargaining history here which would indicate what the parties would have arrived at and the fact is that the comparables that have been consistently used here do not indicate a sufficient trend to binding arbitration. Again, this may be a benefit which could best be achieved in next year's collective bargaining. For this reason the majority of the Panel will not order the inclusion of a binding arbitration clause, but instead will order the grievance procedure offered by the City in its Exhibit 8 to be included in the 1970-71 contract.

The order of the Court in Oakland County Circuit Court Case No. 70-65594 contemplates in paragraph 6 that the parties will bargain for contract for the fiscal year 1971-72. It may be that many of the items not awarded by this Panel at the present time can best be covered through negotiations for subsequent contracts. The Panel again urge that the parties try collective bargaining. It may produce a more satisfactory result than attempting to bypass it.

As indicated earlier in this opinion, though there were other items covered by the City's brief, it is the position of the Panel that except as discussed herein, all other items will be ordered to be as they were practiced during the 1969-70 contract.

MAJORITY ORDER

The Chairman and Panel Member David E. Burgess hereby enter the following majority order:

1. that the 1970-71 contract provide a cleaning allowance of $100.00 payable in installments of $50.00 to the officers on November 1, 1970 and $50.00 on February 1, 1971.

2. that all items not covered by the majority's opinion of the Panel are to be continued in the 1970-71 contract as they were practiced during the 1969-70 contractual year.

3. that the conclusions set forth in the majority's opinion as to any changes in wages, benefits and grievance procedure over the 1969-70 contract are to be placed in the 1970-71 contract effective July 1, 1970 except the insurance increases which shall be effective November 10, 1970.

4. that there be no changes in the 1970-71 contract from the practice under the 1969-70 contractual years as to those items which the majority of the Panel has so concluded in its opinion effective July 1, 1970.

5. that the parties enter into a collective bargaining agreement incorporating the contents of this Order which agreement shall run from July 1, 1970 through June 30, 1971 (corrected from 1970).

6. that all motions pending before the Panel are denied.

George T. Roumell, Jr.
Chairman

Dated: October 20, 1970

David E. Burgess, Panel Member

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Statutory Arbitration

In the matter of:

BIRMINGHAM POLICE OFFICERS ASSOCIATION

and

CITY OF BIRMINGHAM, MICHIGAN

DISSENTING OPINION OF PANEL MEMBER
NORMAN L. LIPPITT

APPEARANCES

For the Association:

Noel A. Gage, Esq.
G. R. Rentrop, Esq.

For the City:

Earl R. Boonstra, Esq.

In an extremely voluminous opinion, the majority of this panel has apparently determined that the Birmingham Police Officers' Association has met the legal requirements for invoking arbitration, pursuant to Act 312. Therefore, it is concluded, that this panel has jurisdiction to render a total award retroactive to July 1, 1970. While I readily agree with the foregoing proposition, I wish to categorically voice my dissent to the balance of the decision almost in its entirety.

My fellow panel members suggest that failure to engage in collective bargaining in this dispute was entirely the fault of the Birmingham Police Officers' Association. As a matter of fact, they go so far as to state that BPOA ignored the purpose of the Act in not engaging in collective bargaining and mediation as is normally practiced by other public employees attempting to resolve their disputes. In my opinion, this conclusion is wholly unsupported by the record before this panel. Joint Exhibit No. 3 termed "Chronological Sequence of Events", an Exhibit in Oakland County Circuit Court Case No. 70-65594, before the Honorable James S. Thorburn, demonstrates that the City cannot be held blameless. For example, the initial request to meet on May 8th, mailed to the City on May 4th and received on May 5th was ignored until the day of the requested meeting and then answered only by means of a rather impersonal telegram received by the Association after its representatives were observed at City Hall. Furthermore, throughout the "Chronological Sequence of Events" it is patently obvious that the City representative, Mr. Boonstra was relying on technical objections rather than sitting down to bargain. Even if it could be concluded that the Association was premature in demanding mediation, it is difficult to understand why the City's representative objected so strenuously to mediation. Does not Act 312 require liberal construction and isn't it the public policy of this state as evidenced by Section 1 of the Act to provide alternative, expeditious, effective and binding procedures for the resolution

of disputes involving policemen? One wonders whether the City had an ulterior motive in delaying, especially in view of the requirement of Section 3 of the Act requiring mediation prior to invocation of compulsory arbitration, and Section 10 which would have clearly prohibited a retroactive award unless arbitration was invoked prior to July 1, 1970. In addition, I am greatly suspicious of the neutrality of the Michigan Employment Relations Commission in this matter. Act 336, PA 1947, Section 7 (MSA 17.455 (7)) states in part:

> "Upon the request of the collective bargaining representative....it shall be the duty of the Labor Mediation Board to forthwith mediate..."

The "Chronological Sequence of Events" suggests that Mediator Cornfield, although requested several times, failed to schedule a mediation session until June 3, 1970. Mediator Cornfield's tardy scheduling, in my view, failed to comply with the statute requiring mediation "FORTHWITH".

I agree with Mr. Roumell and Mr. Burgess that collective bargaining is meant to be used. However, in my view, their attempt to blame the entire matter on the Association is merely an excuse to render the wholly inadequate award that follows in their opinion.

Now, to the award. I disagree that limited bargaining history initially clouded the issues before the panel or that Association's Exhibit 1 expanded the issues from those set forth

in the Association's brief. I invite my fellow panel members to examine the Association's brief #1, page 4. The issues there are not only simply stated but almost identical to Exhibit 1. If there is any variance it's not significant enough to even mention.

The majority of this panel have correctly recited Section 9 of the Act which sets out the criteria upon which the panel is required to base its findings, opinion and order. However, for some unforseen reason, they choose to emphasize, if not entirely rely upon only one subsection and part of another subsection ((d) comparison (h) [in part] past and present bargaining history). This in spite of the wealth of information which was available to them, some of which I will set out in this dissent.

Before that however, I wish to recite Section 13 of the Act, which states as follows:

> "During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act."

During these proceedings the City of Birmingham, upon recommendation of their bargaining representative and attorney, promulgated and adopted legislation removing the requirement of wearing a

gun while an officer was off duty. The Police Officers have requested a gun allowance and it is a major issue before this panel. By adopting this legislation the City has violated Section 13 of the Act. In my view, they have done this in order to undermine the Association's demands as a whole and improperly influence the panel. While I agree that it may not be necessary or even desirable for Association members to wear guns while off duty, this in no way negates the City's bad faith maneuver. I am shocked that my fellow panel members fell for it hook, line and sinker.

With respect to base salary, I agree it is the most important issue between the parties. However, I do not agree with the majority statement that "limited bargaining history has caused confusion". Simply stated, the Association asks for $11,750.00 after 30 months. The panel has awarded $11,500.00 after 36 months. While considering comparables, the majority fails to even reach the average of its own examples. Furthermore, there is absolutely no basis for the statement that Southfield can afford to pay more because it saves $260.00 per year by virtue of overtime worked by the officers. Southfield may save $260.00 but this panel has no evidence before it to suggest that it is the reason Southfield is willing to pay more than Birmingham. I wish to emphasize that the City has stipulated on the record before this panel that ability to pay is not an issue. If that is the case, how can the majority of this panel

suggest that Southfield savings supports their decision to award a lesser sum in Birmingham?

In July of 1970, the City gave a retroactive unilateral pay raise of 6% terming it an "impasse general increase". The majority states:

> "Apparently, the City would increase this by an additional 1% to $11,238.00."

In my view, the City's increase was simply an attempt to undermine the Association's chosen representative. Hostility toward him is replete throughout the record. Furthermore, the majority's statement relating to what the City has offered to do fails to consider the testimony of Patrolman Donald Graham who stated he overheard the City representative offer $11,500.00. I find nothing in the record before this panel to suggest that Officer Graham can not be believed. Conversly, I feel his testimony cannot be ignored, particularly in view of the majority's pre-occupation with "bargaining history".

Also, with respect to the wage issue, I do not believe my brother panel members have complied with the requirements of Section 9 of the Act. One example is subsection (c):

> "the interests and welfare of the public and the financial ability of government to meet those costs".

This panel would have to be blind not to be aware of the fact

that almost every responsible authority in this country agrees that policemen are underpaid and undertrained. Even in Detroit where there is an acute cash shortage, the arbitration panel's award far exceeds the majority view here. Furthermore, the majority, while interested in comparisons (Sec. 9 (d)) have failed to consider the adjoining community of Troy. Far younger than Birmingham in terms of development, policemen there just received a salary increase from $10,500.00 to $11,750.00, education incentive bonus of 5% of salary and a uniform allowance of $220.00. This information was made available to the Chairman before he wrote his decision.

This panel also has a right, and a duty to consider private industry. Association's Brief #2, page 10, points out that skilled trades such as electricians, plumbers, iron workers, etc. all receive substantially more than policemen. These figures have not been controverted. However, the majority has failed to even consider them as required by the statute.

Under subsection (h) this panel had a right to consider other factors. I believe that so called public safety departments such as Oak Park should have been considered. There, policemen-firemen receive sums in excess of $13,000.00 per year. The majority refuse to consider such departments, I assume, because it has been suggested that a combined police and fire department saves the City money. My view is that the City will not be able

to maintain good policemen if they can go elsewhere for better pay. If the City wants to save money they should change the system rather than settle for policemen of lower caliber.

I would award $12,500.00 per year after 30 months as base salary.

With respect to Roll Call, the City demands time of the Officers and refuses to pay for it. The majority reasons that the City shouldn't have to pay for overtime because they allow Officers 1/2 hour lunch breaks and because the comparables overwhelmingly indicate there are no provisions for Roll Call pay. I should like to point out that the only evidence of comparables on this subject appear in the City's brief, Exhibits 9 and 10. However, the exhibits fail to indicate whether Roll Calls in other cities fall before the beginning of the day's shift as it clearly does in Birmingham. In my view, such a policy is tantamount to involuntary servitude. The evidence points out that Birmingham Police Officers are subject to call even during their lunch break. I would award 12 minutes per day as overtime as requested by the Association.

I have no quarrel with the majority decision with respect to paid holidays, vacations, longevity, cleaning allowance and life insurance, providing base salary and other benefits would have been raised substantially.

The difficulty with the majority opinion regarding training

time is that it fails to consider the interests and welfare of the public and the financial ability of government to meet a necessary cost of government. Here, more than in any other category, the panel had an opportunity to recognize and implement the great modern day need for incentive education and training among policemen. Everywhere, we are told that policemen require more training. Recent Supreme Court decisions require concentrated study just in order to know how to properly arrest and interrogate a suspect. I simply can't understand how my brother panel members could ignore this area. The fact that there is no bargaining history between the parties is no excuse. I would order one hour a week mandatory training time to be paid at time and one half.

With regard to clothing and uniform allowance, the Association has requested $350.00 the first year and $250.00 thereafter. The City suggests that $125.00 is adequate in view of the fact that almost all the Association members have a surplus in their uniform bank. The majority, recognizing increased costs, have raised this allowance to $150.00. I feel their award is inadequate. The City's own comparables, Exhibit 20, City's brief, shows that almost every city in the Woodward Corridor is more liberal. Furthermore, I feel that requiring the Officers to draw from a bank is too cumbersome. I would allow the Officers to administer to their own needs and award them $250.00 a year for that purpose.

The Association requests compensatory time off for overtime as an alternative to pay. The Association cites the policy in Southfield as a comparable. The majority deny this request on the basis that the Southfield Police Department is double the size of Birmingham Police Department. I am not persuaded by this logic. I invite the panel to carefully examine City Exhibit 7, where it is indicated that the population of Southfield is more than double that of Birmingham. I would grant the Association's request here.

In regard to sick leave, the majority states the Birmingham plan is competitive with Southfield and the Woodward Corridor cities. This statement is grossly inaccurate. Southfield, Ferndale, Hazel Park, Madison Heights, Berkley and Pontiac all have some payout plan upon retirement. (See Exhibits 26 & 27, City's brief) Birmingham has none. I would award 50% payout upon retirement or resignation as a supplement to the present plan.

With respect to Disability Duty Connected Pension, the majority has refused to alter the existing plan. Again, however, lack of bargaining history is no excuse for refusal to give a police officer full protection if he is injured on the job. It is unfair and discriminatory to require a policeman to draw from his sick bank if he is shot or otherwise injured while pursuing lawbreakers. I wish to make note of the fact that statistics available to this panel demonstrate that one out of nine policemen

are injured on the job. From January through February of this year sixteen policemen across the nation have been violently executed. The Michigan Police casualty figure shows twelve hundred injuries since January, 1969, to state, local police and sheriff's officers. I don't believe any comparable statistics can be drawn from private industry. I would order the City to pay the difference between workmen's compensation and salary with no deductions from sick leave until the officer is returned to work or is given a duty disability retirement. If group insurance does not provide at least two-thirds of the Officer's pay for life upon retirement, I would require the City to make up the difference.

I agree with the statement of the Chairman that binding arbitration in public employment for grievances is desirable. The fact that he has denied the Association's request for binding arbitration because there is no bargaining history is not persuasive. The purpose of arbitration is to avoid strikes and slowdowns among public employees. Clearly this is public policy. However, if we fail to offer public employees a right to a hearing before a fair tribunal, we invite these dangers. I am surprised the majority is willing to delay in this very important area. I would therefore order that an officer may as an alternative step to going to council with his grievance, present it before the American Arbitration Association, costs to be borne equally by the parties and the decision to be binding upon them.

In conclusion, I believe the majority opinion drafted by panel member Roumell and concurred in by panel member Burgess is unsupported by competent, material and substantial evidence on the whole record. I therefore dissent. However, as did the majority, I adopt all benefits and changes in the 1969-1970 contract not specifically supplemented by my decision.

NORMAN L. LIPPITT