

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Case No. D04 D-0919

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Opinion and Award in the matter of the Act 312 Arbitration between

Detroit Police Officers Association

-and-

City of Detroit

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DATE OF ACT 312 PETITION:	June 30, 2004
DATE OF PANEL CHAIRPERSON APPOINTMENT:	September 8, 2004
DATE HEARINGS CLOSED:	July 27, 2006
DATE LAST, BEST OFFERS EXCHANGED:	August 2, 2006
DATE POST-HEARING BRIEFS FILED:	September 15, 2006
DATE RECORD CLOSED:	September 15, 2006
DATE EXECUTIVE SESSIONS ENDED:	November 16, 2006

ARBITRATION PANEL:

Richard N. Block, Panel Chair  
Brian Ahearn, Sullivan, Ward, Asher & Patton, City Delegate  
Ted Iorio, Kalniz, Iorio & Feldstein, Union Delegate

APPEARANCES:

For the Detroit Police Officers Association

Donato Iorio, Kalniz, Iorio & Feldstein

For the City of Detroit

Kenneth S. Wilson, Fraser, Trebilcock, Davis & Dunlap  
Brandon Zuk, Fraser, Trebilcock, Davis & Dunlap

## STIPULATION ON DURATION

The agreement shall be effective at 12:01 AM on July 1, 2004 and expire at 11:59 PM on June 30, 2009.

## OVERVIEW OF STATUTORY FACTORS

With respect to the factors that must be considered by the panel, Act 312 states, in relevant part:<sup>1</sup>

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.

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<sup>1</sup>See MCL 423.239, Public Act 312 at [http://www.legislature.mi.gov/\(S\(u01h4dqvihaxj3fpyeq1312n\)\)/mileg.aspx?page=MCLBasicSearch,keyword=arbitration](http://www.legislature.mi.gov/(S(u01h4dqvihaxj3fpyeq1312n))/mileg.aspx?page=MCLBasicSearch,keyword=arbitration).

The record establishes that, for the purposes of these proceedings, the panel considered all the factors, but the most relevant statutory factors are c,<sup>2</sup> d,<sup>3</sup> e, f, and h (hereinafter referred to as “other factors”). The record establishes that statutory factors other than c, d, e, f and h are not as applicable as the other factors in this case.

The record establishes that for the purposes of this case, the two most important statutory factors are “ability to pay” and comparability. These two factors will be discussed separately. Following this discussion, this opinion and award will address each unresolved issue.

### **STATUTORY FACTOR: ABILITY TO PAY**

#### Budget Projections

In order to address the ability-to-pay factor, it is first necessary to determine from the record the most reliable indicators of the City’s financial situation. Because this award will determine terms and conditions of employment for the DPOA through June 30, 2009, it would be helpful to have reliable budget projections to consider. The record establishes, however, that budget projections for the City are unreliable. Taking fiscal 2009 as an example, the record contains projections ranging from a deficit of \$287M (Un. Ex. 209) to a surplus of \$4 million (Un. Ex. 555G, p. 18). The range of projections for fiscal 2008, the fourth year of the agreement, is from a deficit of \$261.8 million (Un. Ex. 209) to a surplus of \$19 million (Un. Ex. 555G, p. 18).<sup>4</sup> Thus, this award will give no weight to the budget projections. Rather, this award will rely on data from previous years as well as other evidence on the record affecting the City’s financial condition

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<sup>2</sup>Hereinafter, factor c is referred to as “public interest” or “ability to pay.”

<sup>3</sup>Hereinafter, factor d is referred to as “comparability.”

<sup>4</sup> See also City Ex. 148, p. C39-1 and Un. Exs. 499 and 512.

## Previous Financial Performance and Related Issues

A useful place to start is the City of Detroit Comprehensive Annual Financial Report (CAFR). The CAFR for the fiscal year ended June 30, 2005, which was transmitted on May 13, 2006, presents the statement of revenues and expenditures for the City's general fund, from which the police department is budgeted. In 2005, total general fund operating revenues for the City were \$1.36 billion and total general fund operating expenses for the City were \$1.49 billion, resulting in a fiscal 2005 general fund deficiency of \$135 million (Un. Ex. 555A, p. 35). This deficiency is approximately 10% of the City's budget. Although the actual deficit was only \$33 million, this \$102 million difference was due substantially to proceeds from bond sales, indicating that the City must borrow to meet its current financial obligations (Un. Ex. 555A, pp.7, 35). Former City Budget Director Ed Rago testified that the actual audited general fund deficit for fiscal 2005 was \$144.9 million (City Ex. 493; Tr. 44, pp. 15-16). While these numbers were not reconciled in the record, both numbers indicate financial distress for the City.

A document prepared by Mr. Rago also stated that the City's fiscal 2004 deficit was \$95 million (City Ex. 493). Mr. Rago's numbers for fiscal 2004 are uncontroverted in the record and are consistent with data offered by the City through then-Finance Director Sean Werdlow (City Ex. 148, p. B28). Based on the foregoing, it must be concluded that the record establishes that the City ran substantial deficits in fiscal 2004 and 2005, the last full fiscal years for which the record contains data.

The record establishes that these deficits are likely to continue into the future. The record is uncontroverted that the City derives roughly two-thirds of its revenue from five sources: income tax; property tax; revenue sharing; wagering tax; and utility tax (City Ex.

148, pp. B31, D41-15; Un. Ex. 441, p. 49; Tr. 14, p. 14; Tr. 17, pp. 182-83). Each of these sources will be addressed.

Income Tax. The record establishes that income tax revenues will likely decrease in the future. Even if it is assumed that personal income remains stable or grows slightly, the record establishes that due to Public Act 500 (state legislation enacted in 1998), resident income tax rates have been scheduled to decline since July 1, 1999 by .1% annually, and non-resident rates by .05% annually (City Ex. 148, pp. A24-1, C40). This decline will continue until 2010-11, at which time the resident rate declines to 2% and the non-resident rate to 1%, thus reducing the revenue the City will realize (City Ex. 148, pp. A24-1, C40; Tr. 21, pp. 174). In addition, since 1997-98, the City code has required that corporate tax rates decline by .2% per year, until they drop to 0% by 2010-11.

From 1999-2000 through 2002-03, income tax receipts declined from their post-1983-84 high of \$378.3 million to \$310.9 million in 2002-03 (City Ex. 148, B38). The City estimated that 2003-04 income tax revenues were \$290.6 million. It must be noted that this decline has coincided with the legislated rate declines discussed above. Thus, the record establishes that it is most likely that due to this State legislation and the City code, the City will continue to experience declines in income tax revenues for the life of this agreement.

Property Tax. While the record establishes that the City experienced a 14.4% growth in real property tax revenues during the period 1995-96 to 2004-05 (City Ex. 148, p. B28), and expects some growth in property tax revenues (Tr. 20, pp. 132-35), the record also establishes that any property tax revenues are unlikely to compensate for the decline in income tax revenues and revenue sharing (see below). First, the record

establishes that property tax revenues account for but a small percentage of the City general fund expenditures; in 2003-04, property tax revenues accounted for 12% of the City's general fund expenditures, while the comparable percentage in the southeast Michigan municipality with the next lowest percentage, Westland, was 43% (City Ex. 148, p. 19A). Moreover, this percentage for Detroit has been stable since 1997-98 (City Ex. 148, p. A18), suggesting it is unlikely to change substantially over the life of this agreement/award.

Second, the record also establishes that Detroit has fared worse in terms of increases in property tax valuations than its counterpart cities in southeast Michigan. Between 1970 and 2004, taxable value of property in the City increased by 59.2%, while in the remainder of Wayne County, taxable value increased during this period by 504.1% (City Ex. 148, p. A13).

Third, the record establishes a decline in actual property tax in the future. The City's unaudited estimate of property tax revenues for 2003-04 was \$184.8 million (City Ex. 148, p. B38). The CAFR for 2004-05 states that in that year the City's property tax revenues were \$179 million, suggesting that a ten-year trend of increasing property tax revenues may not continue.

Revenue Sharing. The record establishes that revenue sharing has also continued to decline. According to City data, revenue sharing for the City increased steadily from \$291.2 million in 1994-95 to \$332 million in 1998-99; remained stable at \$332 million through 2001-02; and declined to \$319.1 million in 2002-03 and to an estimated \$286.5 million in 2003-04. State of Michigan data differ from City data by approximately .575%, but both data sets indicate a similar trend. According to the State data, revenue sharing to

the City increased from 292.6 million in 1994-95 to 333.9 million in 1998-99; remained stable at \$333.9 million through 2001-02; and declined to \$319.7 million in 2002-03 and to \$287.4 million in 2003-04. Although the record establishes that the income tax reduction legislation was part of an agreement with the State to hold revenue sharing steady for Detroit, the State has not held Detroit revenue sharing steady. There is nothing on the record that suggests that conditions have changed in Michigan such that this downward trend in revenue sharing for Detroit will be reversed (City Ex. 148, p. B38; Un. Ex. 205; Tr. 20, pp. 94-100, 169-70).

Wagering Tax. On the other hand, the record establishes that wagering tax revenues can be expected to increase, although the amount of the increase is unknown. The City experienced substantial increases in wagering tax revenues between 1998-99 and 2000-01 during the first years the temporary casinos were open; for example, growth in wagering tax revenues from 1999-2000 to 2000-01 was 60.7% to 77.4%. Since that time, however, growth has been volatile. From 2001-02 to 2002-03, casino revenue growth was 1.6% to 2.4%; for the period 2002-03 to 2003-04, growth was 3.7% to 4.3%. But based on a 2005 CAFR estimate of \$138 million in 2004-05, growth for that year from 2003-04 was 10.4% to 18.8%. Given this volatility and in the absence of additional years of data, revenue from the wagering tax cannot be considered to be a reliable and predictable source of revenue growth for the City (City Ex. 148, pp. B38, D43-15; Un. Ex. 555A, p. 35).

Utility Tax. The fifth major source of revenue is the utility tax. Between 1995-96 and 2004-2005, utility tax revenues averaged approximately \$52.9 million per year. Over this period the mean annual increase in utility tax revenues was a modest .8%, but this

average masks a substantial amount of variation in annual utility tax revenue changes. Annual average changes during this period ranged from a high of 8.7 to a low of -8.9%. Thus, the record establishes that increases in utility tax revenues cannot be expected to be a source of revenue increases for the City.

#### Other Evidence

The Union offered evidence on the City's ability-to-pay through the testimony of and a report prepared by Michigan State University Professor James Oehmke. Although credible, Professor Oehmke's testimony primarily addressed broad economic trends in the nation, state, and region, rather than the financial situation of the City of Detroit (Un. Ex. 441, pp. 1-32, 52-56; Tr. 40, pp. 16-97). To that extent, it does not address the City budget and it must be given less weight than the testimony of Mr. Werdlow and Mr. Rago. Professor Oehmke's analysis of the factors affecting the Detroit income tax base refers to the Detroit PMSA (Primary Metropolitan Statistical Area) rather than to the City of Detroit (Un. Ex. 441, p. 52-56). Wage and salary disbursement data are for Wayne County rather than for the City of Detroit. (Un. Ex. 441, pp. 52-53). Thus, these data still do not link directly to Detroit income tax revenue. Moreover, even assuming that growth in income in the Detroit PMSA will have some impact on the income of Detroit residents and Detroit commuters (non-resident taxpayers), as noted, legislated income tax reductions means that the income tax revenues that Detroit realizes from such income increases are limited.

The other major Detroit revenue source addressed by Professor Oehmke is the property tax. Evidence offered by the City and by the Union through Professor Oehmke is generally consistent with respect to the change in State Equalized Value (SEV) in the



City. But the City's tax base is taxable value rather than SEV and uncontroverted City data demonstrate that from the mid-1990's through 2004-05 taxable value in the City increased by less than half of SEV (City Ex. 148, p. A16-A17; Un. Ex. 441, p. 51). It must be concluded that Professor Oehmke's analysis does not contradict the conclusion drawn from the City's analysis, that any growth in revenues from the property tax is not likely to offset declines in revenue from the income tax and revenue sharing

The record also establishes through demographic evidence that the population of Detroit has declined over the last 45 years. According to the decennial census of the United States, the population of Detroit declined from approximately 1.67 million in 1960 to 951,000 in 2000 (Un. Ex. 5, p. 28; City Ex. 7). The Census Bureau estimates that the population of the City was 911,000 in 2003 (City Ex. 7; City Ex. 148, p. A2-5). The Southeast Michigan Council of Governments (SEMCOG) estimates that the population of Detroit will continue to decline through 2010 (Tr. 14, pp. City Ex. 148, p. A2-2). Based on this trend, there is nothing on the record that suggests that the population of the City of Detroit will increase between 2007 and June 30, 2009, the end date of the collective bargaining agreement.

With respect to economic establishments, the record establishes that the number of such establishments consistently declined from 1972-1997, the last year on the record (City Ex. 148, p. A3). There is nothing on the record that indicates that this trend has reversed since 1997. Even if it is presumed that Professor Oehmke's testimony is accurate regarding the economic future of Michigan, Professor Oehmke's testimony did not directly address the relationship between his economic forecasts and the budget of the City of Detroit. While the record does establish that as a general rule, an improved

economy will lead to increases in income and income tax revenue (Tr. 14, p. 70), the City would not benefit greatly from such an improvement because City income tax rates must drop by .1% per year for residents and .05% per year for nonresidents due to the effects of Public Act 500, discussed above. Tr. 14, pp. 54-55, 78; City Ex. 148, p. A24-1).

Also relevant is the City's experience with the bond rating agencies. All three bond rating agencies – Moody's, Standard & Poor, and Fitch - downgraded the City's debt in 2005 (Tr. 14, pp. 89-90; Tr. 15, pp. 42-43, 47-48; City Ex. 148, pp. E42-1 to E43-9, E44-1 to 2). This is objective evidence of the City's financial condition that this panel must take into account.

The record does establish that the City is not managed as well as it could be, and that these management deficiencies have resulted in the City's incurring costs it may not have needed to incur (Tr. 15, pp. 107-24, 135-36, 144-45, 169-70; Tr. 20, pp. 184-85; Tr. 21, pp. 7-10, 30-31, 74-75; Un. Ex. 156). In principle, these expenditures could have been allocated to reducing the deficit or to employee benefits. At the same time, however, the record also establishes conclusively that a substantial portion of the City's financial problems are due to the effects of state policies and legislation that have resulted in tax reductions with a resulting decline in City revenues.

### Conclusion

Overall, it must be concluded that the City of Detroit has serious financial problems. It is running general fund deficits that are high, and it must issue bonds to operate. Thus, the City's financial condition raises concerns about its ability to pay.

## STATUTORY FACTOR: COMPARABLES

### INTRODUCTION

As noted above, Act 312 includes as one of the statutory factors a

“(c)omparison 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) (i)n public employment in comparable communities; (ii) (i)n private employment in comparable communities (see above).

The statute, however, does not define a “comparable community.” Therefore, it is left to the parties to agree on the communities that are comparable. Absent agreement of the parties, the determination of comparables falls to the Act 312 panel.

In the instant case, neither party has proposed that any city in Michigan is comparable to the City of Detroit for the purposes of Act 312. Thus, for the purposes of these proceedings, all comparables are national comparables (Un. Ex. 5; City Exs. 7, 38; Tr. 1, pp. 62-121; Tr. 3, pp. 76-123).

### COMPARABLES PROPOSED BY THE PARTIES

#### Comparables Proposed by the Union

The Union contends that twelve cities are comparable to Detroit within the meaning of Act 312: Baltimore, Boston, Chicago, Dallas, Houston, Los Angeles, Memphis, Milwaukee, New York, Philadelphia, San Antonio, and San Jose (Un. Ex. 5). The basis of the Union’s comparables is the principle of a large primate city, defined by Union witness demographer Lori Post as a city with a population of at least 500,000 that is central to a regional economy and dominates the economy of that region (Tr. 1, 63).

Based on the 2000 census, Dr. Post determined the 20 largest cities in the United States. The largest, New York, had a population of 8 million; the twentieth-ranked city, Boston, had a population of 589,000. According to Dr. Post's data, Detroit was the tenth largest city in the United States, with a population in 2000 of 951,000. These 20 cities formed the Union's initial grouping of cities. From the list of 20, Dr. Post determined that Austin, Columbus, Indianapolis, Jacksonville, Phoenix, San Diego, and San Francisco were not comparable to Detroit based on the racial composition of those seven cities and the percentage of the residents in those two cities living in poverty. Other criteria Dr. Post considered relevant to inclusion of a city in the list of comparables were the percentage of households with single mothers; percentage of adults who had dropped out of high school; the percentage of persons aged 16-19 neither employed nor in school; all components of a composite stress score and the vacancy rate. The remaining twelve cities listed above constitute the Union's comparables. (Un. Ex. 5; Tr. 1, pp.1-121).

#### Comparables Proposed by the City

The City contends that six cities are comparable to Detroit: Baltimore, Chicago, Cleveland, Philadelphia, Pittsburgh, and St. Louis. City demographer Patricia Becker based the City's proposed comparables primarily on population trends (Tr. 3, p. 76).

## DISCUSSION

The Union has not offered wage data on Dallas, Houston, and Memphis (Un. Ex. 519). The Union's expert on wages, Dr. Will Aitchison, testified that he did not consider these cities "comparable" to Detroit because the police in those cities do not bargain under comprehensive state or local collective bargaining legislation (Tr. 46, 16). Although Dr. Aitchison's testimony cannot be taken to mean that Dallas, Houston, and Memphis could never be comparable to Detroit for the purposes of Act 312, because the record does not include wage data on these three cities, for the purposes of these proceedings, they will not be considered comparable to Detroit.

In addition, both parties offered Baltimore, Chicago, and Philadelphia as comparables (Un. Ex. 5; City Ex. 7; City Ex. 38; Tr. 3, p. 128). Therefore, these three cities will be included in the group of comparables for the purposes of these proceedings. Thus, there are nine cities on which the parties are unable to agree: Cleveland, Pittsburgh, and St. Louis, proposed by the City; and Boston, Los Angeles, Milwaukee, New York, San Antonio, and San Jose, proposed by the Union.

### Previous Act 312 Awards

The Roumell panel, which issued its award in 1995, limited the national comparables to five "Midwestern" cities: Chicago, Cleveland, Milwaukee, Pittsburgh, and St. Louis. The Roumell panel determined that proposed comparable New York was not comparable to Detroit because of its high cost-of-living relative to Detroit; that proposed comparables Los Angeles and San

Francisco were not comparable to Detroit because the terms and conditions of employment as police officers in those cities were based on the special characteristics of the California economy; and that Dallas and Houston were not comparable to Detroit because they were in a different “geo-economic sphere” from Detroit (Jt. Ex. 12, pp. 41-44) The Sugarman panel, which issued its award in 2000, determined that the five comparables were Baltimore, Cleveland, Philadelphia, Pittsburgh, and St. Louis. In explaining its determination, the Sugarman panel simply stated that these cities “have a number of attributes of Detroit” (Jt. Ex. 10, p. 10).

The Long panel, which issued its award in 2003, determined that the following national cities were comparable to the City of Detroit for the purposes of those Act 312 proceedings: Baltimore, Chicago, Cleveland, Pittsburgh, and St. Louis. This was based on population; population trends and household; crimes per 100,000 residents; median household income; unemployment rate; and percentage of the population in poverty (Jt. Ex. 11, pp. 17-20).

Based on the foregoing, the three previous panels have determined that of the proposed comparable cities on which the parties cannot agree, Cleveland, Pittsburgh, and St. Louis were comparable to Detroit. The record in this case also establishes that City-proposed comparables Cleveland, Pittsburgh, and St. Louis should be included as comparable to Detroit. Although all three cities have populations of less than 500,000, between 1960 and 2003 all three cities experienced declines in population that were similar to the declines in Detroit. The Detroit population decline during that period was 45%, while the population

decline of Cleveland, Pittsburgh, and St. Louis, respectively, was 47%, 46%, and 56% (City Ex. 7). Household decline between 1970 and 2003 was also similar to Detroit: 35% in Detroit and 25%, 23%, and 33% in Cleveland, Pittsburgh, and St. Louis, respectively (City Ex. 7). Crime rates per 1,000 population in 2003 were also similar to Detroit: 71 in Detroit and 57, 51, and 121 in Cleveland, Pittsburgh, and St. Louis, respectively (City Ex. 7). The household poverty rate in 2003 was 30% in Detroit and 31%, 16%, and 22% in Cleveland, Pittsburgh, and St. Louis, respectively (City Ex. 7). The percentage of employees in blue-collar occupations in 2003 was 29% in Detroit and 26% and 22%, respectively, in Cleveland and St. Louis (City Ex. 7). Although the blue-collar employment rate was only 13% in Pittsburgh in 2003, the other characteristics support including Pittsburgh in the comparables.<sup>5</sup>

Turning to the Union-proposed comparables, and in disagreement with the City, a majority of the panel finds that Boston and Milwaukee are also comparable to Detroit for the purposes of these proceedings. Both cities have experienced population declines since 1960, Boston with 17% and Milwaukee with 21%, although the declines for these two cities slowed since 2000, a key criterion put forth by the City. Both cities have also experienced declines in households, albeit only 5%. Both have poverty rates somewhat similar to the City comparables, 19% in Boston and 22% in Milwaukee. Milwaukee also had a 2003 blue-collar employment rate that was comparable to that of Detroit; Milwaukee

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<sup>5</sup> Although the record establishes that police wages in St. Louis are established by a state commission rather than by collective bargaining (Tr. 47, pp. 18-19), this difference between St. Louis and Detroit does not offset the other evidence on the record, discussed above, that St. Louis should be considered a comparable in these proceedings.

has a property crime rate per 1000 population similar to that of Detroit, 64 per 1000 in Milwaukee, 71 per 1000 population in Detroit, suggesting some comparability in policing. The rate of violent crimes in Boston in 2003 was 12 per 1000; in Detroit it is 21 per 1000. Thus both Boston and Detroit rank relatively high on this measure.

In disagreement with the Union, a majority of the panel finds that Los Angeles, New York, San Antonio, and San Jose are not comparable to Detroit within the meaning of Act 312 or for the purposes of these proceedings. New York is nine times the size of Detroit; this factor in itself makes it not comparable. Los Angeles is four times the size of Detroit and its population has increased by 54% since 1960. San Antonio has doubled in size 1960 and its median income is one-third greater than that of Detroit. Although its population is currently similar to the population of Detroit, San Jose has more than quadrupled in population since 1960 with a median income almost triple that of Detroit (Un. Ex. 5; City Ex. 7).

Based on the foregoing, the panel therefore finds that the following cities are comparable to Detroit within the meaning of Act 312 for the purposes of this case: Baltimore, Boston, Chicago, Cleveland, Milwaukee, Pittsburgh, Philadelphia, and St. Louis. The panel is aware that not all of these cities are identical or comparable to Detroit on all indicators or criteria. Despite this, as discussed above, the panel finds that these eight cities are sufficiently similar to Detroit on a sufficient number of criteria to warrant designation as comparable.



## CITY ISSUE 1: SENIORITY TRANSFER REQUESTS (NON-ECONOMIC)

### LAST, BEST OFFERS

#### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 10, paragraph C,1 be amended as follows:

- a. **A member having less than three years seniority may not submit a request to transfer to or between sections or units.**

a. b. ~~The present practice of Individual officers having three years or more seniority may file requests filing requests (Police Manual Vol. IV, Chapter 1, Sec. 4) for transfers between various precincts, sections and units pursuant to the procedures contained in Police Manual Volume IV, Chapter 1, Section 4, as superceded by DPD Directive Number 401.2-3, effective April 1, 2003. shall be continued.~~ The requests shall be valid for a period until October 1st each year. Continuation requests may be submitted on or after August 15th. Whenever openings occur in precincts, sections or units, the most senior employee on the list shall be transferred provided the employee is qualified. Any time there are common seniority dates on a transfer list, the transfer shall be given to the member who was first recorded as approved by the Personnel Section. In the event members with common seniority dates also have a common recording date, the selection shall be by a blind draw. An Association representative shall be present at the tie-breaking procedure. The following sections or units shall be excluded from this procedure.

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on Article 10 seniority (transfer) and as its last offer of settlement proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the City

The City argues that as a result of the statutory elimination of the residency requirement, police officers have less exposure to and knowledge of the City than they had when officers were required to reside in the City. Thus, although the City is approximately 80% African-American, the Department is approximately 66% African-American and new officers are only about 50% African-American. Therefore, the demographics of the Department are starting to reflect a blend of the demographics of the metropolitan area rather than the demographics of the City, with an associated lack of familiarity with the communities of Detroit.

This proposal, if accepted, would require officers to remain in their first assignment for a sufficient amount of time to become familiar with the community they must patrol. This is a crucial aspect of community policing. This proposal would also permit new officers to be properly trained and evaluated. Finally, the proposal would have almost no effect on current DPOA members because almost all have more than three years seniority.

### Position of the Union

The Union argues that there is no need for this provision. First, the Union notes that the Chief of Police has the authority to approve and direct transfers. Second, the Union notes that there are currently no officers with less than three years seniority; thus the proposal is moot. The Union contends that City would be required to recall 250 officers before such a provision would affect any officer.

The Union observes that the LBO does not guarantee continuity of supervision because the supervisors may transfer. There are no transfer restrictions in the LSA agreement.

If the City is of the view that language skills are important, they should pay officers to develop such skills. Moreover, the City does not now use the bilingual officers currently on the force.

Overall, the City has failed to establish a need for such a provision. Thus, the Union requests that its LBO be accepted.

#### DISCUSSION

In this case, the relevant statutory factor is the “other factor” of “need for a change.” Regarding this factor, the party proposing a change, in this case the City, must demonstrate the need for a change.

The record in this case does not establish that the City has met that burden. Although the City clearly has a rational basis for desiring a three-year limit before a new officer can transfer, the record establishes that the current system has been in the collective bargaining agreement for many years (Tr. 34, p. 30). Although Deputy Chief Godbee was an articulate witness, he presented no testimony regarding any specific problems that have arisen as a result of officers having the right to transfer during their first three years on the force (Tr. 33, pp. 4-60). Moreover, it would be expected that any officer with less than three years seniority would not likely have the opportunity to transfer because, in most cases, such an officer would have less seniority than other applicants.

Finally, the City links this proposal to elimination of the residency requirement pursuant to Public Act 212. There is, however, no evidence of an increase in problems since March 10, 2000, the effective date of Public Act 212.

Based on the foregoing, the record establishes that the “other factor” of “need for a change” supports the LBO of the Union.

#### CONCLUSION

A majority of the panel finds that the Union’s LBO on City Issue 1: Seniority Transfer is more consistent with the statutory factors than the City’s LBO on City Issue 1: Seniority Transfer.

#### AWARD ON CITY ISSUE 1: SENIORITY TRANSFER

The Union’s LBO on City Issue 1: Seniority Transfer is accepted. The City’s LBO on City Issue 1: Seniority Transfer is not accepted.

#### **CITY ISSUE 2: DISCIPLINE – PROBATIONARY OFFICERS (NON-ECONOMIC)**

#### LAST, BEST OFFERS

#### Last, Best Offer of the City

#### Article 9 - Discipline

The City proposes as its last offer of settlement that Article 9, paragraphs C and G be amended as follows:

#### C. Trial Boards

Upon a full investigation of allegations against a **confirmed** member, the Chief of Police may convene a Trial Board which shall conduct a hearing, recommend findings of fact and recommend a penalty.

Remainder of paragraph C to remain as is.

- G. The purpose of the probationary period is to closely examine student and probationary police officers to insure that those ultimately confirmed are qualified intellectually, physically and emotionally for law enforcement service and to eliminate those individuals who prove to be unqualified.

A Probationary Evaluation Board shall convene when it becomes necessary to appraise the overall demonstrated performance of any member in a probationary or student status.

~~The decision of the Probationary Evaluation Board as to student police officers shall be final.~~ **A Probationary Evaluation Board shall make findings of fact and recommend a disposition by way of written decision to the Chief of Police. The Chief of Police shall review the entire case and make a determination which is final and binding with no right of appeal under this Article.**

~~A Probationary Evaluation Board or a Trial Board shall be empowered to extend the probation of an unconfirmed employee by up to six (6) months.~~ **A Probationary Evaluation Board shall be empowered to recommend confirmation of those qualified. If it declines to recommend confirmation, it shall either recommend dismissal or to extend the probation of the unconfirmed employee by up to six (6) months.**

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on Article 9 discipline and as its last offer of settlement proposes that the status quo be maintained.

#### POSITIONS OF THE PARTIES

##### Position of the City

The City contends that the current disciplinary procedure for probationary officers leaves officers who are facing discipline on duty during lengthy appeals. The City points to two examples to illustrate the problem. In one case, a probationary officer left her loaded Department-issued weapon in an unlocked car. The officer's boyfriend used the

weapon to shoot several people. The officer failed to preserve the evidence, called 9-1-1 without identifying herself, and then left the scene of the crime. Because of the appeals under Article 9, she was on the force for three years before she was removed when an arbitrator upheld her dismissal. As a second example, the City notes that it took two years to remove a probationary officer who was involved in the armed robbery of an armored truck.

The City notes that of five comparables surveyed—Boston, Chicago, Milwaukee, Pittsburgh, and St. Louis—none provide the level of appeals that is available to probationary officers in the City. This suggests that the City’s proposal is reasonable.

Finally, the City notes that under its LBO the probationary officer is not summarily removed from his or her job. The officer may appeal to the Probationary Evaluation Board before removal by the Chief of Police.

#### Position of the Union

The Union points out that at the current time this LBO is unnecessary, as there are no probationary officers in the Department. More generally, the Union notes that the current system works, as very few discipline decisions are appealed to a Trial Board or to arbitration. The City’s decisions are appealed only when they are arbitrary and capricious. The Union notes that since 1998, only 15 cases of probationary officers have been appealed to the Probationary Evaluation Board; three to a Trial Board; and two to arbitration. Five of these were successful. This suggests that the City does, on occasion, act arbitrarily and capriciously, and it would be unfair to limit the appeal rights of probationary officers under these circumstances.

The Union notes that if there is a problem of delays, it is caused by the City, which schedules the meetings of the Probationary Evaluation Board and the Trial Board. The City can solve any problems by scheduling meetings with greater frequency.

## DISCUSSION

The relevant statutory factors for this proposal are comparability, and fairness and equity. This issue will be addressed in the light of these two factors.

### Comparability

The City's evidence on the manner in which five of the comparables—Boston, Chicago, Milwaukee, Pittsburgh, and St. Louis—address the question of the discipline appeal rights of probationary employees is uncontroverted (Tr. 27, pp. 134-40; City Ex. 311). There is no evidence on the record regarding the other three comparables—Baltimore, Cleveland, and Philadelphia. Therefore, based on the foregoing, a majority of the panel concludes that the factor of comparability supports the City's LBO.

### Fairness and Equity

Due process for employees facing discipline is an essential component of collective bargaining. There must be appeal rights in place to assure that an employee is not disciplined or discharged without due process. In situations in which an LBO will have an impact on the likelihood of an officer keeping his or her job, the "other" criterion of equity and fairness must be given greater weight than in other circumstances.

First, there is no evidence on the record that the current system prevents the City from dismissing probationary officers who are not suitable for the position of police officer. Three of four cases cited by the City in support of its LBO upheld the decision of the Department (Tr. 27, pp. 151-72; City Exs. 312-14). Although the City's decision was

overturned in one of the cases (Tr. 27, pp. 168-71; City Ex. 315), such a decision simply demonstrates that City's internal discipline can malfunction on occasion and dismiss employees for arbitrary and capricious reasons.

Although the process does take a great deal of time, a majority of the panel finds merit in the contention of the Union that it is the City that schedules the meetings of the Probationary Evaluation Board and the Trial Board. Thus, there is no evidence that the Union is responsible for the delays (Tr. 29, pp. 14-15).

Based on the foregoing, a majority of the panel finds that the "other" statutory factor of fairness and equity supports the Union's LBO.

#### CONCLUSION

Given the importance of fairness and due process in matters of discipline and dismissal, a majority of the panel will attribute greater weight to this statutory factor than to the statutory factor of comparability. Accordingly, a majority of the panel finds that the Union's LBO on City Issue 2: Discipline–Probationary Officers is more consistent with the statutory factors than the City's LBO.

#### AWARD ON CITY ISSUE 2: DISCIPLINE – PROBATIONARY OFFICERS

The Union's LBO on City Issue 2: Discipline–Probationary Officers is accepted.  
The City's LBO on City Issue 2: Discipline–Probationary Officers is not accepted.



## CITY ISSUE 5: HOMICIDE EXEMPT

### LAST, BEST OFFERS

#### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 10, paragraph C, 1, a, be amended to include the **Homicide Section** as a new subparagraph (31).

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on Article 10 seniority (homicide exempt) and proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the City

The City contends that making the homicide section exempt from seniority-based transfers is necessary because of the special skills required in the homicide section. Currently, the City is limited to selecting only a minimally qualified officer. The City must be able to select the best qualified, most highly skilled officer requesting transfer, who may not be the highest seniority officer who is (minimally qualified) on the transfer list. The City contends that the operations of the homicide section have been impaired because the section has been prevented from having access to the best qualified officers. The City points out that the operations of the homicide section have improved since the homicide section was made exempt in the LSA agreement.

The City notes that the homicide section must investigate every homicide that occurs in the City. The City averages approximately 400 homicides every year, and the section has only 62 members. Thus, the workload is substantial, members of the section must work independently without supervision, and the section requires an officer with

special experience, talent, aptitude, and communications skills. The experience received in only one of the investigative commands is not sufficient.

#### Position of the Union

The Union contends that the City has failed to establish a need for this change. The City has presented no evidence that the operations of the homicide section have been impaired, noting that the section has operated with seniority-based transfers since it was established. DPOA members can be trained to work in this section and have long been deemed qualified by their commanding officers.

The Union also notes that the Sugarman panel in 2000 and the Long panel in 2003 rejected similar proposals. The Union points out that nothing has changed, and moreover there is no evidence supporting the City's assertion that the operations of the section have improved since an exemption was included in the LSA contract.

The Union also points out that of the 62 members in the section, only 15 are DPOA members. Thus, the City, through the LSA contract, has the right to select the majority of the members of the section.

#### DISCUSSION

The relevant statutory factor is the "other factor" of "need for a change." This LBO will be analyzed in light of this statutory factor.

The City has presented uncontroverted evidence that an assignment in the homicide unit requires special skills. The officer assigned to homicide must secure the scene; canvass the area for potential witnesses; take statements from any witnesses; work with the evidence technician; direct and also seek assistance from others; convey suspects to a police facility; perform interrogations; compile all information; and prepare a scene

report, as well as investigating the homicide (Tr. 2, pp. 19-22). Homicide investigators must operate independently and communicate effectively, both orally and in writing (Tr. 2, pp. 29-32). It is also clear that of all crimes, homicide affects the community the most (Tr. 2, p. 42).

The record establishes that homicide has been nonexempt for many years (Tr. 2, pp. 63-64). The record does not establish that the current system fails to develop officers with such skills. The City witness could provide no examples of inferior work or problems that were the fault of former DPOA members who had transferred to homicide based on their seniority and (minimal) qualifications (Tr. 2, pp. 4-103). No DPOA officers assigned to homicide have been disciplined for inadequate performance (Tr. 2, p. 60). Moreover, the City does have the right to involuntarily transfer poorly performing employees in the homicide unit, and has used this in the past; therefore, there are safeguards in place (Tr. 2, p. 60-63). The record establishes that DPOA members assigned to other investigative units, such as shooting and child abuse, are able to develop investigative skills that can be used in the homicide unit (Tr. 2, pp. 50-55). Moreover, the training the City provides also appears to be successful (Tr. 4, p. 42).

Based on the foregoing, a majority of the panel finds that the “other” statutory factor of “need for a change” supports the LBO of the union.

#### CONCLUSION

The statutory factors support the Union’s LBO on City Issue 5: Seniority–Homicide Exempt.

AWARD ON CITY ISSUE 5: SENIORITY–HOMICIDE EXEMPT

The Union’s LBO on City Issue 5: Seniority–Homicide Exempt is accepted. The City’s LBO on City Issue 5: Seniority–Homicide Exempt is not accepted.

**CITY ISSUE 6: FIREARMS AND BOMB DISPOSAL EXEMPT  
(NON-ECONOMIC)**

LAST, BEST OFFERS

Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 10, paragraph C, 1, a, be amended to include the **Firearms and Bomb Disposal Unit** as a new subparagraph (32).

Last, Best Offer of the Union

The DPOA rejects the City’s last position on Article 10 seniority (Firearms and Bomb disposal exempt) and proposes that the status quo be maintained.

POSITIONS OF THE PARTIES

Position of the City

The City contends that making the Firearms and Bomb Disposal (FBD) unit exempt from seniority-based transfers is necessary because of the special skills required in FBD. As is the situation with the homicide section, the City is limited to selecting only a minimally qualified officer. Identifying and disabling firearms is highly technical, and the FBD unit requires officers with these highly specialized skills. The work of this unit has grown in importance since 9/11. Thus, the City must be able to select the best qualified, most highly skilled officer requesting transfer, who may not be the highest seniority officer who is (minimally qualified) on the transfer list. The result of an error in

the FBD could be a major tragedy, and the City should not be required to wait until one occurs before obtaining greater flexibility in selecting officers for this unit. The City contends that the operations of the FBD unit have been impaired because the unit has been prevented from having access to the best qualified officers.

#### Position of the Union

As with the issue of homicide exempt, the Union contends that the City has failed to establish a need for this change. The City has presented no evidence that the operations of the FBD unit have been impaired, noting that the section has long operated with seniority-based transfers. DPOA members can be trained to work in this section and have long been deemed qualified by their commanding officers.

The Union also notes that the Sugarman panel in 2000 and the Long panel in 2003 rejected similar proposals. The Union points out that nothing has changed.

#### DISCUSSION

As with homicide, the City has demonstrated that members of FBD require special skills. The officer must be able to use forensics to determine whether a specific weapon was used in a crime and must be trained to follow standard operating procedures so that FBD is in compliance with the requirements of the American Society of Crime Laboratory Directors (Tr. 2, pp. 113-22; City Exs. 18-20). FBD members who appear in court are expected to be trained in compliance with the certification standards set by the Association of Firearm and Tool Mark Examiners (Tr. 2, pp. 123-30; City Exs. 21-23). The FBD members also must meet the physical requirements for the FBI bomb disposal school and have the judgment to disarm a bomb (Tr. 2, pp. 127-28, 132-33, 138 ). They

also must be able to communicate their knowledge in writing and in court (Tr. 2, pp. 145-46).

On the other hand, the chief City witness for this issue, Deputy Chief Gloria Reynolds, did not testify to any specific problems that had occurred in FBD that could be traced to the FBD's non-exempt status (Tr. 2, pp. 104-51). DPOA President Bandemer testified that when the parties negotiated over this issue, he was told of no special problems in FBD (Tr. 4, p. 16). The record shows that there are five officers represented by DPOA in the FBD, including three who are considered to be experts for purposes of testifying in court (Tr. 2, pp. 166-67). The record also indicates that in situations where the City has raised concerns, they have been addressed, either in negotiations or through the grievance procedure (Tr. 4, pp. 28-30, 52-53; Un. Exs. 50-51, City Exs. 54-56). Although it may take more time to resolve disagreements through the grievance procedure than through employer determination, ultimately, the matter is resolved.

Based on the foregoing, a majority of the panel finds the "other" statutory factor of "need for a change" supports the Union's LBO.

#### CONCLUSION

The statutory factors support the Union's LBO on City Issue 6: Firearms and Bomb Disposal Exempt.

#### AWARD ON CITY ISSUE 6: FIREARMS AND BOMB DISPOSAL EXEMPT

The Union's LBO on City Issue 6: Firearms and Bomb Disposal Exempt is accepted. The City's LBO on City Issue 6: Firearms and Bomb Disposal Exempt is not accepted.

## **CITY ISSUE 7: FIRST-TIME MARIJUANA USE (NON-ECONOMIC)**

### **LAST, BEST OFFERS**

#### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 9 be amended to include the following new paragraph:

New. The penalty for first-time marijuana use shall be dismissal.

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on first-time marijuana use and proposes that the status quo be maintained.

### **POSITIONS OF THE PARTIES**

#### Position of the City

The City argues that the provisions of a June, 1988, settlement agreement between the parties did not incorporate into the collective bargaining agreement a penalty of a 30-day suspension plus rehabilitation for first-time use of marijuana (City Ex. 58-59).

Rather, the City contends that the quid pro quo for the reduction of the penalty from discharge was an agreement by the union to withdraw various legal claims against the City. The City notes that had the parties wished to incorporate the provisions of the settlement agreement into the collective bargaining agreement, they would have explicitly done so. Thus, the City contends there was no agreement between the parties that a 30-day suspension plus education was an appropriate penalty for first-time marijuana use.

The City also contends that even if it is assumed, for the sake of argument, that the penalty of a 30-day suspension plus education was part of the collective bargaining agreement, the City's proposal is more consistent with the statutory factors than the

Union's proposal. The City argues that the record establishes that the City of Detroit has a serious drug problem, and police officers, who are sworn to uphold the law, cannot be permitted to support the drug problem. Illegal drug use by officers puts them in the position of enforcing the law against the same people who provide them with illegal drugs.

The City also argues that illegal drug use by police officers reduces the confidence of the community in the police. The City notes that the Department of Justice (DOJ) has observed that lack of community support is a serious problem in the Detroit Police Department. Police should be held to a higher standard than the average citizen; to accept the use of illegal drugs demonstrates that police are held to a lower standard.

The City urges rejection of any Union argument that use of marijuana is socially acceptable and therefore should be treated differently from use of drugs such as cocaine and heroin. The City notes that marijuana, like cocaine and heroin, is a Schedule I drug and the penalty for first time use of marijuana should be the same as for other Schedule I drugs – immediate dismissal.

Although the Union argues that some municipalities do not require discharge for first-time marijuana use, other cities do not have the drug problems experienced by the City of Detroit. Furthermore, other cities are not operating under a DOJ consent decree. This consent decree places a substantial obligation on the City to assure that there is no drug use among police officers.

The City argues that any additional financial burden on the City from such a proposal is minimal and well worth the benefit to the City of assuring that none of its police officers use marijuana. The City also contends that passive inhaling while on an



assignment can be addressed on a case-by-case basis. Finally, the City points out that it is absurd that reinstatement is not permitted for such offenses as driving under the influence of alcohol or assault, but is required for marijuana use.

#### Position of the Union

The Union contends that the current penalty structure for first-time marijuana use has worked well for 18 years. There is nothing on the record that suggests any problems have arisen that require the policy to be changed. There is no evidence that marijuana use is a problem in the Department, and the Union notes that police officers who have tested positive for marijuana have performed well. The policy works as a corrective measure. The Union also notes that a second positive test results in automatic termination.

The Union argues that San Jose, one of its comparables, does not require termination for first-time marijuana use. Similarly, the neighboring cities of Livonia, Westland, Sterling Heights, and St. Clair Shores do not terminate officers for first-time marijuana use. The Union also observes that the City's proposal does not distinguish between off-duty use of marijuana and use that may be required in the line of duty. The latter officers should not be removed from the payroll and forced to fight to be reinstated.

### DISCUSSION

The relevant statutory factors regarding this provision are comparability, fairness and equity, and demonstration of the need for a change. This proposal will be examined in the light of these factors.

Comparability. The record establishes that the City surveyed six of the comparables: Baltimore, Boston, Chicago, Cleveland, Philadelphia, and Pittsburgh. None of these six cities has a policy that prohibits discharge for a first marijuana offense, such

as exists in the City of Detroit. All but Chicago terminate for first-time marijuana use, with the Chicago Police Department terminating on a case-by-case basis (City Ex. 65). Although the record would be stronger had it contained written policies, this evidence is uncontroverted. Although the DFFA has a similar policy (Un. Ex. 74), based on the foregoing, a majority of the panel finds that the statutory factor of comparability supports the City's LBO on this issue.

Equity and Fairness. The current penalty in the Department for first-time marijuana use for non-probationary employees<sup>6</sup> is a 30-day suspension plus education, with periodic testing at the Department's discretion and with dismissal for a second positive test (City Exs. 58-61; Tr. 4, pp. 73-75, 79, 93-94, 101-02, 156; Tr. 5, p. 47). The penalty structure is the result of a 1988 settlement agreement of a lawsuit involving a penalty imposed by the Department for marijuana and the subsequent establishment of a policy to implement that settlement agreement (City Exs. 58-59; Tr. 4, p. 104; Tr. 5, pp. 4-10). Although the City has implemented this penalty structure in its personnel policies (City Exs. 59-60), it is not included in the collective bargaining agreement (Jt. Ex. 9). Thus the current policy permits an officer who tests testing positive for marijuana a second chance, but not a third chance. The policy, while not ideal from the City's point of view, seems to address the needs of both parties. Thus, the "other" statutory factor of fairness and equity supports the Union's LBO.

Burden of Proof on Changes. It is an established principle in interest arbitration that a provision in a collective agreement should not be changed unless there is a reason to do so. The purpose of this change is to prevent marijuana use by police. The

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<sup>6</sup> The penalty for first-time marijuana use by a probationary police officer is dismissal (City Ex. 62; Tr. 4, p. 99). The penalty for first-time marijuana use by a probationary police officer is not at issue in these proceedings.

prevention of marijuana use is especially important in a police department, in which it is the duty of officers to enforce all laws, including those prohibiting the possession and use of marijuana (Tr. 4, pp. 131-39). Police officers should set an example by complying with the law themselves. If the community is to have confidence in the police, the community must have confidence that the police themselves are not under the influence of an illegal substance.

The record does not indicate, however, that marijuana use by police officers is frequent. Indeed, the record provides only three instances since the 1988 settlement agreement and adoption of the policy when an officer has tested positive for marijuana (City Exs. 61, 62, 75). The bargaining unit included up to 3000 members during this time period. Based on this record, a majority of the panel determines that this policy has not been associated with substantial marijuana use by police officers and that the policy has served the City's legitimate and well-founded interest in deterring marijuana use among its police officers. Accordingly, a majority of the panel finds that the "other" statutory factor of burden of proof for changes supports the Union's LBO.

#### CONCLUSION

Two of three relevant statutory factors support the Union's LBO. Therefore, a majority of the panel adopts the Union's LBO.

#### AWARD ON CITY ISSUE 7: FIRST-TIME MARIJUANA USE

The Union's LBO on City Issue 7: First-Time Marijuana Use is accepted. The City's LBO on City Issue 7: First-Time Marijuana Use is not accepted.

## **CITY ISSUE 8: MISCELLANEOUS–CANINE (NON-ECONOMIC)**

### **LAST, BEST OFFERS**

#### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 9 be amended to include the following new paragraph:

Any member no longer assigned to the Canine Unit must return all departmental dogs under the age of five and all departmental equipment to the department.

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on miscellaneous (canine) and proposes that the status quo be maintained.

### **POSITIONS OF THE PARTIES**

#### Position of the City

The City states that canines are obtained by the department for its Canine (K-9) Unit, not for the amusement of officers and their families, and it is fiscally irresponsible to retire Department canines each time a member separates from the K-9 Unit. First, the city cites the cost of purchasing and training a police canine. Often, dogs are imported, costing as much as \$3000. With the dogs receiving at least 16-24 weeks of intensive training in Detroit, costs exceed \$15,000 for the added expenses of equipment and compensation to the training officers.

Second, the Union and the City agreed to a care and grooming premium in which handlers are "compensated for 'off-duty time spent in the care of Department dogs' (C. Ex. 67; Tr. 4, 179-180)." Handlers are paid time-and-a-half for 40 minutes of daily "care" time for one dog, receiving an additional 15 minutes/day per dog for each additional dog.

Financially, this means that a K-9 officer with one dog receives an additional \$8,373 per year and a sergeant with three dogs receives \$18,989.50 additional per year. The City argues that it cannot afford to lose these dogs each time a handler departs.

Third, the Department cannot afford to lose the services of the dogs. Dogs are employed for tracking and detection of explosives, narcotics, arson, and cadavers. Since 9/11, detection dogs have been needed for detecting explosives. Assistant Chief Shoulders testified that “the loss of the dogs...is a loss of resources for public safety and puts an additional burden on the K-9 Unit until the Department can purchase another dog and train it.”

Fourth, Sergeant Richard Hetu, unit commander of the K-9 Unit of the Michigan State Police, revealed that a reassigned dog can adjust to a new handler. Hetu had positive experiences with three reassigned dogs, never experiencing problems with a dog’s performance, demeanor, or health. Hetu further testified that military dogs are often reassigned.

Fifth, the City states that it conducted follow-up calls to all the cities that do not reassign canines when officers depart (referenced in the Union’s chart). The city found that other departments, at a minimum, allow the police department the discretion to keep the dog if it is still useful to the department. In almost every city listed by the Union, the department keeps and reassigns the dog unless the dog is too old for continued use.

In general, the City argues that department dogs are resources of the Detroit Police Department, and those resources are purchased by the citizens of the City of Detroit to be used for the purpose of providing a service to the City of Detroit. Dogs are

now leaving the department at ages lower than six years, and this reduces their usefulness.

### Position of the Union

The Union asks the panel not to accept the City's proposal, because it has not presented sufficient evidence to change the current practice. First, the cost of maintaining the *status quo* is negligible. There is little turnover in the canine section, and most officers in the Canine Unit spend their entire career in the unit. Fifteen out of the 17 dogs in the canine unit are donated dogs, with Officer Tracy Perry having purchased one of the two dogs that were not donated. The City did concede that in prior difficult economic times (1980s) an officer leaving the Canine Unit was allowed to take his dog.

Second, if the City's proposal is granted, the City will not reduce costs. A dog that is retained when his handler leaves will be unable to resume his duties until the dog has been retrained with a new handler, which will cost the City time and money. Dogs between ages five and seven often cannot be reassigned due to their age. Also, a dog under age five may not tolerate being reassigned to a different officer.

Finally, removing a dog from his handler is tantamount to removing a member of the family. During canine training, officers are encouraged to make the dog a part of the family. Police dogs work better when they have a social environment because of their pack mentality; taking a dog out of its home environment will affect its performance.

Since the 1970s, the City has failed to establish a need for the change in the current policy that permits officers to take their dogs with them when they leave the canine unit.

## DISCUSSION

In September 2004, Arbitrator Barry Brown found that there has been a long-standing practice in the City pursuant to which officers assigned to the K-9 unit may keep their dog after they leave the unit (City Ex. 67). Because Arbitrator Brown ruled that this was a past practice, this privilege is a benefit that is incorporated in the collective agreement. The matter of whether this benefit should be changed will be analyzed in light of three statutory factors: ability to pay, comparability, and fairness and equity.

### Ability To Pay.

Although Assistant Chief Walter Shoulders testified that he believed the majority of dogs in the K-9 unit were purchased, he has not been directly involved in the K-unit since 1992 (Tr. 4, pp. 176-77). When a dog is purchased, however, the record establishes that some breeds of dog cost the Department \$3500 in the 1990s (Tr. 4, 193-96). The record establishes that regardless of whether the dog is donated or purchased, the City must also some incur training costs, thus lessening the cost benefit associated with returning the dog to the Department (Tr. 4, pp. 195-97; Tr. 6, p. 10; City Ex. 86).

On the other hand, if a dog is transferred to a new handler, the dog would need to be retrained with a new handler, thus lessening the cost advantage of retaining the dog (Tr. 4, pp. 197-98). Indeed, the record indicates that the new handler must go through the same bonding process as the old handler, thus negating any savings associated with the dog. On balance, the panel finds that the factor of ability to pay, although not substantial regarding this issue, slightly favors the City's LBO.

Comparability.

The record establishes that of the eight comparables, three, Cleveland, Philadelphia, and Pittsburgh, permit an officer to keep the dog when the officer leaves the K-9 unit. A fourth, Chicago, will permit the officer to keep the dog if the dog has not been recently purchased. There is no evidence on the record regarding Baltimore, Boston, Milwaukee, and St. Louis. (Un. Ex. 88; Tr. 6, pp. 94-95). Thus, the factor of comparability supports the Union's LBO.

Fairness and Equity.

There are fairness and equity arguments supporting the contentions of both parties. The dogs are the property of the Department and should be returned by the handler to the Department when the handler is no longer assigned to the canine unit if the Department so desires. Thus, in this sense fairness and equity favor the City's position. There is sufficient evidence on the record that a dog that is under five years old can be retrained to establish that the City's proposal has a rational basis (Tr. 6, pp. 9, 12-13, 28).

On the other hand, because the officer takes the dog to his or her home, the dog becomes a member of the family. Thus, to remove the dog from the officer's family would be a detriment to the family (Tr. 6, 86-87).

It is also true that that the fact that the proposed return policy applies only to dogs that are under five years old lessens the impact on the officer's family. Although the record is unclear on this point, it seems reasonable to infer that many of the dogs will work past five years old.



## CONCLUSION

As this is a non-economic issue, the panel has the option of fashioning its own award. A majority of the panel concludes that because the dogs are the property of the City, the City may request that a dog be returned when the officer leaves the K-9 unit. In order to avoid disrupting expectations of officers currently assigned to the K-9 unit, this new right for the City will go into effect for all new K-9 assignments made on or after July 1, 2007. Because this new procedure will be effective only for assignments made on or after July 1, 2007, officers assigned to canine after that date will be able to inform their families of the rules under which they will keep the dog.

### AWARD ON CITY ISSUE 8: CANINE

A majority of the panel awards the following with respect to City Issue 8: Miscellaneous—Canine:

Article 9 shall be amended to include the following new paragraph:

With respect to any assignment made to the canine (K-9) unit on or after July 1, 2007, the City may, at its discretion, direct the member on said assignment to return all departmental dogs under the age of five and all departmental equipment to the department at such time as that member is no longer assigned to the canine unit.

### **CITY ISSUE 10/UNION ISSUE 14: EMERGENCY/EXCUSED LEAVE DAYS (NON-ECONOMIC)**

#### LAST, BEST OFFERS

#### Last, Best Offer of the City

Article 25 - Emergency/Excused Leave Days

The City proposes as its last offer of settlement that Article 25 be amended as follows (proposed changes in bold):

Emergency or excused days shall be granted to a member for an absence justified by urgent reasons such as attendance to demanding personal business and other pressing matters which cannot be covered by other banked time. Permission to use emergency days must be granted in advance from the member's commanding officer or the officer in charge of his unit. **The command may deny an emergency or excused day request due to demanding operational considerations.** Supervisory personnel may make reasonable inquiries in order to verify that the request is legitimate but shall maintain the confidentiality of any personal information. Not more than five (5) emergency or excused days may be granted in any one fiscal year under any circumstances. All excused days will be deducted from the member's accumulated sick banks, and will consequently affect the accumulation of bonus vacation days.

Any member under the restrictions of the attendance control program (DPD 350) shall not be allowed to have emergency or excused days deducted from his sick banks and will be carried Absent No Pay.

#### Last, Best Offer of the Union

Article 25 paragraph 1 of the current collective bargaining agreement shall be amended as follows:

Emergency or excused days shall be granted to a member for an absence justified by urgent reasons such as attendance to demanding personal business and other pressing matters which cannot be covered by other banked time. ~~Permission to use emergency days must be granted in advance from the member's commanding officer or the officer in charge of his unit. Supervisory personnel may make reasonable inquiries in order to verify that the request is legitimate but shall maintain the confidentiality of any personal information.~~ Not more than five (5) emergency or excused days may be granted in any one fiscal year under any circumstances. All excused days will be deducted from the member's accumulated sick banks, and will consequently affect the accumulation of bonus vacation days.

Any member under the restrictions of the attendance control program (DPD 350) shall not be allowed to have emergency or excused days deducted

## POSITIONS OF THE PARTIES

### Position of the City

The City contends that members of the Department generally use approximately 6,000 Emergency Days (E-days) per year. The City points out that despite this large number, the Union could find only a very small number of grievances. The City notes that one officer filed a grievance because his sergeant asked him the reason for the request. Other situations brought to attention of the panel involved an officer whose boyfriend had a bad back rather than a hospital admission; a grievance that was resolved at a later date; a dead battery; and charging an officer for a funeral day rather than an E-day. The City points out that there have been very few grievances on E-days.

The City also contends that the Department needs manpower to operate. It attempts to balance the needs of officers for legitimate time off with the needs of the citizens of Detroit. The Department must know how many officers will appear on a shift. If the Union's proposal were granted, Department would have no idea of the number of officers to expect on patrol. Indeed, if the Department could not make an inquiry, the City notes that the Union's proposal would create a super-day off that could be taken at will. It would also leave the Department vulnerable to the "blue flu."

The City notes that the current provision represents a compromise developed by the Roumell panel in its 1995 award (Jt. Ex. 12). In that award, the word "shall" in the first sentence was awarded to the Union, but the City was given the right to inquire about the reason for the E-day request in order to verify that the request met the contractual

criteria of “demanding personal business and other pressing matters which cannot be covered by other banked time.” The City observes that Arbitrator Long, in his 2003 award, declined to accept a proposal by the Union that is identical to the LBO for Union Issue 14 in the instant proceedings.

The City’s proposal, on the other hand, would permit it to deny a request if to grant it would make it difficult for the City to provide back-up for officers and to serve the community. The Department must be able to mobilize, and this capability has been impaired by the elimination of the residency requirement.

#### Position of the Union

The Union contends that granting this proposal will permit officers to tend to personal affairs. They may need to time to resolve certain pressing personal situations. The Union contends that the City has presented no reason to reject this Union LBO.

### DISCUSSION

The relevant statutory factors for this proposal are fairness and equity, need for a change, and avoidance of negation of language in the agreement. This issue will be addressed in the light of these three factors.

#### Fairness and Equity

Although the Union contends that this proposal is needed to provide the officers with time to address personal needs, the current language does just that. E-days are for the purpose of conducting such business.

On the other hand, the City makes a compelling case that to accept the Union’s LBO would do serious damage to its operations. The City must have a sense of the

number of officers on every shift. Requiring that E-days be granted in advance gives the City the opportunity to plan (Tr. 5, pp. 161-70).

Based on the foregoing, the “other” statutory factor of fairness and equity supports rejection of the LBO of the Union for Union Issue 14.

#### Need for a Change

Although the record establishes that there have been some disagreements, the Union has not demonstrated the need for a change. The record is uncontroverted that the Department grants approximately 6,000 E-days per year (Tr. 6, p. 43). Yet there are very few grievances. The Union brought only eight to the attention of the panel (Tr. 5, pp. 105-13; Un. Exs. 76-80). Even assuming that other problems have arisen that do not generate grievances (Tr. 5, pp. 114-17), the record strongly suggests that number of problems is small relative to the number of E-days granted (Tr. 5, p. 169).

The City too has not demonstrated the need for a change. The record does not demonstrate that the current E-day language has prevented it from providing police services to the citizens of Detroit.

Based on the foregoing, the statutory factor of “need for a change” supports neither the City’s LBO for City Issue 10 nor the Union’s LBO for Union Issue 14.

#### Avoidance of Negation of Language In The Agreement

Acceptance of the Union’s proposal would have the potential of negating the language in the provision in question that provides a rationale for the E-days. If the City could not inquire about the reason for an E-day request, the City would have no way of verifying that the request meets the contractual criterion of “urgent reasons such as attendance to demanding personal business and other pressing matters which cannot be

covered by other banked time.” A majority of the panel agrees with the City’s assertion that to accept the Union’s proposal would have the potential of creating a free day off. This would negate the E-day rationale. Accordingly, a majority of the panel finds that the “other” statutory criterion of “avoidance of negation of language” supports rejection of the Union’s LBO on Union Issue 14.

**CONCLUSION ON CITY ISSUE 10: EMERGENCY/EXCUSED LEAVE DAYS**

The City’s LBO on City Issue 10: Emergency/Excused Leave Days is not supported by the statutory factors.

**CONCLUSION ON UNION ISSUE 14: EMERGENCY/EXCUSED LEAVE DAYS**

The Union’s LBO on Union Issue 14: Emergency/Excused Leave Days is not supported by the statutory factors.

**AWARD ON CITY ISSUE 10: EMERGENCY/EXCUSED LEAVE DAYS**

The City’s LBO on City Issue 10: Emergency/Excused Leave Days is not accepted.

**AWARD ON UNION ISSUE 14: EMERGENCY/EXCUSED LEAVE DAYS**

The Union’s LBO on Union Issue 14: Emergency/Excused Leave Days is not accepted.

**CITY ISSUE 11: PENSION ACTUARIAL ASSUMPTIONS**

**LAST, BEST OFFERS**

Last, Best Offer of the City

Article 33 - Pension Provisions

The City proposes as its last offer of settlement that Article 33 be amended to include the following new paragraph:

**New. Actuarial Assumptions, Methods and City Contribution Rate**

1. The Plan's actuary shall compute the employer contribution rate pursuant to proper actuarial assumptions, an actuarial method and proper actuarial computations (actuarial basis). The actuarial basis includes, but is not limited to, an amortization period to fund any unfunded actuarial accrued liability, whether such unfunded liability is positive or negative. Effective with the Plan's actuarial valuation as of June 30, 2005, which determines the required contribution for the 2006-2007 fiscal year, and thereafter, the Plan's actuary shall calculate the employer contribution rate separately for DPOA members, to wit, active, retired and other inactive members who were last represented by the DPOA while last employed by the City (DPOA members).
2. For this initial calculation of separate employer contributions, the Market Value of Assets (Assets) shall be apportioned between DPOA members and remaining Plan members as follows:
  - a. The initial Market Value of Assets and all other elements of this calculation shall be specified in the 64<sup>th</sup> Annual Actuarial Valuation as of June 30, 2005.
  - b. Market Value of Assets shall be allocated to DPOA to fully fund the Actuarial Accrued Liability of its retired and other inactive members, and to the Plan's other retired and inactive members to fully fund the Actuarial Accrued Liability of each.
  - c. After subtracting the assets apportioned in paragraph 2 above, the remaining Market Value of Assets shall be apportioned between the DPOA members and the other Plan members in the same ratio as each group's Actuarial Accrued Liability for active members bears to the Actuarial Accrued Liability for all of the Plan's active members.
  - d. Total Market Value of Assets for the DPOA shall equal the sum of the amounts calculated in paragraphs 2 and 3 above.
  - e. Thereafter, a separate accounting of each year's Market Value of Assets shall be maintained crediting the DPOA's portion for the actual total investment return percentage of the Fund after expenses, crediting the DPOA contribution, and subtracting the benefits paid to DPOA members. The Market Value of Assets for the remaining Plan members shall be the remainder of the total Plan Market Value of Assets after subtracting the allocation to the DPOA members.

- f. The Funding Value of Assets for the DPOA shall be determined by the asset valuation method adopted in its own actuarial basis. If the determination of Market Value of Assets under the asset valuation method is required prior to June 30, 2005, such Market Values shall be determined as specified above for the June 30, 2005 value, using the appropriate actuarial valuation and the same calculation basis.
3. The contribution for DPOA members (DPOA contribution) shall be subject to the following requirements and procedures:
  - a. The City may obtain the recommendation(s) of an additional actuary (City's actuary) regarding the actuarial basis for the DPOA contribution.
  - b. If any of these recommendations differ from those of the Plan's actuary or those adopted by the Board, and the actuaries cannot agree on a single actuarial basis that the Board will adopt, then the actuarial basis shall be determined by an actuary who is a member of both the Society of Actuaries and the American Academy of Actuaries or a National firm of such actuaries acceptable to the Plan's actuary and the City's actuary (a third actuary), whose recommendation(s) shall be adopted by the Board to determine the City's DPOA contribution for that year. In the event the actuaries cannot agree upon an actuary to render a decision, then the DPOA and the City shall refer the matter to MERC to appoint an arbitrator to hear argument and receive information from the Plan's actuary and the City's actuary and determine the third actuary by choosing one of the two recommended by the parties' actuaries, whose recommendation(s) shall be adopted by the Board to determine the City's DPOA contribution for that year.
  - c. There shall be no presumption of validity of any kind to any recommendation by the Plan's actuary.
  - d. Either side may submit relevant information in addition to that submitted by their respective actuary to the third actuary.
  - e. The City's DPOA contribution for any year shall be that contribution resulting from the actuarial basis developed by and/or determined as specified above.
  - f. The costs of any such additional actuary(ies) shall be shared equally by the City and the DPOA and shall not be reimbursed from System assets.



- g. The determination of the actuarial basis to establish the City's DPOA contribution for any year shall not in any way effect or change the actuarial basis previously adopted by the Board to establish the City's contribution for Plan participants other than DPOA members (non-DPOA members). The Board shall adopt the City's contribution for non-DPOA members as results from the actuarial basis it previously adopted.

#### Last, Best Offer of the Union

The Union proposes that the status quo be maintained.

### **POSITIONS OF THE PARTIES**

#### Position of the City

The City contends that its pension costs are very high relative to other cities because the Police and Firefighter Retirement System (PFRS) pays very high benefits. The Union points to the comments of Arbitrators Donald Sugarman and William Long in previous Detroit-DPOA awards and this chairperson in the most recent Detroit-LSA award, all of whom indicated that the PFRS provides pension benefits that exceed most of the internal and external comparables.

Included in the high benefits are a withdrawal practice that permits the employee to withdraw an amount equal to the contribution and interest earned while the withdrawal is debited only for the contribution, an automatic 2.25% increase in benefits each year, and a relatively short amortization period of 13 years.

The City also notes that the plan has lost \$1.5 billion in market value since June 30, 2000, in addition to \$218 million in disbursements. The City notes that the plan was overfunded by \$622 million on June 30, 2000, and was underfunded by \$783 million on

June 30, 2004. The City notes that five years ago, the funding in the plan was such that the City's contribution was only 6.5% of payroll, or \$16.6 million. The current annual contribution is 7-1/2 times that level. Escalating pension costs have been a major reason for the downgrade in the City's bond rating and have been financed by the issuance of bonds; the City issued \$98.8 million in pension obligation certificates in 2004-05.

The City contends that a substantial part of its high pension costs are due to the fact that the PFRS Board of Trustees is composed of a union majority and that the Board acts in a way that is designed to achieve ends other than the health of the pension system. The City notes that the Board has consistently set contribution rates above those recommended by the actuary and then offered to reduce those rates if the City would provide benefits to union members that the members were unable to obtain through collective bargaining and Act 312 arbitration. In support of this contention, the City provides a chronology of events between 1998 and 2004 that have resulted in additional payouts to active union members and retirees, over and above the promised pension benefits, of \$218 million. These additional payouts will result in increased pension costs to the City of \$347 million through 2019-20 million due to the reduction in the PFRS asset value associated with the payouts.

#### Position of the Union

The Union argues that the City's LBO on City Issue 11 must be rejected for several reasons. First, the Union contends that the panel lacks the authority to issue an enforceable award on the City's LBO. The Union contends that the City Code, Michigan State Statutes, and the Michigan Constitution grant the Board the authority to establish

the contribution rates. An Act 312 panel may remove from the Board the authority to establish contribution rates and hand that authority to an actuary.

Second, the Union notes that it would be impossible to segregate the pension funds for DPOA retirees from the funds of DFFA, DPLSA, and DPCOA retirees. Assets and liabilities of the fund have never been so segregated; the fund has always had a single-employer contribution with combined assets and liabilities.

Third, the Union notes that no other municipal pension fund in a comparable city is structured so as to permit an actuary to establish the contribution rate. Fourth, the Union notes that the City's proposal removes from the Board the fiduciary responsibility for the fund and gives it to an actuary. Fifth, the Union notes that the inclusion of an amortization rate in the actuarial calculation removes from bargaining a mandatory subject and shifts responsibility for determining a term and condition of employment to an actuary, which is a violation of the Michigan Public Employment Relations Act.

Finally, the Union contends that the thirteenth-check agreement is not evidence of fraud or mismanagement. The Union notes that the City gained substantial benefits from those agreements in terms of reduced contribution rates. Moreover, overfunded pension funds in Los Angeles, Milwaukee, and Chicago also increased benefits.

## DISCUSSION

The City contends that the Board has a union-dominated majority and has consistently disregarded the recommendations of the actuaries, establishing a contribution rate for the City greater than that recommended by the actuary. The City argues that the reason that the union-dominated Board had disregarded the actuarial recommendations was to obtain additional benefits for its membership over and above what was obtained

through collective bargaining. Thus, the City proposal is designed to require the Board to accept the City contribution determined by the actuary.

The Union, for its part, primarily contends that the panel lacks authority to grant this request because the Board has the legal authority under the Detroit City Code, Michigan Law, and the State Constitution to establish the contribution rate, as the Board has the fiduciary responsibility for the fund. The Union contends that this panel may not require the Board to abrogate this responsibility to an actuary.

The record establishes that the PFRS Board of Trustees has 11 members consisting of the following: three “firemen,” two “policemen” holding the rank of lieutenant or lower; one “policeman” holding the rank above lieutenant; the mayor or city controller (ex officio); the President or a representative from the Common Council; the City Treasurer; the Police Commissioner; and the President of the Board of Fire Commissioners (City Ex. 113). The record establishes that the “firemen” and “policeman” trustees are representatives from or are associated with the DPOA, DFFA, DPLSA, and DPCOA. The Board establishes the City’s annual contribution rate as a percentage of total police and fire payroll, taking into account the annual valuation submitted by the fund’s actuary.

Whatever the merits of the City’s contentions regarding the actions of the PFRS Board of Trustees, a majority of the panel is of the view that it lacks the legal authority to accept the City’s LBO. A majority of the panel finds the first Union contention on legality meritorious. The Union in its brief cites *Policeman and Firemen Retirement System v. City of Detroit*, 270 Mich. App. 74, 714 N.W. 2d 658 (2006), cert. den. 477

Mich. 892, 722 N.W.2d 222 (2006).<sup>7</sup> In that case, the Michigan Court of Appeals determined that a Detroit city ordinance that required a 20-year amortization period for the PFRS was in conflict with and therefore preempted by the provision of the Michigan Public Employee Retirement System Investment Act that gives the governing Board of a public employee pension plan the right to set the amortization period for the contributions to that plan. In so deciding, the Court of Appeals stated:

The statute provides that the Board, acting on the recommendation of an actuary, makes “the determination of the required employer contribution.” (MCL 38.1140m) Further, the statute explicitly provides that the Board “shall confirm” that the plan “provides for the payment of the required employer contribution” and “shall confirm” that the system receives “the required employer contribution....” *Id.* “The word ‘shall’ is unambiguous and is used to denote mandatory, rather than discretionary, action.” . . . Thus, the statutory language is unequivocal that the Board determines the amount the employer (Detroit) contributes annually to the retirement system and that the employer, in turn, is “required” to make the contribution. (270 Mich. App. 74 at 80-81, 2006)

Although that case dealt with the amortization rate, a majority of the panel is of the view that it is highly likely that a court would rule in the same way if the contribution rate established by an actuary were at issue. Thus, a majority of the panel believes that an award accepting the City’s LBO on actuarial assumptions would trigger a lawsuit that would result in a judgment that the panel had exceeded its authority.

#### CONCLUSION

A majority of the panel is of the view that it lacks the authority to award the City’s LBO on Issue 11.

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<sup>7</sup> Although this case is not part of the record, a majority of the panel is of the view that when a party argues that the panel would exceed its legal authority if it accepted an LBO, the panel is obligated to consider that argument and any case or cases cited in support of that argument.

## AWARD ON CITY ISSUE 11 PENSION ACTUARIAL ASSUMPTIONS

The Union's last, best offer on City Issue 11 Pension Actuarial Assumptions is accepted. The City's last, best offer on City Issue 11 Pension Actuarial Assumptions is not accepted.

## CITY ISSUE 13: PENSION – ELIMINATION OF ESCALATOR

### LAST, BEST OFFERS

#### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 33, paragraph I be amended to include the following (new language in bold):

Pension benefits earned based on service rendered after the date this award is issued will no longer receive the 2.25% per annum escalation amount. The 2.25% per annum escalation amount shall continue to apply to pension benefits earned based on service rendered before the date this award is issued.

#### Last, Best Offer of the Union

The DPOA rejects the City's last position on pension – elimination of escalator and as its last offer proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the City

The City points out that this proposal would affect only future benefits; current members would receive the annual escalator on all benefits accrued through the date of the award. The members would have a “two piece” pension; pension earned to the date

of the award would be escalated, while pension earned after the award would not be escalated.

The City notes that the escalator, which is compounded, substantially improves the value of the pension plan. As a result of this escalator, the multiplier, which is contractually 2.5% for the first 25 years of service is actually 3.27%. The 2.1% multiplier for years 26 through 35 is actually 2.4%.

The City points out that this escalator drives up the City's pension contribution, which is greater than the comparables. The City notes that its pension contribution was 30% higher than the contribution in Pittsburgh, and double the pension contribution in the other comparables. The City simply cannot afford to continue paying these pension costs. Eliminating the pension escalator will help to provide the City the financial relief it needs.

#### Position of the Union

The Union notes that accepting this City LBO would result in a large "takeaway" that is not supported by the evidence. The Union points out that PFRS retirees have enjoyed the pension escalator for at least the last twenty years. Moreover, the Long panel only recently awarded compounding. The external comparables also have an escalator.

The Union points out that all other bargaining units in the PFRS enjoy this benefit at the compounded rate. Indeed, the LSA was provided this benefit three-to-six years before its was provided by the DPOA.

The Union notes that the savings estimates for this proposal are unreliable. The Union points out that City witness Arv Heilman testified that the estimate provided by

Gabriel Roeder likely overstated the savings associated with this proposal. The Union also note the administrative complexity of this proposal.

## DISCUSSION

The relevant statutory factors for this proposal are ability to pay, comparability and the “other” factor of fairness and equity. This issue will be addressed in the light of these three factors.

### Ability to Pay

As noted, the record establishes that the City is in financial distress and that its pension costs are very high. While the record indicates that this proposal would generate some savings, the level of savings cannot be estimated with precision. Although the 2003 Gabriel Roeder estimate was approximately 4% of payroll, there is also evidence on the record that this estimate could be an overstatement (City Ex. 388; Tr. 34, pp. 6-7).

The record also establishes that the LBO, if granted, would add substantial administrative complexity to the system. The plan would have the obligation to create two separate accounts for each DPOA retiree, but only for the DPOA retirees. This also appears to make the cost savings estimates less reliable than they would otherwise be. (Tr. Tr. 34, pp. 8, 13, 20; Un. Ex. 445). Based on the foregoing, a majority of the panel finds that the “statutory factor of ability to pay supports the Union’s LBO on this issue.

### Comparability

The record establishes that retirees from units represented by LSA, DPCOA, and DFFA all enjoy this escalator benefit (Jt. Ex. 11, p. 60). There is no evidence on the regarding the retirees in the general system. Milwaukee, a comparable, provides a 3% escalator (Un. Ex. 414). Comparables, Baltimore and Chicago provide for pension cost-



of-living adjustments on an occasional basis (Un. Ex. 414). There is no evidence regarding the other comparables.

The record establishes that the City's pension costs are generally higher than those of comparables Baltimore, Chicago, Cleveland, Philadelphia, Pittsburgh, and St. Louis (City Ex. 532). As noted, however, the amount of savings associated with this proposal is unclear, and the record provides no evidence regarding whether Cleveland, Pittsburgh, and St. Louis provide pension escalation.

Based on the foregoing, a majority of the panel finds that the most reliable evidence on comparability on the specific issue of pension escalator, the internal comparables, supports the Union's LBO.

#### Fairness and Equity

The record establishes that the negative impact of this proposal will be greater on new officers, as more senior officers have most of their benefits already accrued (Tr. 34, p. 26). Fairness and equity suggest that, when possible, officers be treated equally.

It was noted above that this proposal, if awarded, would make the pension system administratively complex. It would necessary to separate the DPOA retirees from the DFFA, DPCOA, and LSA and retirees and to divide the DPOA retiree benefits into two parts. This complexity could also result in an increased number of disputes over pension benefits.

Based on the foregoing, a majority of the panel finds that the statutory factor of fairness and equity supports the Union's LBO.

## CONCLUSION

A majority of the panel finds that the Union's LBO on City Issue 13 Pension: Elimination of Escalator, is more consistent with the statutory factors than the City's LBO.

### AWARD ON PENSION – ELIMINATION OF ESCALATOR

The Union's LBO on City Issue 13 Pension: Elimination of Escalator, is accepted.  
The City's LBO on City Issue 13 Pension: Elimination of Escalator, is not accepted.

## CITY ISSUE NO. 14: DEFINED CONTRIBUTION PLAN

### LAST, BEST OFFERS

#### Last, Best Offer of the City

#### Article 33 - Pension Provisions

The City proposes as its last offer of settlement that Article 33 be amended to include the following new section:

#### **New. Defined Contribution Plan for Bargaining Unit Members**

1. This Plan shall be effective for all bargaining unit members at the beginning of the fiscal year following the issuance of this award pursuant to Act 312 Public Acts of 1969, as amended.
2. Employer Contribution Account.
  - (a) Basic Employer Contributions. The employer shall contribute an amount equal to ten (10%) percent of the participant's base salary to each participant's employer contribution account each pay period.
  - (b) For members on duty disability, the amount contributed shall be equal to ten (10%) percent of the participant's base salary on the date of disability. Such contributions shall continue until the earlier of (1) the termination of disability; or (2) twenty-five years of credited service, which includes time spent on duty disability. On July 1<sup>st</sup> of each year, the amount contributed shall be increased by adding an additional two and a quarter (2.25%) percent to the initial base salary amount at the time the duty disability began.

The amount contributed shall be the product of ten (10%) percent of both the initial base salary and these yearly increments.

- (c) Employee Contributions. The employee shall contribute an amount equal to five (5%) percent of the participant's base salary to each participant's employee contribution account each pay period.
  - (d) Employee contributions shall be made on a pre-tax basis subject to the approval of the Internal Revenue Service.
3. Periods of Absence Due to Non-Duty Disability. Employees on non-duty disability are no longer active participants in the Plan and may not receive employer contributions or make Employee contributions.
4. Vesting. All account balances are subject to the following vesting schedule:
- (a) Employee Contribution Account. A participant shall always be one hundred (100%) percent vested in such participant's employee contribution account.
  - (b) Employer Contribution Account. A participant shall be vested in the balance of such participant's employer contribution account as follows:

<u>Years of Service</u>	<u>Percentage Vested</u>
5 or more	100%

5. Forfeitures. In the event that any account balances are forfeited, the amounts so forfeited shall be used to offset expenses of the Plan incurred during the Plan year. Such expenses shall be settled in the following order: administrative, investment, legal, accounting, actuarial, and then all others as determined by the Administrator. To the extent that forfeitures exceed the expenses to be settled for a given year, such excess forfeitures shall be used to offset the City's contribution to the Plan for that year. To the extent excess forfeitures are available after offsetting the City's contribution for that Plan year, the Administrator shall allocate such access to the participant accounts in proportion to the compensation of each participant for the Plan year. The City shall cover the cost of all expenditures which exceed forfeitures.
6. Participant Directed Investments. Each participant and former participant may direct the investment of such participant's or former participant's account balance in specific types of investments made available by the City through a Plan Administrator.

7. Participant Directed Investments; Annual Review. Each participant, former participant, and, following the death of a participant or former participant, the beneficiary of such participant or former participant, to the extent allowed by law shall be given the opportunity, at least annually, to:
  - (i) Elect to direct the investments of such participant's, former participant's or beneficiary's account balances;
  - (ii) to change the investment allocations;
  - (iii) cease to direct the investments.All such elections shall be in accordance with procedures promulgated by the Administrator. The account balances of any participant, former participant, or beneficiary who elects not to direct the investment of such account balances, shall be invested in designated component funds. If the law does not allow the beneficiary, following the death of a participant, or former participant, to direct the participant's or former participant's account balances, then the account balances shall be liquidated and paid to the beneficiary.
8. Participant Directed Investments; Income. The income earned on each participant's investment shall be credited directly to such participant's account or accounts, except as provided in those terms requiring forfeiture.
9. Benefits.
  - (a) Eligibility for Benefits.
    - (i) Retirement. A participant with 25 years or more of credited service may retire. Upon the participant's retirement, the participant will be paid the total balance of the participant's accounts.
    - (ii) Duty-Death. In the event of a participant's death, in the course of duty, the surviving spouse receive  $\frac{5}{11}$  of a police officer's total compensation for the last twelve months for life and each child under age eighteen receives  $\frac{1}{10}$  of such compensation with a minimum total of  $\frac{7}{33}$  of such compensation. If there is no surviving spouse, each child receives  $\frac{1}{4}$  of such compensation with a maximum total of  $\frac{1}{2}$  of such compensation. If there is no surviving spouse or children, each dependent parent receives  $\frac{1}{6}$  of such compensation. Moreover, the beneficiary of the participant shall be paid the total balance of the participant's account. Upon death, the deceased former participant shall be one hundred (100%) percent vested in the balance of his or her account. There are no age or service requirements for duty-death benefits.
    - (iii) If a participant qualifies for Duty-Disability benefits as defined herein prior to acquiring 25 years of credited

service, benefits shall be paid pursuant to this Article. Participants with 25 or more years of credited service shall retire as provided in paragraph 9.(a)(i) above.

- (b) Other Termination. If a participant's employment is terminated for any reason other than the participant's retirement, duty disability, or death, the participant shall immediately become a former participant and shall be entitled to receive the vested portion of each of such participant's accounts.
  - (c) Forfeiture. Any participant who terminates employment for reasons other than retirement, duty disability, or death, forfeits the non-vested portion of such participant's employer contribution account, if any.
10. Participant Loan Program. There shall be a participant loan program which will conform with the requirements of Section 72(p) of the Internal Revenue Code and shall be limited to "hardship" circumstances, as defined by the Plan Administrator and will only be available if no other loans from the Plan are outstanding. A participant who satisfies applicable rules and procedures as established by the Administrator may borrow from the participant's accounts an amount which does not exceed the lesser of fifty (50%) percent of the participant's vested accumulated balance or Fifty Thousand and 00/100 (\$50,000.00) Dollars. Loans must be for a minimum of One Thousand and 00/100 (\$1,000.00) Dollars. Repayment shall be done through payroll deduction.
11. Administrator. The Municipal Employee's Retirement System of Michigan (MERS) shall be the Administrator to oversee the operation of the Plan and the establishment of a trust fund. All contributions by the employer and participant shall be paid to the fund. The fund shall be invested in the manner made available by the Administrator and as specified by the participant, former participant, or beneficiary.
12. Duties of the Administrator. The Administrator shall have the powers, rights and duties as specified in an administrative agreement with the City. The Administrator shall receive the contributions to the fund and subject to the direction of participants, shall hold, invest and reinvest the fund assets and shall distribute fund assets plus earnings thereon pursuant to the provisions of the Plan. The Administrator shall determine all questions relating to accounting and to the financial position of the fund and the shares and interest of the participants in accordance with information supplied by the Union and the employer. The Administrator shall discharge all of the duties and functions imposed by the terms of the Plan either expressly or by implication.

13. Administrative Expenses. The reasonable expenses of the Administrator relating to the fund as may be agreed to in writing by the City and the Administrator shall be paid to the Administrator. Such expenses shall include training of prospective Plan participants and participants whether conducted by the Administrator or a third party on its behalf.
14. Accounting. At the request of the City or the Union, the Administrator shall prepare and submit an accounting of the fund as of any date specified. The Administrator shall not be required to render such accounting more frequently than monthly during any Plan year.

#### Duty Disability Retirement Provisions

1. Applicable to all bargaining unit members who file application for disability retirement benefits on or after the date a settlement agreement is reached or an award rendered, the definition of “total disability” and “total incapacity” for the duty disability retirement provisions is as follows:

Own Occupation: During the first 24 months of benefits, total disability exists when, due to injury, illness or disease, an employee is unable to perform, for wage or profit, the material and substantial duties of the employee’s occupation.

Any Occupation: After the first 24 months of benefits, total disability exists when, due to injury, illness or disease, an employee is unable to perform, for wage or profit, the material and substantial duties of any occupation for which the employee is suited, based on education, training and experience.

2. a. The duty disability retirement benefits payable to an eligible member shall consist of the amount derived from the sum of the applicable following factors and annual escalators in accordance with the definition of “own occupation” and “any occupation” as set forth in paragraph 1 above.

(1) Part A. A basic duty disability benefit amount which is fifty percent (50%) of the member’s final compensation at the time his duty disability retirement began.

(2) Part B. A supplemental duty disability benefit which is sixteen and two-thirds percent (16 2/3%) of the member’s final compensation at the time his duty disability retirement began.

(3) Escalators. On July 1<sup>st</sup> each year, the amounts of Parts A and B then payable will each be

increased by adding to said amounts the product of 2.25% times the initial amount of said Part A and B benefit which was computed at the time the duty disability retirement began.

(4) Duration. Members receive disability retirement benefits as accorded by these provisions for no longer than their 25<sup>th</sup> year of creditable service after which they will receive retirement benefits as provided by this Plan for all bargaining unit members.

b. For the first 24 months that a member is on duty disability retirement his benefit shall be the sum of Parts A and B plus applicable escalators.

c. After 24 months, a member who is disabled from any occupation shall continue to receive a duty disability retirement benefit which is the sum of Parts A and B plus applicable escalators. After the expiration of the period when the member would have attained twenty-five (25) years of creditable service had he continued in active service, payment of Part B. will cease.

d. After 24 months, a member who is not disabled from any occupation shall only receive Part A plus applicable escalators as his duty disability retirement benefit.

e. Duty disability retirement benefits shall continue to be paid to a member on duty disability retirement until the earliest of (i) the member attaining 25 years of credited service, (ii) the member's attaining age 65, or (iii) termination of disability as determined by the third party administrator (TPA).<sup>8</sup>

f. If a member on duty disability retirement returns to active service and within a twenty-four (24) month period re-qualifies for duty disability retirement for the same or related reasons he had been retired, then the disability shall be deemed a continuation of the prior disabling condition and the period of the return to work will not have caused the employee to be entitled to a new initial 2.a(1) and 2.a(2) above. Instead, such employee will return to retirement at the point he had reached in subparagraphs 2.b, 2.c or 2.d above as if there had not been a break in his period of placement on duty disability retirement.

g. As in the past, disability retirement benefits shall continue to be considered benefits which are paid instead of and not in addition to any benefits under the State Workers' Disability Compensation Act.

h. Survivor Benefits. Survivor benefit coverage applicable to active members shall be continued during the period a member is eligible for a duty disability benefit.

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<sup>8</sup> Refer to subparagraph 2.b.

3. Earning Offset.

a. In the event that a recipient of a duty disability retirement benefit receives earned income from gainful employment during a calendar year, the amount of member's disability benefit payable during the next subsequent fiscal year will be adjusted so it does not exceed the difference between (i) the member's base salary at the date of disability to the year in which the earnings offset is applied, and (ii) the amount of remuneration from gainful employment during the prior calendar year.

b. The earnings test shall be based on information the Administrator may periodically require from a duty disability benefit recipient or have secured from other reliable sources. Furnishing such information shall be a condition for continued eligibility for a duty disability benefit.

4. The disability retirement procedure is as follows:

a. The function formerly performed by Medical Boards of Review with respect to the determination of whether an applicant is disabled will be performed by a qualified physician or surgeon in the appropriate specialty at Detroit Receiving Hospital or such other medical facility as may subsequently be mutually determined by the Union and the City. If either the Union or the City desires to terminate the services of the medical facility, it shall give notice in writing to that effect to the other party, specifying the date of termination. The parties shall then send a joint written notice to the medical facility of its termination. Neither party may terminate the services of a medical facility unless it has heard at least one (1) case. Once the medical facility has received written notice that its services are terminated, it shall hear no further cases. However, the medical facility shall render decisions on all cases where the applicant has been examined and evaluated prior to receiving such notice. The medical facility will select the doctor who will perform the examination and evaluation. The medical facility of this physician or surgeon as to whether the applicant is disabled shall be final and binding on all interested parties.

b. If the applicant is determined to be disabled, the Administrator will examine the pension file, including the submissions of the applicant and the Police Department, to determine if there is any dispute as to whether the disability "resulted from the performance of duty" within the meaning of the pension plan. If it is undisputed that the disability did result from the performance of duty, the Administrator will grant duty disability retirement benefits. If it is undisputed that the disability did not result from the performance of duty, the Administrator will grant non-duty disability retirement benefits, provided the applicant meets the other conditions of eligibility, e.g., five years of creditable service. If the performance of duty issue is in dispute, the Administrator will refer the matter to arbitration by a member of the Disability Retirement Review Board (DRRB).



The decision of the DRRB member as to whether the disability resulted from the performance of duty shall be final and binding upon all interested parties. The DRRB shall consist of 3 qualified arbitrators who will be individually assigned in rotating order to decide the matters referred to arbitration by the Administrator. The procedure for the termination of umpires and selection of new umpires found in Article 8 shall apply to the termination and the selection of new DRRB arbitrators.

c. The hearing before a member of the DRRB will be conducted in accordance with the following procedures:

- (1) The applicant and the City will have the right to appear in person or otherwise, may be represented by counsel if they wish and will be afforded an equal opportunity to present evidence relevant to the issues;
- (2) A court reporter will be present and make a stenographic record of the proceeding;
- (3) The hearing will be closed to the public, except that the applicant may select one (1) person to be with him in the hearing room, provided, however, that person may not testify;
- (4) The witnesses will be sequestered;
- (5) The witnesses will be sworn by the court reporter and testify under oath;
- (6) The applicant may not be called by the City as an adverse witness;
- (7) The DRRB will apply the rules of evidence and follow the procedures which are customarily applied and followed in labor arbitration cases;
- (8) If the applicant wishes to have an employee of the City released from duty to appear as a witness on his behalf, the applicant may so inform the Administrator in writing which, in turn, will submit a written request to the appropriate Department executive for the release of the employee for the purpose of so testifying;
- (9) The DRRB member will afford the parties an opportunity for the presentation of oral argument and/or submission of briefs;

- (10) The DRRB member will issue a written decision containing credibility resolutions as necessary, findings of fact and conclusions with respect to all relevant issues in dispute. The decisions of the DRRB member shall be final and binding upon all interested parties;
  - (11) The authority of the DRRB member is limited to deciding whether or not the applicant's disability "resulted from the performance of duty" within the meaning of the Pension Plan. The DRRB member shall have no authority to add to, subtract from, modify or disregard the terms of the Pension Plan; and
  - (12) The costs associated with the hearing, including the arbitrator's fees and expenses, and the court reporter's fees and expenses, shall be paid by the Administrator.
- d. A TPA mutually selected by the Union and the City shall provide all ongoing duties of administering the disability benefits after initial eligibility has been determined. These duties shall include:
- (1) Monthly payments of benefits;
  - (2) Conducting investigations to assure continuing eligibility for disability retirement benefits, including the annual re-examination of disability beneficiaries;
  - (3) Conducting investigations to determine any earnings the disability beneficiary may have for offset to system benefits; and
  - (4) The Administrator shall have reasonable powers to ensure compliance with re-examination and proof of earnings requirements including withholding of monthly payments until compliance is achieved.
- e. If a disability beneficiary is determined by the TPA to no longer be disabled, he may appeal that determination within seven (7) days thereof by filing a written request with the TPA for re-examination by a qualified physician or surgeon at and selected by the medical facility identified in paragraph 6.a above whose medical finding will be final and binding. The TPA shall promptly arrange for such re-examination. The applicant's disability benefits will be continued pending that final and binding medical finding, and if the finding is that the applicant is no longer disabled, his disability benefits will be further continued while the Police Department is conducting such examination and/or investigation as necessary to determine whether the applicant is qualified for reappointment as a police officer.

- f. In the event that the Union and City are unable to reach agreement upon the medical facility to perform the functions described in paragraph 4.a, or the TPA to perform the functions described in paragraph 4.d, each shall nominate one choice as its selection, and after reviewing any materials submitted and considering any arguments advanced by the parties in support of their respective nominations, a member of the DRRB shall decide which of the two nominees shall serve as the medical facility or TPA.

The Administrator shall not act upon or grant the application filed by an officer, who, although he is not capable of performing the full duties of a police officer, has not suffered any diminishment of his base wages or benefits because he is either:

- a. regularly assigned to a position, the full duties of which he is capable of performing; or
- b. assigned to a restricted duty position, unless the Police Department advises that it intends to seek a disability retirement for the officer in the foreseeable future.

The provisions in the preceding subparagraph are not intended to and will not:

- a. affect the officer's right to seek a disability retirement when no restricted duty position is available; or
- b. restrict in any way the existing authority of the Chief of Police to seek a duty or non-duty disability retirement for an officer or for that officer at that time to request a duty or non-duty disability retirement.

#### Last, Best Offer of the Union

The DPOA rejects the City's last, best offer on defined contribution and as it last, best officer proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the City

The City argues that the purpose of this provision is to provide it with some relief from burden of pension costs. The City current contribution rate of 45.85% is "staggering" and is double the average annual pension cost of the

City's national comparables. The City notes that its costs are 40% higher than that of Pittsburgh, the city with the next highest annual pension contribution costs.

The City notes that its pension costs are estimated to exceed \$120 million during the contract. It is issuing bonds to make its contribution. The only way to address this problem is through a defined contribution (DC) pension plan.

The City notes returns to the participant can be increased because a DC plan does not have administrative costs or investment fees. It also need not pay for an annual valuation. The City also notes that the duty death benefits under the DC plan are the same as under the current plan.

The City also observes that a basis of the DC plan is that employee will work longer, as they are living longer. There is no reason to believe that the assumption of a longer working life does not also apply to law enforcement. Thus, although an officer entering the department at age 20 and leaving the department at age 55 would receive 58.6% of his or her base wage, the individual could roll over the account into another employer's DC plan and continue to work for five years. On the other hand, an officer who starts work at 20 and works until 60 would receive almost the same benefit he or she would receive under the current plan. The employer notes that the generosity of the plan is also indicated by the fact that the City, with its willingness to continue to fund disability benefits, would be contributing 16% of payroll to the plan, close the average defined benefit (DB) plan contribution in the state.

In implementing the DC plan, the City will also provide current employees with their accrued benefit based on his or her years of service. Wage increases

would continue to increase the benefits employees receive because they would be receiving benefits from both the DB and DC plans.

The City also notes that the proposed DC plan vests in five years, while the current DB plan vests in six years. Moreover, if an employee separates prior to vesting, the employee would still receive his or her own contributions.

In making this proposal, the City also contends that the financial performance of the PFRS has been poor. The City should not be required to fund the poor performance of the fund's managers and Act 312 should not prevent the City from addressing its costs arising from post-employment liabilities.

#### Position of the Union

The Union points out that a DC plan for newly hired employees was rejected by the Long panel in 2003 as being inconsistent with the comparables. The Union contends that this DC plan is more radical than the plan rejected by the Long panel as it proposes a DC plan for all employees.

First, the Union contends that the City's costs concerns have been ameliorated by the adoption of a 3-year amortization period that will continue as long as actuarial liabilities exceed system assets. Thus, the need for the DC plan as a cost-saving measure is not as urgent as it otherwise might be.

The Union also notes that no comparable city has adopted a mandatory DC plan in lieu of DB plan. Thus, this evidence supports rejection of the City's proposal.

This proposal will also significantly decrease the retirement benefits for officers. Both Union witness Charles Monroe and City witness Arvin Heilman agreed that this was the case. Moreover, the LBO also imposes a financial burden on the officers by

requiring a 5% contribution. The DC plan would also require officers to work longer despite the fact that the job of a police officer is young man's job.

The Union points out that the City would cease making contributions to the PFRS. This would likely reduce the amount of funds available for duty and non-duty disability benefits.

The DC plan would also shift the investment risk to police officers. Police officers simply do not have the time to assume the additional responsibility of investment advisor.

The Union notes that officers do not receive social security benefits. Thus, they do not have the floor on benefits of many other employees with DC plans.

Finally, the Union disputes the City's contention that the PFRS is mismanaged. The Union notes that the rates of return for the fund have consistently outperformed expectations. The Union points out the methodology the City's witness used to determine the funds return was filled with errors.

## DISCUSSION

The relevant statutory factors for this issue are ability to pay, comparability, and equity and fairness. This proposal will be examined in the light of each of these factors.

Ability-to-Pay. The City's financial weakness has been discussed above and the details will not be repeated here. This proposal, by reducing the City's pension contribution will save the City money. Thus, the factor of ability to pay supports the City's LBO.

Comparability. The record does not indicate that the most relevant internal comparables, the DFFA, the DPLSA, and the DPCOA, have mandatory DC plans. The

record also does not indicate that the non-uniformed unions have a mandatory DC plan (City Exs. 556A-I, 556K-M). Thus, the internal comparables favor the Union's LBO.

The record also indicates that all eight comparable cities, Baltimore, Boston, Chicago, Cleveland, Milwaukee, Philadelphia, Pittsburgh, and St. Louis have DB plans (Un. Exs. 521-22). Thus, the external comparables support the position of the Union.

Fairness and Equity. The panel is of the view that is unfair to disrupt the retirement expectations of the bargaining unit by suddenly and unexpectedly changing the retirement plan to DC from DB. It is reasonable to believe that employees have made life plans on the assumption that the DB plan will continue, and that assumption should not be overturned without warning. A majority of the panel gives the greatest weight to this argument.

Much of the City's argument on the retirement income of employees is based on a 40-year working life. What evidence there is on the record indicates that only 6% of the total police department, including command, has more than 30 years seniority (Un. Ex. 401). While this seniority distribution is under a DB plan, and that distribution could change under a DC plan such that an increased percentage of officers may continue to work in order to maximize their DC payout, there is no direct evidence on the record regarding the impact on the Department of having a large number of older officers on patrol duty. There is evidence, however, that officer stress accumulates over time (Tr. 36, p. 97), suggesting that the parties should move cautiously with a provision that encourages officers to stay on the job longer than they otherwise might.

The City contends that its pension costs are very high. Even assuming, for the sake of argument, that the record supports such a contention, the record does not support

the City's view that establishing a defined contribution plan for police officers is the best way to solve any financial problems.

**CONCLUSION**

The Union's LBO on City Issue 14: Defined Contribution Plan, is more consistent with the statutory factors than the City's LBO.

**AWARD ON CITY ISSUE 14: DEFINED CONTRIBUTION PLAN**

The Union's LBO on City Issue 14: Defined Contribution Plan, is accepted. The City's LBO on City Issue 14: Defined Contribution Plan, is not accepted.

**CITY ISSUE 15/UNION ISSUE 1: WAGES**

**STIPULATION**

The panel shall select the LBO of the City or the Union in its entirety.

**LAST, BEST OFFERS**

Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 41, paragraph A, be amended as follows:

July 1, 2004	0%
July 1, 2005	0%
July 1, 2006	0%
January 1, 2007	3%
July 1, 2007	2%
January 1, 2008	3%
July 1, 2008	3%

Last, Best Offer of the Union

Employees in the classification of police officer shall receive the following wage adjustment and wages for the term of the collective bargaining shall be:



July 1, 2004	5%
July 1, 2005	3%
July 1, 2006	0%
July 1, 2007	2%
June 30, 2008	4%

The wage increase for July 1, 2004 and July 1, 2005 shall be implemented as follows:

January 1, 2006	4%
July 1, 2006	4%

### POSITIONS OF THE PARTIES

#### Position of the City

Ability-to-Pay. The City points out that its wage LBO provides for a wage increase for the Union despite the fact it has experienced four consecutive years of deficits. The City notes that the Union's wage proposal would cost the City approximately \$75.4 million over the life of the contract, assuming a fringe benefit rate of 47.35% and assuming that the July 1, 2004, and July 1, 2005, increases are not retroactive. The Union's proposal would also require retroactivity payments of \$17 million, increasing a 2005-06 deficit that is projected to range from \$62 million to \$162 million and, by itself, causing the 2006-07 budget to be in deficit for a fifth consecutive year. The City points out that it currently has no funds for officer wage increases for 2006-07, and that even its more modest wage increase proposal cannot be funded unless its proposals on changes in medical insurance and pension are granted by the panel.

The City points out that it is in fiscal crisis. Awards in previous fiscal crises have acknowledged this fact by declining to award officers retroactive pay increases in these circumstances. Thus, Arbitrator George Roumell declined to provide the officers a wage increase for the period July 1, 1992, through June 30, 1995, because the City did not have

the ability to pay during the extant fiscal crisis. More generally, the City points to Arbitrator Roumell's finding that the City ran a net deficit of \$196 million from 1984-85 through 1993-94, and that Act 312 panels have not awarded wage increases in periods in which the City was running a deficit. The City points out that the total city deficit from 2002-03 through 2005-06, even based on the optimistic projections, is \$382.1 million, far greater in a shorter period of time than the deficits faced by the Roumell panel.

The City also points out that Arbitrator Roumell in 1995, as well as Arbitrator Sugarman in 2000 and Arbitrator Long in 2003, gave weight to concurrent fact-finding decisions involving other units in the City. The City notes that Arbitrator Roumell, in his 1995 award, gave weight to a fact-finding recommendation by Nathan Lipson in fashioning his 1995 award. The City notes that in that recommendation, Fact-Finder Lipson found that the City's financial circumstances at that time were serious and warranted a 10% reduction for the City's employees represented by the American Federation of State, County, and Municipal Employees (AFSCME), which contrasted with his 1989 award in which he accepted the DPOA wage LBO.

The City also notes that the 2006 fact-finding recommendations support its contention that it is in a fiscal crisis. The City observes that Fact-finder Michael Long recommended 0%; -10%; and 0% for AFSCME for July 1, 2005; July 1, 2006; and July 1, 2007, respectively, citing the City's fiscal crisis. Fact-finder Long's recommendation of a 4% increase on June 30, 2008, is premised on savings in health care and wages in order that the City remain financially solvent.

The City notes that Fact-finder Long rejected an AFSCME wage proposal because it would have cost the City \$46.95 million if passed on to all City employees.

Yet, \$46.95 million is the cost of the City's wage LBO to the DPOA. The Union's LBO would cost an additional \$34 million when applied to the allied bargaining unit represented by the Detroit Fire Fighters Association (DFFA). The City notes that Fact-finder George Roumell, in the 2006 fact-finding proceedings involving the City and the Detroit Building Trades Council, also gave great weight to the City's financial condition in recommending a 10% reduction in the work week, amounting to a 10% pay reduction.

Priority of Public Safety. The City also notes that it has consistently placed a very high priority on public safety. In 2005-06, Mayor Kwame Kilpatrick reduced the Department staffing by only 150 positions despite a City Council recommendation of a reduction of 600 positions. From 2001-02 through 2004-05, in a period when general fund revenues decreased by \$38.6 million, the City increased appropriations for uniformed employees by \$180.5 million. Between 1999-2000 and 2004-05, the City has consistently raised wages by a greater amount for the DPOA (and the allied DFFA) than for its civilian employees. Moreover, since 1970, a disproportionate percentage of the layoffs have been among civilian employees.

The City also contends that since 2000, command and officers have been reduced proportionately. Command has been reduced by 26.1%; the Detroit Police Lieutenants and Sergeants Association (DPLSA) by 25.9%; and the DPOA by 24.2%.<sup>9</sup>

Comparability. With respect to the other statutory factors, the City points out that its total compensation analysis in City Exhibit 532 is mandated by Act 312, as the act requires the panel to consider total compensation, not just wages and salaries. The City notes that City Exhibit 32 demonstrates that its national comparables pay 16% less in total compensation to six-year officers than the compensation provided to a six-year

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<sup>9</sup> In support of this statement, the City cites City Ex. 551.

officer in the City. Moreover, the City notes that its wage rates are similar to those paid by its five of its six national comparables. Although its wage rates are lower than those paid in Chicago, Chicago has a residency requirement, making officers available to the citizens 24 hours per day. Moreover, even if the City's (i.e., lower) wage and health care proposals are granted, the cost of overall compensation will still exceed the average of the national comparables.

The City also contends that a reliance on recent arbitration decisions from New York and Philadelphia is without merit. New York has experienced budget surpluses; deficits in Philadelphia are 1/23 and 1/9 the size of the deficits in Detroit for 2003-04 and 2004-05, respectively.

Cost-of-Living. Regarding the cost of living, the City notes that its wages and health care coverage for the DPOA members have kept up with inflation, despite the fact that its revenue sharing and property taxes have not. Since 1980-81, the annual average rate of inflation has been 4.96%, while the City's revenues have increased by an annual average of only 2.6%. At the same time, the cost of wages and health care for retirees has increased approximately 6.32% annually.<sup>10</sup>

Labor Market. The City also contends that the Union's concern about competition in the labor market is unfounded. The City notes that the Union has presented no serious analysis indicating hiring of its officers by suburban police departments. The City notes that since 1999, applications to the Department have increased, suggesting the Department has no difficulty filling its staffing needs.<sup>11</sup>

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<sup>10</sup> In support of this statement, the City cites City Exhibits, 128, 481, 537, 552, and 553.

<sup>11</sup> In support of this contention, the City cites Exhibits 420-21, 552-53; Un. Ex. 422; Tr. 46, pp. 32-33; and Tr. 27, pp. 170-73.

Overall, the City argues it is in fiscal crisis, and that the ability-to-pay factor necessitates that the panel grant its wage LBO. The City argues that the other factors also support its wage LBO.

#### Position of the Union

Ability-to-Pay. The Union argues that the budget of the City of the Detroit is \$3.4 billion, and that the DPOA's wage proposal in total and over the five-year term of the contract will cost the City approximately \$50 million, or 1.6% of the City's overall budget. The Union points out that the record indicates that the City will have a surplus of at least \$8 million by July, 2007, and \$19 million by July, 2008. The Union also notes that the City projects a \$45.7 million dollar surplus in 2009-10 and a surplus in the range of \$40.7 million to \$78.4 million in 2010-11. Overall, the Union notes that the City's "ability-to-pay" argument is based on outdated data offered by Sean Werdlow in 2005. Given the importance of public safety, the Union's wage proposal is justifiable and well within the City's ability to pay. The Union argues that the attempt by the City to offer evidence by former City Budget Director Ed Rago that the City's five-year projections are "overly optimistic" and "cheerleading" should be rejected. The City's contradictory positions cannot be reconciled and do not warrant rejecting the Union's wage proposal.

The Union also argues that it is saving the City approximately \$25 million by waiving retroactivity for the first 1-1/2 years of the collective bargaining agreement and that it is providing the City with an additional \$15.4 million in health care cost savings. The Union notes that these savings are immediate, while the DPOA's wage proposal costs around \$50 million over the life of the agreement, through June 30, 2009. In addition, the City realized additional savings of \$21 million when the Police and Fire

Pension Board adopted a 30-year amortization period. Thus, the DPOA has funded its own wage proposal.

The Union also contends that the national/local economy is strong. The Union contends that, according to the testimony of Dr. James Oehmke, the probability of a national recession is low and the index of leading economic indicators rose in January, 2006, suggesting continued expansion for 2006 and 2007. This expansion, the Union contends, is starting to have positive effects in Michigan and in Detroit. The Union also cites unprecedented development and increased investment in Detroit and an increase in new housing permits. The Union notes that Dr. Oehmke's assessment is consistent with statements made by Mayor Kilpatrick regarding the City's future growth and construction boom.

The Union also points out that the City's presentation to the bond rating agencies provides a positive assessment of its financial state. If this assessment is accurate for the purposes of the bond rating agencies, it is accurate for purposes of Act 312 arbitration.

The Union also points out that in June, 2006, the City offered the LSA an immediate 8% increase in the investigator differential with 1% annual increases for the next four years. In addition, the City promoted 47 police officers to the rank of sergeant; 23 sergeants were promoted to lieutenant; and two lieutenants were promoted to Deputy Chief. These decisions involve increased payroll costs and are further evidence that the City is able to pay for the Union's wage LBO.

The Union notes that the City has claimed "inability to pay" in every Act 312 arbitration. Panels under Act 312 have consistently rejected the City's arguments. The City's "cry wolf" position must be rejected once again.

Cost-of-Living. The Union notes that police officers have suffered a 27% decline in their purchasing power since 1980; since July 1, 1980, wages for DPOA members have increased by 101.8% while the CPI has increased by 172.6%. This comparison between wages and the CPI justifies granting the wage LBO of the Union.

The Union contends that the City's response to this CPI data is invalid. The City's response is based on total compensation, including hospitalization. Fringe benefits cannot properly be included in an analysis of real wage changes because there is no relationship between fringe benefits and the CPI. This fringe benefit analysis, the Union points out, includes LSA, DFFA, and DPCOA members, and is therefore meaningless with respect to the DPOA.

The DPOA also contends that the City delayed these Act 312 proceedings because it continued to realize savings while the proceedings were ongoing and because it was aware that the panel would be unlikely to provide the Union with a large retroactivity payment. To deny the Union its wage LBO would be to reward City for its recalcitrance.

Public Welfare and Physical Dangers. The Union also points out that its wage proposal is consistent with public welfare because public safety is the City's highest priority. The Union notes that the members of the bargaining unit have seen their superiors receive an 8% increase after their own agreement expired, causing morale to suffer. The community is harmed if officer morale is low, as officers will not do their jobs as aggressively as they otherwise might. Comparability is an important factor, and the DPOA salaries should reflect the increases received by the LSA.

The Union also argues that that the panel must not take into account the effect of the DPOA award on the LSA differential and parity with the DFFA. It is improper and

unfair for the DPOA to suffer because the LSA and DFFA agreements link the compensation for those bargaining units with the DPOA agreement. The Union notes that it is the City's responsibility to address these differentials. If the City can afford an 8% increase to the LSA while incurring significant deficits, it can afford the Union's wage LBO in a period of surpluses.

The Union also points out that the hazardous and dangerous working conditions of the police officers in Detroit support the panel's granting the Union's wage LBO. Detroit is the most distressed city in the country. The Union points out that Detroit's population is relatively young, and a young population is associated with increased crime, incarceration, and dangerous working conditions for police. Detroit has an extremely high crime rate, ranking second in murders, first in forcible rape, third in robbery, and second in aggravated assault in the country. It is one of the most dangerous cities in the United States in which to perform police work, and the Union argues that the wage rates of the Union members must reflect that danger.

This danger is strongly evidenced by the frequency with which Detroit police officers are murdered. Four Detroit police officers have been murdered since February, 1994; 12 have been murdered since 1995. Every day that a police officer goes to work, that officer faces the real possibility that he or she will be killed in the line of duty. The danger faced by police officers in combination with the low pay received has resulted in a high degree of turnover among Detroit police officers; between January, 2003, and January, 2006, 241 officers left the City for employment with another department.

This turnover is causing a manpower crisis that will cause severe understaffing in the Police Department. The situation is similar to the one that existed in 1968, which



caused the Haughton panel to award a wage increase of 17%. This manpower shortage has caused the remaining officers to accept increased responsibility without a corresponding increase in compensation. Call volume is higher than ever, and the number of dropped runs has increased, reducing the quality of service to the citizens of Detroit. This increased workload also increases the hazard exposure of the officers. The Union notes that to these physical dangers must be added the stress on a police officer from working in a confrontational and adversarial environment. The Union refers the panel to the grisly scenes of Union Exhibit 384 and asks the panel to consider not only the effects on a police officer of encountering such scenes, but also to consider the reaction of the citizens at the scene of the horrific event. The Union states that the officer not only faces stressors on the job, but is also affected by a department that is administratively dysfunctional, as exemplified by collapsing restructuring 12 precincts in the six districts, thereby repudiating the Union's seniority rights. The Union also notes that the City's restructuring plan resulted in the elimination of 150 police officers while no LSA or DPCOA (Detroit Police Command Officers Association) members were affected. The panel can begin to remedy these injustices by awarding the Union its wage LBO. A fair wage must reflect the value of these officers to the City.

External Comparability—Wages and Salaries. The Union also argues that the factor of external comparability supports its wage LBO. The Union argues that it is well established that the salary basis for comparison is the maximum salary, and the Union notes that all ten of the largest cities (by population) have maximum salaries greater than the City. The Union points out that even if the panel awards the Union's wage LBO, the maximum salary of a police officer in Detroit in 2008 will still be more than \$700 less

than the maximum salary of an officer in Philadelphia in 2008, the lowest-paid city among the ten comparables (\$54,798 and \$55,519, respectively). The City's LBO will result in a maximum salary differential between Philadelphia and Detroit of more than \$1,500 (\$55,519 and \$53,232, respectively). The Union also points out that by 2008, all of the other cities will likely have provided additional salary increases to their officers, moving Detroit further behind the Union's comparables.

The Union argues that its wage LBO simply attempts to move Detroit in the "national direction," as determined by New York City arbitrator police arbitrator Eric Schmertz, without complete closing of the gap. The Union notes that a 14% retroactivity payment would be required to completely close the gap; the Union's LBO proposes only 8%.

The Union also cites Arbitrator Schmertz's New York City award to support its contention that the salaries of police in the 20 largest cities in the United States will continue to grow over the next several years. The Union points out that the 2008 maximum salary of \$54,798 under its wage LBO is substandard, while the 2008 maximum salary of \$53,233 under the City's wage LBO is unconscionable. Overall, the salary paid to DPOA members is four years behind the salaries in the top 20 departments in the United States.

The Union also points out that the City's LBO would also mean that the salaries in Detroit would be less than the salaries in the cities the City considers comparable. It would leave the City's July 1, 2006 salaries, behind the 2005 rates of Cleveland and Pittsburgh and barely above the salary in Cleveland. The City's proposed 2006 and 2007 salaries would result in Detroit's continuing to be the lowest-paid police department.

External Comparability–Total Compensation. The Union contends that the total compensation received by DPOA members is also less than that received by police officers in the comparable cities. The Union notes that its exhibits demonstrate that the level of compensation of officers in Detroit is from 20-27% below the mean of the national comparables, depending on years of service and inclusion or exclusion of other emoluments (i.e., educational incentives). Vis-à-vis each individual city, Detroit ranks last in thirteen of fifteen variations. In Detroit, a 20-year veteran receives a total compensation package of \$55, 524.

The Union argues that the record does not permit including either health care costs or pension costs in determining total compensation. The Union points out that the City's evidence on health care was inaccurate as it failed to address costs; a plan description; employee contributions; regional differences in provider reimbursements; demographics; enrollment; and claims history. Thus, the City's health care cost estimates are unreliable. The Union notes the testimony of City witness Allen Lewis that the City's health care cost estimate was either the most populous plan or the total plan, unable to distinguish among DPOA members, command, and retirees. The City also occasionally commingled dental and or vision coverage with health care. There were conflicting cost items and data from the City's comparables. Such ambiguity does not permit an accurate cost analysis. The Union also contends that if the City cannot determine its costs for health care, the panel cannot rely on the City's cost estimates.

The Union also points out that the City's pension cost estimates and comparisons with comparables are unreliable. The City did not perform an actuarial analysis, which is necessary to obtain an accurate estimate of pension costs. The Union contends that the

City's pension cost estimate of \$21,889 and the 45.8% multiplier per employee used by the City is inaccurate as the City's benefit levels are no greater than benefit levels in the national comparables. Thus, the difference in Detroit pension cost estimates is due to some unknown variable, possibly duty disability costs, workers' compensation costs, or disability insurance included in Detroit estimates but not in the estimates for the other cities.

Internal Comparability. The Union points out that the salary of Detroit's mayor, \$179,700, is the highest of any mayor in Michigan, and City Council members enjoy salaries four times higher than their counterparts in Grand Rapids, the second-largest city in Michigan. Other high city officials, such as the finance director, police chief, fire chief, and budget director, also are paid very high salaries. The Union also points out that all nonunion employees in the City received a bump in their salaries in 2005 through increasing the pay grade of the job classification. If the difficulty of governing Detroit warrants high salaries, then the difficulty of policing Detroit also warrants high salaries.

With respect to other internal comparables, the Union notes that although the City laid off almost 4,400 employees in the early 1990s, approximately 1,100 were called back in 1992 and the City hired 1,328 more general employees between 1994 and 2003. Meanwhile, 250 DPOA members have been laid off since 2005 and the number of police officers has been reduced by almost 1,000 due to attrition.

Labor Market. The Union contends that awarding the Union its wage LBO will discourage DPOA members from leaving the City and going to work in suburban departments. Such turnover is costly to the City because the City does not benefit from its investment in training the officers.

Priority of Public Safety. The Union points out that budgets are established by setting priorities. If public safety is the City's top priority, as it claims, then the Union's wage LBO can be partially funded by reducing unusual services. Giving priority to public safety and to police officers' salaries may actually stem the loss of population. Evidence indicates that higher crime rates result from fewer police and higher crime rates encourage outmigration.

Final Word. The Union notes that its wage LBO must also be considered in light of the fact that adoption of the City's health care proposal would mean that most of the City's wage increase would go to paying health care premium cost-sharing. Overall, the Union argues that only \$1,566 separates the two LBOs at the maximum. This is a small amount for the City in a \$3.4 billion budget, but it is a substantial amount to the police officers.

## DISCUSSION

Prior to addressing this issue, it is first necessary to present the differences between the two LBOs. These differences are presented in Table 1.

TABLE 1

Comparison of City and Union Wage LBOs

\$47,490, Mean Salary Assumed 6/30/04, Per Attachment to 6/13/06 Letter from K. Wilson	7/1/2004	7/1/2005	1/1/2006	7/1/2006	1/1/2007	7/1/2007	1/1/2008	6/30/2008–7/1/2008	Pct. Inc., 7/1/04–6/30/08 or 7/1/08
City LBO									
Pct. Inc.	0	0	0	0	3	2	3	3	
Multiplier	1	1	1	1	1.03	1.02	1.03	1.03	
Mean Salary	\$ 47,490.00	\$ 47,490.00	\$ 47,490.00	\$ 47,490.00	\$ 48,914.70	\$ 49,892.99	\$ 51,389.78	\$ 52,931.48	11.5%
Union LBO Contractual									
Pct. Inc.	5	3	0	0	0	2	0	4	
Multiplier	1.05	1.03	1	1	1	1.02	1	1.04	
Mean Salary	\$ 49,864.50	\$ 51,360.44	\$ 51,360.44	\$ 51,360.44	\$ 51,360.44	\$ 52,387.64	\$ 52,387.64	\$ 54,483.15	14.7%
Union LBO Implemented									
Pct. Inc.	0	0	4	4	0	2	0	4	
Multiplier	1	1	1.04	1.04	1	1.02	1	1.04	
Mean Salary	\$ 47,490.00	\$ 47,490.00	\$ 49,389.60	\$ 51,365.18	\$ 51,365.18	\$ 52,392.49	\$ 52,392.49	\$ 54,488.19	14.7%

As can be seen, the City’s LBO provides for a total salary increase, including compounding, of 11.5% over the five-year life of the agreement. The Union’s LBO provides for a total salary increase of 14.7%, including compounding, over the five-year life of the agreement. The parties’ LBOs will now be addressed in the context of the statutory factors.

Ability-to-Pay. This award has discussed the City’s financial situation in great detail elsewhere; therefore, this discussion will not be repeated. It is clear, however, that the City’s financial condition is very poor. The City has run large deficits for three years and there is no reason to believe this will change during the term of this agreement. Accordingly, a majority of the panel finds that the statutory factor of ability-to-pay supports the City’s wage LBO, the lower of the two LBOs.

Statutory Factor: Comparability–Internal. Internal comparability involves comparing the parties’ LBOs to the wage adjustments received by other bargaining units

in the City. Clearly, the units most comparable to the DPOA are the DFFA and the DPLSA. As the DFFA wage adjustments are linked to the DPOA wage adjustments, this award will focus on the adjustments received by the DPLSA. The most recent Act 312 arbitration award involving the City and the DPLSA was issued on June 2, 2003 (Jt. Ex. 13). That panel, chaired by Richard N. Block, Chairperson of this panel, awarded the following wage increases to the DPLSA: July 1, 2001–0%; July 1, 2002–0%; July 1, 2003–3%; July 1, 2004–5%; July 1, 2005–3% (Jt. Ex. 13, p. 34). With compounding, the award of the Block panel to the DPLSA resulted in an increase of 11.4% over the life of the collective bargaining agreement/arbitration award. This increase of 11.4% is almost identical to the 11.5% increase (with compounding) for the DPOA proposed by the City in its LBO in these proceedings. The Union’s LBO would result in a DPOA wage increase that is 3.3% above the increase received by the DPLSA. Thus, the City’s LBO is more consistent with the internal comparable of the DPLSA, the bargaining unit most comparable to the DPOA, than is the Union’s LBO.<sup>12</sup>

The record establishes that during the spring of 2006, the City engaged in collective bargaining negotiations with the unions representing the general (non-uniformed) city employees. The City reached agreement resulting on a 0% wage increase effective July 1, 2005; July 1, 2006; and July 1, 2007; and a 10% reduction in hours for the period July 1, 2006–June 30, 2007, for general city employee bargaining units represented by Utility Workers of America Locals 504 and 531. These agreements

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<sup>12</sup> The panel is aware that the wages of the members of the DPLSA bargaining unit are also subject to a percentage differential, which may increase the salary received by DPLSA members. The Block panel, however, did not address that differential. Moreover, with a percentage differential, any increase awarded to the DPOA to reduce that differential would result in an increase in the DPLSA salary if the differential falls below the contractual differential.

provide for a 4% increase on June 30, 2008, at 11:59 PM, at the expiration of the collective bargaining agreements (City Exs. 556A, 556B, 556G).

The City and Amalgamated Transit Union (ATU) Local 26 agreed on a 0% increase for 2005-06, “wage concessions” for 2006-07, and a 0% increase for 2007-8 with a 4% increase on June 30, 2008, at 11:59 PM, at the expiration of the collective bargaining agreement. The City and the ATU did not agree on a specific reduction in hours, agreeing to leave that issue for future negotiations (City Ex. 556F).

The City agreed on a 10% reduction in hours for the period July 1, 2006–June 30, 2007, for general city employee bargaining units represented by the International Union of Operating Engineers Local 547 (City Exs. 556C and 556 D); Teamsters Local 214 (City Ex. 556E); the Department of Transportation Foremen’s Association (City Ex. 556L); the Income Tax Investigators Association (City Ex. 556L); the License Investigators Association (City Ex. 556L); three bargaining units represented by Service Employees International Union Local 517M (City Exs. 556K and 556L),<sup>13</sup> and UAW Local 2211 (City Ex. 556M).<sup>14</sup>

Based on the foregoing, it is clear that all of these bargaining units have agreed with the City to limit or reduce the wage costs of the agreements with the City, either by accepting zero wage increases and/or by accepting reductions in hours. Thus, the existence of these agreements supports the lower of the two wage LBOs in these proceedings, the City’s wage LBO.

The panel also notes that, subsequent to the June 30, 2006, issuance of a fact-finding report by Michael Long (City Ex. 556H), the city imposed agreements on four

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<sup>13</sup> The three units are technical-professional, supervisory, and non-supervisory (City 556L).

<sup>14</sup> This is a bargaining unit of public attorneys (City Ex. 556M).



bargaining units represented by the American Federation of State, County and Municipal Employees (AFSCME). These agreements imposed an hours reduction of 10% on the employees in these units during the period July 17, 2006–July 15, 2007 (City. Ex. 556L).<sup>15</sup> Although these imposed agreements are entitled to be given less weight than the negotiated agreements, these employees will accept the reduction in hours, thus supporting, but to a lesser extent than the negotiated agreements, the City’s wage LBO.<sup>16</sup>

Based on the foregoing, a majority of the panel finds that the factor internal comparability supports the City’s LBO on wages.

Statutory Factor: Comparability–External

The record is clear that the salaries of police officers in Detroit are below those in all eight comparable cities. Based on Union data, the annual salaries (the monthly salary multiplied by 12) for the eight comparables for officers with 20 years experience and no education supplement on July 1, 2005, ranged from a high of \$71,688 in Chicago to a low of \$49,320 in Cleveland. The annual salary for Detroit was \$47,760 (City Exs. 519-20).

City data confirm this conclusion. According to the City data, among the comparables, salaries for a police officer on July 1, 2005, working at the maximum salary and working all holidays ranged from a high of \$76,476 in Chicago to a low of \$49,332 in Cleveland. The salary for Detroit was \$47,763 (City Ex. 532).

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<sup>15</sup> The four bargaining units represented by AFSCME are supervisory, forestry and landscape foremen, paving foreperson, and non-supervisory.

<sup>16</sup> A fact-finding report by George Roumell (hereinafter Roumell Report) was also issued in the matter of the expired agreement between the City and the Detroit Building Trades Council (DBTC), representing a bargaining unit covering various skilled tradespeople (City Ex. 556I). The Roumell Report was issued after the membership of the DBTC rejected a tentative agreement between the City and the DBTC (City Ex. 556 I, p. 2). The record does not establish the outcome of these negotiations.

Based on the foregoing, it is clear that the salaries of police officers in Detroit are below all eight of the comparables. Accordingly, the factor of external comparability supports the Union’s wage LBO, the higher of the two LBOs.

Other Factors: Bargaining History

An “other” factor that may also be taken into account in Act 312 is bargaining history.<sup>17</sup> Table 2 presents the history of wage increases from the three previous Act 312 awards for the bargaining unit. As can be seen from Table 2 (below), the total percentage increase awarded to the DPOA during this 12-year period was 26.1%. The mean annual percentage increase was 2.17%.<sup>18</sup>

TABLE 2

Wage Increases for DPOA, July 1, 1992–July 1, 2003

Date	Percent Increase	Multiplier	Hypothetical Wage
6/30/1992			40000.00
7/1/1992	0	1.000	40000.00
7/1/1993	0	1.000	40000.00
7/1/1994	0	1.000	40000.00
7/1/1995	4	1.040	41600.00
7/1/1996	2	1.020	42432.00
7/1/1997	2.5	1.025	43492.80
1/1/1998	2	1.020	44362.66
7/1/1998	2	1.020	45249.91
7/1/1999	2	1.020	46154.91
7/1/2000	3	1.030	47539.55
1/1/2001	3	1.030	48965.74
7/1/2001	0	1.000	48965.74

<sup>17</sup> See, for example, Jt. Ex. 12 (Roumell Award), pp. 53-56, 58-60.

<sup>18</sup> The record also includes the Keifer Award, issued in 1987, which awarded wage increases for July 1, 1986–July 1, 1988 (Un. Ex. 177), and the Lipson Award, issued in 1989, which awarded wage increases for July 1, 1989–July 1, 1991 (Un. Ex. 176). When these two awards are included in the calculation, the mean annual percentage increase for the 18-year period of July 1, 1986–July 1, 2003 is 3.6%. A majority of the panel is of the view, however, that the more recent awards should be given the greatest weight. The mean percentage increase, with compounding, for the period July 1, 1986–July 1, 1991 (the period covered by the Kiefer and Lipson Awards), was 5.0%. As the mean percentage increase, with compounding, for the period July 1, 1992–July 1, 2003, was 2.17%, which is less than half of the percentage increases in the prior six-year period, it is clear that three panels starting in the 1990s have awarded far more modest wage increases than the 1980s panels.

7/1/2002	0	1.000	48965.74
7/1/2003	3	1.030	50434.71
1992-03			
Total Percentage Increase			26.1%
Mean Annual Percentage Increase (with compounding)			2.17%

SOURCES: Jt. Ex. 10, pp. 12-13; Jt. Ex. 11, p. 39; Jt. Ex. 12, pp. 61-62.

Comparing this to the wage LBOs of the parties, the City’s wage LBO of 11.5% over the five-year period of the agreement results in a mean annual percentage increase of 2.3%. The Union’s wage LBO of 14.7% over the five-year period results in a mean annual percentage increase of 2.9%. Thus, the City’s wage LBO is closer to the historical wage increases for this bargaining unit than the Union’s wage LBO and is more consistent with the “other” statutory factor of bargaining history than the Union’s wage LBO. Therefore, the “other” statutory factor of bargaining history supports the City’s wage LBO.

Cost of Living

During the three-year period 2004-2006, the average annual increase in the cost of living in the Detroit metropolitan area, based on the CPI-U, was 2.5%.<sup>19</sup> The average annual increase under the City’s LBO is 2.3%. The average annual increase under the Union’s LBO is 2.9%. Thus, the City’s LBO is slightly closer to the average change in the CPI-U than the Union’s LBO.

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<sup>19</sup>This percentage increase was derived from the following indices: 2003 – 182.5; 2004 – 185.4; 2005 – 190.8; 2006 – 196.6. See [www.bls.gov](http://www.bls.gov).

### Other Factors: Job Hazards and Danger

There is no doubt that the job of a police officer is dangerous and stressful. Detroit is a very dangerous city, and police officers risk their lives every shift when they serve the City of Detroit. They see things that are truly horrific. Their jobs are extremely stressful, and this should be reflected in their compensation.

### CONCLUSION

The record establishes that police officers in Detroit are very low paid relative to their counterparts in the comparable cities. They work in a dangerous environment, and they deserve higher pay than they earn.

A majority of the panel is aware that the actual spendable earnings available to officers as a result of the wage increase awarded will be reduced below what they would have otherwise been because of the decision of this panel to award the City hospitalization proposal. The award in this case on shift premium and the Easter excused day recognizes this in a small, albeit inadequate way. Nevertheless, a majority of the panel is of the view that it cannot disregard the overwhelming evidence of the City's precarious financial condition. The dire financial situation of the City at this time must be given the greatest weight in rendering this award.

Some weight must also be given to fact that other bargaining units in the City have accepted earnings reductions in the form of zero percent wage increases and reduced hours. Despite this, even under the City's LBO, the officers will receive a base wage increase that will be reflected in overtime and, eventually, pension benefits. Their spendable earnings will increase. In the circumstances of this case, this is recognition of

their importance to the City and the hazardous, dangerous, and, too often, life-threatening conditions under which they work.

Based on the foregoing, a majority of the panel finds that the statutory factors support the City's LBO on City Issue 15/Union Issue 1: Wages.

#### AWARD

The City's LBO on City Issue 15/Union Issue 1: Wages is accepted. The Union's LBO on City Issue 15/Union Issue 1: Wages is not accepted.

### **CITY ISSUE 17: OUTSIDE EMPLOYMENT (NON-ECONOMIC)**

#### LAST, BEST OFFERS

##### Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 44 be amended to include the following:

**The employer of any Association member providing work in private or personal security shall maintain, at all times, at either its or the employee's sole expense, liability insurance placed with an insurance carrier or carriers licensed to do business in Michigan and rated "A" or better by Best's, or with a risk retention group that is subject to Public Act 214 of 1989, MCL 500.1801, et seq., as amended as follows:**

- a. **Liability insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.**
- b. **Workers' Compensation**

**Insurance which meets  
Michigan statutory  
requirements.**

This insurance coverage shall name the employee and the City as the insured and shall contain an endorsement that such policies will not be cancelled without at least thirty (30) days prior notice to the Department. In the event an employee receives notice of such policy cancellation, the employee shall immediately notify the Department in writing.

Last, Best Offer of the Union

The DPOA rejects the City's last position on outside employment and as its last offer of settlement proposes that the status quo be maintained.

POSITIONS OF THE PARTIES

Position of the City

The City contends that granting this proposal will relieve the City of the costs associated with an action brought against the City for acts taken by a sworn police officer when he or she is working as a security guard. The City notes that a plaintiff who was harmed by an off-duty police officer working in security could claim that the actions taken by the officer, albeit off-duty, were taken under color of law. The City points out that the risk is especially great in bars or clubs where the likelihood of violence or criminal activity is high. Requiring the officer to purchase liability insurance would shift the cost of such a legal action to the officer and the insurance carrier. It would also relieve the City of the costs associated with defending such suits.

The City notes that it has paid millions of dollars over the last five years to resolve civil suits brought by citizens against Detroit police officers. The City notes that

Detroit juries have a tendency to render large awards; thus it is often less costly for the City to settle a “nuisance” lawsuit than to take it to trial.

The City notes that the authority of the Chief to disapprove outside employment requests is insufficient to protect the City. The Chief does not have full discretion.

The City argues that including this proposal in the collective bargaining agreement would not deter officers from seeking outside employment. This provision would apply only to officers working in security; it would not apply to non-security employment.

#### Position of the Union

The Union argues that the City has not demonstrated a need for a change in Article 44. The Union points out no lawsuits have arisen from outside employment over the last two years. Moreover, the Union notes, the Chief can, with reason, deny permission for an officer to engage in outside employment.

The Union points out that requiring officers to carry liability insurance will deter officers from taking outside employment. Detroit police officers are among the lowest paid in the country. They should not be required to incur the additional financial hardship of purchasing liability insurance in order to work a second job to support their families.

### DISCUSSION

The relevant statutory factors for this proposal are the “other” factors of fairness and equity and “need for a change.” This issue will be addressed in the light of these two factors.

#### Fairness and Equity

The record establishes that Detroit police officers are among the lowest paid among the officers in the comparable cities. Thus, it is reasonable to believe that it may be necessary for some officers to take second jobs in order to maintain an acceptable standard of living. A requirement to carry liability insurance for a security job would increase the expense of outside employment in the field of endeavor in which the officer is most likely to have experience and expertise.

Given the large amount of money the City pays to settle civil suits (Tr. 27, p. 100), the City is justified in attempting to reduce its exposure to the expense and liability associated with civil suits filed against police officers. The evidence does not indicate that requiring officers to carry liability insurance for outside security jobs would reduce the number of civil suits filed against the City. The record establishes that since 2003, when officers were first permitted to work security in outside employment, no suits have resulted from outside employment in security by police officers (Jt. Ex. 11; Tr. 27, p. 109; Tr. 28, p. 157).

Based on the foregoing, a majority of the panel finds that the “other” statutory factor of fairness and equity supports the Union’s LBO on this issue.

#### Need for a Change

The City’s expressed concern about the potential liability associated with a police officer working as a security guard in a bar or club is not as serious as it might appear. The current collective agreement prohibits outside employment in establishments regulated by the police department, including bars. Thus, an officer could not work at a bar in the City of Detroit, although presumably an officer could work security in a bar outside the city limits (Jt. Ex. 9; Tr. 28, pp. 159-61). In addition, the current language



provides the City two additional checks on potential problems from outside employment. First, the Department may, with reason, disapprove requests for outside employment. The fact that a grievance may be filed over the reasonableness of the denial does not negate the fact that the Chief may deny approval, with reason. A sustained grievance would simply mean that the denial was not reasonable. Second, any approval for outside employment must be renewed annually (Jt. Ex. 9).

In addition, as noted, no suits have yet resulted from acts of Detroit police officers working outside employment in security. Thus, while the City has presented a legitimate legal theory on the liability associated with actions by off-duty police officers (Tr. 27, pp. 97-99, 102-06), the theoretical possibility that such a suit could be filed when no such suit has been filed does not meet the standard of demonstrating a need for a change.

Based on the foregoing, a majority of the panel finds that the “other” statutory factor of “need for a change” supports the Union’s LBO on this issue.

#### CONCLUSION

A majority of the panel finds that the Union’s LBO on City Issue 17: Outside Employment is more consistent with the statutory factors than the City’s LBO.

#### AWARD ON CITY ISSUE 17: OUTSIDE EMPLOYMENT

The Union’s LBO on City Issue 17: Outside Employment is accepted. The City’s LBO on City Issue 17: Outside Employment is not accepted.

**CITY ISSUE 19: HOSPITALIZATION (HEALTH INSURANCE)**

**UNION ISSUE 6: HOSPITALIZATION (HEALTH INSURANCE) - RIGHT TO NAME PROVIDER**

LAST, BEST OFFERS

Last, Best Offer of the City on City Issue 19

The City proposes as its last offer of settlement that Article 21 be amended as follows:

~~A. The current health care plan for active and retired employees will remain in effect until April 30, 1995.~~

A. Effective **upon the issuance of the award**, ~~May 1, 1995, or before, if possible,~~ the current hospitalization **benefit design for all plans will be amended in accordance with Exhibit I** ~~replaced by the Coalition of Public Safety Trust~~ for all active employees and future retirees. Coverage shall be provided for active employees and their legal dependents, duty death beneficiaries and their legal dependents and duty disability retirees and their legal dependents. Dependents shall include all 19 to 25 year olds who are dependent on the employee for support and maintenance and who were reported as such on the employee's most recent Federal tax return. Deferred vested retirees and their spouses are included in this coverage.

Deferred vested retirees and their spouses are included in this coverage provided, however, that employees who retire with a deferred vested retirement on or after August 28, 2003, the City's contribution towards its share of the premium cost **as computed in paragraph B** shall be **reduced by** ~~limited to~~ four percent (4%) for each year of service **less than twenty-five (25) or any** pro rata portion thereof. ~~The premium sharing formula in Article 21, Section D-B shall apply for increases.~~

The City will pay for coverage for sponsored dependents of those who are members of the bargaining unit as of August 28, 2003, only. Members entering the bargaining unit after August 28, 2003, shall pay for any and all coverage for sponsored dependents.

Insurance coverage for new hires or re-instated coverage for existing employees shall begin on the first day of the first full pay period and end on the last day of the month that employment ends.

B. The City shall make available the following hospitalization plans. All plans must include both active and retired employees when developing their monthly premium rates, and all plans must follow the benefit levels as described in Exhibit

I. If at the end of any fiscal year an alternative hospitalization plan or program has failed to enroll 50 employees in the entire City, the City shall have the option of removing that plan or program from the list of eligible plans or programs.

COPS Trust/US Health

Employees selecting this plan will be responsible for 20% of the monthly premium for Single Person, Two Person, and Family coverage.

Blue Cross/Blue Shield Traditional

Employees selecting this plan will be responsible for 20% of the monthly premium for Single Person, Two Person, and Family coverage.

Health Alliance Plan, Blue Care Network, Total Health Care

Employees selecting any of these plans will be responsible for 20% of the monthly premium for Single Person, Two Person, and Family coverage.

Blue Cross/Blue Shield Community Blue

Employees selecting this plan will be responsible for 10% of the monthly premium for Single Person, Two Person, and Family coverage.

~~For the initial period of coverage (May 1, 1995 through April 30, 1996), the City shall make the following monthly payments to the C.O.P.S. Trust:~~

~~Active Employees~~

<del>One Person</del>	<del>—————</del>	<del>\$188.66</del>
<del>Two Person</del>	<del>—————</del>	<del>\$421.93</del>
<del>Family</del>	<del>—————</del>	<del>\$439.43</del>
<del>Family Continuation</del>	<del>—————</del>	<del>\$ 97.46</del>
<del>Sponsored Dependent</del>	<del>—————</del>	<del>\$219.25</del>

~~Retirees and spouses under 65 not Medicare eligible:~~

<del>One Person</del>	<del>—————</del>	<del>\$257.18</del>
<del>Two Person</del>	<del>—————</del>	<del>\$575.18</del>

~~Retirees and spouses over 65 who are Medicare eligible:~~

<del>One Person</del>	<del>—————</del>	<del>\$185.31</del>
<del>Two Person</del>	<del>—————</del>	<del>\$366.53</del>

~~D. For the period of coverage beginning as of May 1, 1996, the City will pay any future premium increases up to eight percent (8%).~~

~~Fifty percent (50%) of any premium charges that exceed the above amounts will be paid by the employee, and the other fifty percent (50%) will be paid by the City.~~

- C. Employees who retire after the effective date of this Agreement, and who are qualified to receive the City's hospitalization-medical insurance as a retiree shall at any time the retiree is receiving said coverage, be entitled to the same coverage opportunities then available to the active employees and utilizing the same co-premium calculation formula to determine amounts payable by retirees for the retiree and their spouse.
- D. Spouses of persons who retire on or after July 1, 1985, and who elect the straight life retirement allowance or cash refund annuity (option 1) shall be eligible for health, dental and eye care insurance paid by the City as long as the retiree receives a pension.
- ~~G. Employees and regular future retirees, including deferred vested retirees, shall have the option of choosing alternative hospitalization medical coverage from any plan or program selected by the Union or made available by the City. The City's contribution to the alternative Plans or programs shall be limited to the City's portion premium cost for the COPS program; the employee and retiree paying all additional costs. [If at the end of any fiscal year an alternative hospitalization plan or program has failed to enroll 50 employees in the entire City, the City shall have the option of removing that plan or program from the list of eligible plans or programs. **Moved to paragraph B]**~~
- E. The City will pay to the Dental Plan or Program selected by the Union an amount per employee equal to the premium cost for the Blue Cross/Blue Shield program which provides Class I benefits on a 25% co-pay basis and Class II and III benefits on a 50% basis with Class I, II and III benefits not exceeding \$1,000 per person per year and also Orthodontic coverage on a 50% co-pay basis with a \$1,000 life time maximum. Coverage shall be provided to all employees including duty disability retirees, except that **coverage for newly hired employees shall begin on the first of the month following the completion of six (6) months of service.** ~~not be eligible for these benefits until they shall have worked 1040 straight time hours. Coverage ends on the last day of the month that employment ends.~~
- F. Effective July 1, 1987, the City will pay to the optical plan or program selected by the DPOA an amount per employee equal to the premium cost for the Blue Cross/Blue Shield A-80 Optical Plan. **Coverage for new hires shall begin on the first of the month following sixty (60) days of service, and ends on the last day of the month that employment ends.**

- G. No insurance carrier shall be allowed to underwrite City Health Care Benefits unless it offers coordination of benefits. Employees are to fully cooperate and participate in all of the enrollment and administrative procedures, including coordination of benefits administrative efforts, which the City implements.
- H. A Joint Health Care Cost Containment Committee made up of two members from the City and two members from the Association will, from time to time, review cost containment programs and other health care issues for both active employees and future retirees during the term of the Contract. In determining different alternatives to health care benefits, the Committee will review the benefits structure, utilization analysis and the provider network. The Committee may also utilize the services of a health care consultant whose expenses shall be borne equally by the parties.
- I. The City shall have the right to change the **current insurance carriers offered** ~~Blue Cross/Blue Shield hospitalization plan~~ by entering into preferred or exclusive provider arrangements to reduce cost, provided such changes do not cause a material change in health care benefits.
- J. Any employee premium sharing, if any, will be withheld on a bi-weekly basis, before payroll taxes are applied.
- K. Employees who are on the active payroll of the City, covered by a health care plan offered by an employer other than the City, and, can establish such coverage, who do not elect to take hospitalization-medical coverage offered by the City, may, each enrollment year, at the time of the enrollment period, opt out from City coverage and for said enrollment year receive the applicable payment being offered by the City as payment in lieu of the hospitalization-medical coverage. Once an employee opts out for a given year, the employee will not be able to receive the City's coverage until the next enrollment period, unless the employee loses his eligibility for the alternate coverage, unless, and in such case, the employee will be permitted to resume coverage with the City the month following his completion of a health application and transfer form. The provisions of this section shall be applicable to an employee who is or does retire and is eligible to receive hospitalization-medical insurance coverage. If the employee returns to the City's coverage under the conditions just stated, the employee shall pay back pro rata any payment provided herein. The opt-out stipend will be paid for each enrollment year that the employee elects to opt out under this provision. This payment will not be included in the definition of compensation for determination of pension or any other benefits.

In order to be eligible for the incentive payment, employees must bring their identification card that shows other coverage to the Police Personnel Office and submit a signed enrollment form electing "no coverage" on or before the City's open enrollment deadline. A copy of the identification card will be kept on file.

All employees are required to sign an election form, either enrolling or declining coverage, as a condition of employment.

The provisions of this section shall be applicable to an employee who retires and is eligible to receive the City's hospitalization-medical insurance coverage.

These opt-out provisions may be offered at the discretion of the City, which shall have the sole discretion to determine the amount of the stipend for each year. For the period beginning January 1, 2000, the yearly stipend for all categories shall be a total of \$950 in cash payments paid **monthly** in **twelve (12)** ~~four (4)~~ equal installments, ~~of \$237.50 at the end of each three month period (paid as closely as possible to September 30<sup>th</sup>, December 31<sup>st</sup>, March 31<sup>st</sup>, and June 30<sup>th</sup>), or applicable proportional payment amounts and/or installments for the equivalent proportions of the year covered,~~ in lieu of the hospitalization-medical coverage offered by the City. Such stipend, at the City's discretion, may be modified each year and for each category of opt-out. These opt-out provisions may be terminated by the City at any time.

- L. C.O.P.S. Trust shall be required to respond to any reasonable requests from the City for statistical data regarding claims for active employees, retirees and dependents. The City of Detroit will be provided with a report of the earned premiums and paid claims by line of coverage for actives and retirees separately within thirty (30) days after the end of a quarter during the term of the contract. Furthermore, the future rates shall be stated separately for active employees and retirees.
- M. There shall be no duplicate hospitalization-medical insurance coverage or payments in lieu thereof provided employees or future retirees of the City. If the City employs more than one member of a family, or the family unit includes a retiree of the City, all of whom could be eligible for coverage under one hospital-medical insurance policy or plan as a spouse or eligible dependent, the spouses or eligible dependents of that family shall be covered by only one spouse or the other. It is the responsibility of the family to select a single hospitalization carrier. Under no circumstances shall the City be obligated to provide more than one hospitalization-medical policy or plan.
- N. For an employee who retires after March 1, 1995, under a retirement which makes him or her eligible to receive the City's hospitalization-medical insurance coverage for himself and his family, but who is, subsequent to such retirement, eligible to receive a medical-hospitalization insurance plan from another employer that provides substantially the same coverage and benefits as offered by the City and at no greater premium co-pay than exists at the time of retirement, shall not be entitled to the City's coverage during the period of other employment. He shall be entitled to receive any applicable payment in lieu of hospitalization-medical insurance then being offered by the City pursuant to the provisions of Article 21, Section N, above, recognizing that for each year the retiree is subject

to this provision, the other insurance offered must meet the substantial coverage-benefit, including co-payment test.

- O. The City shall be entitled to implement a self-insured prescription drug program to replace other prescription drug providers, provided such change does not cause a material change in health care benefits. Any dispute over whether there is a material change shall be subject to the grievance procedure.
- P. Coverage will be terminated for any employee who receives a paycheck with less than eight (8) hours of pay in any month. This provision also applies to employees serving suspensions provided that the present practice of permitting suspended employees to continue insurance coverage paid by the City, provided the employee pays the required premium sharing amount, shall be continued.
- Q. Bargaining unit members will be entitled to participate in any new wellness incentive plan the City may implement.

Exhibit I

**HEALTH CARE BENEFIT LEVELS**

<b>COPS Trust/ US Health Plan</b>	<b>In Network</b>	<b>Out of Network</b>
<b>General Plan Information</b>		
Annual Deductible/Individual	\$175	\$425
Annual Deductible/Family	2x individual deductible	2x individual deductible
Coinsurance (Outpatient only)	90%	70%
Office Visit/Exam	\$10 copay, then 100%	70%
Outpatient Mental Health/Substance Abuse	60%	60%
Annual Out-of-Pocket Limit/Individual	\$1,000	\$2,000
Annual Out-of-Pocket Limit/Family	\$2,000	\$4,000
Inpatient Hospitalization	100%	70%
Emergency Room (copay waived if admitted)	\$75 copay, then 100%	\$75 copay, then 100%
Urgent Care Facility	\$10 copay, then 100%	70%
Hospital Admission Deductible	None	None
<b>Prescription Drug Benefits</b>		
<b>Retail</b>		
Generic	\$5	Not covered
Brand (Singlesource/Formulary)	\$15	Not covered
Brand (Multisource/Non-formulary)	\$15	Not covered
Number of Days Supply	30 days	N/A
<b>Mail Order</b>		
Generic	\$10	Not covered
Brand (Singlesource/Formulary)	\$30	Not covered
Brand (Multisource/Non-formulary)	\$30	Not covered
Number of Days Supply for Mail Order	90 days	N/A

**Exhibit I (continued)**



## HEALTH CARE BENEFIT LEVELS

<b>BCN, HAP, THC Plans</b>	
<b>General Plan Information</b>	
Office Visit Copay	\$ 10 Copay
Inpatient Admission Copay	None
Emergency Copay	\$ 75 Copay, then 100%
Urgent Care Copay	\$10 Copay, then 100%
Outpatient MH/SA Copay	\$10 Copay
<b>Prescription Drug Benefits</b>	
<b>Retail</b>	
Generic	\$5
Brand (Single source/Formulary)	\$15
Brand (Multi-source/Non-Formulary)	\$15
Number of Days Supply	30 days
<b>Mail Order</b>	
Generic	\$10
Brand (Single source/Formulary)	\$30
Brand (Multi-source/Non-Formulary)	\$30
Number of Days Supply for Mail Order	90 days

**Exhibit I (continued)**

**HEALTH CARE BENEFIT LEVELS**

<b>BC/BS Traditional</b>	
<b>General Plan Information</b>	
Annual Deductible/Individual	\$175
Annual Deductible/Family	2x individual deductible
Office Visit/Exam	80%
Outpatient Specialist Visit	80% first 6 visits, then 50%
Annual Out-of-Pocket Limit/Individual	\$1,000
Annual Out-of-Pocket Limit/Family	\$2,000
Lifetime Plan Maximum	\$1,000,000
Inpatient Hospitalization	100%
Semi-Private Room & Board; Including Services and Supplies	100%
Emergency Services	\$75 copay then 100%
Urgent Care	80%
Hospital Admission Deductible	None
<b>Prescription Drug Benefits</b>	
<b>Retail</b>	
Generic	\$5
Brand (Singlesource/Formulary)	\$15
Brand (Multisource/Non-Formulary)	\$15
Number of Days Supply	30 days
<b>Mail Order</b>	
Generic	\$10
Brand (Singlesource/Formulary)	\$30
Brand (Multisource/Non-formulary)	\$30
Number of Days Supply for Mail Order	90 days

**Exhibit I (continued)**

**HEALTH CARE BENEFIT LEVELS**

<b>BC/BS Community Blue</b>	<b>In Network</b>	<b>Out of Network</b>
<b>General Plan Information</b>		
Annual Deductible/Individual	\$175	\$425
Annual Deductible/Family	2x individual deductible	2x individual deductible
Coinsurance (Outpatient only)	90%	70%
Office Visit/Exam	\$10 copay, then 100%	D&C
Outpatient Mental Health/Substance Abuse	90%/50%	70%/50%
Annual Out-of-Pocket Limit/Individual	\$1,000	\$2,000
Annual Out-of-Pocket Limit/Family	\$2,000	\$4,000
Inpatient Hospitalization	100%	70%
Emergency Room (copay waived if admitted)	\$75 copay, then 100%	\$75 copay, then 100%
Urgent Care Facility	\$10 copay, then 100%	D&C
Hospital Admission Deductible	None	None
<b>Prescription Drug Benefits</b>		
<b>Retail</b>		
Generic	\$5	Not covered
Brand (Singlesource/Formulary)	\$15	Not covered
Brand (Multisource/Non-formulary)	\$15	Not covered
Number of Days Supply	30 days	N/A
<b>Mail Order</b>		
Generic	\$10	Not covered
Brand (Singlesource/Formulary)	\$30	Not covered
Brand (Multisource/Non-formulary)	\$30	Not covered
Number of Days Supply for Mail Order	90 days	N/A

**Last, Best Offer of the City on Union Issue 6**

The City rejects the last, best offer of the Union on Union Issue 6.<sup>20</sup>

Last, Best Offer of the Union on City Issue 19

The DPOA rejects the City’s last position on hospitalization, medical, dental, and optical care and as its last offer of settlement proposes that Article 21(c) be amended as follows:

Active Employees

1 person	<u>\$452.73</u>
2 person	<u>\$1,014.10</u>
Family	<u>\$1,056.04</u>
Family continuation	<u>\$234.46</u>
Sponsored Dependent	<u>\$527.50</u>

Retirees and spouses under 65 not Medicare eligible

1 person	<u>\$640.05</u>
2 person	<u>\$1,432.99</u>

Retirees and spouses under 65 who are Medicare eligible

1 person	<u>\$452.75</u>
2 person	<u>\$896.69</u>

Article 21(D) below applies except that the employer’s cost for each yearly premium increase will be capped at 10% through June 30, 2009. Once the yearly premium increase under the terms of the contract has been implemented the exception to Article 21(D) aforementioned shall be considered null and void and Article 21(D) shall be applied as written to future premium increases after June 30, 2009.

**Last, Best Offer of the Union on Union Issue 6:**

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<sup>20</sup> Although the City does not explicitly respond to Union Issue 6, the City’s LBO is an implicit rejection of Union Issue 6 because the City’s LBO would include the insurance provider in the collective agreement.

Union Proposal 6: Article 21 of the current Collective bargaining agreement shall be amended to by adding the following (proposed changes in bold):

The current health care plan for active and retired employees will remain in effect until April 30, 1995.  
**During the course of this agreement DPOA shall have the authority to name an alternative health care provider. In the event DPOA so elects to name an alternative provider during the term of the collective bargaining agreement the City's monthly payments to the new health care provider and all obligations thereunder shall be made in a manner consistent with all contract terms and understandings enumerated in the 1998-2000 collective bargaining agreement and where modified in the 2001 Act 312 decision by Arbitrator William Long.**

#### POSITIONS OF THE PARTIES

##### Position of the City

The City states that the purpose of its hospitalization<sup>21</sup> (medical insurance) proposal is to reduce its costs by requiring increased cost-sharing by members of the bargaining unit and to permit it to contract with carriers other than the Coalition for Public Safety (COPS) Trust. The City argues that it is in severe financial distress. Deficits in the City increased from \$69.1 million in 2002-03 to \$155.4 million in 2004-05, with a projected 2005-06 deficit in the range of \$62.8 million to \$172 million. Its deficit exceeds 10% of its budget, a criterion for imposition of an emergency financial manager.

The City argues that increasing health care costs are a substantial contributor to this deficit. The City notes that for 2004-05, the City's gross cost for medical insurance for 16,000 active employees and dependents and 20,000 retirees and dependents was

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<sup>21</sup> The record establishes that the parties use the term "hospitalization" to refer to all health insurance, rather than insurance solely for coverage for inpatient hospital treatment. This Opinion and Award will use the term "hospitalization" as the parties use it and will use the terms "hospitalization" and "health insurance" interchangeably.

\$302 million. The City observes that the Task Force Recommendations to the Governor cited rising health care costs as a major cause of the financial problems of local government (City Ex. 537). The City notes that Fact-Finder George Roumell found that City health insurance costs have risen between 12% and 15% per year, and at least 30% in the previous three years. At the same time, general fund major revenues have decreased by 3.2%. The City also points to the recommendation of Fact-Finder Michael Long, who stated the City's fiscal crises could not be solved without substantial reductions in health insurance premiums for active employees, a position with which Fact-Finder Roumell agreed.

The City notes that hospitalization costs for uniformed personnel have increased by 47.58% since 2001-02. The City points out that in 1980-81, active and retiree hospitalization costs accounted for 11.3% of police payroll. In 2005-06, that percentage was 57.9%. The City notes that all budget forecasts for the City assumed that the City's proposed changes in health care would be implemented, but this did not occur. Because this award will not issue until well into the 2006-07 fiscal year, there will certainly be an unfounded deficit.

The City also notes that its per DPOA-member annual health care cost of \$14,097 exceeds the per member health care costs of all national comparables. The next highest city is Chicago, with an annual average cost of \$11,861; the average of the comparables is \$8,772.

The City contends that a major contributor to its problems is the high cost of health care insurance for the DPOA provided by COPS Trust. The City points out that its exhibits demonstrate that per capita coverage costs for DPOA actives and retirees exceed

the per capita coverage cost of non-uniformed employees by 36%. COPS Trust coverage costs 60% more than the coverage for non-uniformed employees. The City notes that any possible errors in counting retirees do not change the basic facts; in 2004-05, the cost of health care per non-uniformed active employee was \$7,064, while the cost per active DPOA member was \$9,285.

With respect to DPOA–LSA comparisons, the City argues that the Blue Cross Blue Shield (BC/BS) CMM policy in the LSA agreement provides superior benefits at prices equal to or less than the COPS Trust policy. The City contends that accounting for the cost to the City of dependent coverage reduces the City’s CMM coverage cost estimate by \$150, to \$10,357, as compared to the COPS Trust cost of \$10,734. The City contends that had the LSA members remained in COPS Trust, it would have cost the City \$3.8 million more than it cost the City with LSA in CMM coverage. The City also notes that the per capita underwritten cost for LSA retirees in CMM in 2004-05 was \$10,631, less than the COPS Trust cost to the City of \$11,567. The City contends that any Union argument that BC/BS provided the City artificially low rates to steer LSA members to CMM from COPS Trust is not supported by the evidence for CMM renewals for 2004, 2005, and 2006, or in proposed rates for 2007.

The City also argues that COPS Trust has been unresponsive to the City’s concerns and has been responsible for a substantial part of the increase in the City’s health care cost since 1996. The City notes that COPS Trust charged the City an 11% administrative fee resulting in a bill of \$4.8 million in 2005-06. This figure exceeds the BC/BS administrative fee by \$3.1 million. The City also notes that COPS Trust bills the City an access fee of \$6 per month per contract, adding \$462,000 to the \$4.8 million

administrative fee. The City also notes that COPS Trust maintains a “terminal reserve,” which the City claims is the same as the reserve for claims incurred but not reported of \$14 million. This is \$4 million more than the 20% reserve required by the contract and is in addition to a Banker’s Trust reserve of \$5.4 million. If COPS Trust ceased operations, those funds would not be returned to the City. The City also notes that, unlike BC/BS, COPS Trust excess reserves are not rebated to the City. The City notes that with the administrative fees, the access fee, and a surplus of almost \$2 million, COPS Trust costs the City \$908.64 more per contract than BC/BS. Thus, the City notes that it is not surprising that between 1996-97 and 2004-05, the annual increase in cost to the City of COPS Trust coverage has been substantially greater than the annual increase in the other City plans.

The City notes that COPS Trust stated it would use the Medicare D subsidy while other insurance carriers permitted this subsidy to go directly to the City. The City properly and in a timely manner applied for the subsidy. The City also points out that the testimony indicated there was no guarantee that the City would ever receive a Medicare Part D subsidy check for its COPS Trust policies; COPS Trust merely stated that the subsidy might be reflected in the rates it charged the City. Finally, the City notes that, unlike other carriers, COPS Trust refused to delay 2005-06 rate increases until October, 2005.

The City notes that the Union’s hospitalization LBO would not reduce the City’s hospitalization costs. Currently, the City pays all premium increases up to 8%. The Union’s LBO would require the City to pay all hospitalization increases up to 10%. Any



savings that the City might realize in 2005-06 would be more than offset by increases in the following years. This proposal would likely cause the City to become insolvent.

The City also notes that Fact-Finders Roumell and Long recommended that a City plan similar to that proposed in its LBO be included in the agreements for which they made recommendations. They both concluded that the City's serious financial situation made adoption of the City's plan a necessity.

Finally, the City observes that, in combination with its wage LBO, DPOA members at the six-year rate would receive a wage and benefit increase of 4.41%. If that officer enrolled in a BC/BS PPO plan, the officer would pay \$716 in premiums, leaving a net increase of 2.8% in compensation. Non-uniformed employees have accepted wage and hour reductions along with premium obligations. This would also make the City's cost for hospitalization similar to the costs in other cities.

#### Position of the Union

With respect to the proposed change in Article 21(A) in its LBO that would permit the Union to name an alternative health care carrier, the Union observes that the proposal is designed to link the interests of the Union and the City. Both parties have an interest in reducing health care costs, and permitting the DPOA to name an alternative carrier would give it significant bargaining leverage; the threat of being replaced would encourage cost reductions that would benefit the City and the DPOA membership. The DPOA's proposal is a "win-win" and should be accepted.

With respect to City Issue 19, the Union notes that the record is replete with errors; the City was unable to demonstrate that the cost of the BC/BS coverage was less than the cost of COPS Trust coverage. First, the Union notes that the City consistently

refused to supply the Union the information it needed to make cost comparisons. This missing information included misallocation of 819 LSA retirees; omission of \$42 million to \$62.1 million in costs belonging to non-DPOA members; changing assumptions and methodologies; and manipulation of BC/BS rates. Thus, although the Union could point out errors in the City data, it was unable to present its own cost estimates.

The Union notes that the misallocation of the LSA retirees accounted for about 25–30% of the retirees attributable to DPOA. This inflated the DPOA and understated the LSA costs. The Union notes that the inconsistent application of trends to LSA and DPOA 9% to 14% for DPOA, 12% to 18% for LSA, materially affects the relative cost estimates for LSA and DPOA. The Union also notes that Mercer, the City’s consultant, did not use a 14% trend for LSA despite the fact that it was available; instead, Mercer claimed it was unavailable. The City also switched methodologies in the middle of the proceedings, moving from a per contract to a per capita analysis; dependents, continuation, and Medicare coverage are not considered in the per contract analysis. This switch improved the LSA numbers.

The Union also notes that the City’s use of an “unclassified” category in its cost comparisons understates the costs of the non-DPOA coverage in the City. As none of the “unclassified group” were DPOA members, allocating them across non-DPOA groups raises the cost estimate for the other groups, indicating that the City’s original estimates of the relatively high cost of DPOA coverage was distorted. This is also a situation in which the City possessed the information but did not provide it to the DPOA, supporting the Union’s contention that the City’s costs presentation was not credible.

The Union also notes that the City's data on costs are replete with errors. Among others, errors include incorrect experience reports, enrollment numbers, LSA rate estimates, utilization rate data, and numbers of Medicare-eligible recipients. These errors undercut the City's case. The Union also notes that the City's exhibit comparing uniform and non-uniform cost is misleading because it does not take into account differences in retirement age. Because a much higher percentage of non-uniform retirees than uniform are Medicare-eligible, the cost for the non-uniform group would be lower; a true cost comparison would analyze the post-65 and pre-65 retirees separately.

Turning to the substance of the City's proposal, the Union claims that the City's proposal would wipe out the entire wage increase of 11%–14%. It would eviscerate DPOA's long-standing right to name the carrier, a right that predates Act 312. This right has produced significant cost savings to the City. Adoption of the City's proposal would eliminate COPS Trust and make BC/BS the exclusive carrier, permitting the City and BC/BS to set premiums and benefits at whatever level they choose. The officer's current out-of-pocket cost for health coverage is \$420.00. A 20% cost-sharing would increase that cost to \$4,088.95, of which approximately \$2,100 is co-pay and co-insurance. For a five-year officer, pay would be reduced by 7.75%. Earlier attempts to impose such costs on employees have been rejected by previous panels. This panel should also reject this proposal as contrary to the public welfare.

#### DISCUSSION

Although most of the record on health insurance addressed differences in hospitalization insurance costs between the DPOA and other bargaining units and errors in estimation by the City, this record was based on the health care proposals on the record

at that time (Jt. Exs. 94-95). This record, although extensive, has but a tenuous relationship to the parties' LBOs. The Union's hospitalization LBO would require cost-sharing only after the annual premium increase in the COPS Trust plan or whatever plan chosen by the Union reaches 10% per year, with the employee responsible for all premium increases over 10%. Thus, the City's liability for increased health insurance would be capped at 10% per year. The City's hospitalization LBO would require cost-sharing immediately. The employee's cost-sharing would be 20% if the employee selects coverage provided by COPS Trust, BC/BS Traditional, Blue Care Network, Total Health Care, or HAP, and 10% if the employee selects coverage provided by BC/BS Community Blue. Thus, the major difference in the LBOs is the percentage of cost sharing imposed on the employee.

Statutory Factor: Ability to Pay

Under the previous collective bargaining agreement, the City was responsible for all hospitalization premium increases up to 8% per year. Increases greater than 8% were shared between the City and the police officer. The record establishes that this split resulted in employee cost-sharing of approximately .9% ( City Ex. 358; Tr. 38, p. 88).

Turning first to the Union's hospitalization LBO, a majority of the panel finds that this LBO would not necessarily generate savings for the City. Indeed, if health care premiums increase up to 10% per year, the City would be responsible for all of the increase, causing an increase in the City's health insurance costs. Under the language in the old agreement, the City would be responsible for only 9% of the increase, with the employees responsible for the other 1%. The Union's LBO will generate long term

savings for the City compared to the old agreement only if the annual increase in health insurance premiums is above 12%. Data offered by the Union indicate the trend in City health care rates for the period 1997-05 has averaged between 9% and 10% annually (Un. Ex. 423, Tab 3). Data offered by the City indicate that the trend is 9% for medical coverage and 15% for pharmaceutical coverage, which presumably is a smaller percentage of the health insurance premium than non-pharmaceutical coverage (City Ex. 358). Based on this record, it is as likely that the Union's proposal will increase the City's health insurance costs as it is likely that the City's costs will not increase by greater than 12%.

In addition, the Union's LBO fixes a premium for COPS Trust, committing that premium as the baseline minimum the City must pay for health insurance to COPS Trust. Thus, under the Union's LBO the City would be unable to negotiate rates with COPS Trust. This also makes it likely that the City's health care costs would increase under the Union's LBO. Given the City's precarious financial situation, the factor of ability to pay does not support the Union's proposal.

The City's hospitalization LBO will result in savings to the City. Whereas currently the employees pay approximately .9% of health care premiums, under the City's LBO, employees would pay from 10% to 20% of health care premiums, depending on the insurance carrier they choose.

The City's LBO encourages employees to choose BC/BS Community Blue, and a majority of the panel finds that the premium rates under BC/BS Community Blue are the lowest of all plans offered to active bargaining unit employees (City Ex. 358). Although the record is not perfectly clear regarding the premiums charged for each plan, and the

Union questioned the City's cost estimates of the plans, based on a review of the testimony of Mercer representative Gary Cumpata, a majority of the panel finds that Exhibit 358 is a credible estimate of the health insurance premiums on each policy for active employees. The discrepancies between City Exhibits 183, 235, 237, and Commission Exhibit 238, on the one hand, and City Ex. 358, on the other, were explained as having been caused by substituting underwritten costs for budgeted (Tr. 31, pp. 4-27). In addition, many of the City errors in costing alleged by the Union were due to difficulties in determining whether coverage was for active employees or retirees and the bargaining unit from which they retired, e.g., DPOA or LSA (for example, Tr. 38, pp. 37, 79, 100-01). Thus, this award will rely on City Ex. 358 only to the extent it addresses the premiums for active employees. The record establishes that the City would save money by encouraging employees to choose BC/BS Community Blue rather than one of the other plans.

Based on the foregoing, it is clear that the City's LBO would provide cost relief to the City over the life of the contract regardless of which plan an employee chooses. Thus, the City's hospitalization LBO is more consistent with the factor of ability to pay than the Union's hospitalization LBO.

#### Statutory Factor: Comparability

The record contains no evidence on the health care plans offered by the external comparables. Thus, the analysis of comparability will be limited to internal comparables.

With respect to the internal comparables, Fact-Finders Michael Long and George Roumell recommended that the City adopt health care plans for the AFSCME and the Building Trades units similar to that recommended in the City's LBO, with 10% and 20%

cost-sharing (City Exs. 556A, 556H, 556I). Thus, these internal comparables favor the City's hospitalization LBO.

The other evidence on the record regarding internal comparables is the health care plan offered to the LSA. Ninety-eight point five percent of all LSA-represented employees are covered by a plan that is not proposed to be offered to the DPOA—BC/BS CMM (City Ex. 358). The record establishes that 100% of the premiums on the CMM plan are paid by the City (City Ex. 358; Tr. 38, p. 60). The record further establishes that the CMM plan has no deductibles, whereas the non-HMO plans in the City's LBO include annual deductibles of at least \$175 for individuals and \$350 for families, with PPO deductibles of \$425 and \$850 for out-of-network care (Tr. 38, p. 60; City Brief). Thus, the LSA plan is superior to the plans the City is proposing in its LBO.

The Union's LBO, however does indicate the coverage to be provided by COPS Trust. Thus, the record provides no basis for comparing the Union's COPS Trust-based proposal with BC/BS CMM. Nevertheless, because the premiums in the Union's LBO are similar the COPS Trust premium in City Ex. 358, and because COPS Trust is currently the primary insurance provider, it may be presumed that the coverage in the Union's LBO would be similar to that provided by COPS Trust. COPS Trust currently provides a PPO with no deductible for in-network services and \$100 for out-of-network services (Un. Ex. 424). Although this coverage would not be included in the collective bargaining agreement, based on the foregoing, a majority of the panel finds that the internal comparability analysis vis-a-vis LSA generally supports the Union's LBO.

### Statutory Factor: Fairness and Equity

Fairness and equity are important factors in collective bargaining. The record establishes that Detroit's police officers are underpaid relative to their counterparts in the comparable cities and will continue to be so throughout the term of this agreement. At the same time, the record also establishes that the City is in financial distress. Thus, it is important to analyze the two LBOs to determine how they balance these important considerations.

Turning to the Union's LBO, it is most likely that increases in employee cost-sharing for health insurance premiums will absorb a very small percentage of the employees' salary increase, if any. Over the life of the agreement, the cost-sharing of the employees will likely drop below .9%. Thus, the Union's health care LBO will most likely cause the employees to be financially better off than they are currently in terms of the percentage of their increase allocated to cost-sharing. On the other hand, the cost to the City would be substantial. Under the assumptions that the 2005-06 rates are identical to those in City Exhibit 358; that the distribution of policy holders among one-person, two-person, and family coverage is as indicated in City Exhibit 358; that the award is issued such that the new coverage is effective April 1, 2007; that annual premium increases are 10%; and that all members currently enrolled in COPS Trust enroll in the BC/BS Community Blue, it is estimated that, through June 30, 2009, the City will spend approximately \$4700 more per more per policy per year under the Union's LBO than under the City's LBO. In addition, the Union's LBO does not create a mutual incentive for the parties to reduce health costs so long as the annual premium increase to the City does not exceed 10%.



Turning to the City's LBO, a majority of the panel finds that the City's LBO balances the interests of the Union and the City. The City's LBO gives the employees the option of enrolling in BC/BS Community Blue at a cost-sharing rate of 10%. It is conceded that under the City's LBO, police officers will pay more than they currently pay. Under the same assumptions as above, on average, an officer who chooses the BC/BS Community Blue policy with the 10% cost-share will pay an additional \$155 in cost-share in 2006-07, an additional \$681 in cost-share in 2007-08, and an additional \$749 in cost-share in 2008-09. These numbers will be greater the greater the premium increase, and less the lower the premium increase. They will be greater for two-person and family coverage, and less for one-person coverage. With additional co-pays over and above the COPS Trust plant, this is a noticeable increase in the burden on the employees.

The City's LBO also creates a mutual incentive for the parties to reduce health care costs. Employees and the City will share in any decrease.

## CONCLUSION

The record does establish that the health insurance LBO of the union would result in a per policy cost that is likely slightly below the per policy cost of the health insurance provided through BC/BS CMM in the LSA agreement awarded in Act 312 in 2003 (City Ex. 358). The record establishes however, that the City's financial situation was far worse in 2005 and 2006 than it was in 2003. Moreover, as noted, there is nothing in the record that indicates that the City's financial situation will improve during the life of DPOA award. The State-imposed limits on personal income tax and property tax revenues are in place and the record provides no basis for concluding these limits will be

eliminated by the State legislature. Revenue sharing will also likely decrease. Thus, taking into account the expenditures associated with health insurance, the statutory factor of ability to pay must be given greater weight than the statutory factor of comparability as it applies to the DPOA vis-à-vis the LSA.

Under the assumptions discussed above, it is estimated that the City will spend approximately \$20 million less for health insurance for the DPOA through June 30, 2009 under its health insurance LBO than under the Union's health insurance LBO. Given the City's financial situation distress, denying the City such savings cannot be justified. Accordingly, a majority of the panel finds that the City's LBO is more consistent with the statutory factors than the Union's LBO. Therefore, a majority of the panel will accept the City's health insurance LBO.

The panel is aware that this award will impose a considerable cost-sharing and co-pay burden on the average police officer in the City of Detroit who chooses BC/BS Community Blue. This is significant for these officers, who are low paid relative to their counterparts in other cities and who risk their lives serving the citizens of the Detroit. It is hoped that that the wage increase, granting of Easter as an excused day, increasing the shift differential, and reducing the legal fund assessment due to indemnification will offset some of this increased burden.

AWARD ON CITY ISSUE 19: HOSPITALIZATION (HEALTH INSURANCE)

The City's LBO City Issue 19: Hospitalization (Health Insurance) is accepted. The Union's LBO on City Issue 19: Hospitalization (Health Insurance) is not accepted. In making this award, it is understood that the City will reimburse the officers a

proportionate share of any premium refunds obtained by the City on the policies chosen by the police officers. (City Exs. 183, 238, 358)

**AWARD ON UNION ISSUE 6: HOSPITALIZATION (RIGHT TO NAME PROVIDER)**

The City's LBO on Union Issue: Hospitalization: Right to Name Provider, is accepted. The Union's LBO on Union Issue: Hospitalization: Right to Name Provider, is not accepted.

**CITY ISSUE 24: RESIDENCY (NON-ECONOMIC)**

**LAST, BEST OFFERS**

Last, Best Offer of the City

The City proposes as its last offer of settlement that Article 40 be amended to include the following new paragraph:

New. Residency Requirements. In accordance with Act 212 of 1999, 15.602(2), all employees entering into the bargaining unit after the date of this award must reside within twenty (20) miles from the nearest boundary of the City of Detroit, unless the employee is married and both of the following conditions are met:

- 1 the employee's spouse is employed by another public employer,
- 2 and the employee's spouse is subject to a condition of employment or promotion that, if not for statutory restrictions, would require him or her to reside a distance of less than twenty (20) miles from the nearest boundary of the public employer.

Last, Best Offer of the Union

The Union proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the City

The City points out that arbitrators have consistently recognized that a police department is a paramilitary organization and occasionally must be mobilized to respond to an emergency. The City contends that it needs a residency requirement in order to permit the Department to mobilize rapidly in order to respond to an emergency; officers will be unable to respond to a mobilization if they must travel substantial distance to their assigned duty stations. In support of this contention, the City points to the 1975 Opinion and Award of Arbitrator Harry Platt, who concurred in the City's view that the effectiveness of a mobilization would be increased if the officers live in close proximity to the city (CX. 385, Tab 1). The City points out that three arbitrators (Daniel Kruger, Harry Platt, and John Swainson) in four Act 312 proceedings during the 1980's and 1990's had affirmed the City's right to institute a city residency requirement (CX 385, Tabs 2-4) prior to the 1999 statutory elimination of the requirement (Jt. Ex. 10).

The City notes that there have been two mobilizations over past 6 years, in 2001 following the September 11 terrorist attack on the World Trade Center in New York City and in August, 2003, in association with the regionwide power blackout. The City notes that the 2001 mobilization was successful because it occurred while many officers were still living in the city, and the 2003 mobilization was successful because the blackout occurred near shift change, and the City simply directed all officers who were already on duty to remain at work.

The City notes that although only about 7% of the bargaining unit lives outside the proposed 20-mile boundary, the number of officers living outside the boundary is

increasing. Thus, it is less likely than currently that future mobilizations will be successful. The City notes that even in the successful 2003 mobilization, some officers had difficulty traveling to work because of nonfunctioning traffic signals and gasoline stations.

The City contends that the Union's argument that a 20-mile requirement will not solve the problem because some officers might live more than 20 miles from their duty stations should be rejected. The proposal does place some limits on the distances officers must drive in the event of a mobilization.

The City contends that the fact that three of the proposed Union comparables, San Jose, Baltimore, and San Antonio, do not have a residency requirement should not be determinative. The City notes that the record does not establish whether a residency requirement is legal in those jurisdictions, and that Chicago has a residency requirement.

Overall, the City notes that every Detroit-DPOA Act 312 panel that could lawfully issue an Award on residency has accepted the City's argument for a residency requirement. The City urges this panel to do the same.

#### Position of the Union

The Union contends that the City's proposal is arbitrary and unnecessary. First, the Union points out that the 20-mile limit does not guarantee that the officer will be within 20 miles of his/her reporting station. Depending on the location of that reporting station, officers who live 25 miles from the nearest City boundary may be closer to their reporting station than officers who live within the proposed 20-mile limit.

Second, the Union notes that Deputy Chief Godbee testified that the 2001 and 2003 mobilizations were successful, indicating that the current residential pattern of

officers has not prevented the City from mobilizing officers. In this regard, the Union also points out that speed of mobilization is affected by factors unrelated to residence, such as the officer's location at the time of mobilization and traffic conditions. The Union also points out that 30% of the Department's supervisors live outside the City, compared to only about 8% of the officers unit, further suggesting that the current pattern of the residences of Police Department personnel has not impaired mobilization.

The Union also notes that it would be unfair and inequitable to expect new hires to sell their current residences if they don't live within the 20-mile limit. This requirement would cause unnecessary stress on their families.

Finally, the Union notes that external comparables San Jose, San Antonio, Los Angeles, and Baltimore do not have a residency requirement. The situation is similar for the internal comparables DPLSA and DPCOA.

Overall, the Union contends that the City has not demonstrated a need for the residency requirement it proposes. Accordingly, the Union urges that this proposal be rejected.

## DISCUSSION

The record establishes that the efficacy of a potential mobilization is a key reason for this proposal (Tr. 33, p. 94). Deputy Chief Ralph Godbee, the City's major witness in support of this proposal testified, however, that the Department had implemented two mobilizations since the March 10, 2000, effective date of Public Act 212, the Michigan statute that made residency requirements unlawful for public employees.<sup>22</sup> These

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<sup>22</sup> MCL 15.602, Public Act 212 of 1999, effective on March 10, 2000, prohibits the City or any other public employer from requiring residency within the city as a condition of employment. See [http://www.legislature.mi.gov/\(S\(d3hojszn3qfxviftnmhxoxvb\)\)/mileg.aspx?page=getobject&objectname=mc1-Act-212-of-1999&queryid=15757491&highlight=Residency](http://www.legislature.mi.gov/(S(d3hojszn3qfxviftnmhxoxvb))/mileg.aspx?page=getobject&objectname=mc1-Act-212-of-1999&queryid=15757491&highlight=Residency).

occurred on September 11, 2001, following the terrorist attack on the World Trade Center in New York and in August, 2003, when there was a regional blackout. Deputy Chief Godbee testified that both of these mobilizations were successful (Tr. 33, p. 74).

This proposal, if adopted, would compromise the interest of bargaining unit members in choosing their place of residence. If this interest is going to be compromised, there must be compelling evidence on the record that the status quo has prevented the Department from mobilizing officers. As noted, however, the record establishes that the Department has successfully implemented two post-Act 212 mobilizations, which suggests that the current residential pattern of bargaining unit members is such that they can respond quickly to a mobilization.

The City argues that these mobilizations are not evidence of the success of future mobilizations, noting that the 2001 mobilization was successful because it occurred while many officers were living in the city and the 2003 mobilization was successful because the blackout occurred near shift change, when the City simply directed all officers who were on duty to remain at work. It must be noted, however, that on January 31, 2006, almost six years after the effective date of Public Act 212 of 1999, 93% of the bargaining unit members still live within the 20-mile limit that the City's LBO would require (Tr. 33, p. 101). This evidence indicates that the vast majority of bargaining unit members, given a choice over a six-year period, have chosen to reside within 20 miles of the city limits. This evidence suggests that any future mobilizations will not be hampered by distances employees must travel.

The fact that the City's proposal would apply only to new hires after the effective date of this Award does not make it acceptable to a majority of the panel. First, there is

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no reason to believe that the residential distribution of new hires will be different from the residential distribution of current bargaining unit members. Second, the Union has presented evidence of morale problems that can arise when there is differential treatment of bargaining unit members (Tr. 37, pp. 137-38). While morale issues do not outweigh Department interests in all cases, they do outweigh the Department interest in this proposal, where all mobilizations have been successful. Finally, new hires have the same interest in choosing their place of residence as current bargaining unit members.

Statutory factor h, “other factors,” establishes that generally the status quo in a collective bargaining agreement should be maintained unless the record provides substantial evidence that a change is needed. The record in this case does not establish the need for a change.

#### CONCLUSION

A majority of the panel finds that the Union’s LBO on residency is more consistent with the statutory factors than the City’s LBO on residency.

#### AWARD ON CITY ISSUE 24: RESIDENCY

The Union’s LBO on City Issue 24: Residency, is accepted. The City’s LBO on City Issue 24: Residency, is not accepted.

#### **UNION ISSUE 2: PENSION PROVISION–2.8% MULTIPLIER**

##### LAST, BEST OFFERS

##### Last, Best Offer of the Union

The May 7, 1998 Agreement increasing the DPOA-member multiplier to 2.5% shall be incorporated into the collective bargaining agreement and amended as follows:

Effective July 1, 2004, all members of the DPOA retiring on and after that date shall have the following provision



apply to them, superseding as need be, any contrary retirement systems provisions then in effect:

Each member who retires shall be entitled to a pension which when added to the annuity will provide a straight-life retirement allowance equal to 2.8% of his or her average final compensation multiplied by the number of years and fraction of a year of his or her creditable service for the first 25 years.

For years of service over 25 years, the multiplier shall be 2.1%. Maximum years of service for pension credit shall be thirty-five (35) for the new plan members and twenty-five (25) for the old plan members.

#### Last, Best Offer of the City

The City rejects the Union's last position to increase the pension multiplier to 2.8% for the first twenty (20) years of service and as its last offer of settlement on this issue proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the Union

The Union contends that increasing the pension multiplier will result in a police force that is better motivated and is less subject to attrition than would otherwise be the case. The Union also points out that many other cities in southeast Michigan have 2.8% multipliers for their retired police officers. Detroit police officers are underpaid relative to the police officers in these cities and work under far greater stress than the officers in these cities. Thus, it is not surprising that Detroit police officers are being recruited by these cities. Raising the multiplier will encourage Detroit police officers to remain with the City and will reduce the disparity in retirement benefits between the City and other jurisdictions in the geographic area.

### Position of the City

The City contends that this proposal would increase its pension contribution by approximately 5% annually if funded over 20 years and 4.4% if funded over 30 years. The result would be additional annual costs that would be \$12.5 million if funded over 20 years and \$11.1 million if funded over 30 years. In the City's financial condition, it clearly cannot afford to fund such a benefit.

The City also notes that the plan in which DPOA members participate includes a 2.25% escalator compounded. The City contends that this results in an effective 3.27% multiplier. Moreover, because retirees can withdraw their contribution without a decrease in the benefit, the total effective multiplier is 3.5%. The City notes that no other city has such a large multiplier on its pensions.

The City notes that in 2000, Arbitrator Donald Sugarman rejected as excessively costly a union proposal to increase the multiplier for the time between the twenty-fifth and thirty-fifth years of service from 2.1% to 2.5%. That was at a time when the pension plan had a \$662 million full-funding credit and a market value of \$4.2 billion. The 2005-06 actuarial report showed the plan underfunded by \$783 million with a decrease in market value to \$2.9 billion. If a proposal to increase benefits was unjustified in 2000, it is surely unjustified in 2007.

### DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and equity. This proposal will be examined in the light of each of these factors.

Ability-to-Pay. With respect to the City's ability to fund additional contributions, the City's financial condition has been discussed above and it will not be repeated here. A majority of the panel is of the view that the City is not in a position to pay an additional 4.5% to 6% of its payroll to fund this benefit. Moreover, this amount is to a large extent a function of the fact that the fund is underfunded (City Ex. 100, Tab 26). The record also supports the City's assertion that the assets of the fund have dropped by approximately 31% in nominal terms, between the 2000 valuation and 2003 valuation. Based on the foregoing, a majority of the panel finds that the factor of ability-to-pay supports the City's LBO.

Comparability. The comparables exhibit a range of multipliers. Baltimore, Boston, Chicago, Cleveland, Milwaukee, and Philadelphia all have a maximum of 2.5% (Un. Ex. 521-22). St. Louis has 2.5% for the first 25 years, then increasing to 4% and 5% (Un. Ex. 522). Pittsburgh does not use a multiplier; it simply provides retirees with 50% of pay. Based on the foregoing, a majority of the panel finds that the factor of comparability supports the City's LBO.

Fairness and Equity. Although it must be conceded that Detroit police officers have a difficult and stressful job, their retirement multiplier, especially when taking into account the escalator, does not warrant an increase. On the other hand, raising the multiplier would work a substantial hardship on the City. Based on the foregoing, a majority of the panel finds that the factor of fairness and equity supports the City's LBO.

## CONCLUSION

The City's LBO on the pension multiplier is more consistent with the statutory factors than the Union's LBO.

**AWARD ON UNION ISSUE 2: PENSION PROVISION–2.8% MULTIPLIER**

The City’s LBO on Union Issue 2: Pension Provision–2.8% Multiplier is accepted. The Union’s LBO on Union Issue 3: Pension Provision–2.8% Multiplier is not accepted.

**UNION ISSUE 3: PENSION PROVISION – 20 AND OUT**

**LAST, BEST OFFERS**

Last, Best Offer of the Union

Article 33(F) first paragraph of the current collective bargaining agreement shall be amended as follows:

Effective on the date of Chairperson Block’s 312 Award, such members will be eligible to retire after twenty (20) years of service regardless of age.

Last, Best Offer of the City

The City rejects the Union’s last position to increase the pension multiplier to 2.8% for the first twenty (20) years of service and as its last offer of settlement on this issue proposes that the status quo be maintained.

**POSITIONS OF THE PARTIES**

Position of the Union

The Union contends that this benefit would improve the morale of the officers. Patrolling the streets of Detroit is a dangerous, stressful job; after 20 years of such work, an officer should be able to retire. The Union also points out that comparable cities Baltimore, Boston, and Chicago provide a 20-and-out benefit for officers.

The Union notes that the costing by Gabriel Roeder overstates the cost of this proposal to the City. It presumes that all units in the pension plan would want a 20-and-out provision. The Union points out, however, that the firefighters would not desire or use such a benefit and the LSA agreement does not link LSA pension benefits to DPOA pension benefits.

The Union notes that relatively few officers would be eligible to take this option. The size of the unit has been dropping since January 2006, and only about 250 officers would be able to take advantage of this option immediately. In addition, there is a disincentive to take the option because the maximum multiplier would be 50% rather than the 83.5% available to officers who retire with 35 years of service.

#### Position of the City

The City notes that this proposal would increase its costs in two ways. First, it would increase its pension contributions because some percentage of employees would retire earlier than 25 years. The City contends that the increased contribution would be between 3% and 4% of payroll, depending on the amortization period used. Indeed, the City notes that arbitrator William Long rejected a similar proposal in the previous Act 312 proceedings because of the potential cost to the City. The City estimates that its increased cost to the PFRS would be \$10 million annually.

Second, the proposal would increase the City's health care costs for retirees because the City would be responsible for paying for the health care costs of both the retiree and the replacement employee. Indeed, the City points out that the additional payments to the pension fund would be greater than the savings it would generate from their hospitalization proposal.

## DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and fairness and equity. This proposal will be examined in the light of each of these factors.

Ability-to-Pay. The record establishes that this proposal would likely cost the City an additional 3%–4% of payroll, an amount the City estimates to be approximately \$10 million. The Union contends that this cost is an overestimate, because it assumes a bargaining unit size of 2900, while the current bargaining unit is approximately 2300. The record also establishes that the City would be required to continue to pay for health insurance of the retired employees, less any cost sharing.

On the other hand, the pension fund now has 30-year amortization period, thus reducing the burden on the City. This is an important consideration in reducing the City's costs.

Based on the foregoing, a majority of the panel concludes that this factor of ability-to-pay somewhat supports the City's LBO. The existence of the 30-year amortization period makes the factor of ability to pay less weighty than it would be with a shorter amortization period.

Comparability. The record establishes that four of the eight comparables, Baltimore, Boston, Chicago, and Pittsburgh, have "20-and-out" provisions for employees (Un. Exs. 521-22). A fifth comparable, Philadelphia, has a retirement age of 45, which could accommodate a "20-and-out" if the officer was hired at 25 years of age (Un. Ex. 521). Cleveland, Milwaukee, and St. Louis have "25-and-out" provisions (Un. Exs. 521-22). Based on the foregoing, the record establishes that the factor of comparability

supports the Union's LBO, as four of the eight comparables have a specific "20-and-out" provision and another one has a potential "20-and-out" provision. Thus, there is clearly precedent in the comparables for 20-and-out.

#### Fairness and Equity.

Bargaining unit employees have a difficult, stressful, and dangerous job. The testimony of Christine Panyard was credible regarding the level of stress and pressure on police officers in the City of Detroit. Pay of police officers is low, and poverty, unemployment, and violent crime in Detroit are high (Tr. 13, pp. 121-22, 125-26; Tr. 45, pp. 36-37; Un. Ex. 514). Merely calling officers to a criminal incident places them in danger (Tr. 45, pp. 20, 33). Officers are often placed in situations of conflict with citizens (Tr. 13, pp. 122-23). They come upon horrific scenes (Tr. 179-81; Un. Ex. 384). The job often takes a toll not only on the police officer, but also on the officer's family (Tr. 32, 122; Un. Exs. 376-81).

David Klinger's research demonstrated that the 1985-2004 murder rate of Detroit police officers of 60.2 per 10,000 officers is by far the highest of all the comparables. The Detroit police officer murder rate is more than three times higher than Chicago and higher than the murder rate in the comparables of Baltimore, Boston, Milwaukee, and Philadelphia. Indeed, the city with the next highest rate of fatal violence against police officers, Baltimore, has a police officer murder rate of 29.7 per 10,000 officers. Thus, police officers in Detroit literally risk their lives when they report for work (Tr. 45, pp. 26-29; Un. Ex. 514).

It is reasonable to believe that over a period of time, the stress level associated with the job is cumulative and some officers become "burned out" (Tr. 35, p. 97). While

in the past as an officer accumulated seniority he or she would be assigned to a less stressful and less dangerous desk job, with the consolidation of the precincts into districts, there are likely to be fewer desk jobs than before, thereby forcing more senior officers into street duty. Thus officers are less likely than before to be able to obtain relief from street patrol as they gain seniority.

Based on the foregoing, a majority of the panel finds that the record demonstrates that the job of a police officer in Detroit is dangerous and stressful and is likely to continue to be so into the foreseeable future. This record supports the proposition that police officers in the City of Detroit should have the option of retiring after 20 years. Given the reduced pension associated with retiring after only 20 years, it is likely that those officers who retire will be those who, because of accumulated stress, have the greatest difficulty performing their jobs.

A “20-and-out” provision could also result in reduced costs for the City by permitting it to continually evaluate the number of officers in the bargaining unit without the need for layoffs. Given the reduction in the size of the bargaining unit over the last several years, it is likely that the DPOA-represented unit will continue to shrink, suggesting that the City will not replace 100% of the officers who choose to retire at 20 years.

Based on the foregoing, the panel finds that the statutory factor of fairness and equity considerations supports the Union’s LBO.

#### CONCLUSION

The 30-year amortization period and the reduction in the size of the bargaining unit has reduced the cost of a “20-and-out” option below what it would otherwise be



such that “20-and-out” is justified. Accordingly, a majority of the panel concludes that the statutory factors support the Union’s LBO on Union Issue 3: Pension Provision–20 and Out.

**AWARD ON UNION ISSUE 3: PENSION PROVISION – 20 AND OUT**

The Union’s LBO on Union Issue 3: Pension Provision–20 and Out is accepted.

The City’s LBO on Union Issue 3: Pension Provision–20 and Out is not accepted.

**UNION ISSUE 4: RETIREE ANNUITIES**

**LAST, BEST OFFERS**

Last, Best Offer of the Union

Add the following as a new section to Article 33:

Effective on the date of Chairperson Block’s 312 Award, DPOA retirees who elect to leave a balance in the Defined Contribution Plan (Annuity Savings Fund) would have the option of receiving a quarterly payment of interest earnings or to allow periodic withdrawals of principal, in addition to a one-time complete withdrawal.

Last, Best Offer of the City

The City proposes that the status quo be maintained.

**POSITIONS OF THE PARTIES**

Position of the Union

The Union contends this is a no-cost item to the City. The Union points out that the City trustees on the Pension Board have voted in favor of this option, supporting the Union’s contention that this is a no-cost matter. Thus, the Union contends, there is no reason for the panel not to accept the Union’s City’s LBO.

Position of the City

The City contends that this LBO likely would involve a cost to the City because the pension fund does not allocate negative interest returns for the fund to the retirees' annuity accounts. Thus, in years when the fund loses money, the City must increase its contributions to the fund to offset the losses not allocated to the annuity accounts.

#### DISCUSSION

No evidence on this issue was offered during the hearing. Although the affidavit offer by Mr. Arv Heilman (City Ex. 556J) states that this proposal would involve a cost to the City, the PFRS Board of Trustees, the body closest to this matter, unanimously voted that retiree annuities such as are proposed here will be a no-cost item to the City (Un Ex. 555C). Greater weight must be given to the statement of the Board of Trustees. Based on this record, a majority of the final finds that the statutory factors support the Union's LBO.

#### CONCLUSION

The Union's LBO on Issue 4: Retiree Annuities is more consistent with the statutory factors than the City's LBO.

#### AWARD ON ISSUE 4: RETIREE ANNUITIES

The Unions LBO on Issue 4: Retiree Annuities is accepted. The City's LBO on Issue 4: Retiree Annuities is not accepted.

## UNION ISSUE 5: PENSION–SICK TIME PAYMENT

### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 33 (H), Paragraph 2 of the collective bargaining agreement shall be amended to read as follows (proposed new language in bold):

**Effective on the date of Chairperson Block’s 312 award** the average final compensation for “old plan” and “new plan” members shall be calculated using the current maximum salary for the rank(s), grade(s), or position(s) held by the member over the sixty (60) months just prior to the member’s elective date of retirement, plus the amount of their most recent longevity payment **and up to 25% of their sick time payment**. The salary is obtained from the official compensation schedule for the fiscal year prior to the member’s effective date of retirement and an average is determined.

#### Last, Best Offer of the City

The City rejects the Union’s last position to allow members to elect to have 25% of their unused sick leave payment added to average final compensation and as its last offer of settlement on this issue proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the Union

The Union contends this is a no-cost or minimal cost proposal. The Union argues that this proposal will encourage officers to come to work as it will be to their benefit to have a positive sick time bank, a portion of which may be added to final average compensation for pension purposes. The Union notes that the cost of this proposal is considerably less than it was during the previous Act 312 proceedings, as the number of police officers has declined by approximately 1,000 since those proceedings.

### Position of the City

The City contends that awarding this proposal would raise its costs. The City argues that a 30-year employee with 2000 hours in his or her sick bank would receive a 14.4% increase in pension payments. Assuming a 30-year amortization rate, this proposal would increase the City's contribution rate by 2.71% of payroll. The City notes that in his 2003 award, Arbitrator Long rejected a proposal to include a portion of the sick leave bank in final average compensation because the pension fund was underfunded. The financial situation is worse now than it was in 2003. Finally, the City notes that there is no evidence that any of the comparables provide such a benefit to the police officers.

### DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and equity. This proposal will be examined in the light of each of these factors.

Ability-to-Pay. As discussed above, the financial condition of the City is serious, and the pension fund is underfunded with a declining market value. Such a situation argues against placing additional liabilities on the fund for which the City would be responsible. Although there is no costing analysis of this proposal by either the City or Union (Tr. 45, pp. 14, 128-29), an addition to final average compensation would increase the liabilities of the pension fund. Thus, the factor of ability-to-pay supports the City's LBO.

Comparability. There is no evidence that any of the comparables permit the use of unpaid sick leave to augment final average compensation for purposes of pension payments (Un. Exs. 521-22). Thus, the factor of comparability supports the City's LBO.

Fairness and Equity. There is no evidence that the pension payments to DPOA retirees are so low that they must be augmented by adding a portion of unused sick leave to final average compensation. Thus, the fairness and equity criterion does not support the Union's LBO.

## CONCLUSION

The City's LBO is more consistent with the statutory factors than the Union's LBO.

### AWARD ON UNION ISSUE 5: PENSION–SICK TIME PAYMENT

The City's LBO on Union Issue 5: Pension–Sick Time Payment is accepted. The Union's LBO on Union Issue 5: Pension–Sick Time Payment is not accepted.

### UNION ISSUE 7: RESTRICTED LEAVE DAY COMPENSATION

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 18 (E) shall be added as a new section in the current collective bargaining agreement:

Effective on the date of Chairperson Block's 312 award employees shall be paid at the rate of time and one half for all hours worked when assigned a restricted weekend (i.e. Friday, Saturday and Sunday).<sup>23</sup> The Department shall be entitled to restrict up to six (6) weekend days and up to four (4) days for the Halloween Task Force (in the event some days fall on the weekends) per calendar year without paying employees at time and one half. Any weekend day that is restricted shall count towards the total of six (6) weekend days regardless of the number of commands affected by the leave day restriction.

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<sup>23</sup> The record establishes that a restricted day or weekend is a day or weekend during which the Department does not permit any officer to take leave. A restricted day is generally due to a special event that requires police presence, such as the TasteFest or the Detroit-Windsor International Freedom Festival fireworks. A restricted day may be Department-wide or precinct-wide (now district-wide), depending on the event (Tr. 16, pp. 40-41; City Exs. 158-59).

### Last, Best Offer of the City

The City rejects the Union's last position to add a restricted leave day compensation at time and one half and as its last offer of settlement on this issue proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union argues that because the current scheduling practice requires that officers work an irregular work schedule, officers have no continuity and are unable to make plans to spend time with their families and otherwise have a normal personal life. This lack of continuity causes additional stress for officers who work in a stressful, difficult, dangerous job. The Union points that this problem is caused because officers may have different days off in different months.

The Union points out that such irregular scheduling is inconsistent with the scheduling practices of the police departments in the comparable cities. All of the national comparables have regular days off. This proposal would correct this problem. The proposal should be granted.

### Position of the City

The City notes that it permits its officers to select seniority leave days in advance of the 28-day work cycle, with the Department informing officers and districts which days in the cycle, if any, are unavailable for seniority leave days. These restrictions do not affect the 20 furlough days the officer receives or the bonus vacation days they may

use. The Union produced no evidence that the City has increased the number of restricted leave days such that this is a problem.

The City argues this LBO is simply an attempt by the Union to receive premium pay for weekend work. There is no evidence on the record that any of the comparables provide such premium pay. The City contends that Union Exhibit 521 simply provides data on whether the comparables provide for specific days off. The Union has not made a proposal for specific days off, and Union Exhibit 521 does not address weekend premium pay.

The City points out that the Union was evasive regarding the scope of this proposal. It was not clear from the testimony of the Union witness whether all members of the bargaining unit would receive the premium pay or whether the premium pay would be limited to the officers in the precinct (district) that had restricted the days.

The City points to its estimate that the cost of this provision, if accepted, would be in excess of \$15,000,000 annually. The cost would be over \$100,000 per day. The City could not afford this and the result would be that the City would be unable to deploy officers on the weekends.

In addition, the City notes that the Union has not presented evidence of a problem this provision is designed to solve. The City points out that the Union has made the identical proposal in prior proceedings and it has been rejected, and this panel should also reject it.

## DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and the “other” factors of fairness and equity and “need for a change”. This LBO will be addressed in the light of these four factors.

### Ability-to-Pay

The record establishes that the proposal, if accepted, would cost the City approximately \$100,000 per department-wide restricted weekend day (Tr. 24, pp. 7, 13; City Ex. 239). The City states that this proposal, if accepted, could cost the City almost \$15.1 million per year. This assumes, however, that the City would restrict three days every weekend (Tr. 24, pp. 12-14). This is unlikely. The record establishes that there were four department-wide restricted weekends in 2004 and three department-wide restricted weekends plus the Major League Baseball All-Star game in 2005, although there were likely some precinct-wide restricted days as well (City Exs. 158-59). In addition, under the Union’s proposal, six days, or two weekends, plus the Halloween task force, would be excluded from the premium pay requirement. Thus, assuming four department-wide restricted weekends, and excluding Halloween, two weekends, or six days, would have resulted in premium pay. The City’s additional cost would have been approximately \$600,000 if the number of department-wide restricted days were identical to what they were in 2004 and 2005. Moreover, even if the City’s cost is unlikely to reach \$15,000,000, the cost is unpredictable as this does not take into account unexpected occurrences and district-wide restrictions.



Despite this likely overestimate on the part of the City, however, this proposal would result in an additional cost to the City. Thus, a majority of the panel finds that the statutory factor of ability-to-pay supports the City's LBO.

### Comparability

Union Exhibit 521, cited by the Union, only addresses whether employees have set days off, or regularly enjoy the same days of the week off. Although including set days off in the agreement may be linked to restricted leave days in that there may be premium pay associated with requiring work on a set day off, a majority of the panel finds that the relationship between set days off and premium pay for restricted weekends is too tenuous to be attributed great weight.

Although Union Vice-President Paul Stewart testified that none of the comparable cities used restricted leave days, the only city of which he was personally aware was Los Angeles (Tr. 16, pp. 57, 61-62), which is not a comparable for the purposes of this case. Moreover, the Union in this LBO is not proposing that restricted leave days be eliminated, but that, under a certain set of circumstances, employees be paid premium pay for working on restricted leave days.

Finally, there is no evidence on the record regarding internal comparables. Based on the foregoing, a majority of the panel finds that neither LBO is supported by the statutory factor of comparability.

### Fairness and Equity

The authority of the City to establish days when no officer may take a leave day clearly causes an inconvenience to police officers. Restricting days results in fewer days the officer has available for leave and for planning personal events (Tr. 16, p. 54). On the

other hand, in 2004 at least, the Department gave some notice of restricted leave weekends (City Ex. 158).

Even so, requiring premium pay after six restricted weekends, exclusive of Halloween, would result in extra costs to the City associated with the restricted days. This might discourage the Department from restricting days that should be restricted, with negative implications for public safety.

Based on the foregoing the panel finds that the “other” statutory factor of fairness and equity favors neither LBO.

#### Need for a Change

Although the Department has the right to establish restricted leave days, there is no evidence on the record that this right has been abused. As noted, the Department restricted only four weekends in 2004 and three plus the Major League Baseball All-Star Game in 2005. All the weekends that were restricted seem to be for good reasons, as they were associated with special events. Even assuming there were several precinct-wide restrictions, the number of restricted weekends does not seem so large as to prevent officers who are entitled to weekend leave days from taking the vast majority of them.

With the reduction in the number of police officers in Detroit, it is possible that the City may find it necessary to increase the number of restricted leave days (Tr. 16, pp. 50-51). If this occurs, it can be addressed in the 2009 negotiations.

Based on the foregoing, the “other” statutory factor of “need for a change” supports the City’s LBO.

## CONCLUSION

The City's LBO on Union Issue 7: Restricted Leave Day Compensation is more consistent with the statutory factors than the Union's LBO.

### AWARD ON UNION ISSUE 7: RESTRICTED LEAVE DAY COMPENSATION

The City's LBO on Union Issue 7: Restricted Leave Day Compensation is accepted. The Union's LBO Union Issue 7: Restricted Leave Day Compensation is not accepted.

## UNION ISSUE 8: EXCUSED TIME – GOOD FRIDAY

### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 32 of the current collective bargaining agreement shall be amended by adding the following (proposed new language in bold):

**Effective on the date of Chairperson Block's 312 award** employees shall be granted ~~four (4)~~ **eight (8)** hours of "excused time" on Good Friday or the last ~~four (4)~~ **eight (8)** hours on the last scheduled day prior to Good Friday, and eight (8) hours of "excused time on the last scheduled paid day before Christmas day, and before New Year's Day and Martin Luther King's birthday provided they are on the payroll through the holiday in question. Employees required to work any portion of the "excused time" on these days will receive equal time off for hours worked or straight time cash at the option of the Chief of Police. No holiday premium will paid for work on these days.

#### Last, Best Offer of the City

The City rejects the Union's last position to increase the Excused Time granted for Good Friday from four (4) hours to eight (8) hours and as its last offer of settlement on this issue proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union argues that this LBO should be granted because the LSA and the general City employees represented by AFSCME currently enjoy this benefit. Those bargaining units receive eight hours pay for Good Friday, while the DPOA members currently receive four hours pay.

### Position of the City

The City contends that DPOA members have generous holiday benefits. They have 12.5 holidays, eight of which are premium holidays for which the officer receives double time if the officer works the holiday. The other holidays are excused days. In addition, officers benefit from the furlough provisions and Bonus Vacation Days. The holiday benefits exceed the holiday benefits of the external comparables by 29%. When money is tight, funds should be allocated to wages. Thus, the City urges the panel to reject this LBO.

## DISCUSSION

The relevant statutory factors for this proposal are ability to pay, comparability, and fairness and equity. This issue will be addressed in the light of these three factors.

### Ability to Pay

Although the City is in financial distress, the cost of this proposal is modest, approximately \$204,000 at the July 1, 2005, average wage level assuming a bargaining unit size of 2,300 (City Ex. 39). With a wage increase over the life of the contract of 115%, and taking half of that increase as the average over the remainder of the

agreement, it is estimated that the cost of this proposal to the City will be approximately \$217,000. Thus, although ability to pay is relevant, it is not a major consideration.

#### Comparability

The record establishes that the LSA and the DFFA both enjoy the benefit of eight hours of excused time associated with Good Friday (Tr. 11, pp. 88-89). Currently, the DPOA members enjoy only four hours (Jt. Ex. 9; Tr.11, p. 88). Thus, the statutory factor of comparability supports the Union's LBO.

#### Fairness and Equity

This provision, if granted, will provide additional time for officers to be with their families and away from a stressful and dangerous job (Tr. 11, pp. 85-89). Thus, the statutory factor of fairness and equity supports the Union's LBO.

### CONCLUSION

The Union's LBO on Union Issue 8: Excused Time–Good Friday is more consistent with the statutory factors than the City's LBO.

### AWARD ON UNION ISSUE 8: EXCUSED TIME–GOOD FRIDAY

The Union's LBO on Union Issue 8: Excused Time–Good Friday is accepted. The City's LBO on Union Issue 8: Excused Time–Good Friday is not accepted.

### **UNION ISSUE 9: EXCUSED TIME–EASTER**

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 32 of the current collective bargaining agreement shall be amended by adding the following (proposed new language in bold):

**Effective on the date of Chairperson Block's 312 award** employees shall be granted four (4) hours of "excused time" on Good Friday or the last four (4) hours on the last scheduled day prior to Good Friday, and **eight (8) hours of "excused time" on Easter or the last eight (8) hours on the last scheduled day prior to Easter**, eight (8) hours of "excused time" on the last scheduled paid day before Christmas day, and before New Year's Day and Martin Luther King's birthday provided they are on the payroll through the holiday in question. Employees required to work any portion of the "excused time" on these days will receive equal time off for hours worked or straight time cash at the option of the Chief of Police. No holiday premium will be paid for work on these days.

Last, Best Offer of the City

The City rejects the Union's last position to add Easter Sunday as an Excused Time Day and as its last offer of settlement on this issue proposes that the status quo be maintained.

POSITIONS OF THE PARTIES

Position of the Union

The Union contends that this LBO should be granted because of the difficult work of the officers. Officers will have more time than they currently have to relax and recuperate.

Position of the City

The City refers the panel to its position on Issue 8: Excused Time–Good Friday.

DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and fairness and equity. This issue will be addressed in the light of these three factors.

### Ability-to-Pay

Comparing this LBO to the LBO for Union Issue 8, this LBO would cost the City twice as much as the LBO for the additional four hours of excused time for Good Friday. Thus, the additional annual cost to the City would be approximately \$434,000 for the DPOA-represented bargaining unit (City Ex. 239). Given the savings that the City will incur through its health insurance proposal, the City can afford this benefit to employees. Thus, the statutory factor of ability-to-pay does not support the City's LBO.

### Comparability

The record does not establish that any internal or external comparable provides officers with eight hours of excused time, or the equivalent, for Easter. Thus, the statutory criterion of comparability does not support either party's LBO.

### Fairness and Equity

Accepting this provision would give the bargaining unit members additional time to rest and recuperate from a stressful job. If asked to work, they may earn more than they otherwise would. Given the increased health insurance burden on the employees, this additional income may be important. Thus, the "other" statutory factor of fairness and equity supports the Union's LBO.

## CONCLUSION

The Union's LBO on Union Issue 9: Excused Time–Easter is more consistent with the statutory factors than the City's LBO.

### AWARD ON UNION ISSUE 9: EXCUSED TIME–EASTER

The Union's LBO on Union Issue 9: Excused Time–Easter is accepted. The City's LBO on Union Issue 8: Excused Time–Easter is not accepted.

## **UNION ISSUE 10: UNIFORMS**

### **LAST, BEST OFFERS**

#### Last, Best Offer of the Union

Effective July 1, 2006, Article 19-Uniforms, paragraph five of the current Collective Bargaining Agreement shall be amended by adding the following:

Each member of the bargaining unit shall receive an annual uniform cleaning allowance calculated at one percent (1%) of their base salary payable the first payroll period each fiscal year.

#### Last, Best Offer of the City

The City proposes as its last offer of settlement to withdraw its demand on this issue and maintain the status quo.

### **POSITIONS OF THE PARTIES**

#### Position of the Union

The Union argues that the existing \$250.00 annual clothing cleaning allowance is insufficient and must be raised to a more reasonable level. First, it has not been increased since it was first negotiated twenty years ago. Second, uniforms require professional dry cleaning of approximately \$1,200.00/yr. Third, the current uniform allowance is less than that of other comparable departments. The DPOA argues that their proposal should be granted to keep pace with national comparable departments. Fourth, the DPOA argues that the proposal would result in a negligible cost. Applying the proposal to the current maximum possible salary of \$47,762.00, the maximum amount payable would be \$477.62. For those with less seniority, the resulting maximum is about \$320.00, a nominal increase of less than \$100.00. Finally, the DPOA argues that in light of the



dangerous working conditions and overall substandard compensation, police officers have earned this increase.

#### Position of the City

The City contends that the proposal is ill-conceived. The City notes that in 2000 Arbitrator Sugarman, observing no consensus in the treatment of uniforms, rejected a uniform allowance increase of \$100 (smaller than what the Union seeks now). Arbitrator Sugarman concluded that there was no probative evidence to warrant an increase. During this time, the City had its largest budget stabilization in over 10 years, experiencing six consecutive annual surpluses and resulting in three years of increased income taxes.

The City notes that this proposal costs over \$700,000/yr. and if awarded would cost the City in excess of \$2,000,000 (over the life of this contract). The Union makes this proposal retroactive to July 1, 2006, causing the City to fund this increase in its 2005-06 budget where it already projects a deficit between \$62.8 and \$162 million. The City notes that it has experienced four consecutive deficits.

The City also contends that the Union could not show how “more senior officers” soil their uniforms more than junior officers, justifying a uniform allowance on a percentage of payroll. It notes that the Long panel in 2003 rejected a similar proposal.

#### DISCUSSION

The relevant statutory factors for this issue are ability-to-pay, labor market, cost-of-living, and equity and fairness. This proposal will be examined in the light of each of these factors.

Ability-to-Pay. The City estimated that the additional cost to the City of this proposal for the DPOA bargaining unit would be approximately \$573,000 per year based

on an average salary of \$46,313 and a unit size of 2,687. Under these assumptions, the total additional cost to the City over the five-year life of the agreement would be approximately \$2.9 million.

The record establishes that the bargaining unit size is approximate 2300, lowering the cost somewhat. If one assumes an average salary of \$50,000 over the life of the agreement, this would result in a doubling of the current \$250 allowance, with a result that would equally approximate \$2.8 million. Given the City's financial situation, a majority of the panel finds that the statutory factor of ability-to-pay supports the City's LBO.

Labor Market. The labor market may be considered an "other factor" under Act 312. The City must compete for police officers with other municipalities in the area and, to the extent possible, should offer a competitive compensation package.

The Union has offered evidence that other municipalities in the Detroit metropolitan area with which the City must compete for police officers provide uniform allowances greater than the \$250 provided in the collective agreement. The range was \$1200 per year in Sterling Heights to \$650 in Allen Park (Tr. 22, pp. 14-16). To the extent that the amount of the uniform allowance is a factor in determining whether police officers choose to work for the City or to leave the City, the "other" statutory factor supports the Union's LBO.

Cost of Living.

The record establishes that the uniform cleaning allowance of \$250 has not changed since it was established in 1986 (Tr. 22, pp. 4-5). The allowance would need to

be \$459.85 in 2006 to pay for the same amount of cleaning.<sup>24</sup> Thus, the statutory factor of cost-of-living favors the Union's LBO.

#### Equity and Fairness

There is evidence on the record that the \$250 allowance does not cover a police officer's annual uniform cleaning expenses. An officer can spend as much as \$1,200 on cleaning (Tr. 22, pp. 10-11). Thus, on this point, equity and fairness supports the Union's LBO.

A majority of the panel finds merit in the City's observation that the record indicates no reason why officers with longer service should have a greater uniform allowance than officers with shorter service. Thus, at least with respect to this component of the LBO, the factor of fairness favors the City because the City will receive no better service for its higher payment of a uniform allowance to long-service employees.

A majority of the panel also finds that the proposal is unfair to the City because it would lock in a continuing increase in the uniform allowance by tying it to wages rather than to the expenses of cleaning. Although in principle the parties or another arbitration panel could decide to remove the provision at a later date, it is axiomatic in collective bargaining that it is difficult to remove a benefit once it is in the agreement.

### CONCLUSION

Based on the foregoing, although the evidence does indicate that some improvement in the cleaning allowance may be needed, a majority of the panel finds that the statutory factors do not warrant linking it directly to an officer's salary. There is no rationale for such a linkage and such a linkage would likely result in cost increases that

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<sup>24</sup> United States Bureau of Labor Statistics, "Inflation Calculator," at <http://www.bls.gov>.

could not be controlled. Accordingly, a majority of the panel finds that the City's LBO on Union Issue 10: Uniforms, is more consistent with the statutory factors than the Union's LBO.

#### AWARD ON UNION ISSUE 10: UNIFORMS

The City's LBO on Union Issue 10: Uniforms is accepted. The Union's LBO on Union Issue 10: Uniforms is not accepted.

### **UNION ISSUE 11: LEGAL REPRESENTATION INDEMNIFICATION**

#### LAST, BEST OFFERS

##### Last, Best Offer of the Union

Article 28 of the current collective bargaining agreement shall be amended by adding the following new paragraph:

Effective July, 2004 and each fiscal year thereafter the City shall either defend or reimburse the DPOA and/or member for all legal expenses and fees incurred by the DPOA or member if the member is criminally charged and/or prosecuted for conduct that arises out of/or involved with the good faith performance of the official duties of the employee and the member is either exonerated or the criminal charges are dismissed. The City's obligation to defend or reimburse shall be capped at an annual amount of one hundred thousand dollars (\$100,000) each fiscal year. The DPOA shall upon request provide documentation supporting a claim for reimbursement.

##### Last, Best Offer of the City

The City proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union contends that standards of fairness dictate that it is wrong that police officers bear the legal costs of defending themselves against criminal charges when those charges arise out of the good faith performance of their duties. Police officers working in the most dangerous city in the United States are exposed to the possibility of criminal charges on a daily basis. They deserve the same level of indemnification protection as civilian employees. Officers are indemnified for civil litigation, and there is no reason they should not be indemnified for criminal charges. The absence of indemnification for criminal defense worsens police officer morale and harms productivity and performance.

Currently officers are forced to subsidize their legal defense through an assessment levied on them by the Union. In view of the substandard wage paid to the officers, this is unjust.

The Union notes that this LBO is reasonable. It would cap the City's liability at \$100,000, a very small percentage of the City's budget. Moreover, between July 1998 and June 2005, the average amount the DPOA paid for criminal defense was \$80,000.

### Position of the City

The City contends that current indemnification for legal representation in civil suits is generous for DPOA members. Moreover, officers are already protected by the DPOA criminal defense fund.

The City also argues that, unlike civil suits, a criminal suit is prosecuted by the government, and the City must cooperate with the County prosecuting attorney, the U.S. attorney, or other prosecuting authority. The City cannot ethically be in the position of

cooperating with the prosecution on the one hand and paying for the criminal defense of the defendant police officer on the other.

The City points out that in *U.S. v. Mellendez*, the case that prompted the Union's LBO, three of the officers pled guilty. Thus, there is often truth to allegations.

The City contends that any Union argument that additional stress on officers is likely to result in more criminal charges does not justify indemnification. This has not been an issue for forty years and there is no reason why officers cannot exercise increased self-control.

The City also notes that the proposal is likely to substantially increase the City's costs, as there has been a trend in the City of increasing police misconduct suits. Detroit pays approximately \$3,900 per police officer to resolve misconduct suits. This is \$1,000 greater than Los Angeles, \$2,000 greater than New York, and \$3,000 greater than Chicago, Baltimore, Philadelphia, and San Jose. The City also notes that the Union's proposal does not account for repeaters. The City points out that the Union's data on other cities is irrelevant, as no city spends as much as Detroit on police misconduct litigation.

The Union's LBO is vague, as an officer could be "exonerated" but not "legally acquitted" should there be a plea bargain. In addition, it is unclear whether the \$100,000 cap is a cap on overall legal expenditures or whether the cap applies to each employee. In addition, it might be difficult to determine when an officer was acting in "good faith."

## DISCUSSION

### Threshold Matter: Interpretations of Ambiguous Terms

The City has pointed out that some of the language in the LBO is ambiguous. In order to resolve any ambiguities, a majority of the panel is of the view that, as a threshold matter, it is necessary to interpret ambiguous terms.

First, a majority of the panel interprets the term “exonerated” as meaning “legally acquitted.” The LBO would cover indemnification for representation in criminal legal proceedings with legal outcomes. Thus, the City’s liability should be determined based on a legal outcome; under this proposal, a legal outcome is an acquittal or a case dismissal.

Second, a majority of the panel interprets this provision to mean that the City’s liability for all criminal cases brought against DPOA members is capped at \$100,000 per fiscal year. This is based on an interpretation of the following sentence: “(t)he City’s obligation to defend or reimburse shall be capped at an annual amount of one hundred thousand dollars (\$100,000) each fiscal year.” The term “defend or reimburse” is not applied to any member; rather it is used in its general sense. Therefore, it is applied to the DPOA-represented bargaining unit as a whole.

Third, the panel interprets the term “good faith performance” as meaning actions taken by the officer while properly carrying out his or her responsibilities as a police officer. The criminal charge to which the LBO would apply must arise out of the proper performance of the police officer’s law enforcement duties.

## General Discussion

The two relevant statutory factors for this proposal are ability to pay and comparability, as well as the “other” factor of fairness and equity. The proposal will be examined in the light of these three factors.

Ability-to-Pay. Although this proposal was prompted by a drug-related case involving 18 police officers for which the DPOA paid \$1.1 million in criminal defense legal expenses (Tr. 28, p. 8; Un. Ex. 316; City Ex. 325), the LBO limits the City’s liability in any single fiscal year to a total of \$100,000 for expenditures on legal defense for criminal charges that are eligible<sup>25</sup> under the proposal. This is a modest amount even when taking into account the extreme financial difficulties of the City. Accordingly, a majority of the panel finds that the factor of ability to pay supports the Union’s LBO.

Comparability. The record establishes that of the eight comparables, two, Boston and Cleveland, provide some level of indemnification for officers for criminal charges either through reimbursement or provision of legal services (Tr. 30, pp. 35-38; Un. Ex. 324, City Exs. 332-33, 343). There is also some evidence that Baltimore and Milwaukee may have a practice of providing indemnification for criminal charges, although this is in dispute (Tr. 28, pp. 91-95; Tr. 30, pp. 35-38; Un. Ex. 323; City Exs. 330-31, 343; Un. Ex. 344). Based on the foregoing, a majority of the panel finds that the statutory factor of comparability supports the City’s LBO.

Other Factors: Fairness and Equity. Detroit is a high-crime city, and officers are involved in shootings (Tr. 28, pp. 21-26; Un. Exs. 317-22). Thus, officers are exposed to

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<sup>25</sup> A majority of the panel interprets eligible expenses as those meeting the following criteria: (1) the officer was exonerated (legally acquitted) or the criminal charges were dismissed; (2) the officer was performing his or her law enforcement duties in good faith; and (3) proper documentation of incurred legal expenses that meet the first two criteria is provided to the City upon request.



the possibility of criminal charges and ultimately incarceration. As of November, 2005, officers pay a DPOA assessment of \$18.36 per month (Tr. v. 28 p. 15), or \$220.32 per year; the officers must pay for their own legal defense for criminal charges arising out of law enforcement actions performed on behalf of the City (Tr. 28, 15-16). It is unfair and inequitable for the City to receive the benefits of the job performance of these officers and not bear some of the risk associated with criminal charges arising out of that job performance if the officer is acquitted or the case is dismissed.

The Union's proposal is also fair to the City by limiting its annual financial liability under this provision to \$100,000 and by limiting the reimbursement to cases in which the officer is acquitted or the case is dismissed. In other words, it is most likely that, under this provision, the City will only pay when the criminally charged officer was acting properly.

Based on the foregoing, a majority of the panel finds that the statutory factor of fairness and equity supports the Union's LBO.

Other Concerns. The City contends that it will be placed in a position of conflict of interest if it must cooperate with the prosecutor and simultaneously defend the charged party. Given the record, it is most likely that the officer will opt for independent counsel (Un. Ex. 316). If the officer opts for City-provided counsel, a majority of the panel believes that the City will be able to make appropriate internal arrangements to avoid any ethical conflicts.

The panel also finds misplaced the City's concerns about police misconduct. The Union's LBO is limited to indemnification for officers who are acquitted while acting in the good faith performance of their duties. Such situations would not cover police

misconduct. The City's concerns about repeaters are also addressed through the \$100,000 annual limit.

The record also establishes some concerns about the ambiguity of officers' actions that would be encompassed under the term "good faith" (Tr. 30, pp. 3-16). In general, a majority of the panel has offered its definition of "good faith" under this proposal and believes the meaning of good faith is sufficiently clear so as to not be a barrier to inclusion in the collective agreement.

### CONCLUSION

Based on the foregoing, a majority of the panel concludes that two of three relevant statutory factors favor the Union's LBO, and one of the statutory factors favors the City's LBO. A majority of the panel also finds that the City's concerns, while legitimate, are not so serious as to outweigh the fairness and equity inherent in this proposal. For these reasons, a majority of the panel will rule in favor of the Union's LBO.

### AWARD ON UNION ISSUE 11, LEGAL REPRESENTATION INDEMNIFICATION

The Union's LBO on Union Issue 11, Legal Representation Indemnification, is accepted. The City's LBO Union Issue 11, Legal Representation Indemnification, is not accepted.

### UNION ISSUE 12: SICK LEAVE

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 35(M) paragraph two "Retirement and Death Sick Leave Payment" of the current Collective Bargaining Agreement shall be amended by adding the following:

**Effective on the date of Chairperson Block's 312 award**  
a member shall receive full pay for ~~60%~~ **70%** of the unused  
accumulated sick leave.

Last, Best Offer of the City

The City rejects the Union's last position to increase the unused sick leave payment upon retirement or death to 100% of the accumulated sick banks and as its last offer of settlement on this issue proposes that the status quo be maintained.

POSITIONS OF THE PARTIES

Position of the Union

The Union points out that with this proposal the Union is attempting to bring its sick leave payout to the same percentage as the LSA, which currently enjoys a 70% payout. The Union notes that the City has presented no reason why the LSA should enjoy a higher sick leave payout than the DPOA.

The Union notes that this proposal will maximize attendance during a manpower crisis. Because of the shortage of police officers, working conditions are stressful. In addition, the Department is denying requests for compensatory time off, vacation time, and bonus vacation days. With this proposal, officers know that at the time of retirement, they will receive compensation. In addition, this proposal will save the City money in reduced overtime coverage for officers who have called in sick.

Position of the City

The City notes that the officers currently accumulate two sick banks, a current sick bank and a seniority sick bank. They accumulate one day per month in their current sick bank and five days on July 1 each year in their seniority sick bank. The Union notes that in 2000 Arbitrator Sugarman removed a cap of 125 days in each, effectively

removing the 250-day limit. In 2003, Arbitrator Long increased the payment for unused sick leave from 50% to 60%. These two awards addressed any disincentive to come to work. The City notes that in this arbitration the Union seeks still more accumulated sick leave.

The City notes that the maximum sick leave accumulation for the Union of 136 hours is generous relative to the national comparables. This is a component of overall compensation, which is also generous relative to the national comparables.

The City estimates that the annual cost of this proposal would be approximately \$1,000,000 annually, almost 1% of payroll. Given the City's dire financial situation, the City would prefer that its limited funds be allocated to wages and not to post-retirement benefits that are already overly generous.

## DISCUSSION

The relevant statutory factors for this proposal are ability to pay and comparability. This issue will be addressed in the light of these two factors.

### Ability to Pay

The City's estimate of an annual cost of \$991,000 was based on the Union's initial proposal of 100% payout, an increase of 40 percentage points over the current 60% payout (Tr. 24, pp. 72-75; City Ex. 239). The Union has reduced its LBO to a 70% payout, an increase of 10 percentage points over the current payout, or 25% of its initial proposal. Thus, based on the City's estimate, the City's annual cost would be reduced from \$991,000 to \$248,000, a very modest amount. Furthermore, the cost would likely be

reduced further because, due to layoffs, there are fewer DPOA members in early 2007 than there were in September, 2005, when the cost estimate was generated.

Based on the foregoing, therefore, a majority of the panel is of the view that given this small amount of money involved, ability to pay, even with the City's dire financial situation, supports the Union's LBO on this issue.

### Comparables

With respect to the internal comparables, the record establishes that the LSA currently enjoys a 70% sick leave payout (Jt. Ex. 13). Thus, the internal comparables support the Union's LBO.

The record indicates national comparables vary widely with respect to sick leave earnings, accumulation, and conversion. Regarding sick leave earnings, St. Louis permits 150 hours per year. Officers in Cleveland, Milwaukee, and Philadelphia earn 120 hours per year, while officers in Baltimore earn 96 hours per year. Chicago has an unlimited accumulation, and officers in Pittsburgh receive disability benefits in lieu of sick leave. Thus, it appears that Detroit, with 136 hours of annual sick leave earning, is relatively high, but is not at the top (Un. Exs. 521-22).

Regarding accumulation, six of the comparables—Baltimore, Boston, Chicago, Cleveland, Philadelphia, and St. Louis—have unlimited accumulation. In Milwaukee, accumulation is capped at 2,920 hours. Pittsburgh, as noted, uses its disability system to provide sick leave. Thus, Detroit's unlimited accumulation is consistent with the comparables (Un. Exs. 521-22).

Regarding conversion, Boston has a 40% payout up to 200 hours. Cleveland permits a 33% rate for annual salary. Milwaukee has a 100% payout for up to 55 days, or

440 hours. Philadelphia permits 500 hours of sick leave to purchase post-retirement health insurance and a third of over 1,800 hours to be converted to cash. St. Louis permits all of the sick leave to be used, divided between cash and the pension plan. Pittsburgh has a payout from its disability benefits fund. There are no data on Baltimore and Chicago, so it must be assumed that those two cities do have a sick leave payout. Thus, it is impossible to make a comparison between Detroit and the comparables on conversion because no comparable appears to have a conversion system similar to that of Detroit (Un. Exs. 521-22).

Based on the foregoing, a majority of the panel finds that with respect to this issue the police officers in Detroit are behind the most relevant internal comparable and they are generally consistent with the external comparables. Accordingly, a majority of the panel finds that the statutory factor of comparability supports the Union's LBO on this issue.

#### CONCLUSION

A majority of the panel finds that the Union's LBO on Union Issue 12: Sick Leave is more consistent with the statutory factors than the City's LBO.

#### AWARD ON UNION ISSUE 12: SICK LEAVE

The Union's LBO on Union Issue 12: Sick Leave is accepted. The City's LBO on Union Issue 12: Sick Leave is not accepted.

#### **UNION ISSUE 13: BONUS VACATION DAYS**

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 37, paragraph three, of the current Collective Bargaining Agreement shall be amended by adding the following (proposed new language in bold):

~~The Department must ensure that that bonus vacation days are expended proportionately throughout the year and not carry into the last month of the fiscal year; therefore on April 1, commanding officer shall assign the remaining bonus vacation days at his discretion.~~ **Effective July 1, 2006, prior to April 1<sup>st</sup> of each contract year bargaining unit members possessing unused bonus vacation time shall be automatically credited with an equivalent amount of “excused time” which shall be placed in the officer’s compensatory time bank.** Any request to utilize bonus vacation days in conjunction with a furlough scheduled during the months of April, May or June must be submitted to the commanding officer by April 1<sup>st</sup> or those bonus days will be reassigned.

#### Last, Best Offer of the City

The City rejects the Union’s last position to eliminate the Department’s right to assign unscheduled bonus vacation days and instead convert these days to compensatory time and as its last offer of settlement on this issue proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the Union

The Union points out that this proposal is justified because the current system precludes officers from using their earned bonus vacation (BV) days. Department policy does not permit BV days to be used on Fridays, Saturdays, or Sundays and the Department generally restricts the use of BV days during special events. The Union points out this proposal will save money for the City because officers would use compensatory time off rather than forced recall.

The Union notes that this proposal is different from the BV days proposal rejected by Arbitrator Long in 2003. That proposal was linked to a furlough buy-back. This proposal is not so linked; it is justified on its own.

#### Position of the City

The City notes that BV days must be granted when attached to a furlough, and this was the basis of Arbitrator's Long 2003 decision to reject a similar Union proposal. The City notes that over the last several Act 312 proceedings, the value of banking sick days has increased. The City points to Arbitrator Sugarman's decision to uncap the accumulation and Arbitrator Long's decision to increase the sick leave payout from 50% to 60%.

The City notes that the expected annual cost of this proposal over 10 years would be \$493,000; over 20 years \$1.1 million; and over 25 years 1.5 million. The City also contends that there is no need for a change. The City's contribution to post-employment benefits is substantial if hospitalization and sick leave payouts are considered.

### DISCUSSION

The relevant statutory factors for this proposal are ability to pay and the "other" statutory factors, fairness and equity and need for a change. This issue will be addressed in the light of these three factors.

#### Ability to Pay

The record establishes that this proposal would permit officers to take BV days that are unused by April 1 and shift them to the officer's compensatory leave bank. The officer would then receive a payout upon retirement or leaving the force. The City estimates that the additional cost of this proposal in terms of payout at termination would



be \$493,000 over 10 years; \$1.1 million over 20 years; and 1.5 million over 25 years (Tr. 6, pp. 147-50; City Ex. 97). Even if one assumes that this is a maximum estimate, it is still substantial (Tr.6, pp. 157-59). Thus, a majority of the panel concludes that the statutory factor of ability to pay supports the City's LBO.

#### Fairness and Equity

There is no evidence on the record that officers are losing BV days. Rather, the fundamental matter with this issue is the officer's discretion in the use of his or her BV days. At the present time, the City has prohibited the use of BV days during the Friday-Sunday period; if the officer does not use them by April 1, they are assigned. These constraints clearly limit the officer's flexibility in use of the BV days (Tr. 6, pp. 107-09). The proposal would permit the officer to carry the unused BV days into the officer's compensation time bank.

On the other hand, the current agreement requires approval of a BV day request if it is linked to a furlough. Moreover, there is no evidence on the record that the Department is forcing officers to use BV days at times that officers do not need them, essentially requiring officers to "waste" their BV days. Scheduling of BV days seems to take into account officers' needs and operational considerations.

Based on the foregoing, the panel finds that the "other" statutory factor of fairness and equity supports both LBOs equally. This factor favors neither LBO.

#### Need for a Change

The record establishes that only one grievance has been filed over BV days. This indicates that the vast majority of BV day requests are worked out and the problem, while not non-existent, is manageable. Moreover, sick leave accumulation and payout also

encourages officers to avoid using sick leave (Tr. 6, pp. 121-22). Thus, a majority of the panel finds that the “other” statutory factor of need for a change supports the City’s LBO.

### CONCLUSION

A majority of the panel finds that the City’s LBO on Union Issue 13: Bonus Vacation Days is more consistent with the statutory factors than the Union’s LBO.

### AWARD ON UNION ISSUE 13: BONUS VACATION DAYS

The City’s LBO on Union Issue 13: Bonus Vacation Days is accepted. The Union’s LBO on Union Issue 13: Bonus Vacation Days is not accepted.

### UNION ISSUE 15: VACATION

#### Last, Best Offer of the Union

Article 22(H) shall be added as a new section in the collective bargaining agreement, as follows:

Effective July 1, 2006 each bargaining unit member shall receive one (1) additional vacation day for each season (i.e., one for summer and one for winter) for every 5<sup>th</sup> year of service up to a total of 25 years of service.

#### Last, Best Offer of the City

The City rejects the Union’s last position to increase the amount of furlough time and as its last offer of settlement on this issue proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the Union

The Union contends that the difficult working conditions of police officers justify the increase in vacation time. Moreover, the Union notes that the City has presented no reason to reject this LBO.

### Position of the City

The City contends that this is a very expensive proposal during a period of time when the City has severe financial problems. The City points out that the total cost of the proposal, taking into account the fact that it must be applied to the DFFA, is approximately \$2 million. It would also require a retroactive payment to the beginning of fiscal 2006-07.

The City notes that officers in Detroit receive their maximum vacation in their first year, a situation that occurs in few other cities. Thus, officers have a great deal of vacation time.

The City points out that the Union's comparability analysis in Union Exhibits 555 N and O fails to take account of bonus vacation (BV) days, which are attached to furlough days. These are six additional vacation days for officers who have accumulated 50 days in their banks and have six years of seniority. These are additional furlough days that must be considered by the panel. The City also notes that its vacation pay is above the average of the comparables at 5 years of service and at approximately the average of the comparables at 10 and 15 years of service. Thus, the City argues that the factor of comparability does not support the Union's LBO.

## DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay and comparability. This proposal will be examined in the light of both of these factors.

### Ability-to-Pay

The record indicates that this proposal as applied to the DPOA will cost the City almost \$1.6 million (Tr. 24, pp. 109-14; City Ex. 239). The City's financial problems have been discussed in great deal elsewhere and will not be repeated here. Accordingly, a majority of the panel finds that the factor of ability-to-pay supports the City's LBO.

### Comparability

An analysis of vacation compensation for the eight comparables and the City of Detroit based on the Aitchison data (Un. Exs. 555 N-O) supports the City's contention that Detroit police officers reach a maximum vacation early in their tenure, after which there are no increases in vacation (Tr. 22, p. 57; Jt. Ex. 9). Other cities increase vacation provided to employees as length of service with the department increases. Because of layoffs in the Detroit Police Department, it is reasonable to believe that most of the officers currently assigned to duty have relative high seniority resulting in a situation in which the majority of officers on the payroll have less vacation than the comparables. On the other hand, this situation is the consequence of the choice the parties have made to provide the maximum vacation to new officers quickly, but no vacation increases to employees as they accumulate time in the Department.

Officers in Detroit also receive up to six days additional vacation through bonus vacation (BV) days (Jt. Ex. 9; Union Issue 13, above). BV days are likely not considered in the Aitchison data, thus underestimating vacation time available to officers in the City.

On balance, a majority of the panel is of the view that the factor of comparability slightly favors the Union's LBO.

## CONCLUSION

A majority of the panel finds that because the factor of ability-to-pay strongly supports the City's LBO and the factor of comparability only slightly supports the Union's LBO, the statutory factors, applied to Union Issue 15, support the City's LBO.

### AWARD ON ISSUE 15: VACATION

The City's LBO on Issue 15: Vacation is accepted. The Union's LBO on Issue 15: Vacation is not accepted.

### UNION ISSUE 16: SHIFT DIFFERENTIAL

#### LAST, BEST OFFER

##### Last, Best Offer of the Union

Article 30, paragraph one, of the current collective bargaining agreement shall be amended as follows (proposed changes in bold):

**Effective on the date of Chairperson Block's 312 award** shift premium shall be paid to all members whose regular tour of duty begins with the hours prescribed as follows, and in the amounts set forth herein; if the tour of duty begins between 11:00 AM and 6:59 PM, the rate of shift premium pay is ~~forty cents (\$.40) per hour~~ **fifty cents (\$.50) per hour**. If the tour of duty begins between 7:00 PM and 3:59 AM, the rate of shift premium pay is ~~fifty cents (\$.50) per hour~~ **sixty cents (\$.60) per hour**.

##### Last, Best Offer of the City

The City rejects the Union's last position to increase the shift differential and as its last offer of settlement on this issue proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union argues that the increased shift differential is warranted because the afternoon and midnight shifts are especially stressful. There are more runs and more danger on those two shifts than on the morning shift.

### Position of the City

The City admits that this LBO is inexpensive compared with other proposals. Nevertheless, the City observes that it is in a financial crisis, and its scarce resources are best allocated to wage increases. The City has stretched itself to the limit with its wage proposal.

## DISCUSSION

The relevant statutory factors for this proposal are ability to pay, comparability, and fairness and equity. This issue will be addressed in the light of these three factors.

### Ability to Pay

The cost of this proposal is modest, roughly \$266,000 per year. This is a fairly modest amount, given the savings the City will realize on health insurance. Thus, although the City is in a financial crisis, a majority of the panel finds that the statutory factor of ability-to-pay does not support the City's LBO.

### Comparability

The record establishes that the AFSCME bargaining unit enjoys a greater shift differential than the DPOA (Tr. 16, p. 10). On the other hand, the AFSCME unit has taken earnings reductions while the DPOA unit will receive a wage increase (City Ex.

556A). Thus, to the extent that AFSCME is an internal comparable, the statutory factor of comparability supports neither LBO.

#### Fairness and Equity

There is increased danger and stress associated with the afternoon and evening shifts (Tr. 16, pp. 7-9). There is, however, a shift differential in place and that differential recognizes the greater difficulty of these shifts. It is also true that employees will incur a financial burden with health insurance, and an increased shift differential may ease that burden a small amount. Overall, the “other” statutory factor of fairness and equity supports the Union’s LBO.

#### CONCLUSION

A majority of the panel finds that the Union’s LBO on Union Issue 16: Shift Differential is more consistent with the statutory factors than the City’s LBO.

#### AWARD

The Union’s LBO on Union Issue 16: Shift Differential is accepted. The City’s LBO on Union Issue 16: Shift Differential is not accepted.

#### UNION ISSUE 17: EDUCATIONAL REIMBURSEMENT

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 20, paragraphs two-five, of the current Collective Bargaining Agreement shall be amended by adding the following (proposed changes in bold):

Effective January 1, 2006 **An eligible employee will be entitled to receive a maximum of ~~\$850.00~~ \$2,500.00 per**

**fiscal year to be applied toward tuition in seeking a graduate degree from an accredited university.**

Effective July 1, 2006

An eligible employee will be entitled to receive a maximum of ~~\$700.00~~ **\$2,000.00** per fiscal year to be applied toward tuition seeking an undergraduate degree from an accredited university.

Effective July 1, 2006

An eligible employee will be entitled to receive a maximum of ~~\$600.00~~ **\$1,700.00** per fiscal year to be applied toward payment for participation in employee development programs.

Effective July 1, 2006

The above amounts cannot be pyramided to permit any employee to receive more than the total amount of ~~\$850.00~~ **\$3,000.00** in any fiscal year.

Last, Best Offer of the City

The City rejects the Union's final position to increase educational reimbursement and proposes that the status quo be maintained.

POSITIONS OF THE PARTIES

Position of the Union

The Union argues that the educational reimbursement proposal must be awarded to both keep pace with the increasing costs of tuition and to benefit officers and the City via new techniques/skills acquired. The current educational reimbursement rates of \$850/yr. are insufficient; they do not fully cover the tuition cost for even one graduate class. Thus, Detroit police officers, who already receive lower salaries than officers in comparable cities, are forced to choose between providing for their families or paying for school.



Second, they state that the City would also benefit from an increased reimbursement. The DPOA argues that education provides officers with both new problem-solving methods and enhanced critical thinking in policing communities and interacting with the public.

Third, the DPOA compares their educational reimbursement with that of general city employees represented by AFSCME Council 25. Those employees receive \$2,000 for a graduate degree program, \$1,500 for an undergraduate degree program, and \$1,200 for an employee development program.

The Union argues that the City has presented no justifiable reason for its objection to the Educational Reimbursement proposal. Hence, they argue that they are entitled to an increase in the current education reimbursement found in Article 20.

#### Position of the City

The City first states that the Union relies heavily on the fact that non-uniformed employees receive a higher tuition reimbursement than DPOA members. The City notes, however, that the wages of DPOA members are greater than the wages of non-uniformed employees. Citing Exhibit 71, the City points out that non-uniformed employees are eligible for full retirement only at age 55 and after 30 years of service. Moreover, the pension multiplier for non-union employees is lower than that of DPOA members. As a result, the normal cost for members' benefits in the Detroit general retirement system is 9.56%, about one-third the normal cost for police and fire. Though more members exist in the general retirement system, the 2004-05 police and fire retirement contribution was almost double that of the general retirement system.

Secondly, uniformed employees will receive a wage increase, non-uniformed employees will not. Current non-uniformed employees received a 0% wage increase July 1, 2005, and a 10% reduction in hours effective July 1, 2006. They will receive a 0% wage increase July 1, 2007, and a 4% increase on June 30, 2008. The City points out that it has proposed an 11% increase for the DPOA through June 30, 2009.

Thirdly, the City argues that it is in dire fiscal crisis and cannot afford the proposal. Citing Arbitrator Roumell's observations, the City argues that when resources are scarce, they should be channeled to wages.

#### DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and fairness and equity. This issue will be addressed in the light of these three factors.

##### Ability-to-Pay

As discussed, the record establishes that the City's financial condition is serious. It is running large deficits. The Union's LBO would result in reimbursement payments that are two to three times higher than they are under the current agreement. This is a burden that the City cannot absorb. Accordingly, a majority of the panel finds that the statutory factor of ability-to-pay supports the City's LBO.

##### Comparability

With respect to internal comparables, although the Union compares its reimbursement rate with the rates available to non-uniformed employees, it must be noted that the officers represented by DPOA will receive wage increases through June 30, 2009. The non-uniformed units have accepted a freeze in the wage level and 10% cuts in

hours (City Exs. 556A-G, 556K-M). Thus, at least with respect to wages, the DPOA will be working under a superior contract.

In addition, there is nothing on the record regarding reimbursement rates for the DFFA, DPCOA, or LSA. There is also nothing on the record regarding the external comparables. Based on the foregoing, a majority of the panel determines that the statutory factor of comparability does not support the Union's LBO.

#### Fairness and Equity

The panel is well aware of the rising cost of education, and the panel agrees with the Union that the current levels of educational reimbursement are not sufficient to fully offset the costs of tuition of DPOA members (Tr. 13, p. 135, 138-39). Thus, many police officers will not be able to obtain the education they need to perform in their jobs to the best of their capabilities (Tr. 13, pp. 136-37). The panel also acknowledges that an educated police force is a better police force, and the City and citizens of Detroit will benefit from educated officers (Tr. 139-40). Thus, the statutory factor of fairness and equity supports the Union's LBO.

#### CONCLUSION

In view of the City's dire financial circumstances and the fact that a substantial amount of the City budget will be allocated to the DPOA, a majority of the panel will give greatest weight for this issue to considerations of ability to pay. Accordingly, a majority of the panel finds that the City's LBO on Union Issue 17: Education Reimbursement is more consistent with the statutory factors than the Union's LBO.

AWARD ON UNION ISSUE 17: EDUCATIONAL REIMBURSEMENT

The City's LBO on Union Issue 17: Educational Reimbursement is accepted. The Union's LBO on Union Issue 17: Educational Reimbursement is not accepted.

**UNION ISSUE 18: OVERTIME/SHIFT EXTENSION–MEDICAL TREATMENT**

LAST, BEST OFFERS

Last, Best Offer of the Union

Article 14 (E) shall be added as a new section in the current collective bargaining agreement:

Effective on the date of Chairperson Block's 312 award when a bargaining unit member is injured on duty he/she shall be paid up to a maximum of eight (8) hours overtime for time spent receiving medical treatment when such treatment occurs during or extends the officer's shift.

Last, Best Offer of the City

The City proposes as its last offer of settlement on this issue to amend Article 35–Sick Leave, paragraph K as follows:

When receiving medical treatment for an injury incurred while on duty, and such treatment extends beyond the officer's shift, such time will be considered as extension of the shift, up to a maximum of an additional eight hours.

POSITIONS OF THE PARTIES

Position of the Union

The Union contends that this provision is based on simple equity. When an officer's shift is extended due to call volume, the officer receives overtime. Yet when an officer's shift is extended due to an injury in the line of duty, the officer is not paid. This difference is unfair. The Union notes that only the most serious injuries will trigger this provision.

### Position of the City

The City offers no argument in support of its LBO.

### DISCUSSION

The relevant statutory factors for this proposal are the “other” statutory factors of fairness and equity and clarity of language. This issue will be addressed in the light of these two factors.

### Fairness and Equity

Based on the Union’s argument, the purpose of this provision is to compensate officers who are injured in the line of duty; who must receive medical treatment for that injury; and who are not released from medical treatment before the end of their shift. A majority of the panel finds that the principle underlying the Union proposal brings fairness and equity to the workplace. There can be no doubt that if an officer must receive medical treatment because of an on-the-job injury and is not released from medical care until after his or her shift ends, the officer’s time in medical treatment grows out of his or her work. The injury was sustained in service to the City, and the officer should be paid for this extra time. Both LBOs provide such payment. Thus, the “other” statutory factor of fairness and equity supports both LBOs equally.

### Clarity of Language

As between two proposed provisions that have identical intent, the preferred provision is the provision that is the clearest and least ambiguous. Clarity of language prevents disputes between the parties over the interpretation of a provision.

A majority of the panel concludes that the City’s LBO is clearer than the Union’s LBO. The City’s LBO makes it clear that only the medical treatment time that extends

past the end of the officer's shift is considered a shift extension and paid at overtime rates. The Union's proposed language "overtime for time spent receiving medical treatment when such treatment occurs *during* (emphasis added) or extends the officer's shift" could be interpreted to require an overtime payment for time spent in medical treatment that occurred during the officer's regular shift. The panel interprets the intent of Union's LBO as requesting overtime only for time spent after the shift. Thus, the "other" statutory factor of clarity of language supports the City's LBO.

### CONCLUSION

A majority of the panel finds that the City's LBO on Union Issue 18: Overtime/Shift Extension–Medical Treatment is more consistent with the statutory factors than the Union's LBO.

### AWARD ON UNION ISSUE 18: OVERTIME/SHIFT EXTENSION–MEDICAL TREATMENT

The City's LBO on Union Issue 18: Overtime/Shift Extension–Medical Treatment is accepted. The Union's LBO on Union Issue 18: Overtime/Shift Extension–Medical Treatment is not accepted.

### UNION ISSUE 19: "ME TOO"

#### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Effective on the date of Chairperson Block's Act 312 award, the City shall provide DPOA bargaining unit members with all greater economic benefits awarded and/or provided to the DPCOA, LSA, and/or DFFA.

### Last, Best Offer of the City

The City rejects the Union's last position to include a "Me Too" provision to the collective bargaining agreement and as its last offer of settlement on this issue proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union argues that the Union should be awarded this LBO as a matter of equity. The Union notes that in the previous two contract negotiations, the LSA received an 8% wage increase and a 2.5% multiplier for pension benefits that the DPOA was required to secure via Act 312. The Union argues that it is only fair that if the LSA (or DFFA or DPCOA) obtains a benefit, that same benefit should go to the DPOA. This Union notes that this provision will assure that appropriate wage differentials are maintained. It will also act as a cost-containment measure for the City because the City will be aware that all benefits granted to the other three units will also be granted to the DPOA.

### Position of the City

The City argues that this proposal is dissimilar to the provisions in the DFFA, LSA, and DPCOA agreements. This provision, if awarded, through the "all greater benefits" language would provide the DPOA with only increases in benefits, not forcing the DPOA to accept any decreases or concessions in the other agreements. The parity provisions in those agreements that are linked to the DPOA required those units to accept decreases as well as increases in benefits.

Second, the “me too” provisions in the LSA and DPCOA contracts are narrow; they are limited to wage differentials. The City notes that, as the Union interprets it, this provision would apply to all benefits, including uniform allowances, insurance co-pays, and seniority promotions. Although the DFFA contract applies to all benefits awarded to the DPOA, that contract would also apply to concessions.

In addition, the City observes that this LBO would apply to three other units, whereas the parity provisions in other public safety agreements apply to only one union, the DPOA. This would create a multiplier effect for the DPOA.

The City also argues that this LBO fails to account for the possibility that the other unit may have made concessions in other areas in order to obtain a benefit. Under this provision, the DPOA would obtain a benefit but provide nothing in return.

Finally, the City contends that this provision would negate the negotiations process and the Act 312 process. It would provide the Union a benefit that it could not obtain through negotiations or might not be able to justify under the statutory factors incorporated into Act 312.

## DISCUSSION

The relevant statutory factors for this proposal are ability-to-pay, comparability, and the “other” factor of fairness and equity. This LBO will be addressed in the light of these three factors.

### Ability-to-Pay

This LBO would clearly increase the City’s costs over and above what they would otherwise be. By granting the DPOA all benefits that members of the three other public



safety units receive even if the DPOA did not receive them, the cost of DPOA benefits would increase.

In addition, a majority of the panel finds valid the City's observation that the LBO, as proposed, would provide the DPOA with benefits, but would not require the DPOA to accept concessions. Thus, the City would not obtain any cost reductions from the DPOA.

Based on the foregoing, a majority of the panel finds that the statutory factor of ability-to-pay favors the City's LBO.

#### Comparability

To the extent that the DPOA obtains a benefit that is provided to at least one of the other bargaining units, the DPOA LBO is consistent with the statutory factor of internal comparability. On the other hand, to the extent that LBO does not require the DPOA to accept a concession or benefit decrease accepted by one or more of the other bargaining units, the LBO is inconsistent with the statutory factor of internal comparability. The record contains no evidence on whether any of the external comparables have such a provision.

Based on the foregoing, a majority of the panel concludes that the statutory factor of comparability favors neither LBO.

#### Fairness and Equity

The DPOA's concern that its negotiations and Act 312 arbitrations awards establish the basis for the other bargaining units is understandable (Tr. 35, pp. 147-59). In that sense, fairness and equity would support the Union's LBO on this issue. It is also the case, however, that the other units must go through negotiations and Act 312. The DPOA

parity provisions of those units must be negotiated or justified before an Act 312 panel if the City proposes to change them. In that sense, the parity provisions in the other unit are not “automatic.”

On the other hand, the proposal would be unfair to the City because it would be forced to give a benefit to the DPOA even if such a benefit was not justified by statutory factors or the give-and-take of collective bargaining. Finally, as the City notes, the provision would apply to all benefits, not simply wages or specified differentials, and it would not apply to benefit decreases or concessions.

Based on the foregoing, a majority of the panel finds that, on balance, the “other” statutory factor of fairness and equity supports the City’s LBO.

#### CONCLUSION

The City’s LBO on Union Issue 19: “Me Too” is more consistent with the statutory factors than the Union’s LBO.

#### AWARD ON UNION ISSUE 19: “ME TOO”

The City’s LBO on Union Issue 19: “Me Too” is accepted. The Union’s LBO Union Issue 19: “Me Too” is not accepted.

#### UNION ISSUE 20: PENSION–MILITARY TIME

##### LAST, BEST OFFERS

##### Last, Best Offer of the Union

The following shall be added as a new Article 33 section:

Effective on the date of Chairperson Block’s Act 312 Award all bargaining unit employees who have served in the military may purchase a maximum of three (3) years pension time.

### Last, Best Offer of the City

The City rejects the Union's last position to include a Purchase of Military Time article to the collective bargaining agreement and as its last offer of settlement on this issue proposes that the status quo be maintained.

## POSITIONS OF THE PARTIES

### Position of the Union

The Union notes that the proposal applies to all honorably discharged veterans, regardless of when they served. The Union notes that veterans have traits, skills, and training that are valued by a paramilitary organization such as the Detroit Police Department.

The Union notes that this proposal costs the City nothing, as it permits the veteran to purchase pension credit. The Union sees no reason why this proposal should not be granted.

### Position of the City

The City does not take a position on this issue.

## DISCUSSION

The City has offered no reason why this Union proposal should not be accepted. Because the officer will pay for his or her pension credits, there is no pension cost to the City. While the City may be required to pay for up to three additional years of health insurance if the officer retires earlier than he otherwise might, this small additional cost to the City does not justify rejecting this Union LBO on the basis of ability to pay.

## CONCLUSION

A majority of the panel finds that the Union's LBO on Union Issue 20: Pension–Military Time is more consistent with the statutory factors than the City's LBO.

### AWARD ON UNION ISSUE 20: PENSION–MILITARY TIME

The Union's LBO on Union Issue 20: Pension–Military Time is accepted. The City's LBO on Union Issue 20: Pension–Military Time is not accepted.

## UNION ISSUE 21: OVERTIME–COMPENSATORY TIME OFF (NON-ECONOMIC)

### LAST, BEST OFFERS

#### Last, Best Offer of the Union

Article 14(A) of the current collective bargaining agreement shall be amended by deleting the current language in Article 14(A) and substituting the following:

~~Prior to any fiscal year all members will be required to sign a list indicating their preference to be paid in cash or compensatory time for overtime worked. Once a member elects or does not elect to take time instead of cash payment, he is restricted to that choice for the entire fiscal year. All overtime will be credited at the rate of time and one half. For the first seventy five (75) hours of overtime work in a fiscal year, for which there is one hundred twelve and one half (112 1/2) hours of credit, the employee will have an option of receiving compensatory time instead of payment in cash. All overtime beyond the first one hundred twelve and one half (112 1/2) converted time hours must be paid in cash. However, in any fiscal year, no more than one hundred twelve and one half (112 1/2) converted hours may be earned as compensatory time as a result of overtime worked. Furthermore, such overtime shall be paid in cash rather than granting compensatory time when necessary to comply with F.L.S.A requirements. Effective on the date of Chairperson Block's 312 award a police officer who has worked overtime shall if he/she so elects be allowed to receive compensatory time off at the overtime rate in lieu~~

of pay provided he/she does not exceed more than four hundred and eighty (480) accumulation limitation set forth in the Fair Labor Standards Act as amended. Scheduled overtime shall be paid in cash at the rate of time and one half rather than granting compensatory time off when necessary to comply with F.L.S.A requirements.

#### Last, Best Offer of the City

The City rejects the Union's last position to allow a member the choice between compensatory time and cash payment for each instance of overtime worked and as its last offer of settlement on this issue proposes that the status quo be maintained.

### POSITIONS OF THE PARTIES

#### Position of the Union

The Union notes that it is often impossible for officers to know whether they will need overtime or compensatory time off at the start of the fiscal year. Financial circumstances can unexpectedly change during a year, and an officer who believed in good faith in July that he or she would not need overtime may later come to need it.

The Union notes that the administrative burden on the City would be no greater than it is now. Currently, the payroll clerk must determine whether the officer has met the 75-hour requirement. Thus, this proposal would simply allocate the same administrative resources differently.

#### Position of the City

The City notes that this provision is vague and ambiguous. It is unclear how this designation will be made on every overtime occasion. The City notes that non-uniformed employees process payroll, and that it has laid off a large number of non-uniformed employees. This proposal will only exacerbate the administrative problems in the City.

## DISCUSSION

Although the panel understands the concerns of officers who must designate at the start of the fiscal year whether they will take their first 75 hours of overtime pay in cash or compensatory time off, the City has expressed what appear to be legitimate concerns regarding the administrative burden associated with changing the current system. The record on this issue does not contain sufficient detail on the processing of payroll for the panel to choose the Union's LBO over the status quo or, because this is a non-economic issue, to fashion an award not proposed by either party (Tr. 22, pp. 80-99). A majority of the panel is of the view that this issue is best left to face-to-face collective bargaining where the day-to-day administration associated with processing overtime can be explored.

## CONCLUSION

A majority of the panel finds that the record on Union Issue 21: Overtime–Compensatory Time Off cannot support a change from the status quo.

### AWARD ON UNION ISSUE 21: OVERTIME–COMPENSATORY TIME OFF

The City's LBO on Union Issue 21: Overtime–Compensatory Time Off is accepted. The Union's LBO on Union Issue 21: Overtime–Compensatory Time Off is not accepted.

March 8, 2007

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Richard N. Block  
Impartial Arbitrator, Panel Chair

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Brian Ahearn\*  
City Delegate

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Ted Iorio\*\*  
Union Delegate

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\*Concurs on all awards for the City and dissents on all awards for the Union.

\*\* Concurs on all awards for the Union and dissents on all awards for the City.

