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STATE OF MICHIGAN
EMPLOYENT RELATIONS COMMISSION
ACT 312 COMPULSORY ARBITRATION AWARD

CITY OF ROYAL OAK

-and-

ROYAL OAK POLICE
OFFICERS ASSOCIATION

Case No. D06 E-1674

CHRONOLOGY

Petition filed by City: July 11, 2006
Arbitrator/Panel Chairperson appointed: February 16, 2007
Pre-hearing Conference: February 19, 2007
Arbitration hearings: May 2, 4, 7, 21, 23 & 30, October 3 & 10, and November 2, 2007
Briefs received: November 3, 2008
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Award issued: March 27, 2009

APPEARANCES

For the Employer: Howard L. Shifman, Attorney
For the Union: L. Rodger Webb, Attorney

ARBITRATION PANEL

Impartial Arbitrator/Chairperson: Paul E. Glendon
City Delegate: Howard L. Shifman
Union Delegate: L. Rodger Webb

COMPARABLE COMMUNITIES

The parties agreed upon seven municipalities as comparable communities for comparison under Section 9(d)(i) of Act 312 (MCL 423.239): the cities of Dearborn Heights, Madison Heights, Roseville, St. Clair Shores and Taylor, and Redford and Waterford Townships. The Union proposed an eighth, the City of Southfield, which is included for these reasons: it was used as a comparable community in Act 312 proceedings that led to the parties' last contract in 2002; the population differential between Royal Oak and considerably more populous Southfield is smaller than between Royal Oak and less populous Madison Heights, an agreed comparable; and the taxable-value-per-citizen ratio in Royal Oak is closer to Southfield than five of the seven agreed comparables.

DURATION (ECONOMIC)

The City proposed a four-year agreement, effective dates July 1, 2006 through June 30, 2010. The Union proposed a five-year agreement, through June 30, 2011. Relevant Section 9 statutory factors are (c), (d) and (h). Factor (c) favors the Union, because the interests and welfare of the public (the citizens of the City of Royal Oak) will be better served by the stability of an extra year of settled contractual relations between the parties and the City's beleaguered finances will be less strained by thus deferring the next negotiations and potential Act 312-related costs, especially given that nearly three years of the contract term will have elapsed before it actually takes effect. Factor (d)(i) favors neither party, because police union contracts in the comparable communities are spread roughly evenly over durations of three to six years. Factor (h) favors the Union in that City contracts with other bargaining units (an "other factor . . . 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") all have five-year terms. Therefore the duration of the parties' new agreement will be five years, and its Section 53.1 will read as follows:

> This Agreement shall be effective 12:01 AM on July 1, 2006 and expire at 11:59 PM on June 30, 2011. All provisions of this contract shall continue to operate unless notice of termination or desire to modify or

change this Agreement is given in writing by either party at least sixty (60) days prior to the expiration date hereof.

PROHIBITED PRACTICES (NON-ECONOMIC)

The parties stipulated to add "handicap" to the prohibited bases for discrimination in Section 4.4 of the agreement, which therefore will read as follows:

> No person employed by, nor applicants for, employment with the Employer, nor any applicant for Association membership shall be discriminated against because of race, creed, color, national origin, age, sex, marital status, number of dependents, *handicap* or political affiliations.

WAGES (ECONOMIC)

The parties agreed on wage increases of 2.5% in the second and 3% in the third year of the new contract. The City proposed no increase in year one, 2.5% in year four, 2% in year five. The Union proposed a 1.5% increase in year one, 3% each in years four and five. Statutory factors relevant to resolution of this issue (albeit not all of them for each year) are (c), (d)(i), (e), (g) and (h).

The most important consideration, for this and several other economic issues, is the City's declining ability to meet the costs of wage increases. It is undisputed that its general fund revenues have not grown substantially in recent years, because the state's municipal tax structure has forced millage rate reductions as property valuations increased, and funds received from state revenue sharing have been sharply reduced. But there have been large additions to the City's operating expenses due to new requirements for actuarially sound current funding for future pension benefits and retiree health care, together now accounting for approximately one-third of the annual operating budget. To cope with this dire financial situation, the City has made significant staff reductions and taken other remedial measures, but still must deal with the possibility of significant deficits.

The Union does not (really it *cannot*) dispute these dire financial realities, but argues they should not be a basis for favorable consideration of the City's positions in this arbitration because the City did not previously take appropriate measures to deal with them, such as funding for future benefits in previous budgets and seeking and effectively advocating for taxpayers' approval of adequate millage increases. With benefit of hindsight

one has sympathy with the Union's argument, but it does not alter the financial realities now confronting the City and is not a statutorily permissible basis for an Act 312 award.

The severe budgetary constraints affecting the City's current operations and planning for the future significantly limit its ability to meet the costs of wage increases in this or any other bargaining unit. To disregard them for this purpose potentially would necessitate drastic cuts in other City services and thereby badly disserve the interests and welfare of the public. In both those respects, therefore, statutory factor (c) favors the lower wage increases proposed by the City for the fourth and fifth years of the 2006-11 agreement. For year one, however, the situation is different because according to the City's Comprehensive Annual Financial Report for Fiscal Year 2006-07 its general fund revenues and expenditures ended that year almost exactly in balance, including certain "other financing sources," with a slight increase in the general fund balance. The total cost of the increase proposed by the Union for that year would be less than $150,000, and the City will have had the benefit of the use of those funds for (as a net average) almost two and a half years before the new contract actually takes effect, so factor (c) favors neither party with respect to year one wages.

Among the comparable communities, the pattern favors the Union's position on wage increases for 2006-07: of the five of eight municipalities with settled contracts covering that period, one had a 1% increase, one 2%, two 3%, and one 3.5%. None of the eight comparable communities had a settled contract for 2009-10 or 2010-11, so factor (d)(i) does not apply to those years.

Factor (e) also favors the Union's position for year one, because the increase in the CPI in calendar year 2006 was 2.8% to 3.0%, depending on which basket of items was measured for which set of urban workers/consumers, but this factor does not apply to years four and five.

Factor (g) favors the Union as to year one, in that the general fund balance at the end of that year changed from a projected reduction of more than $1.3 million (in the City Manager's initial 2007-08 budget recommendation) to an actual *increase* of $118. But as to years four and five, changes in circumstances related to other Section 9 factors, especially (d) and (f), favor the City. Its particular budgetary challenges also have been and will be exacerbated by general economic problems that have hit Southeastern Michigan

especially hard and will put even greater pressure on City tax revenues, further limiting its ability to meet wage increase costs and making employment in this bargaining unit more valuable in terms of continuity and stability, even at slightly lower wages than the Union proposed, than other employment in Royal Oak and comparable communities.

Factor (h) also favors the City's position for year four, in that other bargaining units agreed to wage increases of 2.5% for that year.

For these reasons, a majority of the panel adopts the Union's position on wages for year one of the new agreement and the City's for years four and five; as to police officers Section 45.1 of the agreement will read as follows:

> The general wage scale for all bargaining unit members shall be increased, fully retroactive to the dates and in the amounts as follows:
>
> | | |
> |---|---|
> | July 1, 2006 | 1.5% |
> | July 1, 2007 | 2.5% |
> | July 1, 2008 | 3.0% |
> | July 1, 2009 | 2.5% |
> | July 1, 2010 | 2.0% |

MANAGEMENT RIGHTS (NON-ECONOMIC)

The City proposes to eliminate Section 6.2(b), as it exists in the 2002 contract, from the new agreement. Section 6.2 generally recognizes that existing rules and regulations "not inconsistent with the provisions of the Agreement shall continue in effect" and the City may reasonably modify them and "adopt reasonable new rules," and also gives the Union a right to challenge the reasonableness of such rules or their application through a single-step (City Manager only) grievance procedure and arbitration. Section 6.2(a) says grievances alleging that rules "in effect, abrogate" the agreement also may be arbitrated, "as elsewhere provided in this Agreement." Section 6.2(b) reads as follows:

> The arbitrator shall be empowered to rule on the reasonableness of said Departmental rules and also on the time in which said Departmental rules were put into effect. Provided, however, the arbitrator finds that said rule is not reasonable, or not enough time was given prior to its being put into effect, he shall be empowered to award money damages. Such money damages, however, shall not exceed the compensation lost by any individual member or members of the Association.

The City's stated purpose for removing Section 6.2(b) is to eliminate its money damages provision because it is "highly unusual . . . and requires the payment of money damages without any explanation of what those damages should be based on." Whether or not such a provision is unusual, the assertion that it creates a risk "that an arbitrator may impose money damages without any criteria or reason" is incorrect. As written, Section 6.2(b) limits such damages to "the compensation lost by any individual member or members of the Association." If nobody loses compensation due to purportedly unreasonable application of a rule, therefore, no damages may be awarded; if a bargaining unit member *does* lose compensation, damages "shall not exceed the compensation lost." There hardly could be a clearer explanation or limitation of the basis for such damages, and the City presented no evidence of any problem with this language for however long it has been part of the parties' previous agreements, so the Union's position that the status quo should be maintained is adopted.

GRIEVANCE PROCEDURE (NON-ECONOMIC)

The City proposed to change the time limit for its response at each step of the grievance procedure from seventy-two hours to five days; the Union responded that it would accept that proposal if the same change was made in its time limit for presenting and advancing grievances at each step of the grievance procedure; the parties then stipulated to such mutual changes, therefore it is ordered that wherever the phrase "within seventy-two (72) hours" appears in Steps 1 through 4 of Section 10.5 it shall be removed and replaced with the phrase "within five (5) days."

LAYOFF AND MANNING (NON-ECONOMIC)

The City proposed not to include in the new agreement a new version of the existing Section 14.1(e), which reads as follows,:

> The Employer agrees that positions filled as of the date of signing of this contract will not be subject to layoff prior to July 1, 2006. This provision is intended by the respective parties to apply only to this particular agreement, and is not deemed to be precedent setting, nor construed as establishing a past practice.

The Union agreed that a no-layoff clause is not a mandatory subject of bargaining and therefore did not oppose the City's proposal, but proposed to replace the old Section 14.1(e) with a new "layoff protocol" stating that no full-time bargaining unit employee "may be laid off unless and until all part-time unit employees are laid off and the Auxiliary Police Program is suspended (which provisos remain in effect until all full-time unit employees are recalled)." In support of this proposal, the Union asserts that it parallels similar provisions in the City's contracts with other (non-public safety) bargaining units and that when it agreed the City could hire part-time parking enforcement officers (who later became part of the bargaining unit) it requested and received certain *quid pro quo* commitments from the City, including that there would be a minimum number of full-time Police Service Aides (also bargaining unit members).

The City opposes the proposal on various grounds, including that non-renewal of Section 14.1(e) from the 2002 contract will leave the parties in the same position as under previous contracts, and most important that this proposal also addresses a non-mandatory subject of bargaining, in that the Union's proposed "protocol" really is just another layoff prohibition for police officers.

The City is right on the latter point, both because barring layoffs of full-time police officers until all part-time bargaining unit employees are laid off and the Auxiliary Program is suspended would "unduly restrict the city in its ability to make decisions regarding the size and scope of municipal services," *AFSCME v City of Centerline*, 414 Mich 642, and because such a prohibition would conflict with other parts of Section 14.1 calling for layoffs and bumping *by classification*. For these reasons, the Union's proposal on this issue is rejected and Section 14.1(a), (b), (c) and (d) in the 2002 agreement shall be included unchanged in the 2006-11 agreement, but it will include no Section 14.1(e).

DRUG/ALCOHOL TESTING (NON-ECONOMIC)

The City proposed to add the following provision to the 2006-11 agreement as a new Section 27.3: "The Employer shall have the ability to conduct reasonable cause random drug and alcohol testing consistent with the law." In its post-hearing brief it dropped this proposal, however, so this issue no longer is before the panel.

VACATION (NON-ECONOMIC)

The City proposed not to include Section 31.22 of the 2002 agreement in the new contract, thereby eliminating bargaining unit members' ability to "borrow" vacation leave time from the next contract year for use in the final month of the current year. The clause in question reads as follows: "During the month of June, members of the bargaining unit may be allowed to carry negative vacation time balances. Such time will be taken from their time banks on July 1." The City argues such a provision is unnecessary because with vacation, holidays and compensatory time, bargaining unit members "have too much time off," and other City employees and police officers in the comparable communities do not have such a benefit.

The Union points out that the City presented no evidence in support of this proposal and argues there is no reason to revoke a benefit that has existed since 1995, when it was adopted as a transitional adjustment to the City's change from a June-May to July-June fiscal year.

The City presented no evidence that this benefit has caused it any hardship or inconvenience, so a mere feeling that bargaining unit members have "too much time off" does not justify elimination of a non-economic benefit that has been available to them for more than ten years, whether or not employees in other bargaining units or comparable communities enjoy such a benefit. Thus this proposal is rejected and the language in Section 31.22 in the 2002 contract also will be in the 2006-11 agreement.

NEW HIRES' VACATION (ECONOMIC)

Sections 31.1 through 31.16 of the 2002 agreement provide for bargaining unit employees' annual (vacation) leave: starting with eighty hours/two calendar weeks after one year of service (prorated lesser amounts for that part of the first year of service preceding July 1) and adding one day for each subsequent year of service to a maximum of 25 days after fifteen years. The City proposes no change in this structure for current employees, but proposes a new subsection in Section 31.0 establishing this three-tier arrangement for employees hired after issuance of this award: ten days vacation for employees with one to five years of service; fifteen days with six to fourteen years of service; twenty days after fifteen years. The City bases this proposal entirely on "internal comparability," arguing

that since vacation entitlements historically have been the same across all City bargaining units and five other Unions (SEIU, AFSCME, Department Heads, Foremen and Supervisors, Professional and Technical) agreed to these less generous vacation arrangements for new hires as an accommodation to the City's financial straits, they should be imposed on this unit as well.

The Union argues the more apt comparison is with police union contracts in the comparable communities, none of which provide for such reduced vacation benefits for new hires. It points out that although existing vacation benefits for bargaining unit employees align fairly closely with the comparable communities, six of them provide a maximum benefit exceeding 25 days and in the two (Roseville and Taylor) with two-tier systems the second tier is more generous than the existing Royal Oak schedule. The Union contends the vacation benefit history in this bargaining unit, cognizable under statutory factor (h), also militates against the City's proposal, in that the year-by-year accrual system has been the same since the 1983-86 contract, and although earlier contracts had five-year ranges, maximum vacation days have been 25 since 1971. Generally, the Union argues the proposed reduction in vacation benefits for new hires is unjustifiably drastic, both at the top end and in comparison to year-by-year accruals within the five-year ranges, and it points out that such reductions also can affect employees' pensions, in that Section 47.11 of the agreement calls for "up to 200 hours [to] be rolled into FAC from the employee's vacation bank and accrued vacation time." It suggests that with the proposed lower levels of vacation entitlement, employees may have to forgo vacation usage to build up their banks in order to maximize final average compensation for pension purposes.

The problem with the Union's position on this issue is that both the vacation history within this bargaining unit and the vacation benefits for police officers in the comparable communities reflect circumstances much different than financial realities now confronting the City of Royal Oak. Internally, historical precedent is neutralized by the fact that all other City employees have enjoyed the same vacation benefits as members of this bargaining unit but Unions representing five other City bargaining units have accepted the proposed three-tier system of less generous vacation benefits for new hires as an accommodation to these new financial realities. Thus the "internal comparability" component

of factor (h) is more significant than the history of vacation benefits *within this unit* and it clearly favors the City's position, as does the ability-to-pay component of factor (c).

As for the comparable communities, two of those contracts began in 2001, two in 2002, one in 2004, three in 2005; three had expiration dates in 2006, one in 2007, two in 2008, and the last two will expire at the end of March and June of this year. In short, *none* of them was entered into under economic circumstances similar to those the City of Royal Oak now faces or even cover the period here in question, which will not begin until the new contract takes effect. Also, all of them are better equipped to deal with the most difficult of the City's financial challenges, because they have unlimited separate millage funding for pensions and retiree health care costs under Public Act 345 (of 1937). Therefore vacation benefits for police employees in the comparable communities cannot be found to have direct application to this particular issue.

The Union's argument that this proposal unjustifiably slashes vacation benefits that members of this bargaining unit have enjoyed for more than thirty years also lacks merit, because it will apply only to employees who never received the more generous benefits still afforded to current employees and who, if this proposal is adopted, will accept employment with the Royal Oak Police Department knowing that their vacation entitlement will be ten days with one to five years of service, fifteen days with six to fourteen years, and twenty days after fifteen years of service, period. For them, therefore, the possibility of more generous vacation benefits will never have existed and adoption of this proposal will cost them (and current employees) nothing. This is another relevant consideration under statutory factor (h), as is the fact that differentiation of benefits between incumbent and future employees has become normal in collective bargaining not only in other City bargaining units but in private employment generally.

For these reasons, the City proposal for a separate vacation entitlement schedule for new hires is adopted; Sections 31.17 through 31.22 in the 2002 contract shall be included in the 2006-11 agreement but renumbered 31.18 through 31.23; and there shall be a new Section 31.17 in the 2006-11 agreement that reads as follows:

> The provisions in Sections 31.1 through 31.16 apply to employees who were hired before March 27, 2009; those hired after this date shall be allowed annual leave as follows:

With 1 to 5 years of service	10 days
With 6 to 14 years of service	15 days
With 15 or more years of service	20 days.

LONGEVITY PAY (ECONOMIC)

Section 38.1 of the 2002-06 agreement provides a five-step longevity pay benefit for bargaining unit employees: from 2% of base pay (in 2% increments) after five years of service to 10% after 25 years. The City proposes to include no longevity pay benefit in the new agreement for employees hired after July 1, 2008 and to freeze longevity pay for those hired before then "at the step that the member is at." Its rationale for the new hire proposal is the same as for vacations: ability to pay and internal comparability, in that all the other five settled contracts eliminated longevity pay for new hires. As to current employees, it acknowledges that internal comparability does not support its proposal, because pre-existing longevity pay provisions continue in the five bargaining units with settled contracts, and expressed willingness to drop this proposal if all its other proposals for consistency between this bargaining unit and the other five were adopted, but it finds support for both proposals in the ability-to-pay component of factor (c).

The Union argues the City has not proven inability to continue paying a benefit that has existed in the same form for more than 35 years and is highly significant for its members in terms of both current wages and future pension benefits. It also notes that granting the proposal as to incumbent employees in effect would create a permanent five-tier wage structure, contrary to bargaining history, and for new hires it would create unjustifiable disparities with large relative reductions as their service continues over the years. It acknowledges the existing longevity pay structure ranks high relative to the comparable communities, but nevertheless finds factor (d)(i) support for its opposition to the proposal in the fact that none of the comparables has frozen longevity pay, only one has eliminated it for new hires, and even with a high rank on this particular benefit, this bargaining unit is only at mid-range among the comparables in terms of total compensation.

The City presented no proof of what precise savings would result over what period if its half-hearted proposal to freeze current employees' longevity pay at July 1, 2008 levels were granted. Without such evidence and given that the internal comparables component of factor (h) favors rejection of the proposal, it must be and is rejected.

As to new hires, however, all factors supporting the City's vacation proposal apply on this issue as well. For those same reasons, the City's proposal to eliminate longevity pay for employees hired after issuance of this award is adopted and Section 38.1 in the 2002 agreement shall be included in the 2006-11 agreement exactly as it appears in the 2002 agreement but with the following sentence added immediately after the fifth step of the longevity pay schedule set forth therein: "Employees hired after the issuance of this award will receive no longevity pay."

DISPATCH (NON-ECONOMIC)

The City proposed to replace Section 41.1 in the 2002 agreement, which addresses a possibility that it might "institute a centralized (police and fire) civilian dispatch," with a new Section 41.1 addressing its possible participation in a "regional dispatch" system, to read as follows:

> **Section 41.0 – Regional Dispatch**
> 41.1 – The Employer may implement a regional dispatch at its sole discretion. Prior to making a final decision on this issue, notification will be provided to the Union. The parties agree that the effects of implementation will be agreed upon through negotiations.

In the 2002 agreement, Section 41.1 states that the Employer may institute a centralized dispatch system "only under the following conditions":

> (a) Program is equally applied to police and fire departments.
> (b) Shall be accomplished through attrition and not layoff of police personnel.
> (c) Effects of implementation will be agreed upon through negotiations.

Police Chief Theodore Quisenberry testified that the City has discussed with other municipalities a possible multi-city police/fire dispatch system and a request for proposal was issued for creation and operation of such an entity, but apart from continuing study he said he did not know how such exploration would turn out. Nevertheless, he said he felt the proposed change in Section 41.1 was needed to give the City maximum flexibility for potential participation in any regional dispatch system that might eventuate. The City adopts that argument, without tying it to any statutory factors, and asserts that deciding

how to handle police dispatching and whether to lay off employees are fundamental management functions and therefore not mandatory bargaining topics.

The Union concedes Section 9 factors "do not provide a useful construct to evaluate" this proposal, but argues it is an unjustified attempt by the City to preempt PSAs' expectation of continued employment and continuing Act 312 coverage as well as the Union's own "representation capability," and suggests it would be better off "without any contract provision whatever" on this subject.

The latter point, combined with the City's meritorious assertion that this is not really a mandatory subject of bargaining and the fact that the proposed new language would do no more than state what its management rights and obligations may be if it decides to participate in a regional dispatch system, leads to this conclusion: the City's proposal for a *new* Section 41.0-41.1 is rejected, but the existing Section 41.0-41.1 in the 2002-06 contract will not be carried forward into the 2006-2011 agreement, which simply will not address at all the possibility of different dispatch arrangements than now exist.

COURT TIME (ECONOMIC)

Section 44.3 of the 2002-06 agreement provides that an officer subpoenaed to appear in court during off-duty hours and placed on "stand-by" status for that purpose "shall be compensated for a minimum of four hours of overtime at one and one-half times his/her basic hourly rate" and paid overtime for time standing-by or in court beyond four hours. The City proposes to reduce minimum payment in such cases to three hours at time and one-half if the officer is subpoenaed to appear in District Court but continue Section 44.3 in the 2006-11 agreement without any other change. It asserts (but presented no evidence to establish) that District Court appearances usually are for traffic tickets and are brief, in part due to the proximity of the local District Court to City Hall, and argues this modest reduction in stand-by pay only for District Court stand-by time still will leave bargaining unit employees advantageously positioned relative to the comparable communities, only one of which pays for four hours of court stand-by time for any court, and is a reasonable response to its budgetary pressures and need to control overtime costs.

The Union argues the proposal should be rejected because the City presented no evidence substantiating any of the purported facts on which it is based and did not demon-

strate inability to pay more than three hours for District Court stand-by time, and because this is only one very small component in officers' total compensation, in which they rank lower than several of the comparable communities. The Union is correct: without any evidentiary support for the factual assertions purportedly justifying this proposal, it cannot be found to have support in any of the statutory factors and must be and is rejected.

PROMOTIONAL TESTING (NON-ECONOMIC)

The City proposed entirely new language for Section 50.0 of the agreement, but asserted it reflects promotional testing and scoring procedures the parties actually have used since the 2002-06 agreement took effect and therefore continues the status quo. Although the Union made a competing proposal, in its post-hearing brief it conceded that the City's proposal merely removes an "obviously superseded provision" and accurately reflects the procedure the parties have been and still are using, so it withdrew its proposal and stated it had no objection to the City's proposal, which therefore is adopted.

MEDICAL INSURANCE (ECONOMIC)

The City proposed five changes in contractual medical insurance arrangements for current employees: replace existing standard insurance plan, Blue Cross/Blue Shield Blue Preferred Plan (PPO Option), with Community Blue Plan 2 (Plan 3 in the fifth year of the new contract); replace the existing prescription co-pay plan ($10/20 generic/brand with a cap of thirty prescriptions per year beyond which the City reimburses co-pay costs) with a $10/20/30 plan (with two tiers of brand name drugs) without a cap; add the MOPD 2 prescription drug mail order option, including mandatory mail-in for maintenance drugs if available from the carrier; and add authorization for self-insurance or wrap plans to provide medical insurance benefits identical to Community Blue Plan 2. The Union proposes to change the standard medical insurance coverage to Community Blue Plan 1, but advocates for continuation of status quo in all other respects. The City presented evidence that changing to CB2 and a $10/20/30 drug co-pay plan would reduce premiums almost 15% per year, based on BCBS 2007-08 rates. The Union presented evidence that changing to CB1 would reduce premiums about 3.6%.

The City finds support for its proposals in statutory factors (c) and (h), arguing that the relatively modest cost-sharing required of employees under CB2 and a 10/20/30 drug plan (maximum out-of-pocket in network of $600 single person, $1,200 family in CB2) are justified given its financial challenges, constantly increasing health care costs, and the acceptance of these changes by the other five City bargaining units with settled contracts.

The Union finds support for its position in factor (d)(i), in that police union contracts in all but two of the comparable communities provide standard medical insurance equal to or better than CB1; factors (e) and (f), in that the City's proposals would impose significant new costs on bargaining unit employees, to their disadvantage both absolutely and relative to cost of living increases and total compensation ranking *vis-à-vis* the comparable communities; and factor (h), in that historically the parties have made *incremental* medical insurance changes from contract to contract, not abrupt major changes such as the City proposes. As to factor (c), the Union makes the same general argument as mentioned earlier about the City's responsibility for its own financial quandary, and adds that health care cost increases are not a new phenomenon or one for which employees should be expected to bear the bulk of the burden.

Statutory factor (c) clearly favors the City. As discussed above, the City is in dire financial straits, which adversely affect its ability to cope with relentlessly rising health care costs, and however it got into this situation, this reality must guide the panel's consideration of the parties' positions. Premium costs for CB2 will be significantly lower than for the existing Blue Preferred Plan, without negatively impacting the nature of coverage or placing unmanageable financial burdens on bargaining unit employees, and such savings are a logical and necessary response to the City's financial challenges.

Factor (d) does not favor the Union, because these new medical insurance arrangements will not take effect before mid-2009, when all comparable community contracts will have expired, leaving no basis for current comparison, and as noted earlier, the comparable communities do not face the same financial challenges as Royal Oak because they all have separate Act 345 millage for police/fire retirement costs. The expiration of the comparable community contracts also represents a change in circumstances during the pendency of these proceedings, which means that factor (g) also favors the City, both in that respect and in that general economic conditions have worsened significantly and

health care costs have continually increased since the Act 312 petition was filed almost three years ago.

As for factor (h), a bargaining history of "incremental change" in medical insurance contract provisions is of little relevance given the significantly different economic conditions now prevailing generally and specifically affecting the City, and in this context the proposed changes *are* incremental compared to more draconian changes that might have been proposed. Therefore this component of factor (h) does not favor the Union, but acceptance of these changes in five other City bargaining units makes internal comparability a highly relevant factor (h) consideration strongly favoring the City.

For these reasons, four of the five City proposals here in question are adopted. The fifth, to change medical insurance coverage to BC3 in 2010-11, is rejected because the City made no convincing case for treating year five differently than year four. Another City proposal to require employees to pay part of monthly medical insurance premiums has not been discussed and is considered to have been withdrawn, because in its post-hearing brief the City stated it was "only proposing this if its position on the issues which have been agreed to by other bargaining units is not accepted by the Panel."

To effectuate the proposals adopted herein, Section 36.2 in the 2002 contract shall be carried forward into the 2006-11 agreement, but with this added subsection (g):

> As soon as practicable after issuance of the 2009 Act 312 award, without any interruption in coverage, the medical insurance plans described in Section 36.2(a) and (b) above will be supplanted by these plans: The City shall provide and pay the full premium for Blue Cross Blue Shield Community Blue Plan 2 (or similar insurance thereto which may be secured at the option of the City provided that the benefits are at least identical to the benefits described herein) for employees, spouse and eligible dependents; the prescription drug rider for all medical insurance plans in which employees may enroll under this agreement will be a formulary drug card with a $10 co-pay requirement for generic prescription drugs and a $20/30 co-pay for two tiers of name brand drugs, and will include a mail order option that is MOPD 2, with mandatory mail-in for maintenance drugs if available from the carrier; and the City is authorized to provide such medical insurance and prescription drug coverage through self-insurance or wrap-around plans, provided that the benefits thereby provided are identical to those provided under Community Blue Plan 2 and the prescription drug coverage specified herein.

RETIREE MEDICAL INSURANCE (ECONOMIC)

The City proposed the following changes from existing contract language regarding medical insurance for current employees *in retirement*: to restrict eligibility for medical insurance in retirement to employees with at least twenty years of actual service with the Royal Oak Police Department at time of retirement; to limit coverage for spouses or retirees to the person to whom the employee is married *when he/she retires*; to specify that employees who retire after the effective date of this Act 312 award will receive Community Blue Plan 2 and 10/20/30 drug card coverage in their retirement; and to state that if medical insurance coverage for active employees changes in future contracts, the same changes will apply to any employee who retires after June 30, 2010. The Union opposes all these changes and argues for status quo except for proposing to add a new subsection to 36.5 specifying that employees who retire after issuance of this award will have Community Blue Plan 1 medical insurance with 10/20 prescription drug co-pays.

Apart from its general ability-to-pay argument, the City did not tie these proposals to any of the statutory Section 9 factors. It argues that requiring twenty years of actual service with the Royal Oak Police Department (thus allowing only five years of the twenty-five years "credited service" required by Section 47.2 for retirement with "full pension" to be "purchased" service with another employer for retiree medical insurance purposes) will "control legacy costs" by "keep[ing] people working," but it presented no evidence that employees actually have retired with less than twenty years actual service or that, if they did, that created any particular problems.

As to the "spouse at time of retirement" proposal, the City says the practice has been to limit retirees' spousal coverage exactly that way, but speculates that sometime a retiree might challenge that and claim benefits for a new young spouse, potentially stretching City responsibility for continuing medical insurance coverage far into the future. Mere speculation, however, is not a valid basis for changing established contract language.

In its post-hearing brief the City argued that what it called its "mirroring" proposal – to change coverage for post-June 30, 2010 retirees to match coverage changes in future contracts rather than letting them (like all other bargaining unit retirees) keep the medical insurance coverage they received when they retired – is necessary only because a five-

year contract for this bargaining unit will extend beyond the expiration of contracts for other City bargaining units. This argument matches none of the statutory factors either.

None of these arguments is convincing, and lacking demonstrated specific support related to any of the statutory factors, all three of these proposals must be rejected.

It is not necessary to add new subsections to Section 36.5 to specify that current employees who retire during the term of the new agreement but after issuance of this award will receive Community Blue Plan 2 with a 10/20/30 drug card, because that will be the "level of medical insurance in effect at [their] date of retirement," which is exactly what the introductory sentence in Section 36.5 says the City is to "provide and pay the full premium for" unless one of the "except[ions]" in the following subsections provides for something different, which they do not. It would only potentially confuse matters to add another purported "exception" which would not in fact be an exception but a mere restatement of the general principle clearly set forth in that introductory sentence.

For these reasons, all five of the City's proposals as well as the Union's one proposal for contract changes related to medical insurance for current employees in retirement are rejected and except as ordered with respect to retiree health care for new hires (or as the parties may separately agree) Section 36.5 as it exists in the 2002 contract shall be carried forward into the 2006-11 agreement.

NEW HIRES' RETIREE HEALTH CARE (ECONOMIC)

The City proposes to eliminate Employer-provided retiree medical insurance for employees hired after the issuance of this award and create a retirement health savings plan to which the City and newly hired employees both will be contractually required to contribute three percent of the employee's gross base wage. (As originally submitted, the City's final offer was to contribute two percent, but at the arbitrator's urging and without objection by the Union it has amended that offer to increase the Employer contribution to 3%.) It argues this proposal most directly, logically and effectively addresses the biggest of its financial problems, paying for previously unfunded retiree health care costs, with support in statutory factors (c), (g) and (h). With particular reference to factor (h), it emphasizes that this arrangement is part of settled contracts with the five other City bargaining units previously mentioned and asserts that such internal comparability together with

undisputed limitations on its ability to adequately fund future retiree health costs and increasingly dire economic developments during the pendency of these proceedings make this proposal more meritorious than continuing the status quo, as the Union urges. It also argues the lack of such separate retiree health care arrangements in police union contracts in the comparable communities is irrelevant, for reasons discussed earlier, and notes that such arrangements have been included in more recent police union contracts in other suburban Detroit communities.

The Union argues it will be impossible for bargaining unit employees to save enough under the proposed HSA system for more than a few years of medical insurance coverage in retirement, assuming continuing increases in health insurance premiums over the next 25 years comparable to those in the past several years. In its view, that means this really is a proposal to *deprive* newly hired Royal Oak police officers of realistic opportunity to fully retire after a career of normal duration. It emphasizes that no such arrangement exists in a police union contract in any of the comparable communities or has ever been part of this collective bargaining relationship, and thus argues statutory factors (d)(i) and (h) support the status quo. It also asserts that adopting the City proposal would depress new hires' overall compensation, absolutely and relative to the comparable communities, and thus also finds support in factor (f). As to factor (c), its position is the same for this issue as for others previously discussed: basically, that the City got itself into its current financial distress and may not demand unreasonable sacrifices by current or future bargaining unit members to solve that problem but instead should take effective action of whatever other kind is necessary to increase its available resources.

The last argument has been dealt with above and all that needs to be said here, again, is that current economic reality leaves no doubt that the City's ability to meet the costs of funding future retirees' health care benefits is severely limited and this panel must deal with that reality, not with what current circumstances might, could or should have been if things had been done differently over the past few decades. Therefore factor (c) applies with particular significance to this issue, because the huge costs for funding current and future retiree health care benefits is the single biggest limiting factor with respect to the City's ability to meet the costs of any and all aspects of this employment relationship, and it strongly, decisively favors the City's position.

So does factor (g), in that these particular costs have continued to increase at alarming rates while the general economic situation has deteriorated even more alarmingly during the pendency of these proceedings.

As discussed earlier, factor (d)(i) has no more than minimal application both because police union contracts in the comparable communities will have expired by the time an HSA system for new hires is implemented and because circumstances in those communities are fundamentally different than Royal Oak in that they have separate Act 345 millage funding for fire and police retirement benefits.

The internal comparability element of factor (h) applies and strongly favors the City, in that five unions have accepted HSAs for new hires in other City bargaining units. The fact that these parties never before negotiated about such arrangements or had "tiering" of benefits between incumbent and subsequently hired employees is noteworthy, but less so than dramatic changes in circumstances that occurred in the last few years before these proceedings began and while they have been pending.

Factors (e) and (f) do not have significant application to this issue.

As for the Union's general point that employees for whom an HSA is the only contractual provision for health care in retirement will not be able to save enough to pay for medical insurance in retirement for very long, that is essentially a speculative argument, and if one were to engage in such speculation he might also speculate (hopefully, if not optimistically) that sometime in the next 25 years the health care system in this country will be improved in terms of availability and affordability. More to the point, the current economic reality is that the *City* cannot afford to continue providing lifetime medical insurance in retirement for all future retirees, and *that* – unlike future retirees' *potential* ability to pay for whatever health insurance may be available to them 25 years from now – is a matter to which the statutory factors have direct, decisive application.

For these reasons, the panel adopts this City proposal and the 2006-11 contract shall contain a new Section 36.5(h) reading as follows:

> Effective upon issuance of the 2009 Act 312 arbitration award, the City shall not be required to provide or pay for medical insurance in retirement for employees who are hired after the date of such award. Instead such newly hired employees will participate in a Medical Health Plan (an individual retirement health plan also known as a Health or Retirement Savings Account), provided through MERS or ICMA, to which

the City and such employees each will contribute 3% of the employee's gross base wages, with seven-year vesting for City contributions. The employees may contribute additional amounts above 3% if they so desire, provided such additional contributions are permitted by the HSA provider, but the City will not match such extra contributions.

NEW HIRES' RETIREMENT (ECONOMIC)

The City proposed not to include new hires in the existing defined benefit pension plan but instead create a new defined contribution retirement plan to which it would contribute 9% of new hires' wages and the employees would contribute 3%. It finds support for this proposal in the ability-to-pay component of factor (c), but acknowledges this is a weaker argument for pensions than with respect to retiree health costs, because it has pursued a course of actuarially sound funding of defined benefit pension obligations, which are almost fully funded. Primarily, it relies on the internal comparability argument under factor (h), noting that the five other settled contracts include this provision. But in its post-hearing brief it also concedes that this issue "is less important to the City than the elimination of retiree healthcare [for new hires]," especially in light of a Union proposal to increase employees' contributions to the defined benefit pension system.

The Union opposes the City's proposal as another unwarranted break from a long history of providing benefits to bargaining unit members without differentiating between incumbent and subsequently hired employees, and notes it has no support in factor (d)(i), because none of the police union contracts in the comparable communities have defined contribution retirement provisions for *any* employees. It also contends there is no support for the City proposal in factor (c), because the City has been able to fund its defined benefits pension obligations in keeping with actuarial standards, and the Union says that funding will be further solidified by its own retirement proposal to revise Section 47.5 (which now requires police officers to contribute only two percent of their compensation to the pension system) to increase such contribution to 3% effective July 1, 2008, 4% in 2009-10 and 5% in 2010-11. It also proposes to increase Police Service Aides' contributions (now "1.5% - 3.5%" as specified in Section 47.6(c)) by raising that range .5% each of the three years. The City does not oppose this proposal. To the contrary, it expressed appreciation for it, albeit with a grudging comment that it would have been better if the Union had proposed to increase police officers' contributions to 5% immediately.

On this issue, given the history of actuarially sound funding for the existing pension system and the City's candid admission that excluding new hires from it is less important than creating a new, cost-controlled contractual mechanism for their retiree health care, factor (c) is not a valid basis for adopting the City's proposal. That other unions have accepted such a proposal for new hires in other City bargaining units is not irrelevant, but whatever persuasive force that factor otherwise might have is offset by the Union's proposal for increased employee contributions to the existing system. Therefore the City's proposal to create a defined contribution retirement plan for new hires is rejected and the Union's proposal to increase employee contributions to the existing pension system is adopted, and as proposed by the Union the relevant sections of the 2006-11 agreement will read as follows:

> 47.5 – The Police Officers' contribution to the pension system shall be three percent (3.0%) effective July 1, 2008, four percent (4.0%) effective July 1, 2009, and five percent (5.0%) effective July 1, 2010. The City Ordinance establishing a Revised Retirement System for Officers and Employees of the City of Royal Oak, as revised, shall be amended to reflect this provision.
>
> 47.6 – Police Service Aides
>
> * * *
>
> (c) The employee's contribution from compensation as described in Section 32(b)(3) of Royal Oak Ordinance 76-7 shall be 2.0%-4.0% effective July 1, 2008, 2.5%-4.5% effective July 1, 2009, and 3.0%-5.0% effective July 1, 2010.

DISCIPLINE/EMPLOYEE'S BILL OF RIGHTS (NON-ECONOMIC)

The City proposed several changes in Sections 48.0 and 49.0 as they appear in the 2002 agreement.

Section 48.1 deals with complaints against employees initiated either by the Department "or as a result of a citizen complaint" and states that in the latter case no charge will be brought "unless the complaint is sworn to and in writing." The City proposes to delete the words "sworn to and" from that clause, arguing that requiring sworn complaints may impede citizens from bringing forth valid complaints, but it presented no evidence of any known instance in which that occurred.

Section 48.2 embodies certain due process obligations of the Employer and rights of the employees with respect to complaints or charges. Its Subsection (c) deals with rights to counsel, as follows:

> If the officer desires the assistance of legal counsel, no further proceedings shall be had until the officer has been afforded a reasonable opportunity to consult legal counsel, but the officer may be suspended from duty if the gravity of the charges being investigated so dictate. Legal counsel may appear with the officer in any subsequent proceedings if the officer so desires. No officer shall be suspended until a written order to answer is issued which would subject him/her to possible disciplinary action which could include discharge for refusal to answer
>
> (1) All written answers to the above-mentioned charges will be subject to and include a reservation of rights.

The City proposes to add these two sentences after the first paragraph in Subsection (c): "If the officer requests to be represented by counsel, it is up to the union or officer to obtain one within 24 hours. After twenty-four hours notice, the statement must be given." It argues this change is needed to avoid unreasonably delaying investigation and processing of charges against officers, but it presented no evidence of any instance in which unreasonable delay *did occur* because right to counsel was not exercised swiftly.

Section 49.0 enumerates and explains in numerous subsections the "Employee's Bill of Rights." Subsection (h) recognizes the employee's "right to be represented by counsel and/or association representatives of his/her choice . . . during any interrogation" as well as before or during the making of statements. The City proposes to add the same twenty-four-hour restriction here as in Section 48.2(c), for the same reason, but again without having presented any evidence to substantiate need for such a restriction. Section 49.8 says bargaining unit members have the right to remain silent until they receive "an order to make a statement from the Chief or one of his agents," then must "make a statement or subject himself/herself to disciplinary action," but any such statement "will be deemed to be a coerced statement and will be privileged" and used only for disciplinary action and civil service proceedings and "will not be made available to any person, persons, agencies, or corporations for any reason whatsoever." The City proposes to "clean up" that language by adding to the end of Section 49.8, after the word "whatsoever," these words: "unless ordered by a court of law or required by law."

Section 48.3 specifies when documentation of various kinds of discipline is to be removed from employees' files. The City proposes to add a new Section 48.5 reciting that both the Employer and employees "shall comply with the Bullard-Plawecki Act" and that "Other than the specific provisions of Section 48.3 there are no other restrictions on the ability of the Employer to place documents in the employee's file or to retain records in the City's files." The stated purpose is to remove possible restrictions on its ability to retain documents in files other than employees' personnel files that might arise from a written grievance resolution dated November 9, 2004 dealing with the use, filing and retention of "coaching letters" "or any other document that serves a similar purpose by whatever name." That "resolution" (also referred to by the parties and two grievance arbitrators as a "letter of agreement" or "LOA") said such documents were "not to be used for progressive discipline [or] placed in personnel file" but "shall remain in an administrative file for up to 364 days at the discretion of the writer," and "may be removed from the administrative file after they expire upon written request of the person receiving said document." After it was executed, the Union developed a form letter for officers to use to request removal of documents from City files. Denials of such requests led to two grievances that resulted in arbitrations in which the Union made rather expansive claims about the scope of the "resolution." The City essentially wants to extinguish that resolution and thereby prevent any further such disputation and protect its ability to retain documents that might be needed not for disciplinary purposes but to enable it to effectively investigate or respond to claims of discrimination or other litigation.

The Union opposes all these proposals, observing that the City failed to prove actual need for any of the contract changes requested and suggesting the November 2004 LOA provided valuable protection to bargaining unit employees especially with regard to prospects for future employment and that any disagreements or uncertainties that might have existed about its meaning, purpose or scope already have been resolved by grievance arbitrators Brown and Sperka. With respect to the proposal to "clean up" Section 49.8, it notes that a similar prohibition in Section 48.2(f) against giving officers' *voluntary* statements "without the signed consent of the officer to any person or agency" ends with "except pursuant to subpoena issued by a court" and says it would not oppose rewording the Section 48.2(f) exception to say "unless ordered by a court of law" and adding that same

phrase to the end of Section 49.8. But it opposes the additional proposed exception "or required by law" on the ground that it might permit distribution of such statements to other persons or agencies based on City officials' mere *interpretation* of unspecified legal requirements.

The Union has the more meritorious position on all five of these issues.

As noted, the City presented no evidence of need for the proposed changes to Section 48.1, 48.2(c), or 49.7(h) based on actual reluctance of citizens to make sworn complaints or delays in questioning or taking statements from officers. It also is noted that Section 48.2(c) says officers under investigation shall be "afforded a reasonable opportunity to consult legal counsel," which in itself is protection for the City against *unreasonable* delay. That being the case, and it also having the right under 48.2(c) to suspend an officer pending questioning "if the gravity of the charges . . . so dictate," there is no valid reason to impose an arbitrary requirement that counsel be obtained within 24 hours. It would be sensible to add the same "reasonable opportunity" qualifier to Section 49.7(h), however. Accordingly, the City proposals to revise Sections 48.1 and 48.2(c) are rejected and those subsections of Section 48.0 in the 2002 contract shall be included without change in the 2006-11 agreement. The City's proposal for a revision in Section 49.7(h) also is rejected, but that subsection shall be revised in another way so that in the 2006-11 agreement it will read as follows:

> Any member, at his/her request, shall be afforded reasonable opportunity for representation by legal counsel and/or association representatives of his/her choice prior to making any statements, and during any interrogation or the making of statements, written or verbal, concerning any act, incident, or occurrence from which disciplinary action, criminal prosecution, or civil suit might result.

The City's proposal to add a new Section 48.5 to Section 48.0 has not been shown to be a matter of practical or legal necessity, either. In effect, the City's real motive on this point seems to be to extinguish the November 2004 LOA concerning "coaching letters" or other documents "serving a similar purpose." But it did not simply notify the Union that it no longer would consider itself bound by that grievance "resolution" after expiration of the contract that was in effect at the time of its execution (as it could have done and thus put the burden on the Union to propose a new contract provision to continue the

benefits ostensibly achieved thereunder) and its proposal on this point goes well beyond the scope of that LOA, as it has been interpreted and applied by arbitrators Brown and Sperka. To the extent that the City is worried about ambiguities or uncertainties in the meaning and possible application of the LOA, those arbitrators already have dealt with them. And if the City merely wants to insure compliance with Bullard-Plawecki, adopting this proposal is not necessary, because to whatever extent that Act applies to the City and to bargaining unit employees, *it applies* whether or not the contract says so. Thus the proposal to add a new Section 48.5 to the 2006-11 agreement is rejected.

On the last of these five issues, the Union's position is adopted, Section 48.2(f) shall be revised so that in the 2006-11 agreement it ends with the clause "unless ordered by a court of law" rather than its current ending of "except pursuant to subpoena issued by a court," and the clause "unless ordered by a court of law" also shall be added to the end of Section 49.8(a) as it appears in the 2002 contract and as thus revised that subsection shall be included in the 2006-11 agreement.

HOLIDAYS/PERSONAL BUSINESS DAYS (ECONOMIC)

Section 32.0 in the 2002 agreement provides (as did the previous eight contracts) that employees "receive" a designated list of holidays (twelve currently) plus a number (three currently) of "personal days." As is typical in police work, however, bargaining unit employees are not assured of having any of those holidays off work. If a designated holiday falls on an officer's regularly scheduled shift in any given week, he/she is required to work and Section 32.6 mandates payment for that day at straight time just like any other regular work day. But employees also get "a lump sum payment no later than July 15" for the twelve holidays, as provided in Section 32.3, and an equivalent number of *other* paid days off under Section 32.8, which says they "shall be permitted to utilize their fifteen holidays/personal business days [two in one-hour, the rest in four-hour increments] subject to the approval of the commanding officer."

The City proposes to add a new Section 32.9 to the 2006-11 agreement to require officers to choose either the lump sum payment for twelve days or twelve paid days off in lieu of holidays, thus eliminating twelve days straight time pay per year. Assuming an officer is scheduled to work on all twelve of the actual designated holidays, this would

reduce the number of straight time paid days in a year from 272 to 260: in effect a 4.4% pay reduction, although the City does not discuss it in those terms. Its claimed justification for this is that Royal Oak police officers have more paid time off available than their counterparts in the comparable communities.

The Union argues factor(d)(i) is not a valid basis for such a draconian change in long established contractual benefits because the police union contracts in all but one of the comparable communities provide more than twelve holidays; five provide for premium pay for working on holidays; and holiday pay should be considered in the context of total compensation, by which measure Royal Oak ranks in the lower middle range among the comparable communities. It notes that if the City's proposal were to be adopted bargaining unit employees' total compensation ranking would be even lower and they would fall to the absolute bottom of the list in terms of holiday pay.

The Union is correct. None of the statutory factors provides a valid basis for this proposal, so it is rejected.

SHIFT STAFFING (NON-ECONOMIC)

The Union proposes to add a new Section 25.5 to the 2006-11 agreement requiring in most pertinent parts that the Chief (or designee) determine the "number of police officers assigned to work in the uniformed patrol division on each" shift in "5 week blocks" and that "said minimums shall be equally effective for all pertinent provisions of this contract and other conditions of employment, including requests for time off and filling vacancies (i.e. where the number of officers on duty is below the determined number)." It says the purpose of this proposal is not to establish minimum staffing requirements, which it acknowledges to be only a permissive subject of bargaining (absent proof of direct demonstrable impact on officer safety, of which there was none), but merely to make the same staffing levels apply for *denying* time off requests as for deciding whether to call officers in to fill vacancies. But it presented no evidence of officers being denied time off in order to maintain managerially determined staffing levels that management disregarded by choosing not to fill unscheduled vacancies that reduced actual staffing below such levels, nor did it connect this proposal with any of the statutory factors.

The City argues that no matter how one looks at this proposal or how creatively the Union attempts to characterize it as something else, it is a proposal to establish minimum staffing requirements and as such addresses only a permissive, not mandatory, subject of collective bargaining over which this panel has no jurisdiction. But even if that were not the case, the City contends the proposal should be rejected for lack of any support among the statutory factors, and because insofar as it might require filling unexpected vacancies regardless of command determinations of need and expense, it could impose potentially huge expenses on the City which it does not have the ability to pay.

The City is correct. If adopted, this proposed addition to Section 25.0 would create minimum staffing requirements. Whether in "5 week blocks" or any other length of time, that is a management prerogative and only can be a mandatory subject of collective bargaining under Michigan law if there is proof of direct impact on officer safety, a point the Union did not even argue, much less prove. Therefore the panel may not adopt the proposal to add a new Section 25.5 to the 2006-11 agreement dealing with what the Union refers to as "Shift Officer Protocols," and it is rejected.

SCHOOL LIAISON OFFICER (NON-ECONOMIC)

In 2006 the Department created a new School Liaison Officer position. The officer so assigned was to work in the newly consolidated Royal Oak High School and the position was to be co-funded by the school district and at least partially grant funded. As in previous instances when special non-patrol positions were created, the Chief took the position that establishment and staffing of this position were management rights covered by Section 6.1 of the contract but invited Union leadership to discuss effects of such actions and possibly agree on a side letter or memorandum describing a selection procedure for the new position. In response to that overture the Union asserted that this really was a Community Police Officer position with another name and the 1997 Letter of Agreement for that position should govern selection of the School Liaison Officer as well.

Thus rebuffed, the Chief devised a selection process he considered appropriate for the new job. It included candidate interviews by experienced school liaison officers from other departments and did not accord preferential selection status to senior applicants as the Community Police Officer LOA does. When the Chief announced the new job to the

bargaining unit at large and invited members to apply for it, the Union filed a grievance claiming the Community Police Officer LOA was controlling and had been violated and urged its members not to apply, and none did.

That grievance was arbitrated and arbitrator Nora Lynch decided "the School Liaison Officer is a new and different position not covered by the July 1997 Letter of Agreement"; the City had the management right under Section 6 of the 2002 agreement to create the position "subject to its obligation to bargain effects"; that the City attempted to discuss this position with the Union and "come to an agreement, as it had with other special assignments," but "the Union declined to do the same with the School Liaison Officer"; so the City's "broad rights under Section 6 of the contract gave it the authority to make the appointment." In that grievance the Union also claimed the City had violated a 1999 Memorandum of Agreement about filling "vacancies in unit positions occurring between shift and assignment picks." Lynch rejected that claim too, finding that Memorandum "was applicable to existing regular position vacancies within the department but was not intended to apply to special assignments, including the School Liaison Officer."

The Union now proposes to have this panel establish a "Memorandum Re: School Liaison Officer" setting forth what it refers to as "protocols" for assignments to that position. It begins with this statement: "Consistent with Article 25 herein, and with the parties' Memorandum of Understanding dated May 7, 1999, the position/assignment of School Liaison Officer shall be subject to the following terms." What follows essentially reproduces the 1997 Community Police Officer LOA verbatim, but the Union insists this is not a second crack at the issue already decided by Lynch. Instead, it says, it proposes to establish appropriate assignment "protocols" for what she decided is a "new and different position" and the Community Police Officer LOA just happens to be a perfect template for them. The City argues this proposal *is* an attempted second bite of the apple, for which there is no identified support in the statutory factors, so it should be rejected.

An inherent flaw in the Union's proposal is embodied in the first phrase in the proposed Memorandum, "Consistent with Article 25 herein," because Article 25 (which presumably means *Section* 25.0 and the four subsections that are part of it) has nothing to do with selecting officers for *special assignments* such as School Liaison. It describes a semi-annual "pick" system for regular "permanent shifts" and temporary desk/radio and

records assignments, but does not address such special assignments at all. The statement that it is "consistent with the parties' Memorandum of Understanding dated May 7, 1999" is not true either. As Lynch noted and the preamble to *that* Memorandum plainly states, it applies to filling "vacancies in unit positions occurring between shift and assignment picks, as provided in Section 25.1" of the contract.

The contract provision that *is* relevant to selection of officers for special assignment such as School Liaison Officer (as arbitrator Lynch also found) is Section 6.1, which reserves to the City the right to "assign employees," "direct the work force, assign work," "establish job classifications and prescribe and assign job duties." Historically, it appears, when new special classifications have been established the parties discussed them and in some cases such discussions culminated in letters or memoranda of agreement describing selection guidelines. But it does not appear that such discussions were part of periodic, comprehensive contract bargaining and the side letters and memoranda that resulted from them were not made part of the contract.

Opportunity for such discussion, and potentially for adoption and implementation of a side letter or memorandum establishing mutually acceptable guidelines for selection of School Liaison Officers, apparently was offered to the Union when that position was created in late 2006. But the Union chose not to participate and took a rigid position that the existing Community Police Officer LOA applied. That left the Chief to establish a process he believed best suited the School Liaison position, which the Union then challenged through the grievance procedure. Having lost that challenge, the Union must abide the result. It has shown no basis in any of the statutory factors for obtaining in this arbitration what it failed to get in grievance arbitration.

Even accepting as sincere the representation that this is not an attempted second bite of the apple but merely a proposal to establish appropriate selection procedures for a new special assignment position "consistent with Article 25" and the May 1999 MOA, the only statutory factor arguably applicable would be the previous practice of determining selection procedures for special assignments, under Section 9(h). But it is not a basis for adopting the Union's proposal, because the Union refused to take part in discussions for a possible new side letter for School Liaison Officer as had been done in other special assignment situations, instead prosecuted a rigid claim that the Community Police LOA

governed School Liaison Officer assignments through the grievance procedure, and there is nothing "consistent with [Section] 25" about its attempt to obtain new "protocols" identical to the Community Police Officer LOA in this proceeding after losing that battle in grievance arbitration.

To the contrary, this proposal is *in*consistent with Section 25.0, Section 6.1 and the parties' previous practice of dealing with such matters, and having no basis in any of the statutory Section 9 factors, it is rejected.

SERVICE PURCHASE CREDIT (NON-ECONOMIC)

The Union also proposed a housekeeping amendment to Section 47.10, to be carried forward into the 2006-11 agreement with only these date changes to conform to the dates of the new agreement: change the date for commitment to purchase service credit from June 30, 2004 to June 30, 2009, and the date for completion of such purchases from June 30, 2006 to June 30, 2011. The City did not oppose this proposal or propose to eliminate the service purchase credit program, so the Union's proposal is adopted and Section 47.10 in the 2002 contract shall be included in the 2006-11 agreement with those changes.

Issued: March 27, 2009.

Paul E. Glendon, Impartial Arbitrator
Panel Chairperson

Howard L. Shifman, City Delegate
(Concurring as to all issues decided in favor of the City; dissenting as to all issues decided in favor of the Union)

L. Rodger Webb, Union Delegate
(Concurring as to all issues decided in favor of the Union; dissenting as to all issues decided in favor of the City)