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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMM.
DETROIT OFFICE

STATE OF MICHIGAN
COMPULSORY ARBITRATION

In the Matter of:

CITY OF DETROIT,

Public Employer,

-and-

**DETROIT POLICE LIEUTENANTS
AND SERGEANTS ASSOCIATION,**

Labor Organization.

Arising pursuant to Act 312
Public Acts of 1969, as amended

Case No. D09 G-0786

ACT 312 ARBITRATION AWARD

APPEARANCES

ARBITRATION PANEL

Thomas W. Brookover, Impartial Chair
Saul A. Green, Public Employer Designee
John A. Lyons, Labor Organization Designee

FOR THE EMPLOYER

Kenneth Wilson, Esq.
Fraser, Trebilcock, Davis and Dunlap, P.C.

FOR THE LABOR ORGANIZATION

J. Douglas Korney, Esq.
Law Offices of J. Douglas Korney

INTRODUCTION

The Detroit Police Lieutenants and Sergeants Association (“LSA”, “Association” or “Union”), which includes all Police Investigators, Police Sergeants and Police Lieutenants employed by the City of Detroit (“City” or “Employer”), filed an application for Act 312 arbitration on July 17, 2009.

The Impartial Chair was appointed in August, 2010, and a pre-hearing conference was held on September 16, 2010. Hearings were conducted on October 18, 19 and 21, November 5 and 15, and December 2 and 8, 2010.

Both the City and the Association, through their very able attorneys, presented exhibits and examined, and cross-examined, witnesses.

The panel heard testimony from eighteen witnesses, about evenly divided between the parties. In addition, the testimony of several witnesses was presented through transcripts of their testimony from prior proceedings.

The parties have agreed which issues submitted to the panel are “economic” and which ones are “non-economic”.

The parties submitted final offers of settlement on economic and non-economic issues on January 10, 2011. Pursuant to the panel’s directive of January 13, 2011, the City, on January 24, 2011, submitted supplemental last offers of settlement on three issues.

The panel chair wants to acknowledge the assistance of his panel members in preparing this award. While awards are commonly the product of the chair, in this case it has been a collaborative effort and the award is the product of the entire panel. The chair thanks them.

APPLICABLE STATUTORY CRITERIA

Act 312 distinguishes between “economic” and “non-economic” issues. Section 8 of Act 312 requires the Panel to adopt the Last Offer of Settlement on each “economic” issue which more nearly complies with the applicable factors prescribed in Section 9, which are:

- 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 these 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 proceeding.
- h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 8 also requires that the Panel's findings, opinions, and orders as to all non-economic issues shall be based upon the applicable factors prescribed in Section 9. The panel has, in reaching each of its decisions, taken the entire record into account and considered all of the factors in Section 9.

FACTS RELEVANT TO STATUTORY CRITERIA

DETROIT'S ECONOMIC CONDITION

There is no question that Detroit is, and has been, facing serious economic problems. Two recent fact finders, George Roumell, Jr. and William Long, heard testimony similar to what this panel heard. It would be superfluous to summarize that testimony again, since the conclusions they drew are irrefutable.

Mr. Long's report was dated June 25, 2010. In it, referring to exhibits introduced in his proceeding which are similar to those introduced here, he said:

Also, exhibit (C-47), which is the Fact Finder's Report and Recommendations involving the City and the Detroit Building and Construction Trades Council issued September 11, 2009, was very useful in assessing the facts involving the City's financial situation as it existed for FY 2009-2010. In [that exhibit] Fact Finder George Roumell, Jr. reviewed and summarized some of the same

financial data that was presented in this proceeding and contained in (C-1). This Fact Finder is aware that Fact Finder Roumell has had extensive experience involving labor relations issues between the City and its employees and I respect his work in determining and reporting the facts. I have reviewed and compared the data presented in (C-1) with the narrative in Fact Finder Roumell's discussion of the City's finances in (C-47) and rather than plagiarize the language from Fact Finder Roumell's discussion, I will provide excerpts from that discussion below where I find it is consistent with the information provided in (C-1) and the testimony of City Witness Scales. In some instances I have updated the data from (C-47) to conform with updated information in (C-1). Following are those excerpts from (C-47) in which I have inserted updated comparable information from data contained in (C-1).

By any measurement, the City is faced with a severe financial crisis. Economists have agreed that the nation as a whole is in a recession. The City of Detroit may even be approaching a depression. Whereas the nation's unemployment rate is hovering near 10%, the current unemployment rate within the City of Detroit is approximately 28.5%. In addition, the State of Michigan is facing financial problems and a budget shortfall that affects State aid to municipalities, including Detroit.

Detroit's two largest employers, Chrysler Corporation and General Motors, have just emerged from bankruptcy. The ripple effect of the automobile industry's economic role has affected suppliers who were based in Detroit. The major Chrysler plants that were located in Detroit were closed for upwards of two months at the beginning of 2009. Chrysler Corporation has eliminated automobile dealerships, including a major dealership within the city limits of Detroit affecting the layoff of a number of employees, i.e. Lochmoor Chrysler. A major hotel, the Pontchartrain, has closed. A major building, the Penobscot building, is said to be default.

Thus, there are economic forces that have had a hurricane strength effect on the City of Detroit's financial health that the City had no control over.

The Demographics

In 1950, the population of Detroit hit its highest point, namely 1,849,568 individuals. At that time, Detroit was 29% of the population of the State of Michigan. By 1960, there began a downward trend in the population growth of Detroit so that by 2008 Detroit had fallen to a population of 912,062 individuals, or 9.1% of the population of the State of Michigan. While the State from 1940 showed an average annual population increase of 8.8% per year, the City of Detroit was showing an average population decline of 6.2% decline. (C-1, Tab A-1)

The significance of this decline in population is twofold. While Detroit's population was dropping, its geographical area remained the same. Yet, there were less persons available to pay city income tax or otherwise be taxed. In addition, going from 29% of the State's population to 9.1% of the State's population meant that, in terms of influence on State government, Detroit's influence has weaned. There is another factor. The reduction in population has affected the City's ability to obtain grants from both state and federal government that are based upon population.

The City of Detroit's demography has seen an impact in the City's economic activities. In 1972, as to retail trade, service industries, manufacturing and wholesale trade, the City had 23,465 establishments. By 2002, the number of establishments has been reduced to 8,691. Significantly, manufacturing has gone from 2,398 to 647 in 2002. As between 1997 and 2002, there has been an increase in service industries from 4,479 to 5,254. But service industries frequently are lower paid positions as compared to manufacturing positions, thereby affecting City income tax revenue. The point is that the loss of economic activities from 1972 to 2002 has been a loss of 14,774 business establishments for a 63% loss ratio. The evidence establishes that this loss trend has continued to the present time. (C-1, Tab A-2)

In 1980, there were 421,975 persons employed in the City of Detroit. By 2009, this number had fallen to 303,186 for a loss of 118,789 jobs or a 28.2% loss. Wayne County also experienced a net loss over the same period, whereas Livingston County, Macomb County, Oakland County and Washtenaw County experienced gains. What the change in economic activities has meant as well as the loss of employed persons that there are less real estate taxes and income tax collected within the City of Detroit because of these negative changes. (C-47, pg 4, 5 updated with figures from C-1, Tab A-3)

Underscoring the above demographic information is that the United States Department of Labor has reported that, of the 50 largest cities in the United States, Detroit has the highest unemployment rate. The report as of November 2009 from the Department of Labor suggested that the unemployment rate in Detroit was 25.4% (C-47, pg 5, updated with figures from C-1, Tab A-4)

In addition, the City, beginning with the 1994-1995 fiscal year and up to the current fiscal year, is experiencing a spread between State equalized value and taxable real estate value because of declining property values which impacts on the City's revenue flow from property taxes. (C-1, Tab A-5)

In 1950, the property tax was 61% of Detroit's general fund budget. By fiscal year 2009, unaudited, the percentage of the general fund budget funded by property tax revenue was 14%. Whereas Detroit's percentage of the general fund from property tax revenue hovers around 13-14%, the largest cities in the southeast metropolitan area such as Ann Arbor and Dearborn, for example, receive 67% and 74% respectively, of their general fund from property taxes. This comparison highlights another structural difficulty in the City's ability to raise revenue. The property values are just not here. (numbers updated from C-1, Tab A-6, A-7)

The City does have a resident and non-resident income tax. In 1970, the highest point, the City processed 747,719 income tax returns from residents, nonresidents, corporations and partnerships. In that year, there were 488,095 resident returns, 243,682 non-resident returns, 11,684 corporation returns and 4,258 partnership returns. In 2008, the total number of income tax returns had dropped to 262,043. Of these, 127,521 were resident returns, 125,167 were non-resident returns, 7,183 were corporation returns and 2,172 were partnership returns. The total returns represent a drastic reduction from a high in 1970. It also noted that not only is there a dramatic drop of resident returns, but likewise in non-resident returns, indicating that non-residents are no longer working in Detroit. This drop in income tax returns further highlights a structural difficulty that the City has in its ability to raise revenue. (numbers updated from C-1, Tab A-8)

Fact Finder Roumell's report was issued in 2009 – Fact Finder Long's in 2010. Conditions have not improved. Detroit is similar to other large cities with declining population as the people who leave the City are those who can afford to leave, leaving many who are unemployed and living in poverty. Evidence showed that less than 37% of Detroiters are actually employed.

The City's three major revenue sources, property taxes, state revenue sharing, and income taxes, have been declining and are projected to continue to decline.

Property taxes in the City started to decline before the real estate bust, and the decline has accelerated in FY 2009 and 2010. The fact that property assessments are a trailing number, and continued losses in value are not reflected for one to three years, leads to a projection of continued decline in values and taxes.

Michigan's revenue sharing plan redistributes state-collected taxes to cities, counties, and townships according to a two part formula. The first part, the constitutional portion, is a purely

per capita formula. The second part, the statutory portion, is based, in large part, upon state sales tax and income tax collections, sometimes referred to as the tax effort formula.

Because Detroit's population has declined relative to the state overall, its constitutional portion of revenue sharing will continue to decline. Additionally, as Michigan's new governor and the State Legislature continue to grapple with the task of balancing Michigan's budget, the statutory portion of revenue sharing will continue to fall as well. Detroit's revenue sharing in 2001-2002 was approximately 50% higher than its estimated revenue sharing for 2009-2010. This reduction in revenue sharing will continue and, in fact, as a result of the last census, this will, in all likelihood, accelerate.

Income tax revenues have continued the decline noted by Fact Finder Roumell. While he noted that in 2008 there were 262, 043 income tax returns filed, in 2009 that number went down to 239,000. Resident returns decreased from 127,521 in 2008 to 108,000 in 2009. That is a decrease, in one year, of 8.8% in total income tax returns and 15% of resident returns.

Detroit has implemented a number of one-time revenue generators to address its economic problems. It has depleted its Budget Stabilization Fund, curtailed overtime, implemented a property tax amnesty, sold assets, sold fiscal stabilization and risk management bonds, capitalized pension liabilities, and entered into agreements for casinos in the City. In spite of these efforts, the City had deficits in 2003 to 2006 ranging from \$70 million to over \$170 million dollars.

As the panel prepares this Award, it takes judicial notice of the release of the 2010 Census. As stated in the New York Times,

Laying bare the country's most startling example of modern urban collapse, census data on Tuesday showed that Detroit's population had plunged by 25 percent over the last decade. It was dramatic testimony to the crumbling industrial base of the Midwest, black flight to the suburbs and the tentative future of what was once one of America's most thriving cities.

New York Times, March 23, 2011, page 1

The Wall Street Journal, on the same day, headlined an article on page A3 "Detroit Population Crashes" and noted that

The population of Detroit has fallen back 100 years.

The flight of middle-class African-Americans to the suburbs fueled an exodus that cut Detroit's population 25% in the past decade to 713,777, according to Census Bureau data released Tuesday. That's the city's lowest population level since the 1910 census, when automobile mass production was making Detroit Detroit"

COMPARABLE COMMUNITIES

The Act requires the panel to consider wages, hours and working conditions of other employees in both public and private employment in "comparable communities".

"Comparable" is defined by the Random House Unabridged Dictionary as "capable of being compared; having features in common with something else to permit or suggest comparison." In the 2007 City of Detroit-DPOA Act 312 proceedings, Arbitrator Block opined that for communities to be considered comparable to Detroit, they must be "sufficiently similar to Detroit on a sufficient number of criteria to warrant the designation as comparable." Like any other true comparables, the communities must share "a sufficient similarity of interests between them...for it to be reasonable" to compare them. Elkouri, *How Arbitration Works* 1108 (5th ed. 1997).

Population loss and reduction in households are critical criteria in comparing communities because those large central cities whose populations have substantially declined tend to share common characteristics since they have the same problem -- an exodus of haves while the have-nots remain along with the resulting decline in housing stock, decreasing property tax revenues, loss in commercial infrastructure, low median household income, high percentage of population in poverty, and high unemployment rate.

Past panels have used such criteria to find the following cities comparable to Detroit:

Cleveland

St. Louis

Pittsburgh

Baltimore

Philadelphia

Chicago

(See, *In the matter of the Arbitration Between City of Detroit and Detroit Police Officers Association*, MERC Case Number: D01 D-0568, and *In the Matter of the Arbitration between:*

The City of Detroit, Employer, and The Detroit Police Officers Association, Labor Organization, Arbitrator Donald Sugerman, Chairperson, Case Number: D98 E-0840, March 8, 2007.

Arbitrator Sugerman found that Cleveland, Pittsburgh, St. Louis, Baltimore and Philadelphia share enough essential features to be comparable. Similarly, Arbitrator Long opined that Cleveland, Pittsburgh, Chicago, Baltimore, and Philadelphia were the most comparable to Detroit. Consistent with these prior arbitration panels, as well as the panel in the most recent Act 312 proceedings between the parties, MERC Case Number: D06 B-0169, this panel finds the cities named above as comparable under the Act.

CONTRACTUAL ISSUES

In light of the significance and importance of the issues pertaining to pensions, the Panel will address these issues first.

PENSION BACKGROUND

There is no question that the costs of funding the pension plan for the City's police and fire departments (the "Police and Fire Retirement System" or "PFRS") is high. There are 4,037 active police and firefighters in the City. There are 8,424 retirees under the plan.

Much of the testimony and written evidence submitted in this matter has focused on contributions required to be made to fund the Police and Fire Retirement System (PFRS).

PFRS is comprised primarily of a defined benefit plan. A "defined benefit plan" is just that – a plan where the "benefit" to be received by an employee who retires is "defined" in the plan. This contrasts with a "defined contribution plan" where the "contribution" made by the employer is "defined", not the benefit to be received. An employer with a defined benefit plan does not wait until the benefits are due to fund them but attempts, with the assistance of actuaries, to predict what its financial obligation will be and funds the plan on the basis of these predictions and forecasts.

"Normal cost" of the PFRS

Normal cost is the cost attributed to the benefit each person earns in a fiscal year of service. It is the amount the plan should be setting aside in order to have sufficient money to pay

benefits when, pursuant to the group's history, the employee is expected to retire. The benefit earned by participants in fiscal year 2008-2009 is 29.83% of payroll. This normal cost is not affected by under-funding or over-funding. As a result the normal cost is a measure of the level and quality of benefits provided by the plan. The normal cost of the City's plan is high and this high normal cost shows that the value of its benefits are very good, and relative to other plans, among the very best.

“Unfunded Liabilities” of the PFRS

There is a second costing consideration, which is the status of the fund in regard to benefits already earned. The actuary must compare the current value of the assets to the value of benefits already earned. If the value of the assets exceeds the value of the benefits already earned, what is commonly called full-funding or over-funding results. Similarly, if a plan has fewer assets than are required to fund it with contributions equivalent to normal cost, it is under-funded. The cost of funding an unfunded liability is amortized over some period of time.

As a result of a downturn in the market, along with \$218 million in disbursements to active members and retirees, this system lost over \$1,500,000,000 of its market value between June 30, 2000 and June 30, 2004. The plan was \$622 million over-funded on June 30, 2000. By June 30, 2004, it was \$783 million dollars under-funded. Attempting to alleviate the burden of these costs, the City, in June, 2005, when confronted with a \$119 million contribution to the Policemen and Firemen Retirement System (PFRS) for fiscal year 2005-2006 issued, through the Detroit Retirement System Funding Trust (DRSFT), Pension Obligation Certificates of Participation (POCs) to pay down the system's unfunded accrued actuarial liability in the amount of \$630,829,188.00. The pension obligation certificate payments are scheduled to increase significantly over the next seven years, and generally, over the next 23 years. As observed by a former budget director of the City, these payments are back-loaded, and the City has not yet begun to feel the full effect of their burden.

Pension costs are a significant factor in the City's financial troubles.

The City's funding obligations to the PFRS significantly exceed those contributions required of comparable communities. These obligations threaten both the City's fiscal viability, as well as its wherewithal to provide public safety for its citizens.

The City is now responsible for escalating pension contributions to the PFRS, which for fiscal year 2011-2012, the third year of this contract, are projected to exceed \$150 million or over 65% of uniformed payroll. The City's annual contribution, in 2011-2012, will be over six times higher than that recommended by the actuary for fiscal year 2000-2001 in the 59th valuation. More importantly, over the last 10 years, annual pension funding obligations for the PFRS have increased by almost \$130 million, while annual general fund revenues have decreased by \$160 million. Finally, due at least in part to these contributions to fund the PFRS, Detroiters now have fewer officers on the street to protect them than do the citizens in the comparable cities.

THE PROPOSALS

1. CITY PROPOSAL 12 (ECONOMIC) -- ARTICLE 56 POLICE AND FIRE PENSION BOARD COMPOSITION -- ASSOCIATION ISSUE 16

The City seeks to replace the present deadlock mechanism of binding arbitration to resolve disputes between trustees on the pension board with language requiring a 13th or, in effect, *tie-breaker* member. Additionally, the City seeks to add language permitting the Mayor to designate an additional trustee or trustees as necessary to maintain equal representation of both the employer and participants on the board.

The Association opposes the proposed modifications and seeks that the status quo be maintained.

The City, by its proposal 12, seeks to change Sections C and D in Article 56 as follows:

A. *The Board of Trustees shall consist of twelve (12) trustees, as follows:*

The Mayor . . .

B. ~~*Deadlock involving an actuarial issue*~~ ~~*In the event of a deadlock involving an actuarial issue, the board members may agree upon an actuary to render a decision. If the board members cannot agree on an actuary, then the matter shall be referred to MERC to appoint an arbitrator to resolve the issue.*~~

C. ~~*Deadlock involving a non-actuarial issue*~~ ~~*In the event of a deadlock*~~

~~involving a non-actuarial issue, the board members may agree upon an arbitrator to render a decision. If the board members cannot agree on an arbitrator, then the matter shall be referred to MERC to appoint an arbitrator to resolve the issue.~~

- C. ***Deadlock and 13th trustee - An additional 13th trustee, who may not be a participant in the plan or employed by the City in any capacity, shall be selected by the Board of Trustees. Such trustee shall serve as a full member of the Board of Trustees and vote on any and all matters considered by the Board. This 13th member of the Board of Trustees, and successors, shall serve as a member for two years from the date of selection.***

- D. ***Equal number of participant trustees and non-participant trustees - Under no circumstances shall the number of trustees on the Board of Trustees who are participants in the plan exceed the number of non-participant trustees named in subparagraphs 1 through 6 herein. The Mayor of the City shall designate an additional trustee or trustees pursuant to subparagraph A(1) as necessary to maintain compliance with the provisions.***

The deadlock mechanism presently in Section C of Article 56 is taken from 29 USC Section 186(c)(5)(B) requiring impartial umpires to resolve deadlocks that might occur between the employer and employees which must be equally represented in the administration of a pension fund.. Though the City still contends that these provisions are enforceable the City seeks to modify the deadlock mechanism to that most common throughout the State of Michigan. The City proposes that the contract provide that an odd numbered trustee, who may not be a participant in the plan or otherwise employed by the City in any capacity, serve as a full member of the board and may vote on any and all matters considered.

The City also contends that, as found in MERC Case Number: D01 D-0568, equal representation of both the employer and the employee is necessary for proper management of the fund and also proposes to modify the present language in order that the Mayor shall designate an

additional trustee or trustees as necessary to maintain and assure equal representation in the future. The panel will address these two proposed changes in reverse order.

Equal Representation on the Board.

The evidence in this matter reveals that in virtually no city other than Detroit does a pension board, a majority of whose members are elected or appointed by union members, set a city's contribution rate. Further, the evidence shows that there is no state-wide retirement system having a union majority on its board. Most state retirement systems have either employer majorities or equal representation.

A survey of the pension boards of cities, villages, and townships throughout the State of Michigan reveals that, on most boards, a management or employer majority sets the contribution. The remainder have boards evenly divided between employee and employer, and either the employer or the 50/50 board selects the additional or odd member(s).

Moreover, in a 2003 Act 312 award between the City and the DPOA, arbitrator William Long awarded the City's proposal to change the composition of the board to one comprised equally of management and employee members. Granting the City's proposal to revise the membership of the Police and Fire Pension Board, Arbitrator Long stated:

The City has put forth ample evidence to demonstrate that during the time the pension fund was overfunded the fund's actuary provided the board with actuarial assumptions and methods resulting in a recommendation that the amount of employer contribution take into consideration a fund credit amortized over a number of years resulting in a payment of less than the calculated normal cost. These actuarial reports and recommendations were consistently rejected by the pension board in favor of the normal cost contribution until an agreement was reached between police and fire associations and the City on additional member pension benefits, i.e. increase in multiplier and 13th check. After agreements were reached, the pension board voted in support of a City contribution of less than the normal funding amount, i.e., the amount recommended by the plan actuary. The City's proposal, along with its proposal on City issue 33 involving board member composition, is in response to this experience. The City believes both proposals would bring about more objectivity and balance to the pension board decisions on

these matters. The panel will address City issue 33 separately, but as for this City proposal the question is whether it is acceptable to the panel as appropriate and represents sound policy.

The panel majority finds the City has presented substantial and persuasive evidence in support of the panel addressing this issue. The evidence and testimony identified within this record provides clear, convincing evidence that both the City and the association's representatives on the pension board have viewed the board actions or inactions at various times as impacting the City budget and the overall benefits to Association members. The panel majority does not view this as resulting, as the City suggests, in board members having breached any fiduciary duty. The board, in actions it has taken, has been within its authority to act and record evidence describing votes taken on these issues reveals both City and Association board members acting in support of actions taken. But this record does establish that both the City and the associations have viewed the board as a means to achieve their party's or impede the other party's purposes, which have resulted in placing additional pressure on pension board members as they strive to maintain the fiduciary responsibilities.

Will the proposal put forth by the City to change the composition of the Police and Fire Pension Board likely result in improved collective bargaining relationships and be in the public interest? That is more difficult to answer, but the panel majority finds that there is more evidence in support of a yes answer than a no answer. Record evidence reveals the majority of public pension boards do not have employee/retiree representatives comprising a majority of the board.

William Long concluded:

But there is strong evidence in this case that the current composition may not be serving the best interest of the parties and the public interest to the extent that it could be served by the change proposed by the City in its last offer of settlement. Evidence on this record indicates the issue of pension costs and benefits will likely grow in importance to both employer and employees in the coming years and the perception of balance and ability to consider the long term interests of the plan's participants and beneficiaries as objectively as possible will be a critical component in the employer/employee relationship and in serving the public interest. The panel majority believes the panel composition as proposed in the City's last offer of settlement will provide a greater opportunity for the board to address these important issues in a more constructive, cohesive fashion.

Appointment of a 13th Board Member. Though a majority of the pension boards in the state have employer-member majorities, the City's proposal seeks only a board of 50/50 composition wherein the equally represented members would choose a 13th member who would serve as a full member (for a shorter term than do the others).

In light of the foregoing, the panel majority awards the City's last offer of settlement as to City Proposal 12.

2. CITY DEFINED CONTRIBUTION PLAN PROPOSALS

CITY PROPOSALS 9 and 10 (ECONOMIC) -- ASSOCIATION ISSUE 13

Article 51 – Defined Contribution Plan for Bargaining Unit Members

In its Last Offer of Settlement 9, the City proposes to freeze benefits in the defined benefit plan and limit future benefits to a defined contribution plan.

In the alternative, the City proposes, in its last offer of settlement 10, that members of the bargaining unit who are initially hired into the Detroit Police Department – not the bargaining unit – after the date of the award, cease to accrue benefits under the defined benefit plan and only participate in a defined contribution plan.

The Association seeks the status quo as to both proposals.

The panel awards the Association's last offer of settlement as to 9, current employees, and the City's last offer of settlement as to 10, new hires.

Testimony established that normal cost is an accurate measure of the value of benefits and the PFRS' normal cost exceeds that of its uniformed counterparts. Both the high cost and generosity of this plan is also confirmed by the fact that, for fiscal year 2009-2010, the City's required pension contribution to the PFRS was 37% higher than the average for the comparable

cities. Going forward, the funding obligations to the PFRS will exceed 50% of payroll for fiscal year 2010-2011 and 65% of payroll by 2011-2012. There are now twice as many retirees as actives in the plan, and the City is now paying more in pension and survivor benefits than it is in payroll to current uniformed employees.

Former Budget Director Ed Rago testified that the 2011-12 pension contributions would approach 25% of Detroit's general fund revenues and that the only way to address the cost of the pension plan is to make structural changes.

The City maintains that its proposed defined contribution plan is the only effective way to address this crisis. Under the City's proposal 9, bargaining unit members would no longer accrue benefits under the defined benefit plan. Rather, they would only accrue benefits going forward pursuant to a defined contribution plan. Participants would contribute 5% of their annual wages, and the employer would contribute 10%. Though bargaining unit members would not accrue any future service under the defined benefit plan, they would accrue credit for salary increases up through retirement. Stated differently, their final average compensation, for purposes of accrued defined benefits, would be based upon their wages at the time they retire from the Department. Moreover, though they would not accrue future service under the defined benefit plan, this service would count towards vesting of any defined benefits accrued, but not vested, prior to the date of the award.

In a defined contribution plan actuaries can estimate what the benefit will be by making certain assumptions about what is going to happen in the future, i.e., how much interest the funds will earn and how much will accumulate by the time of retirement. The evidence shows that, assuming retirement on or after age 65, the City's proposed defined contribution plan would

supply benefits approaching those under the present defined benefit plan. Moreover, the City can provide these benefits at a cost that is approximately 11% of payroll less.

The City does not contend that the defined contribution plan proposed provides benefits equal to those received pursuant to the present defined benefit plan. However, it still provides significant benefits to those who remain in the work force into their mid-60s

Union witnesses Richard Huddleston and Sergeants Junetta Wynn and Mark Young testified against these proposals. Wynn gave strong testimony as to the service performed by members of this bargaining unit and maintained that this record of service mitigates against such a significant change to their benefits.

The panel finds the testimony of Sergeant Wynn persuasive as to City Proposal 9. The panel awards the Association's last offer of settlement as to the City's proposal 9 and current members are not affected by this change.

However, a majority of the panel awards the City's last offer of settlement as to its Proposal 10, a defined contribution plan for bargaining unit members who enter the Police Department after the date of this award.

3. CITY PROPOSAL 11 -- REDUCING THE MULTIPLIER AND ELIMINATING THE ESCALATOR (ECONOMIC) -- ASSOCIATION ISSUES 14 AND 15

The current defined benefit plan provides a straight-life retirement allowance of 2.5% of final average compensation times years of service for the first twenty-five (25) years of service and 2.1% of average final compensation for years of service thereafter, not to exceed thirty-five (35) years of service. Additionally, during retirement, bargaining unit members receive a 2.25% per annum escalation, compounded.

The City proposes reducing the annual multiplier from 2.5% to 2.1% for the first 25 years of service for all service accrued following the date of this award. Similarly, the City proposes to eliminate the 2.25% annual escalator on service rendered after the date of this award.

The LSA vigorously opposes this proposal and, for its offer of settlement, seeks to maintain the status quo.

The change in the multiplier would not, if awarded, affect benefits accrued prior to the award date. The evidence shows that compounded annual cost-of-living increases are uncommon and this benefit significantly increases the City's funding obligations. The City argues that the benefit increase provided by the escalator is no longer affordable, given the City's financial predicament.

The City's proposal does not eliminate the escalator as to benefits earned prior to the date of this award. For example, if someone has ten years of service when the proposal is awarded, and they ultimately retire with 25 years of service, they would receive the escalator as to the benefit already accrued, i.e., 25% of final pay (ten years of service times 2.5%). That portion would be subject to the annual escalator for however long they lived after retirement. However, the benefits accrued after the award would not be increased annually pursuant to the escalator.

The actuarial report submitted into evidence shows that this proposal, if awarded, would reduce the City's annual contribution to the Police and Fire Retirement System by approximately 4%. Similarly, reducing the multiplier from 2.5% to 2.1% for the first 25 years of service for benefits accrued after the date of the award would reduce the City's annual contribution to the PFRS by approximately 3.1% of payroll. The severity of the City's pension problem is readily apparent from the fact that, even with these projected cost reductions, the City's funding

obligations to the PFRS for fiscal year 2009-2010, would still exceed the average contribution of its counterparts by 26%.

The panel awards the City's last offer of settlement on this issue, City Proposal 11, effective the date of this award.

4. CITY AND UNION WAGE PROPOSALS AND CONTRACT DURATION (ECONOMIC) -- CITY PROPOSAL 1 -- ASSOCIATION PROPOSALS 1-6

In its last offer of settlement, the Union seeks a 2% annual wage increase for five years. The City offers no wage increase for four years.

The parties have agreed that the panel has no authority to make a split, or year-by-year award and must award one indivisible wage proposal or the other. The parties have also agreed that the wage award resolves the issue of contract duration.

Sgt. Mark Young, Sgt. Lillian Cunningham, and Sgt. Junetta Wynn, all testified on behalf of the Association's wage proposal. Their evidence as to the skill and commitment bargaining unit members bring to a most difficult job daily is irrefutable. In fact, the City's own witness, Chief of Police Ralph Godbee's, evaluation of bargaining unit members echoed, if not exceeded, that of the Union's own witnesses.

However, consideration of the factors in Section 9 of Act 312 requires that the City's last offer of settlement be awarded. The Association's proposal, using a fringe factor of 1.402, would, if awarded, cost the City \$20,100,374 over the life of the contract for this bargaining unit only. Moreover, any such award to the LSA would also increase the wages of fire fighters allied in rank to the DPLSA pursuant to the parity provisions contained in the City's contract with the DFFA. Operation of these parity provisions would increase the City's costs by an additional \$14,826,632 for a total increase of \$34,927,006 over the life of the contract. If this wage

increase was passed along to all uniformed employees, it would cost the City an additional \$100,005,699 over the life of the contract.

The evidence shows that the cost of overall compensation presently received by bargaining unit members, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits exceeds the average cost for the six national comparables. Section 9(f) of the Act contemplates such a comparison of the “overall” benefit/compensation package. Moreover, the City’s wages to bargaining unit members are similar to those received by their counterparts in these municipalities.

Arbitrator William Long, in MERC Case Number: D09 A-0062, when issuing his fact-finding report, based his findings upon the factors contained in Article 9 of Act 312, and recommended the City’s proposal to reduce non-uniformed employee wages by 10% through imposition of twenty-six (26) mandatory budget-required furlough (BRF) days for three consecutive years.

Finally, the Association maintains that public sector employees, such as themselves, are paid lower than those in private industry. Section 9(h) of the Act invites such analysis, and pursuant to that section, it is appropriate for the panel to consider that the median household income statewide fell 21% over the last decade, and in southeast Michigan, nearly 24%. Michigan’s decline of 21% was far worse than the nation’s 7% drop, and locally, Detroit’s median household income has dropped by 30%. Yet, during this same period, wages for Association members have increased by over 22%.

Based on the foregoing, the panel awards the City’s last offer of settlement as to City Proposal 1, Wages and Contract Duration.

5. LONGEVITY PAY (ECONOMIC) -- CITY PROPOSAL 4 -- ASSOCIATION ISSUE 8

The current CBA gives bargaining unit members longevity pay in four steps – after 5,11,16 and 21 years. Each step is 1%, for a total of 4%. The City seeks to eliminate longevity pay entirely. The Association, in its last offer of settlement, counter proposes to suspend longevity pay for two years, calendar years 2011 and 2012.

Fact-finder Long, recommending that longevity pay be eliminated for members of the AFSCME bargaining unit, noted that it could significantly affect both the City and AFSCME members, and would reduce annual costs to the City by approximately \$900,000.

If this proposal were implemented for this bargaining unit, the City would save approximately \$1 million annually, and if implemented for all uniformed employees, the City would save over \$4 million each year.

The Association's president testified vigorously against this proposal, emphasizing that such an award would not reflect the hard work and dedication of bargaining unit members.

This reduction will not be easy for bargaining unit members, and because the efficacy of this proposal is its significant and immediate impact on the City's financial situation, the Association's proposal to limit its duration is a valid counter-proposal. Moreover, the Association's proposal balances the City's fiscal exigencies, with a recognition of the difficult work performed every day by bargaining unit members. With the Association's counter-proposal, the City achieves its goal of immediately reducing costs, while the Association members know that its impact is temporary. As a result, the panel majority awards the Association's last offer of settlement on this issue.

**6. RETIREMENT AFTER 20 YEARS (ECONOMIC) -- ASSOCIATION PROPOSAL
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The Association proposes that members be entitled to retire after 20 years of service without any actuarial reduction to their pension benefit.

The City, for its last offer of settlement on this issue, seeks to maintain the status quo, of normal retirement after 25 years of service.

The Association argues that because presently a member of the DPOA can retire after 20 years of service, regardless of age, without any actuarial reduction to their pension, its members should have the same opportunity.

Chief Godbee testified how this proposal, if awarded would devastate the Department. 68 of the Department's lieutenants, or 68% of the rank, and 297 of the Department's 467 sergeants, or 64% of that rank, could leave the Department.

Arbitrator William Long, denying the identical proposal in MERC Case Number: D06 E-0169, said: :

The panel recognizes that an important internal comparable the DPOA has this provision in their contract and understands the rationale for the panel in the most recent Act 312 for the DPOA granting that proposal. However, the majority of this panel finds the impact of granting this proposal to this bargaining unit on the health and safety of the officers in the Department and the citizens of the City is far greater than the impact of granting the 20-year retirement eligibility to members of the DPOA.

Given the number of personnel in this bargaining unit eligible to retire with 20 years of service and given their differential in pay and potential retirement pay, it is far more likely that greater numbers of personnel would retire prior to age 25 from this bargaining unit than from the DPOA.

With the current number of personnel eligible to retire under this proposal equaling 50 percent or more of the total personnel within those respective ranks, the potential impact of this proposal could severely impact the Employer's ability to ensure the safety of its employees and citizens.

Section 9(c) requires the panel to consider the interests and welfare of the public and Section 9(f), the continuity and stability of employment and other benefits received.

Given the testimony and evidence presented in this case, the panel finds the granting of this benefit to the members of this bargaining unit at this time outweighed by the potential impact of the interests and welfare of the public.

The City's last offer of settlement on this issue is awarded.

7. PROPOSAL TO ELIMINATE THE DIFFERENTIAL (ECONOMIC) -- CITY PROPOSAL 2 -- ASSOCIATION ISSUE 7

Article 54 of the current CBA requires that upon promotion to sergeant, the member's salary must be at least 20% higher than the maximum salary of a police officer and upon promotion to lieutenant, a member's salary must be at least 35% higher than the maximum salary of a police officer. In both cases, the differential increases 1% each year to a maximum difference of 24% and 39% respectively.

The City proposes to eliminate the differential.

The Association strongly opposes this proposal and seeks to maintain the status quo.

City evidence shows that the overall compensation package of a sergeant and a lieutenant in the Detroit Police Department exceeds the average cost of the compensation for their counterparts in comparable communities. One of the reasons for this disparity is the differential that the City seeks to eliminate. Evidence shows that the differential for members of this bargaining unit is 41% higher than the average differential between police officers and sergeants in the comparable cities and 28% higher than the average differential between lieutenant and police officer in these same cities.

Both Chief Godbee, and the Union's president, Junetta Wynn, gave compelling testimony to maintain the differential. Godbee repeatedly emphasized the crucial role bargaining

unit members have in the day-to-day operations of the Department. Wynn's testimony echoed that of Godbee's as to the day-to-day efforts of Association members to serve Detroit's citizens.

The panel awards the Association's last offer of settlement on this issue.

8. PROPOSAL TO ELIMINATE SPONSORED-DEPENDENT COVERAGE (ECONOMIC) -- CITY PROPOSAL 3 -- ASSOCIATION ISSUE 6

Bargaining unit members have the option to insure "sponsored dependants" at their own expense. A "sponsored dependent" is an individual who is over age 25, related by blood to the employee, living in the employee's household and is claimed as a dependant on the employee's income tax.

The City proposes to eliminate sponsored-dependant coverage. .

The Association seeks to maintain the status quo.

There are few sponsored dependents still covered by City plans. Typically, they are parents or in-laws of employees.. Presently, these few participants in the City's health care coverage account for approximately \$253,000 of health care costs annually. This proposal, the City argues, is a reasonable change to the health care plan that will affect very few bargaining unit members.

Most important, however, is who would not be affected by this change. The elimination of this coverage would not affect coverage for others who can currently be covered, including employees' children; adopted children; stepchildren; those over whom bargaining unit members may have guardianship who are under the age of 25; or full-time college students and stated as dependents on the employee's federal income tax filings. In addition it does not affect coverage for disabled children of the employee or the employee's spouse, so long as a finding of permanent disability is made prior to the child's 19th birthday.

This change is now in effect for approximately 35 bargaining units throughout the city, as well as non-union employees, and in every bargaining unit for whom there is an agreement in the current round of negotiations. Recommending this change, Arbitrator Long, in fact-finding between the City and its largest union concluded that it is a reasonable change to the City's health care plan, and this requirement is not unusual in other public and private health care plans.

The panel majority awards the City's last offer of settlement as to this issue.

9. PROPOSAL TO CAP PAYMENT FOR UNUSED ACCUMULATED SICK BANK AT 50% (ECONOMIC) -- CITY PROPOSAL 5 -- ASSOCIATION ISSUE 9

When current CBA members retire, they receive full pay for 85% of the unused accumulated sick leave in their account. The City proposes to reduce that to 50%.

The Union's last offer of settlement on this issue is to maintain the status quo.

The City's Labor Relations Director testified that the purpose of sick-leave banks is to provide income to employees in the event they should suffer sickness or injury, leaving them unable to work. It is not something to be banked and paid out as a significant bonus at the time of retirement. The City's present liability for current sick banks, for this bargaining unit alone, is \$17,062,670. For the entire police force, it climbs to \$37,669,716.

Non-uniformed employees accumulate unused sick leave to be paid at a rate of 60%. The City argues that a cap on this bargaining unit's unused accumulated sick bank similar to the non-uniformed cap is appropriate. The City contends that it simply cannot sustain these costs. Moreover, this change would assist it to reduce costs without making critical personnel reductions.

The Association, by way of testimony of its president, emphasizes that the City's other two police unions, the DPOA and the DPCOA, receive 100% of their accumulated sick bank

amounts and it would be wholly unreasonable to reduce the LSA's already lower formula. Moreover, as a result of the reduced manpower, it is now more important that members of this bargaining unit work, if at all possible.

The City has presented persuasive evidence to support its proposal. However, in light of the testimony of the Association's president, the panel awards the Association's last offer of settlement on this issue.

10. ASSOCIATION PROPOSAL 10 (ECONOMIC) -- OPTIONAL ANNUITY WITHDRAWAL TO ALLOW BARGAINING UNIT MEMBERS TO BORROW 50% OF THEIR ANNUITY ACCOUNT OR UP TO \$15,000

Employee contributions to the PFRS are maintained in separate accounts, often times referred to as the employee's annuity savings fund.

The Association wants to allow members to borrow 50% of their annuity , or up to \$15,000. The City opposes this proposal and seeks the status quo.

Having considered the evidence in this regard, the panel awards the Association's last offer of settlement.

11. CITY PROPOSALS 7 AND 8 (NON-ECONOMIC) -- DROP PLAN -- ASSOCIATION ISSUE 12

Pursuant to stipulation between the parties, the panel shall treat these proposals as non-economic issues and is not, when issuing its award, confined to either side's last offers of settlement.

DROP is an acronym for Deferred Retirement Option Program Plan. The DROP plan provides that a member with at least 25 years of service can continue working, but elect to have 75% of his pension benefit, based on his then current years of service, be paid into a "DROP account" where it is invested. The member does not earn any additional pension credit as he

continues to work. At retirement, he or she receives the amount in the DROP account, plus a pension based upon his or her years of service at the time he or she entered the DROP plan. The City has two proposals to modify the DROP Plan. City Proposal 7 proposes to limit participation in the DROP to bargaining unit members in a full-duty status. To that end, the City proposes that Article 51(O)(1) be modified as follows:

- O. **DROP Plan.** Effective July 1, 2003, a Deferred Retirement Option Program (DROP) plan option shall be made available as a retirement option with the following features:
 - 1. To participate in the program a member must have at least twenty-five (25) years of active service with the City as a member of the Policemen and Firemen Retirement System, **be in a full duty status and must remain in a full duty status for the duration of the DROP Plan. If a member is not able to return to a full-duty status within six months, their participation in the DROP plan shall terminate and he/she shall revert to a regular pension.**

By its Proposal 8, the City also seeks to limit participation in the DROP to five (5) years.

The Association seeks the status quo as to both proposals.

Chief Godbee testified on behalf of the City's proposal to restrict DROP plan eligibility to those available for full duty, stating that it is an issue of *resource allocation*. As a result of the diminished police census, it is imperative that the Department use its limited resources as wisely as possible. Under the circumstances, maintaining police officers who are restricted from performing public safety is contrary to the Department's present goal, to do more with less. For the same reason, the City proposes to limit participation in the DROP to five (5) years.

The Association's president testified that if these proposals were granted without excluding bargaining unit members presently in the plan, the City would be, in effect, changing the terms of their agreement to DROP after the fact.

The panel finds both the City and the Association witnesses persuasive on this issue. As a result, the panel awards City Proposal 7, but excludes from its purview all members of the bargaining unit currently enrolled in the DROP plan. In effect, those members would be grandfathered in and would not be subject to the awarded modification. Additionally, the panel agrees with the City that participation in the DROP plan should not be unlimited in duration, but disagrees that such limitation be set at five (5) years. Thus, the panel awards City Proposal 8 to the extent of limiting participation in the DROP to ten (10) years. Again, members currently enrolled in the Plan as of the date of this award are excluded from this limitation. This award reflects the give-and-take of the collective bargaining process and responds to the concerns expressed by both parties.

As a result, the panel awards City Proposals 7 and 8, with the modifications sought at hearing by the Association as described above.

12. CITY PROPOSAL 14 -- 36TH DISTRICT COURT MAY UTILIZE CIVILIANS FOR ITS SECURITY DETAIL (NEW ARTICLE 59)

Security at the 36th District Court is presently provided by 67 Wackenhut security people, along with 44 Detroit Police Department officers, of which six are members of this bargaining unit. The City proposes that, upon the effective date of the award, the Department may, at its discretion reassign bargaining unit members from the Court in order that they may be replaced with civilian staff or civilian security personnel. The Association seeks the status quo on this issue.

Chief Godbee, testified that certain law enforcement functions need not necessarily be performed by sworn police officers:

. . . As it relates to 36th District Court the functions of the police personnel I will say 98 to 99 percent of the personnel that are assigned to the court section are ostensibly just security functions. The reason why -- for a

number of reasons, it is just not the most efficient use of sworn police personnel especially in light of the fact that there are security officers that perform the same exact function at the court already.

It is not the best use of resources for me as the Chief of Police especially when there are approximately nine LSA members that are assigned there when I'm struggling to make span of control decisions and I have nine LSA personnel that I cannot actively count in that span of control for active policing. It further exacerbates a problem that we already have relative to span of control.

The non-sworn personnel that are performing security functions have demonstrated over years they have the same efficacy and perform the same function and are trained in a similar manner relative just to security function of the court.

Evidence shows there are between 255 and 278 sworn police officers each day at the 36th District Court, whether it be for felony preliminary exams or misdemeanor trials. All these officers would be duty bound to respond to any crime issue that happened in their presence as if they were on patrol, if they were in their duty station, if they were at a community meeting.

Moreover, Wackenhut is already performing functions similar to those handled by sworn police officers. As Godbee testified:

THE WITNESS: -- it is literally a hybrid or a mixed bag of how all of the officers are used, but they are all performing the same functions, just some happen to be highly trained, highly paid sworn individuals that I don't have at my disposal for policing and the other ones are employed by Wackenhut at a fraction of the cost to the Court.

Private security is used in lieu of sworn police officers in other district courts throughout the State of Michigan. In fact, there was a five-year period where no sworn members performed any security function in 36th District Court. The City argues that the goal of this proposal is not to save money, but simply to put more officers on the street.

The Association argued that, despite the fact that there would still be numerous police officers at the 36th District Court if the proposal were awarded, Wackenhut could not provide effective security.

The panel awards the City's last offer of settlement as to this issue.

13. CIVILIANIZE COMMUNICATION

The City has withdrawn its proposal to civilianize members of the communications section. As a result, the Association's last offer of settlement that the status quo be maintained is awarded.

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14. CITY PROPOSAL 6 (ECONOMIC) -- TEMPORARY OFFICERS (NEW ARTICLE 60) -- ASSOCIATION ISSUE 20

The City seeks to use retired non-bargaining until members certified by the Michigan Commission on Law Enforcement Standards as temporary officers to fill absences or vacancies.

The Association opposes the provision and proposes that the status quo be maintained.

Both of the City's witnesses, Director of Labor Relations, Joseph Martinico, and Chief Godbee, testified that this program has been implemented successfully by Wayne County. The purpose of this proposal is to reduce the City's overtime costs, which in fiscal years 2008-2009 and 2009-2010, were more than three times over budget. This modification, if awarded, would allow the Department to avail itself of a pool of qualified persons who already have the experience to fill temporary voids when full staffing is not available. It would provide people who could, with a phone call, plug a hole on any given day. None of these individuals would have anything resembling a regular status. To the contrary, the proposal does not envision using these individuals even for an entire week.

The Association maintains, through its president, that this proposal, encroaches on the rights of bargaining unit members. The weight of the evidence supports the Association's last offer of settlement on this issue. The City failed to supply detail as to just how this proposal would operate, and as a result, there is insufficient evidence to award such a significant modification. In light of the foregoing, the panel awards the Association's last offer of settlement on this issue.

15. ASSOCIATION'S PROPOSALS TO CHANGE THE CRITERIA FOR PROMOTING SERGEANTS TO THE RANK OF LIEUTENANT, AS WELL AS TO CHANGE THE APPELLATE PROCESS

The current CBA contains a formula for the promotion to the rank of lieutenant, which specifies how criteria are to be weighted. The Association proposes to change the respective weights accorded to these criteria.

The Association additionally seeks to change the appellate process in the event that a promotion is not made, so that appeals be evaluated by individuals not affiliated with the Detroit Police Department.

The City seeks to maintain the status quo as to both of these proposals.

The Association's witness, Sgt. Sherell Stanley, testified on behalf of both Association proposals. The purpose of the proposals is to reduce subjectivity in the selection process and that appellate review be more detached from the process.

In opposition to the proposals, the Chief Godbee testified that the weights that are currently used in Exhibit III to the CBA have been validated professionally, and that it would be dangerous to arbitrarily change the weighting. The Association's witness was credible. However, the testimony proffered was entirely anecdotal and does not include any evidence from any professional source that the City's criteria, or appellate process, requires or would be

enhanced by modification. Under these circumstances, the panel accepts the position of the Chief of Police on these issues and awards the City's last offer of settlement of the status quo as to each.

16. CITY PROPOSAL 13 (ECONOMIC) -- ELIMINATE 2% WAGE DIFFERENTIAL IN EXHIBIT III, SECTION M -- ASSOCIATION ISSUE 23

Currently, Exhibit III to the collective bargaining agreement between the parties requires that those who score sufficiently well enough to appear on the promotional eligibility register for police lieutenant receive an additional 2% of base salary above that of police sergeant for the time that the member is on the promotional eligibility register until that individual is promoted or the list expires. The City seeks to eliminate this language.

The Association proposes that the status quo be maintained.

The collective bargaining agreement states the rationale for this additional 2% remuneration as follows:

The transitional differential shall represent and be compensation for additional duties and responsibilities that the members on the eligibility register will be called upon to perform above and beyond the regular duties of the member in his current rank.

There was conflicting evidence presented on this issue. The City argued tht the Association has filed grievances seeking "out of rank" pay for sergeants actiong as lieutenants. The Association argued that no such grievances had been filed.

Regardless, upon review of the entire record, in particular both Chief Godbee's testimony and Sgt. Wynn's, as to how important members of this bargaining unit are to the Department, the panel awards the Association's last offer of settlement on this issue.

17. ASSOCIATION PROPOSAL 24 -- EDUCATIONAL REIMBURSEMENT

The Association seeks to modify the CBA to provide a yearly payment of \$1,000 to any member obtaining a post-graduate degree. The City proposes, by its last offer of settlement, that the status quo be maintained.

The Association's witness gave persuasive testimony as to how encouraging and rewarding individuals for obtaining higher degrees would work to the Department's betterment. However, because higher education is presently one of the criteria for promotions to lieutenant, the reasons behind the Association's proposal are already recognized.

The panel awards the City's last offer of settlement to maintain the status quo as to this issue.

18. ASSOCIATION PROPOSAL 25 -- VACATION

Presently, bargaining unit members receive two furlough periods annually. The Association proposes that all bargaining unit members be permitted to bank one of these two as follows:

Effective upon ratification of this CBA, all members have the option each year of banking one of their two furlough periods. The member can have the option to forfeit the furlough in lieu of cash compensation or bank the furlough, and at the time of retirement, the member would be paid a lump sum for their furlough time at their then current rate of pay. Such payment will not be included in the computation of average final compensation for pension purposes. Such an option shall be given in writing at the time of furlough selection.

For its last offer of settlement, the City counter-proposes with language agreeing to much of the sought after modification:

Effective for fiscal year beginning on July 1, 2011, all members will have the option each year of banking one of their two furlough periods. The members can have the option to forfeit the furlough in lieu of cash compensation at the minimum wages of their applicable rank, and exclusive of longevity payments.

Such payment will not be included in the computation of average final compensation for pension purposes. Such an option shall be given in writing by the member at the time of furlough selection. Failure to exercise the option in writing at the time of furlough selection shall be a full and complete waiver of the option for that furlough period.

This option shall be effective for fiscal years beginning July 1, 2011 and July 1, 2012. If in each of these fiscal years, the City's overtime expenditures are not reduced by 10% of its overtime expenditures for the Department for fiscal year 2008-2009, these provisions shall expire and those provisions in effect prior to the award in D09 G-0786 shall be reinstated with full force and effect.

The uniformed census decreased by 23.21% between the fiscal years ending 2004 and 2009. Additionally, in fiscal year 2009-2010, actual overtime exceeded budgeted overtime by 300%. Chief Godbee emphasized how the Department is attempting to effectively police with limited resources. The City argues that its counter-proposal should be a cost-effective means of increasing the number of officers available for public safety, all the while reducing overtime expenditures. In turn, bargaining unit members receive much of the benefit they sought by their proposal.

The panel awards the City's last offer of settlement on this issue.

19. ASSOCIATION ISSUE 26 -- EMERGENCY AND PRE-SCHEDULED OVERTIME AVAILABLE TO WORK WHILE ON FURLOUGH

Presently, members of the bargaining unit on furlough are not eligible for overtime opportunities. The Association proposes that they shall be eligible for overtime while on furlough, so long as they notify the command of their eligibility, in writing, prior to the furlough beginning.

The City, as its last offer of settlement as to this proposal, asks that the status quo be maintained.

The panel awards the City's last offer of settlement.

PANEL SIGNATURES

This Award addresses those issues presented to the panel for resolution. Other contract provisions not presented to the panel or otherwise agreed to by the parties, will be carried forward in the collective bargaining agreement. Unless otherwise indicated, any awarded modification to the collective bargaining agreement is effective upon the date of the award.

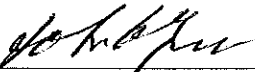
The total award includes the resolution of issues above, tentative agreements by the parties, and the prior agreement as modified by this award.

Based upon the entire record and the argument of the parties, the panel issues this Opinion and Award. By signing below, the panel delegates concur on those issues decided in favor of their principal and dissent on those issues in favor of the other party.



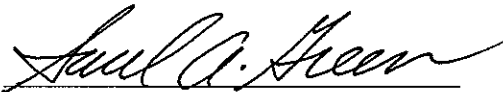
Thomas W. Brookover
Chairman and Impartial Arbitrator

April 1, 2011
Date



John A. Lyons
Union Delegate

4-5-11
Date



Saul A. Green
Employer Delegate

March 31, 2011
Date